

Court of King's Bench of Alberta

Citation: Winslow v Thivierge, 2026 ABKB 273

Date: 20260409
Docket: 2301 14535
Registry: Calgary

Between:

Daun C. Winslow

Plaintiff

- and -

Marteen Thivierge and Bryan Thivierge

Defendants

**Reasons for Decision
of the
Honourable Justice M.A. Marion**

I. Introduction and Background

[1] The defendants (**Defendants**) in this action, Marteen Thivierge (**MT**) and Bryan Thivierge (**BT**) both apply (**Applications**) to strike the statement of claim and, alternatively, for summary dismissal. They also seek discharge of a certificate of *lis pendens* (**CLP**). The plaintiff, Daun C. Winslow (**Winslow**), opposes.

[2] The action is a simple claim founded upon breach of contract. The November 2023 statement of claim pleads that Winslow (as purchaser) and the Defendants (as sellers) reached a binding agreement for the sale of land in Rocky View County (**Property**) as defined at para 4 of the statement of claim. The claim seeks an order for the sale of the Property in accordance with the alleged contract, an injunction stopping the sale of the Property to a third party, and judgment for legal fees for enforcing the alleged contract. The claim does not seek damages.

[3] The Defendants filed statements of defence in December 2023. They both deny that there was a binding contract. They plead that Winslow made a counter-offer which they did not accept. They each seek the discharge of a CLP that Winslow filed and then registered against the Property in November 2023. The Defendants did not file a counterclaim.

[4] For the reasons set out below, I find there is no merit to Winslow's claim that there was a binding contract created between these parties and I find that there is no genuine issue requiring trial. There has been a significant evidentiary process leading up to the Applications. There are no

material facts in dispute, but rather a dispute about the legal effect of uncontested facts. This is precisely the type of matter appropriate for summary determination.

[5] Accordingly, summary dismissal and discharge of the CLP are appropriate, on the terms set out below to allow the Defendants to commence a process for their claim to compensation for the registration of the CLP against the Property.

II. Record

[6] The matter was set down for a special application. There is a significant record before me for what is a fairly simply claim. It includes:

- (a) a December 22, 2023 (filed January 8, 2024) Winslow affidavit;
- (b) a December 22, 2023 (filed January 8, 2024) affidavit of Weiping Sun (**Sun**), Winslow's realtor;
- (c) a February 2, 2024 (filed February 7, 2024) BT affidavit;
- (d) a February 2, 2024 (filed February 7, 2024) MT affidavit;
- (e) a February 6, 2025 (filed February 11, 2025) BT affidavit;
- (f) a February 14, 2025 (filed February 18, 2025) supplemental MT affidavit;
- (g) a February 21, 2025 transcript of the questioning of BT on his affidavits;
- (h) a February 21, 2025 transcript of the questioning of MT on her affidavits;
- (i) a March 4, 2025 Sun affidavit;
- (j) a March 4, 2025 Winslow affidavit;
- (k) a March 14, 2025 transcript of the questioning of Sun on her affidavits; and
- (l) a March 14, 2025 transcript of the questioning of Winslow on his affidavits, with exhibits.

[7] There were no objections to the evidence. I have reviewed the entire record.

III. Issues

[8] The issues before me are:

- (a) Should the statement of claim be struck?
- (b) Should the claim be summarily dismissed?
- (c) What is an appropriate order?

IV. Analysis

A. Should the Statement of Claim be Struck?

[9] The Defendants did not strongly argue that the claim should be struck. They did not address it in their brief, but rather focused on summary dismissal.

[10] In *Pinkney v Hines*, 2026 ABKB 267, Justice Lema recently and succinctly summarized the relevant test for striking a pleading:

[21] Applications to strike must satisfy at least one of the conditions under R. 3.68(2). Quereshi and Ogilvie argue that R. 3.68(2)(b) applies i.e. “a commencement document or pleading discloses no reasonable claim or defence to a claim.”

[22] When an applicant seeks to strike pleadings under this rule, it must demonstrate it is “plain and obvious” the pleading does not disclose a reasonable claim: *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 14; *Mikisew Cree First Nation v Alberta*, 2025 ABCA 304 at para 15; and *SR v Edmonton (Police Service)*, 2024 ABCA 340 at para 13.

[23] As no evidence may be submitted on an application under r 3.68(2)(b), the facts as pleaded are assumed to be true: R. 3.68(3); *SR* at para 13; *Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24 at para 20; and *Tuharsky* at para 16. The Court assesses only whether there is a legal basis for the claim.

[11] In my view, the Defendants have not met test for striking under rule 3.68 of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*). As pleaded, the statement of claim discloses a valid and reasonable claim for breach of contract. The claim is not struck pursuant to rule 3.68.

B. Should the Claim be Summarily Dismissed?

1. Legal Framework for Summary Dismissal

[12] Rule 7.3(1)(b) provides that a defendant may apply for summary judgment (that is, summary dismissal) in respect of all or part of a claim on the basis that there is no merit to a claim or part of it.

[13] Summary judgment cannot be granted if the application presents a genuine issue requiring trial: *Hannam v Medicine Hat School District No 76*, 2020 ABCA 343 at para 13, leave to appeal to SCC refused, 39442 (18 March 2021); *Clearbakk Energy Services Inc v Sunshine Oilsands Ltd*, 2023 ABCA 96 at para 5.

[14] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak v Mauldin*, 2014 SCC 7 at para 49; *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 at para 21; *Liberty Mortgage*

Services Ltd v River Valley Development Corp, 2025 ABCA 346 at para 27; *Calgary Co-operative Association Limited v Federated Co-operatives Limited*, 2025 ABCA 142 at para 24.

[15] The proper approach to summary dispositions in Alberta has been laid out in *Weir-Jones* at para 47 (emphasis in original) (and as recently re-affirmed by the Court of Appeal in *Liberty Mortgage* and *Calgary Co-operative* at para 25):

[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.

[16] The court has a duty to take a “hard look” at the merits of the claim or defence on a summary judgment application: *Weir-Jones* at para 44, citing *Knee v Knee*, 2018 MBCA 20 at para 33.

[17] A defendant applicant for summary dismissal has the initial burden to prove the factual elements of its defence (that is, the facts on which it relies), on a balance of probabilities, that there is no merit to the claim, and that there is no genuine issue requiring a trial: *Weir-Jones* at paras 31-35, 47(b); *Eberle v Terroco Drilling Ltd*, 2022 ABCA 8 at para 10, citing *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2021 ABCA 16 at para 69, leave to appeal to SCC refused, 39597 (8 July 2021); *Giustini v Workman*, 2021 ABCA 65 at paras 22-24; *P & C Lawfirm Management Inc v Sabourin*, 2020 ABCA 449 at paras 38-39, leave to appeal to SCC refused, 40004 (21 April 2022); *Hannam* at paras 145-151. The resisting party must put its best foot forward and demonstrate a genuine issue requiring a trial and, in the end, the presiding judge must be left with sufficient confidence that the state of the record permits a fair summary disposition: *Eberle* at para 10, citing *PricewaterhouseCoopers* at para 69.

2. Have the Defendants Met the Burden to Show That There Is No Merit to the Claim and No Genuine Issue Requiring a Trial?

[18] In *Weir-Jones*, the Court of Appeal described the threshold burden upon an applicant for summary judgment at paras 32–33 (emphasis added):

[32] A notable aspect of summary judgment applications is that there is no symmetry of burdens. **The party moving for summary judgment must, at the threshold stage, prove the factual elements of its case on a balance of probabilities, and that there is no genuine issue requiring a trial.** If the plaintiff is the moving party, it must prove “no defence”. **If the defendant is the moving party, it must prove “no merit”.** The resisting party need not prove the opposite in order to send the matter to trial. **The party resisting summary judgment need only demonstrate that the record, the facts, or the law preclude a fair disposition, or, in other words, that the moving party has failed to establish there is no genuine issue requiring a trial:** see para. 35, *infra*.

[33] **The threshold burden on the moving party with respect to the factual basis of a summary judgment application is therefore proof on a balance of probabilities. If the moving party cannot meet that standard, summary judgment is simply not available.** On the other hand, merely establishing the factual record on a balance of probabilities is not sufficient to obtain summary judgment, because proof of the facts does not determine whether the moving party has also proven that there is no “genuine issue requiring a trial”. Imposing standards like “high likelihood of success”, “obvious”, or “unassailable” is, however, unjustified. A disposition does not have to be “obvious”, “beyond doubt” or “highly likely” to be fair.

[19] The Defendants’ defence to the claim is straightforward: no binding agreement was reached between the parties with respect to the Property because there was no offer and acceptance.

a. Legal Framework

[20] For a binding contract to be formed, there must be offer and acceptance, and certainty of terms, meaning the parties must have reached agreement on all the essential terms of their agreement: *Bidell Equipment LP v Caliber Midstream GP LLC*, 2019 ABQB 296 at para 85, aff'd 2020 ABCA 478, leave to appeal to SCC refused, 39591 (17 June 2021); *Commercial Truck Equipment Corp v Prairie Hydraulic Equipment Ltd*, 2018 ABQB 218 at para 48. If there is no agreement (objectively determined), there is no contract: *Ko v Hillview Homes Ltd*, 2012 ABCA 245 at para 75, leave to appeal to SCC refused, 35040 (17 January 2013).

[21] Acceptance must be unequivocal and it must be communicated to the offeror: Angela Swan et al, *Canadian Contract Law*, 4th ed (Toronto: LexisNexis Canada, 2018) at §4.43.

[22] If the offeror fixes what the offeree has to do to make an effective acceptance, the offeree has to comply in order for the acceptance to be effective: Swan at §4.43, citing *Hemingway v Desire2Learn Incorporated*, 2008 CanLII 47476 (ON SC); see also *Ansar Development Corporation v Indus Development Corporation*, 2015 ABQB 723 at para 34.

[23] It is trite law that a “counteroffer kills the original offer”, because it is the rejection of an offer and the making of a new offer: Jason W Neyers et al, *Fridman’s The Law of Contract in Canada*, 7th ed (Toronto: Thomson Reuters, 2024) at §2:21; *Adair v Baryla*, 2025 BCSC 565 at para 26; *Sortiropoulou v Beaudin*, 2013 ONSC 6097 at para 24, aff'd 2014 ONCA 168.

[24] The offeree cannot “choose to accept some parts of the offer and reject other parts. The offeree accepts all or he accepts nothing”: *32262 BC Ltd v 411676 Alberta Ltd*, 1995 CanLII 9082 (AB KB) at para 35; *Adelaide Capital Corp v Singh*, 1997 CanLII 14885 (AB KB) at para 19. Therefore, if an offeree rejects one term of an offer, if the offer and acceptance do not “correspond completely”, if the offeree proposes a new contract, or if the offeree purports to accept the original offer while introducing or varying terms, it is not an acceptance but a counter-offer, and there is no contract: *Ko* at para 75; Neyers at §2.21; *Adelaide* at paras 19-20.

[25] In the context of contracts for the purchase and sale of land, to be enforceable, the agreement must be in writing and signed by the parties (which can be through a purchase and sale agreement or some “other writing” evidencing that there was an agreement): *Statute of Frauds 1677*, (29 Car 2) c 3; *1353141 Alberta Ltd v Roswell Group Inc*, 2019 ABQB 559 at paras 184, 209, citing *Leoppky v Meston*, 2008 ABQB 45 at paras 35-41, aff'd 2020 ABCA 428; *Campbell v Paradise Petroleums Ltd*, 2021 ABQB 864 at para 39, aff'd 2023 ABCA 205; *Jusza v Dobosz*, 2003 ABQB 512 at para 38; *Kendell v Kendell*, 2006 ABQB 664 at paras 15, 22.

[26] Solely verbal agreements that create, confirm or amend an interest in land are not enforceable: *1704455 Alberta Ltd v Sage Property Development Inc*, 2020 ABQB 776 at paras 27-28; *Kendell* at para 22; *Haan v Haan*, 2015 ABCA 395 at paras 10-11; *Jones v Nilsson Livestock Ltd*, 2023 ABKB 588 at para 27; *Austie v Aksnowicz*, 1999 ABCA 56 at paras 52-55, leave to appeal to SCC refused, 27248 (17 February 2000).

b. Facts

[27] The background facts are largely either uncontested or agreed.

[28] In October 2023, Winslow wanted to buy a property for retirement. He hired Sun as his realtor. The Defendants had the Property listed for sale, through a RE/Max brokerage. Heather Nickel (**Nickel**) was one of their real estate agents. Winslow toured the Property with BT. At the time, the only building on the Property was a 5,000 square foot shop organized into various components, including a mechanical room, offices, a tool room, a tool crib, a woodworking room, a lay down room, and a welding room. At the time, the building had many tools and saws in it, including “skil saws, hand saws, ring saw, floor saw, table saw, custom table saw, saw tables, chop saws on stands, robot saw, bandsaw, concrete saw”, jig saws, reciprocating saws, scroll saws and circular saws.¹ At least some of the tools in the building were not owned by the Defendants, but by a numbered corporation.

[29] Other than meeting BT during the tour, there was no contact between Winslow and the Defendants regarding the formal negotiation of an agreement. The negotiations were handled on their behalf through Sun and Nickel.

[30] On October 25, 2023, at 9:49 a.m., Sun emailed a written offer (**Offer**) to Nickel for Winslow’s purchase of the Property.² The Offer contemplated Winslow’s purchase of the Property using the Alberta Real Estate Association (**AREA**) form of Country Residential Purchase Contract. The Offer was signed and initialed electronically by Winslow using electronic document signature software. The purchase price was \$825,000. Clause 1.1 provided that it included as unattached goods “All the equipment in the workshop room including compressor, saw table and a dust sucker etc.” as follows:

ALL the equipment in the work shop room including compressor, saw table and dust sucker etc.

(c) the attached goods except for _____
N/A

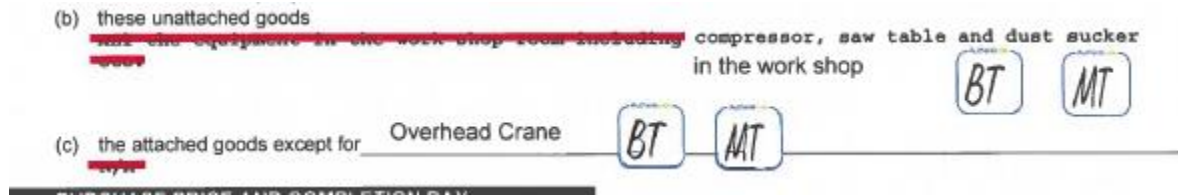
[31] The Offer was not acceptable to the Defendants, including due to the description of the included unattached and attached goods. The Defendants wanted clarity on what Winslow intended to include in the proposed contract.

[32] Sun and Nickel then had some communications about the Offer, both orally and through texts. According to Sun, around 11:00 a.m. or 12:00 p.m. she and Nickel had an oral conversation about it, and they discussed whether Winslow wanted a saw included in the sale. Sun confirmed he did and it should be included in the offer. According to Sun, Nickel advised she would include the saw. The communication about the saw was oral. It is not clear from the record what specific saw was discussed.

[33] On October 25, 2023, at 1:04 p.m., Nickel emailed Sun a revised version of a proposed contract (**Counter-Offer**). Instead of starting with a clean form of contract, the Counter-Offer built upon the Offer document. The Counter-Offer included several revisions including revisions to the included unattached and attached goods as follows:

¹ MT February 2, 2024 affidavit at para 5 and Exhibit B; BT February 2, 2024 affidavit at para 6 and Exhibit B; Winslow transcript at 26-27.

² Sun December 22, 2023 affidavit at Exhibit A.



[34] The Counter-Offer continued to have Winslow’s earlier signature and initials on it, but also indicated that the Defendants had signed the Counter-Offer under clause 18 of the document, indicating that they agreed to sell the Property “according to the terms of this contract”. The Counter-Offer also revised the “Completion Day” to January 12, 2024. It changed the time for acceptance in clause 17.2 and provided that “This offer/counteroffer will be open for acceptance until 2:00 p.m. on October 25, 2023.” It did not include any changes regarding a saw.

[35] The Counter-Offer was never signed or initialed by Winslow in an unaltered form.

[36] According to BT, he still needed clarification about what was included in the Counter-Offer he had already electronically signed, and Nickel was to contact Sun to clarify what Winslow intended to be included in the contract.³

[37] According to Sun, after receiving the Counter-Offer, she had communications with Nickel, which Sun described as follows:

But, unfortunately, when - - when she just sent to me back the - - send the offer, she didn’t put it - - the saw on, and I - - after I received [the Counter-Offer] - - this - - send the offer - - okay - - he didn’t - - she didn’t put the saw - - saw on. I just text to her. I said Oh, you forgot to put - - put the saw on. I will add it on, and she said, Okay. You send - - you - - you - - you put it on, and I will let my client get his initial.⁴

[38] Sun confirmed that this was “just oral voice conversations.”⁵

[39] According to Winslow, he advised Sun that he accepted the Counter-Offer and did not instruct Sun to make a further counter-offer. However, Sun prepared another version of the AREA purchase contract, by making changes to the Counter-Offer. At 1:32 p.m., Sun emailed Nickel a document, stating: “Hi Heather, Signed offer attached. One place I need initial.” As the legal effect of the attachment to Sun’s email is disputed (and each party defined it in a way to support their position),⁶ I will simply refer to it as the “**Disputed Document**”.

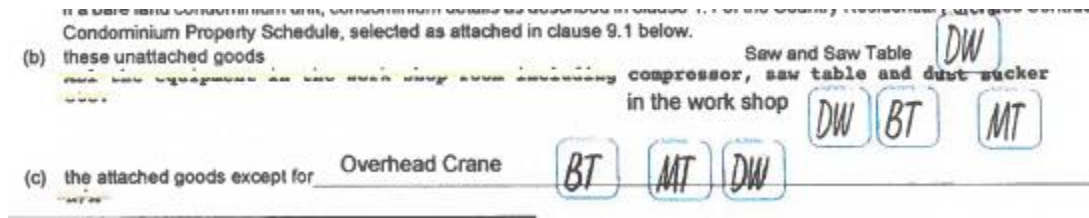
[40] The Disputed Document made changes to the Counter-Offer, including with respect to the unattached goods, by adding “Saw and Saw Table”, with Winslow’s new initials next to the change, as follows:

³ BT transcript at 43-44.

⁴ Sun transcript at 17.

⁵ Sun transcript at 18.

⁶ In the Statement of Claim, the Disputed Document is referred to as the Purchase Contract with a “Proposed Saw Amendment”. In Winslow’s brief, it is referred to as the “Amended Counteroffer”. In the statements of defence, it is referred to as “Counter-Offer #2”.



[41] In questioning, Winslow acknowledged he was aware of and initialed the changes to the unattached goods to include “Saw and Saw Table”. Winslow described it as a “clarification to include a saw.”⁷ The Disputed Document did not change the time for its acceptance; however, Winslow specifically added his initials to clause 17.2, which continued to provide “This offer/counteroffer will be open for written acceptance until 2:00 p.m.”

[42] The Defendants did not further initial or sign the Disputed Document. BT interpreted it as adding more items to the offer for the same price, and he was not sure what kind of saw was being referenced in the Disputed Document.

[43] At 2:28 p.m., Sun reminded Nickel that “Signed offer sent back to you. I added the saw in the goods included. Please initial it.” Nickel responded by confirming she had already sent the Disputed Document to the Defendants.

[44] The Disputed Document was never returned by the Defendants or Nickel to Sun or Winslow. Specifically, nowhere in the record is there a version of the Disputed Document on which the Defendants initialed the changes made to their Counter-Offer. According to the Defendants, they did not accept the Disputed Document.

[45] On October 26, 2023, at 10:26 a.m., Sun followed up with Nickel advising she had not “received the contract yet.”

[46] Sun deposes that Nickel “gave me the go ahead for Mr. Winslow to pay the deposit.”⁸ At some point on October 26, 2023, Winslow attended the Defendants’ realtor’s RE/Max office and left a cheque as a \$20,000 deposit at reception. The cheque was never cashed, and a few days later, Winslow was asked to retrieve the cheque but refused to do so.

[47] On October 26, 2023, at 2:19 p.m., Nickel confirmed in a text that she had not received the initialed Disputed Document from the Defendants, that the parties were well past the expiry date, and that in the meantime the Defendants had received another offer. She advised she was instructed to inquire whether Winslow wanted to change his offer.

[48] The realtors exchanged further texts and a dispute arose. Sun texted Nickel stating, among other things, “This is not a matter about the counter offer your client don’t want to accept. They have agreed just make the change properly.” Nickel responded: “I did not hear any of that.”

[49] On October 31, 2023, Nickel advised Sun that they were in a competing offer situation and if Winslow intended to proceed, he was requested to leave his offer open until November 2, 2023.

⁷ Winslow transcript at 13.

⁸ Sun December 22, 2023 affidavit at para 13.

[50] At some point before November 1, 2023, Sun offered to waive her entire commission. In questioning, she admitted this was to induce the Defendants “to agree with” the Disputed Document.

[51] On November 1, 2023, Nickel advised Sun that the Defendants had decided to go with the other offer. Sun confirmed that Winslow refused to pick up his deposit and that Winslow was going to file a claim. She requested Nickel to advise the buyers of the Property.

[52] On November 2, 2023, Winslow filed the claim in this action.

[53] On November 6, 2023, Winslow filed the CLP and, on November 28, 2023, it was registered against the Property’s title.

[54] On December 15, 2023, the Defendants each filed separate statements of defence.

[55] On January 11, 2024, Winslow filed an application for an injunction preventing the transfer of the Property pending resolution of the action or, in the event the Property had already been transferred, to void the transfer of the Property.

[56] On February 14, 2024, Justice Kuntz heard Winslow’s application in civil chambers. There were several affidavits filed, including from Winslow, Sun and each of the Defendants. Justice Kuntz dismissed the application, for these reasons:

So, at the end of the day there will be no injunction. I think it was a counter offer and the respondent was not required to accept it. I mean they sent an offer, there was a counter offer, they changed the terms in sending it back. It was a counter offer which they did not have to accept. So the application is dismissed.

[57] It does not appear much happened in the action after that, until January 30, 2025 when BT’s counsel demanded Winslow remove the CLP. That letter advised that the CLP was preventing closing of the sale of the Property to other purchasers. During Winslow’s March 14, 2025 questioning, Winslow’s counsel advised that he had not provided Winslow the January 30, 2025 letter. It was reviewed with Winslow at the questioning. The CLP has never been removed, and, in February 2025, the Defendants filed the Applications.

c. Assessment

[58] Based on the legal principles and the undisputed facts noted above, I find that the Defendants have met their threshold burden to show there is no merit to Winslow’s claim and no genuine issue requiring a trial.

[59] Winslow’s argument focused heavily on whether the parties had agreed to the required essential terms to establish a contract, certainty of terms and interpretation of contract. I agree that had the Counter-Offer been accepted, it would have included all the essential terms of a real estate purchase contract. Further, had the Disputed Document been accepted, it would also have included the essential terms of a real estate purchase contract (although there may have been some debate about which “Saw” the parties had agreed was part of the deal).

[60] But the Defendants' defence is not about whether those documents contained essential terms, or how to interpret a contract. Their defence is that there was never an offer and acceptance.

[61] The record before me establishes, on a balance of probabilities, that the Defendants' Counter-Offer was never validly accepted by Winslow. Rather, before the Counter-Offer expired on its terms at 2:00 p.m., Sun provided the Disputed Document to Nickel, which was a revised version of the Counter-Offer. The Disputed Document was a new counter-offer on materially different terms. The addition of an unspecified "Saw" in this context was not a trivial change, as evident by both realtors' acknowledgment that further initials were required.

[62] Therefore, the Disputed Document constituted a rejection of the Counter-Offer and a further counter-offer by Winslow to the Defendants. The Defendants never signed or initialed the Disputed Document, it was never returned to Winslow or Sun by the Defendants or Nickel, and there was no other communicated acceptance of its terms by the Defendants, in writing or otherwise.

[63] The Counter-Offer ceased to exist when the Disputed Document was provided by Sun to Nickel. The Disputed Document expired, unaccepted, on its terms at 2:00 p.m. on October 25, 2025

[64] These conclusions are also based on the form of AREA contract that the parties were using for their negotiations:

- (a) clause 3.1(1) states: "contract changes that are **agreed in writing** will supersede the pre-printed clauses" (emphasis added). Neither the Counter-Offer nor the Disputed Document was agreed in writing by the parties;
- (b) clause 13.1 states that "A **notice** under this contract **means a written document**, including notices required by this contract, **and this contract when accepted**" (emphasis added). Again, neither the Counter-Offer nor the Disputed Document were accepted in writing;
- (c) clause 16.1 states: "The **legal obligations in this contract begin when the accepted contract is delivered** in person or sent by fax or email..." (emphasis added). Again, there was no written acceptance, and there was no delivery of an acceptance of the Counter-Offer or the Disputed Document, and therefore no legal obligations between the parties began; and
- (d) clause 17.1 states: "the buyer offers to buy the Property **according to the terms of this contract**" and clause 17.2 states "this **offer/counteroffer will be open for written acceptance** until [2:00 p.m. on October 25, 2023]" (emphasis added). Neither the Counter-Offer nor the Disputed Document was accepted in writing by 2:00 p.m.

[65] The Defendants have established that there is no merit to Winslow's claim, and that there is no genuine issue requiring a trial to determine whether a binding agreement for the sale of the Property was reached between Winslow and the Defendants.

3. Has Winslow Established a Genuine Issue Requiring a Trial?

[66] Winslow provided the Court with a 57-page written brief. I have considered all of the matters he has raised in his brief and in oral argument. I conclude that Winslow has not established a genuine issue requiring a trial. I briefly address his various positions and arguments below.

a. No Genuine Issue that Winslow Accepted the Counter-Offer

[67] Winslow and Sun both depose that Winslow accepted the Counter-Offer before its deadline. This is a bald, conclusory statement providing, at best, their inadmissible opinion to support Winslow's argument about the legal effect of what transpired. Such evidence is given little or no weight and cannot establish a genuine issue requiring a trial in this case: *McDonald v Sproule Management GP Limited*, 2023 ABKB 587 at para 96, aff'd *Sproule Management GP Limited v McDonald* (November 6, 2024), Calgary (Alta CA) (Antonio, Woolley and Feehan JAs); *Otiti v Har-Par Investments Ltd*, 2023 ABKB 732 at para 86, aff'd 2025 ABCA 379. As noted above, the documented evidence illustrates that Winslow did not accept the Counter-Offer. Instead, at law, he rejected it by providing his own counter-offer through the Disputed Document.

[68] Even if it is accepted that Winslow told Sun that he accepted the Counter-Offer (which is contradicted by the fact he initialed the revised Disputed Document after Sun created it with the revisions in it), and even if it is assumed that he did not instruct Sun to make another counter-offer, none of that changes the result. As noted elsewhere in these Reasons, those are matters between Winslow and Sun. It is the communications between the parties to the negotiation, through their realtors, that must establish acceptance. No valid acceptance ever happened in this case.

[69] Further, the fact that Winslow delivered the deposit to the Defendants' realtor's office does not create a genuine issue requiring a trial. By that point in time, the Counter-Offer no longer existed, the Disputed Document had expired on its own terms unaccepted, and the parties had no contract. For the same reason, even if it is accepted, for the sake of argument, that Nickel gave Sun "the go ahead" for Winslow to pay the deposit (which is inconsistent with the balance of the written record from Nickel), this cannot reasonably be construed as having created a contract, whether through the Counter-Offer, the Disputed Document, or a new contract.

b. No Genuine Issue re: the Realtor's Oral Conversations

[70] For the same reasons, the oral discussions between the realtors prior to the Counter-Offer and the Disputed Document do not create a genuine issue for trial. I have considered this issue based on Sun's unchallenged evidence of those discussions, even though there is a text by which it appears Nickel may have expressed a different view about what was discussed.

[71] I have already set out the specific provisions of the AREA form of agreement that the parties were using which make it clear that the parties' agreement, including its acceptance, had to be in writing.

[72] Further, clause 15.1 of the form of AREA contract used by the parties in the negotiations provided:

- 15.1 The seller and buyer confirm that this contract sets out all the right and obligations they intend for the purchase and sale of the Property and that:

- (a) this contract is the entire agreement between them;
- (b) unless expressly made part of this contract, in writing:
 - (i) verbal or written collateral or side agreements or representations or warranties made by either the seller or buyer, or the seller's or buyer's brokerage or agent, have not and will not be relied on and are not part of this contract; and
 - (ii) any pre-contractual representations or warranties, howsoever made, that induced either the seller or buyer into making this contract are of no legal force or effect.

[73] Although this provision never became operative as part of a contract, because there was no offer and acceptance, its use by the parties in their negotiations is important. In that context, there was no reasonable expectation by Winslow or Sun that any offer could be accepted to create a binding contract unless it was accepted in writing in accordance with its terms. There was no reasonable expectation that the parties or realtors could create binding contracts creating interests in land through oral agreements, conversations or representations between the realtors. Winslow expressly confirmed the application of the AREA form of contract in the Disputed Document, including clause 15.1, when Sun sent the Disputed Document to Nickel.

[74] The AREA form of contract is a standard form contract developed by the Alberta Real Estate Association. They are commonly used by vendors, purchasers and realtors in Alberta: *Vallieres v Vozniak*, 2014 ABCA 290 at para 13; *Covey v Dueck*, 2025 ABKB 78; *Stephens v Sowiak*, 2024 ABKB 583. As was stated by the Court of Appeal in *Vallieres* at para 13, “attempting to inject the circumstances surrounding the formation of the contract” or “any attempt to identify the intention of the parties”, into the interpretation of an AREA contract “is nothing but a legal fiction” when parties “were content to adopt the standard form agreement.” In my view, the same can be said for parties that choose to negotiate using an AREA form of agreement.

[75] The AREA form unambiguously requires written offers and written acceptance of offers before binding contracts are formed. This is for good reason. It is to create certainty so everyone knows where they stand during the negotiation process, and to avoid litigation like this, founded solely upon oral discussions between realtors. It also allows realtors to freely explore options knowing that there is no binding deal until a written offer is made and accepted in writing by their respective clients. Based on the clear terms of the AREA form, negotiating parties and realtors using AREA standard form contracts can reasonably expect that everyone using such contract forms for their negotiations reasonably expects that there is no binding contract until a written offer is accepted in writing.

[76] In my view, that reasonable expectation is borne out by the record in this case. When Nickel and Sun were texting about the Offer, Nickel pointed out that Winslow had missed an initial in the Offer. When Nickel and Sun had the second oral conversation about adding the unspecified “saw” into the offer, Sun acknowledged that Nickel told her: “you put it on, and I will let my client get his initial.” When Sun sent the Disputed Document to Nickel, she prefaced it by telling Nickel she needed an initial. All of this is consistent with there being no binding agreement without written acceptance.

[77] The formalities contemplated and required by the AREA form of contract provide much needed commercial certainty to an often fast-moving negotiation process that frequently relies heavily on multiple communications between realtors.

[78] Sun's offer to waive her commission to induce the Defendants to "agree" to the Disputed Document is also consistent with there not being any agreement in place.

c. No Genuine Issue that the Disputed Document was an Amendment to an Already Accepted Counter-Offer

[79] Winslow argues that the Disputed Document was an amendment to the already accepted Counter-Offer (he refers to it as the "Proposed Saw Amendment"). This argument does not establish any genuine issue requiring a trial.

[80] First, it is founded on the premise that Winslow had already accepted the Counter-Offer, which I have already found is a hopeless position. This matter falls squarely into the principles set out in *Ko* and the other cases above. Winslow changed the terms and sent the Disputed Document. The Counter-Offer and the Disputed Document do not "correspond completely" and "there is no contract": *Ko* at para 75.

[81] Second, I agree with the Defendants that this case is similar to *Ventura Land Company Inc v F & L Erb Holdings Ltd et al*, 2007 MBQB 297, where a similar argument was made that a document sent by one party to the other was confirmation of an existing agreement following an oral conversation. Like here, the disputed document in *Ventura* was written as an offer open for a limited time with an expiry time. The Court stated, at para 52, that "inserting a deadline for acceptance casts fatal doubt on the certainty respecting the intention of the parties concerning a supposed agreement already in existence." That is equally applicable here.

[82] Winslow has not provided me authority to support a position that an offeree can both accept an offer and propose new "amended" terms in the same response. As noted above, there is significant authority to suggest that this is not possible.

[83] Winslow has not established a genuine issue requiring a trial on this basis.

d. No Genuine Issue re: Lack of Evidence from Nickel

[84] Winslow argues that an adverse inference should be drawn against the Defendants because they did not present evidence from Nickel. This argument is not persuasive.

[85] A court may exercise its discretion to draw an adverse inference against a party that fails or refuses to bring forward evidence on a key point, upon considering various factors: *Stikeman Elliott LLP v 2083878 Alberta Ltd*, 2019 ABCA 274 at para 87 (Slatter JA in dissent); *Greco v Calgary (City)*, 2025 ABKB 629 at paras 169-172. I agree with Winslow that this can, in some circumstances, include failing to provide an affidavit on an application: *Can Southern Petroleum v Amoco Can*, 1996 CanLII 19897 (AB KB) at para 88.

[86] However, whether to draw an adverse inference is a discretionary decision based on the specific circumstances before the court. A court may consider a number of circumstances, including but not limited to:

- (a) whether the witness has material evidence to provide;
- (b) whether the witness is the only person or the best person who can provide the evidence;
- (c) whether there is a legitimate explanation for the failure to call the witness; and
- (d) whether the witness is within the “exclusive control” of the party, and is not “equally available to both parties.”

See: *Stikeman* at para 87; *Greco* at para 170; *Howard v Sandau*, 2008 ABQB 34 at paras 43-44; *Sunshine Village Corporation v Boehnisch*, 2020 ABQB 692 at para 165.

[87] With respect to these factors:

- (a) on the record before me, there is no reasonable prospect that Nickel’s evidence would have established a genuine issue requiring a trial. There is no suggestion that Nickel has documentary evidence in her possession that has not been produced or been made available to the parties in this action. Her oral testimony would only potentially add to the content of the realtors’ oral conversations but would not likely change the outcome because it would not affect whether there was a written offer and a written acceptance;
- (b) Nickel was not the only witness who could provide information about the realtors’ conversations. Sun has provided her evidence and I have treated it as unchallenged for the purposes of the Applications. Sun’s evidence did not establish a genuine issue requiring trial;
- (c) the Defendants did not provide an explanation for not providing evidence from Nickel. It was up to the Defendants to decide what evidence they filed in support of their application to summarily dismiss the claim. They obviously felt they did not need evidence from Nickel to meet their threshold burden. They were right. As noted in *Weir-Jones* at para 47(c), once the Defendants met their burden to show no merit to the claim and no genuine issue requiring a trial, it was up to Winslow to put his best foot forward to demonstrate a genuine issue requiring a trial. While not obligated to do so, if Winslow was of the view that Nickel’s evidence was important to establish a genuine issue requiring trial, he could have examined her under rule 6.8: *Covey* at para 81; *Armstrong v Gula*, 2024 ABKB 358 at paras 72-73; *Liberty Land Corporation v Kinnear*, 2026 ABKB 248 at paras 175-176 and
- (d) Nickel was the Defendants’ realtor on this potential transaction over two years ago. There is no evidence to suggest the Defendants have control over her, let alone exclusive control. As noted above, her evidence was not necessary to establish no merits to Winslow’s claim, and Winslow could have questioned her under rule 6.8.

[88] Winslow also relies on rule 8.15, but that rule is not applicable because this is not a trial. I understand that, in any event, there may have been discussions amongst counsel about Nickel’s evidence and it does not appear to have been a surprise to Winslow that the Defendants did not rely on an affidavit from Nickel. Again, it was open to Winslow to adduce evidence from Nickel.

[89] There is no reasonable basis to draw an adverse inference against the Defendants as requested, and I decline to exercise my discretion to do so. The lack of evidence directly from Nickel does not establish a genuine issue requiring trial.

e. No Genuine Issue re: Bad Faith

[90] Winslow argues that there is a genuine issue requiring a trial because the Defendants acted in bad faith or failed to act in good faith. He relies on *Bhasin v Hrynew*, 2014 SCC 71, *Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 and *CM Callow Inc v Zollinger*, 2020 SCC 45.

[91] This issue does not raise a genuine issue requiring trial.

[92] First, bad faith is not pleaded in the statement of claim, and no application to amend the claim to plead bad faith was made before or during the summary dismissal application. “Malice or ill will” must be specifically pleaded: rule 13.6(3)(f).

[93] Further, the pleadings identify the substantive rights and issues a court must resolve: *PetroFrontier Corp v Macquarie Capital Markets Canada Ltd*, 2022 ABCA 136 at para 22, leave to appeal to SCC refused, 40216 (12 January 2023); *McMullen v Norton Rose Fullbright Canada LLP*, 2018 ABCA 299 at para 5; *LC v Alberta*, 2024 ABKB 146 at para 19; *Boardwalk REIT Properties Holdings Ltd v Condominium Corp No 0822896*, 2019 ABQB 40 at para 95.

[94] Bad faith is not an issue in dispute based on the pleadings before the Court. In the circumstances, it is difficult to imagine how Winslow’s assertion of bad faith now could be an answer to summary dismissal. Casting irrelevant aspersions against someone about their commercial motives for not accepting an offer does not create genuine issues requiring trial in this action.

[95] Second, and in any event, Winslow conflates the obligation of parties to a binding contract to *perform* their contractual obligations in good faith, with an obligation to *negotiate or create a contract* in good faith.

[96] The organizing principle of good faith generally requires parties to “perform their contractual duties” honestly, reasonably and not capriciously or arbitrarily: *North American Polypropylene ULC v Williams Canada Propylene ULC*, 2026 ABCA 65 at para 39, citing *Bhasin* at paras 63-64. All contracts are subject to a common law duty of honest performance: *North American Polypropylene* at para 40, citing *Bhasin* at para 93.

[97] On the other hand, with respect to negotiations, the well established general principle is that there is no stand alone duty of care owed to the opposite side in contract negotiations: *Martel Building Ltd v Canada*, 2000 SCC 60 at paras 66-68; *Covey* at para 54; *H2 Canmore Apartments LP v Cormode & Dickson Construction Edmonton Ltd*, 2024 ABKB 423 at para 75; *The Power Limited Partnership v OEFEC*, 2016 ONSC 4415 at para 91; *Gross v Great-West Life Assurance Co*, 2002 ABCA 37 at para 25.

[98] While there may very well be a duty to negotiate in good faith in some specific circumstances, Winslow has not provided me authority to suggest that courts have recognized a

duty of good faith in the context of private, arm's length negotiations of real estate purchase contracts. The law in Alberta suggests that there is no such duty.

[99] In *Taubner Estate (Re)*, 2010 ABQB 60 at para 109, Justice Graesser confirmed: "Alberta law does not recognize a general duty of good faith and fair dealings in contract negotiations between non-fiduciary private parties of roughly equal bargaining power."

[100] In *Ko*, the Court of Appeal did not need to decide this issue because it was raised late, but the Court noted that such a duty "seems incompatible with the adversarial nature of negotiations between parties who deal at arm's length": *Ko* at para 136.

[101] In *Styles v Alberta Investment Management Corporation*, 2017 ABCA 1, decided post-*Bhasin*, the Court of Appeal confirmed, at para 51, that (emphasis in original) "the *Bhasin* principle relates to the performance of the contract. It does not relate to the negotiation or terms of the contract": see also *Alberta Computers.com Inc v Thibert*, 2019 ABQB 964 at para 153; *Concord Pacific Acquisitions Inc v Oei*, 2019 BCSC 1190 at paras 390-397; *Ocean Pacific Hotels Ltd v Lee*, 2025 BCCA 57 at paras 64-66.

[102] In this case, there is no merit to Winslow's claim that a contract came into existence, so he has not established a genuine issue requiring a trial about whether the duty of honest performance expressed in *Bhasin* arose. Winslow has not shown a genuine issue requiring trial that Defendants and Nickel owed Winslow and Sun a stand-alone duty of care, or duty of good faith in the context of the negotiations. Further, there is no pleading of misrepresentation (particulars of which would have been required under rule 13.7(c)), nor is there any evidentiary foundation that any misrepresentation was made.

[103] Third, and in any event, Winslow has not established any evidentiary foundation to assert bad faith against the Defendants that would create a genuine issue requiring trial. Winslow seems to be suggesting that the Defendants had improper motives for failing to sign the Disputed Document or for selling the Property to a third party rather than to Winslow.

[104] In *Karroll v Silver Star Mountain Resorts*, 1988 CanLII 3094 (BC SC) at para 19, Justice McLachlin (as she then was), confirmed that, in commercial situations, it is not usually necessary for one party to advise the other to read the document. Similarly, in this case, it was not up to Nickel or the Defendants to explain to Sun or Winslow the consequences of changing the terms of the Counter-Offer before the Disputed Document was sent by Sun to Nickel.

[105] Further, BT interpreted the Disputed Document as adding assets to the deal for the same price, and he was not sure which "Saw" was being referenced as included. In the circumstances, it cannot credibly be argued it was in bad faith for the Defendants not to accept the Disputed Document, regardless of whatever may have been discussed between the two realtors. The Defendants were simply exercising their right to make commercial decisions about their own Property based on a proposed form of contract placed before them. Further, the Defendants cannot be blamed by Winslow for another offer coming in, or for giving Winslow another chance to sweeten his proposal.

[106] I note, further, that the Defendants also obtained legal advice after the dispute arose before proceeding with the other offer,⁹ which militates against a finding of any misconduct on their part: *Blair v Consolidated Enfield Corp*, [1995] 4 SCR 5 at para 67.

[107] There is no genuine issue requiring a trial with respect to Winslow’s bad faith arguments.

f. No Genuine Issue re: Disputed Material Facts

[108] Winslow argues that there are disputed material facts.

[109] Winslow relies on a “material factual dispute concerning the discussions between Ms. Sun and Ms. Nickel.”

[110] The record discloses that, if this matter were to proceed to trial, there *may* be a dispute between Sun and Nickel about what was discussed orally between them. However, Sun has presented her evidence about those conversations, and that evidence, even if accepted, does not establish any merit to the claim or a genuine issue requiring trial. It is unlikely that Winslow’s position will improve if any dispute between Sun and Nickel about their discussions is resolved by a trial process. Their oral conversations will not affect whether there was a written offer and written acceptance.

[111] Winslow also argues that there are disputed material facts about whether the Disputed Document was a counter-offer or a minor clarification, and whether there was acceptance of the Counter-Offer. The fact there is a material *dispute* in an action does not equate to there being a material *factual dispute* or there being a genuine issue requiring a trial. If any material dispute was enough to avoid summary determination, summary disposition would almost never be available. These matters raised by Winslow go to the heart of the case, but there is no material factual dispute on the record before me about what actually happened. The Court is able to fairly make findings about the legal effect of what happened on this record.

g. No Genuine Issue that There Was a Mistake

[112] At times, Winslow’s argument seems to suggest that Nickel made a mistake by not including a saw in the Counter-Offer and that the Disputed Document was correcting this oversight.

[113] The statement of claim does not plead that there was any mistake between the parties. It does not seek rectification. Winslow’s claim is founded upon his pleading and affidavit that he accepted the Defendants’ Counter-Offer¹⁰ (even if it did not include the allegedly mistaken omission of a saw). He pleads that the Disputed Document was “an amendment request on top of the already valid Purchase Contract”, an argument I have already found not to have merit. The alleged mistake by Nickel has no impact on the outcome of the case, even on Winslow’s pleading. It does not create a genuine issue requiring trial.

⁹ MT transcript at 17.

¹⁰ Statement of Claim at para 20.; Winslow 2024 affidavit at para 7.

[114] Winslow also raises concerns about both realtors' conduct in this matter, criticizing them for the confusion caused by the way they built upon the previous documents. He argued:¹¹

Moreover, the dispute surrounding the Proposed Saw Amendment stems not from any deficiency in the formation of the underlying contract, but from the informal conduct of the parties' respective real estate agents. Ms. Sun and Ms. Nickel, while well-intentioned, handled the Proposed Saw Amendment in a manner that lacked the formality appropriate to a transaction of this nature.

Notwithstanding this procedural irregularity, Mr. Winslow clearly communicated his acceptance of [the Counter-Offer] to his realtor, Ms. Sun, who in turn engaged in further communications with Ms. Nickel regarding the Proposed Saw Amendment.

[...]

The failure of the real estate agents in not providing a fresh Purchase Contract should not operate to deprive Mr. Winslow of a validly formed and executed agreement.

[115] This also does not establish a genuine issue requiring trial. As noted elsewhere, what Winslow may or may not have instructed Sun to do does not create a genuine issue requiring a trial with respect to his claim against the *Defendants*. What matters, as between the parties to *this* action, is what Sun did on Winslow's behalf.

h. No Genuine Issue re: *Res Judicata* or Issue Estoppel

[116] Winslow's brief includes a section on *res judicata* and issue estoppel. This appears to have been because he believed that the Defendants were relying on Justice Kuntz's decision to dismiss the injunction application as being a binding decision.

[117] This does not establish a genuine issue requiring a trial. Justice Kuntz made it clear that she was only deciding the injunction, not the action. The Defendants confirmed in argument they were not relying on her decision as being binding on me. Justice Kuntz made her decision on a different, less robust record than what is before me. It was an interlocutory, not a final decision. Although I have come to the same conclusion, I did not treat Justice Kuntz' decision as binding on me nor did I give it any weight. I decided the Applications based on the record before me.

4. Is it Possible to Fairly Resolve this Matter?

[118] Ultimately, I must be left with sufficient confidence in the state of the record such that I am prepared to exercise the judicial discretion to summarily resolve the dispute: *Weir-Jones* at para 47(d). I am left with that confidence. The summary dismissal Applications were filed in February 2025. The parties engaged in a robust process. There is little chance that anything new or material will come forward at trial.

¹¹ Winslow's Brief at paras 70-73.

5. Conclusion

[119] Summary dismissal of the claim is appropriate.

C. What is an Appropriate Order?

[120] In addition to summary dismissal, the Defendants also seek to have the CLP discharged from title to the Property. That is appropriate and the natural result of the dismissal of the claim against them and against the Property.

[121] The Defendants seek compensation for the registration of the CLP against the Property pursuant to section 149 of the *Land Titles Act*, RSA 2000 c L-4 (*LTA*). The Defendants did not file a counterclaim in this action or seek compensation as part of the relief sought in their statements of defence. However, the January 2025 letter from BT's counsel, and the Defendants' materials filed in these Applications, made it clear they were seeking compensation for wrongful registration of the CLP. There is no surprise. However, BT's counsel acknowledged that this may need to be the subject of further proceedings. It was not the focus of the parties' evidence or arguments. Winslow did not engage on the compensation question in his response to the Defendants' Applications.

[122] In all these circumstances, I find it would not be fair or appropriate to address a claim under section 149 of the *LTA* without a further process and opportunity for Winslow to test that claim and respond. I also find it is appropriate to provide the Defendants an opportunity to formally seek permission to commence a process for their compensation claim within this action before the action against them is dismissed, should they wish to do so. I make no finding here about entitlement or quantum of compensation under section 149 of the *LTA*.

[123] Accordingly, I direct as follows:

- (a) Winslow's claim is summarily dismissed, but this shall be effective one month from the date of these reasons to give the Defendants an opportunity to commence a process to seek compensation under section 149 of the *LTA*; and
- (b) the CLP registered by Winslow against the Property, registered as instrument number 231 367 666, shall be cancelled and the Registrar of Alberta Land Titles shall cancel the CLP notwithstanding the requirements of section 191 of the *Land Titles Act*, RSA 2000, c L-4.

[124] The Defendants have been substantially successful and are presumptively or *prima facie* entitled to its costs of the action to date: rule 10.29; *JWS v CJS*, 2022 ABCA 63 at para 24; *McAllister v Calgary (City)*, 2021 ABCA 25 at para 21.

[125] The parties are encouraged to resolve any compensation claim under section 149 of the *LTA*, and the costs of the action to date.

[126] In the event the parties are unable to reach agreement on costs of the action to date, the following process shall apply:

- (a) within four weeks of this decision, the Defendants shall file and serve on Winslow and submit to my office a written cost submission setting out their costs position;
- (b) within six weeks of this decision, Winslow shall file and serve on the Defendants and submit to my office a written costs submission setting out his costs position;
- (c) each party's costs submission will be a maximum of five pages (excepting attachments, including authorities, draft proposed bill of costs, and cost summaries), single spaced in letter format, and shall provide (at a minimum):
 - (i) their position with respect to the factors set out in rule 10.33;
 - (ii) any formal offer under the *Rules* or other offer they wish considered, that predates these Reasons;
 - (iii) a draft proposed bill of costs as would be ordered under Schedule C; and
 - (iv) proof of the actual costs that the party incurred in respect of the action to date, and a summary of their proposed solicitor-client costs (costs that a reasonable client might be required to pay for the services rendered: *Barkwell v McDonald*, 2023 ABCA 87 at para 56).

[127] If no submissions are received pursuant to this direction, there shall be no order as to costs for the action to date.

[128] I am not seized of any future process related to the Defendants' compensation claim under section 149 of the *LTA*.

Heard on the 11th day of December, 2025.

Dated at the City of Calgary, Alberta this 9th day of April, 2026.

M.A. Marion
J.C.K.B.A.

Appearances:

George Huang and M. Weng (student-at-law)
for the Plaintiff, Daun C. Winslow

Corey Sandquist
for the Defendant, Bryan Thivierge

David L. Campbell
for the Defendant, Maureen Thivierge