

# In the Court of Appeal of Alberta

**Citation: Compeer Financial PCA v Sunterra Farms Ltd, 2026 ABCA 125**

**Date:** 20260421  
**Docket:** 2601-0046AC  
**Registry:** Calgary

**Between:**

**Compeer Financial, PCA**

Respondent

- and -

**Sunterra Farms Ltd, Sunwold Farms Ltd,  
Sunterra Enterprises Inc., and Ray Price**

Applicants

**Docket:** 2601-0047AC  
**Registry:** Calgary

**And Between:**

**Compeer Financial, PCA**

Applicant

- and -

**Debbie Uffelman and Craig Thompson**

Respondents

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**Reasons for Decision of  
The Honourable Justice Michelle Crighton**

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Application for Leave to Appeal

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[1] There are two applications before me seeking leave to appeal a decision of a chambers judge pursuant to s 13 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [CCAA].

[2] Applicants Sunterra Farms Ltd, Sunwold Farms Ltd, Sunterra Enterprises Inc (collectively, Sunterra) and Ray Price, director and president of Sunterra, filed an application for leave to appeal the chambers judge's decision finding Sunterra and Price liable for fraudulent misrepresentation. They later filed a notice of appeal, taking the position that their initial application for leave is in the alternative.

[3] On the other hand, the applicant Compeer Financial, PCA (Compeer) appealed the chambers judge's decision refusing to find the respondents Debbie Uffelman and Craig Thompson personally liable for fraudulent misrepresentation. Uffelman and Thompson were Sunterra's vice-president of corporate finance and a member of Sunterra's accounting staff, respectively. Compeer argues it can appeal to this Court as of right, as the decision in question was not made under the CCAA. If leave is required, Compeer concedes it cannot meet the test for leave under the CCAA.

[4] For the reasons that follow, I find that Compeer, Sunterra, and Price all require leave to appeal under s 13 of the CCAA. Given Compeer's concession that it cannot meet the test, it is denied leave. Sunterra and Price likewise do not meet the test and their application for leave is denied.

### **Background**

[5] Sunterra belongs to a larger group of Canadian entities (Sunterra Canada). Sunterra Canada is interrelated with Sunterra US, a group of US entities (collectively with Sunterra Canada, the Sunterra Group). Sunterra US' primary lender was Compeer, and Sunterra Canada's primary lender was National Bank of Canada (NBC). Both lenders extended conditional credit to the Sunterra Group, which allowed it to access the funds from deposited cheques before the cheques had cleared.

[6] The Sunterra Group used cheques as its primary form of fund transfer between Sunterra Canada and Sunterra US. At some point, these cheques ceased to be anchored by sufficient funds, and the entity receiving the cheque would rely upon conditional credit to write a cheque back to the account with insufficient funds, thereby covering the shortfall. This cycle was continued with a high volume of cheques flowing back and forth between Sunterra Canada and Sunterra US. The chambers judge found that the Sunterra Group's conduct amounted to cheque kiting "on an astonishing scale": *Compeer Financial PCA v Sunterra Farms Ltd*, 2026 ABKB 57 at para 52 [*Sunterra*].

[7] On February 11, 2025, Compeer terminated the cheque-writing privileges of Sunterra US. With no new cheques from Sunterra US available to deposit into the NBC accounts, those accounts had insufficient funds to cover the earlier cheques issued by Sunterra Canada and these cheques were dishonoured. The balance of the Sunterra Group's accounts with Compeer fell to negative \$35,924,307.05 by February 28, 2025.

[8] In April 2025, the Sunterra Group obtained an initial order to commence proceedings under the *CCAA*. In June 2025, Compeer commenced the King's Bench action that underlies the present appeal (the Compeer Action). The Compeer Action advanced claims of fraudulent misrepresentation against Sunterra, Price, Uffelman, and Thompson, and sought declarations under ss 19(2)(d) and 5.1(2) of the *CCAA* that Compeer's claims could not be compromised or arranged in the *CCAA* proceedings without Compeer's consent.

[9] On July 24, 2025, the chambers judge pronounced a consent order agreed to by the parties. The consent order specified that Compeer's application for declaratory relief and summary judgment would be heard on December 4–5, 2025, and proceed in accordance with a litigation plan appended to the order.

[10] At the hearing, the chambers judge dismissed Compeer's summary judgment application against Uffelman and Thompson, finding they were not personally liable for fraudulent misrepresentation. Compeer's claims of fraudulent misrepresentation against Sunterra and Price were successful.

[11] Compeer appeals the chambers judge's decision with respect to Uffelman and Thompson's liability. It concedes that it does not meet the test for leave to appeal under s 13 of the *CCAA* but takes the position that it can appeal as of right. Uffelman and Thompson argue that the chambers judge's decision was "made under" the *CCAA*, and therefore Compeer requires leave to appeal.

[12] Sunterra and Price apply for leave to appeal the chambers judge's decision, alleging several errors of fact and mixed fact and law in finding liability for fraudulent misrepresentation. In the alternative, they advance an appeal as of right. Compeer opposes Sunterra and Price's application on the basis that they do not meet the test for leave to appeal and are prevented from appealing as of right because the decision with respect to them was "made under" the *CCAA*, as contemplated by s 13.

### **Legal Test**

[13] Section 13 of the *CCAA* requires parties to seek leave to appeal decisions made under the *Act*:

13 Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

[14] The determination of whether a party requires leave to appeal under s 13 is a purpose-driven analysis: *Spartan Delta Corp v Alberta (Energy and Minerals)*, 2025 ABCA 181 at para 18 [*Spartan*], citing *Essar Steel Algoma Inc (Re)*, 2016 ONCA 138 at para 33 [*Essar*]. The relevant questions are whether the order was made in a CCAA proceeding and resulted from the exercise of judicial discretion in furtherance of the purposes of the CCAA. If so, the order is said to have been “made under” the CCAA within the meaning of s 13: *Spartan* at para 18.

[15] In *Spartan* at para 19, this Court adopted the non-exhaustive list of indicia from *Essar* for whether a decision is “made under” the CCAA, which include whether:

- a) the decision was necessarily incidental to a proceeding under the CCAA or any order made thereunder;
- b) the decision required the interpretation of a previous order made under the CCAA proceeding;
- c) the decision “determined rights arising under an agreement that arose out of and that was related entirely to the CCAA proceeding”: *Re Hemosol Corp*, 2007 ONCA 124 at para 3;
- d) CCAA considerations informed the decision or exercise of discretion by the chambers judge;
- e) the claim is being prosecuted by virtue or as a result of the CCAA;
- f) the notice of motion and reasons of the chambers judge explicitly state that the matter is a CCAA proceeding; and,
- g) there was an independent originating process in the court below.

[16] If leave is required, the applicant must show that there are “serious and arguable grounds of real and significant interest to the parties” to obtain leave: *Lexxor Energy Inc v Richter, Allan & Taylor Inc*, 2003 ABCA 158 at para 15, recently reiterated in *Spartan* at para 22.

[17] The test for leave to appeal under s 13 of the CCAA is well-known, and considers whether:

1. the issue on appeal is of significance to the practice;
2. the issue on appeal is of significance to the action itself;
3. the appeal is *prima facie* meritorious; or on the other hand, whether it is frivolous; and
4. the appeal will unduly hinder the progress of the action.

In assessing these factors, the court must consider the applicable standard of review on appeal. “CCAA proceedings are dynamic processes where events are unfolding in real time, the situation is constantly changing, and the supervising justice is ‘steeped in the intricacies of the CCAA proceedings’”: *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, 2025 ABCA 147 at para 25. An appellate court owes a high degree of deference to decisions of judges supervising CCAA proceedings, and appellate intervention is only warranted if the decision discloses an error in principle or an unreasonable exercise of discretion. “Appellate courts must be careful not to substitute their own discretion in place of the supervising judge’s” (citations omitted): *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at paras 53-54, [2020] 1 SCR 521.

## Analysis

### *Is leave to appeal required?*

[18] Applying the principles from *Spartan* and *Essar* to the present case, in my view, the chambers judge’s decision with respect to Uffelman and Thompson was “made under” the CCAA.

[19] Compeer argues that the chambers judge’s decision with respect to Uffelman and Thompson was entirely separate from the CCAA proceeding and therefore was not a decision “made under” the CCAA for the purposes of s 13. In Compeer’s view, the action against Uffelman and Thompson was not part of the CCAA proceedings nor captured by the CCAA stay, given that they were not directors of Sunterra.

[20] I do not accept this argument.

[21] The chambers judge explicitly stated that the determination of this application was in furtherance of the CCAA proceeding — specifically, to determine “the quantum and character of the claims of Sunterra’s primary Canadian and U.S. lenders in this CCAA proceeding”: *Sunterra* at para 1.

[22] Further, the July 24, 2025 consent order refers to “Compeer’s application for declaratory relief and summary judgment of its claims in Court of King’s Bench Action No. 2501-06120”. This is the same action number as the CCAA proceeding. Further, Compeer sought declarations under ss 19(2) and 5.1(2) of the CCAA that its claims against Sunterra, Price, Uffelman, and Thompson were non-compromisable under the CCAA.

[23] I take Compeer’s argument that the claim against Uffelman and Thompson could have been brought separately from the CCAA proceeding, as a common law action for fraudulent misrepresentation. But this argument does not get Compeer far. It chose to bring its claim within the CCAA proceeding so it could apply for the discretionary relief offered by the CCAA — a declaration that would not be available in a common law fraud action. The fact that Compeer was

unsuccessful in obtaining its requested relief does not allow it to now avoid the application of the CCAA in bringing its appeal. When a party chooses to bring a claim under the CCAA to gain access to the unique recourse under the statutory scheme, it also accepts the risk that, if unsuccessful, it will have a more onerous test to satisfy before it can access an appeal in CCAA proceedings. As articulated by this Court in *Sandhu v MEG Place LP Investment Corporation*, 2012 ABCA 91 at para 17: “It is inappropriate for parties to rely on the CCAA jurisdiction for the preservation and determination of their claims but seek to avoid its leave requirements for the purpose of an appeal”.

[24] In sum, CCAA considerations informed the chambers judge’s exercise of discretion, and the chambers judge explicitly stated the matter was in relation to a CCAA proceeding. As a result, the chambers judge’s decision with respect to Uffelman and Thompson’s personal liability was “made under” the CCAA and Compeer requires leave to appeal the decision, the test for which Compeer concedes it cannot meet.

[25] The chambers judge’s decision with respect to Sunterra and Price’s liability was also “made under” the CCAA for the purposes of s 13, for the same reasons articulated above. In addition, the chambers judge issued declarations under ss 5.1(2) and 19(2)(d) of the CCAA rendering Compeer’s claims against Sunterra and Price non-comprisable without Compeer’s consent. Sunterra and Price’s liability was both a live issue in, and incidental to, the CCAA proceeding.

[26] Sunterra and Price require leave to appeal under s 13 of the CCAA.

***Have Sunterra and Price satisfied the test for leave to appeal under the CCAA?***

[27] I am not satisfied that Sunterra and Price meet the test for leave to appeal under s 13 of the CCAA.

[28] Sunterra and Price propose several issues on appeal. Most are alleged errors of fact, including whether the chambers judge erred: in finding that Sunterra and Price’s conduct amounted to cheque kiting, in accepting or rejecting certain pieces of evidence to make several findings of fact, and in assessing Price’s credibility. They further argue that the chambers judge erred in law by misapplying the burden of proof for fraudulent misrepresentation and erred in mixed fact and law by attributing Sunterra’s intent to Price absent sufficient evidence and declining to reduce damages for the alleged failure of Compeer to mitigate.

[29] Sunterra and Price argue that several of the above issues are significant to the insolvency practice. These include the allocation of personal liability to directors in CCAA proceedings, the burden of proof for fraud, and Compeer’s duty to mitigate.

[30] These questions are settled in the appellate authority and therefore lack precedential value to the practice. The ability to allocate personal liability to directors for fraud without lifting the corporate veil is established in *Zerbin v Vrbaneck*, 2021 ABCA 317 at para 19. The burden of proof for fraudulent misrepresentation is also uncontentious: *Canada (Attorney General) v Bourassa*

(*Trustees of*), 2002 ABCA 205 at para 35. With respect to Compeer's duty to mitigate, Sunterra and Price raise no issue with the legal principle but rather argue an error of mixed fact and law. They have not articulated the importance of this issue to the practice. At their core, Sunterra and Price's concerns are with the chambers judge's application of these principles. The principles themselves are settled law and further consideration by this Court would have no significant benefit to the practice. This factor weighs against granting leave to appeal.

[31] Compeer does not dispute Sunterra and Price's argument that the issues raised are of importance to the action itself. Considering a successful appeal has the potential to reverse a finding of fraud and reduce the parties' liability for damages, I accept that the action has significance to the parties. Reversal of the fraud finding may also affect the CCAA proceeding, because it would alter the quantum of non-comprisable claims against Sunterra and Price. Given the CCAA proceeding is still in the early stages and has not progressed past the restructuring and sales and investment solicitation process, such a change could have an impact on the proceeding. This factor weighs in favour of granting leave to appeal.

[32] Sunterra and Price's proposed grounds of appeal lack *prima facie* merit. The standard of review that would apply to an eventual appeal is an essential consideration at this stage.

[33] Sunterra and Price argue that the chambers judge erred in law by misapplying the burden of proof for fraudulent misrepresentation. They reference paragraphs 49–50 of the *Sunterra* decision to say that the chambers judge placed the burden upon Sunterra to disprove elements of the test for fraudulent misrepresentation.

[34] Reviewed in context, these paragraphs do not disclose an erroneous application of the burden of proof. The chambers judge weighed the evidence and, having found that Compeer had met their burden of proving the requisite elements of fraudulent misrepresentation, he looked to Sunterra for any evidence to refute that finding. In my view, the chambers judge's reasons do not reverse the burden of proof. Rather, they reflect the weighing of evidence, including the absence of evidence to find whether the elements of the test for fraudulent misrepresentation were met. The chambers judge's interpretation of the evidence as a whole is an issue of mixed fact and law. Sunterra and Price have pointed to no error in principle or unreasonable exercise of discretion in this respect.

[35] Sunterra and Price further argue that the chambers judge erred in finding that Compeer had not failed to mitigate its losses. In their view, the chambers judge conflated the conduct of Sunterra US in the US receivership proceedings with the conduct of Sunterra Canada, who had no role in the receivership proceedings. On my reading, this mischaracterizes the chambers judge's reasoning. The crux of his analysis was that due to the circumstances of fraud underlying the claim, Compeer had no obligation to mitigate through entering a repayment plan with Sunterra. Sunterra and Price articulate no error in principle or unreasonable exercise of discretion with respect to this finding. Sunterra's conduct or involvement, or lack thereof, with respect to the US receivership proceeding does not alter the chambers judge's finding with respect to mitigation.

[36] The remaining issues raised by Sunterra and Price are issues of fact or mixed fact and law. Sunterra and Price have failed to demonstrate any error that, on first impression, appears to be an error in principle or unreasonable exercise of discretion. In the absence of a clear reviewable error, I cannot find that the grounds of appeal proposed by Sunterra and Price are *prima facie* meritorious. This factor weighs strongly against granting leave to appeal.

[37] Finally, Sunterra and Price argue that the hearing of the appeal will not unduly hinder the progress of the CCAA action, because the claims process is complete and next steps in the proceeding can be completed concurrently with the appeal. Compeer does not dispute that further steps in the CCAA could be taken concurrently with the appeal. However, it argues that granting leave will cause undue delay in the CCAA action because up until this point, Sunterra and Price have declined to advance the proceedings pending determination of Compeer's claim. While the uncertainty surrounding the finality of these issues may present a barrier at the later stage in the proceeding when the distribution of assets is being determined, the action remains in its early stages. Further steps can be taken in the CCAA proceedings while the appeal is being determined. This factor does not weigh strongly against permitting the appeal.

[38] The final step in the analysis is to ascribe proper weight to each of the four factors. Although I acknowledge the potential significance of the action to the parties and the underlying proceeding, this cannot overcome the lack of significance to the practice and, more importantly, the absence of *prima facie* merit. The absence of undue delay also cannot remedy the absence of merit in the circumstances. I find that Sunterra and Price do not satisfy the test for leave to appeal under s 13 of the CCAA.

### **Conclusion**

[39] Compeer requires leave to appeal the decision of the chambers judge with respect to Uffelman and Thompson's personal liability for fraudulent misrepresentation. As Compeer acknowledges, it does not meet the test for leave to appeal and that application is denied.

[40] Sunterra and Price also do not meet the test for leave to appeal, and their application is denied.

Application heard on April 8, 2026

Reasons filed at Calgary, Alberta  
this 21st day of April, 2026

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Crighton J.A.

**Appearances:**

D.W. Mann, KC (no appearance)

S.C. Chimuk

for the Applicants Sunterra Farms Ltd, Sunwold Farms Limited, Sunterra Enterprises Inc.,  
and Ray Price

for the Respondents Debbie Uffelman and Craig Thompson

J.L.J. Caylor

N.J. Shaheen

K. Cameron

M.J. LaFleche (no appearance)

for Respondent/Applicant Compeer Financial, PCA