Court of King's Bench of Alberta

Citation: ATM Cash Systems (Canada) Ltd v DirectCash Payments Inc, 2026 ABKB 324

Date: 20260428
Docket: 1501 06573
Registry: Calgary

Between:

ATM Cash Systems (Canada) Ltd

Plaintiff

- and -

DirectCash Payments Inc

Defendant

Reasons for Judgment of the Honourable Justice D. Jugnauth

I. Overview

[1] This decision follows the trial of a claim brought by the Plaintiff ("ATM Cash") against the Defendant ("DC Payments") for the tort of inducing a breach of contract.

[2] The claim alleged that DC Payments induced a casino operator to breach an exclusive license with the Plaintiff to supply and operate automated teller machines (ATMs) in the casino by funding a loan required by the casino to maintain its operations in exchange for DC Payments receiving the casino's ATM business.

[3] On the whole of the evidence, I am not satisfied that the Plaintiff has proven on a balance of probabilities that DC Payments induced the casino operator to breach its contracts with the Plaintiff, or that DC Payments had the intention to do so. In the result, the claim is dismissed.

II. Background

a. Agreements between the Plaintiff and Vanshaw

[4] The Plaintiff operated an ATM business out of Medicine Hat, Alberta. Tony Steiert was the president and sole shareholder of the Plaintiff at all material times.

[5] Vanshaw Enterprises Ltd. ("Vanshaw") owned and operated a casino in the Medicine Hat Lodge (the "Casino"). Kevin Van Der Kooy was the President of Vanshaw at all material times.

[6] The Plaintiff had two 10-year contracts with Vanshaw that gave the Plaintiff an exclusive license to place and operate ATMs in the Casino. The first contract was executed in 2006 and granted an exclusive ATM license in exchange for approximately $2,000,000 in consideration.

[7] This contract was set to expire on June 19, 2016. An addendum signed in June 2006 made Vanshaw responsible for filling the ATMs with cash throughout the term of the 2006 contract (the "2006 Addendum"). Under this addendum, Vanshaw was to receive $60,000 in $500/month installments as consideration for providing this service.

[8] The second contract, executed on October 5, 2012, extended the 2006 agreement by a further 10 years, until July 17, 2026. The Plaintiff paid an additional $500,000. In these reasons, these two contracts between Vanshaw and the Plaintiff will be referred to collectively as the "ATM Cash Contracts".

[9] Central to the ATM Cash Contracts was the *exclusivity* of the Plaintiff's right to operate ATMs in the Casino. Master Robertson (as he then was) made the same finding in an earlier, related proceeding: ***ATM Cash Systems (Canada) Ltd v Vanshaw Enterprises Ltd***, 2017 ABQB 622 at para 15.

[10] In 2015, Vanshaw breached the ATM Cash Contracts when it entered into a subsequent agreement that provided DC Payments with an exclusive license to place and operate ATMs in the Casino in exchange for a loan, and when Vanshaw thereafter replaced the Plaintiff's ATMs with those belonging to DC Payments.

[11] The events leading up to Vanshaw's breach of contract are described below.

b. The events of February – June 2015

i. The genesis of the DC Payments deal

[12] On February 10, 2015, Vanshaw received a formal demand letter from the Bank of Montreal ("BMO") requesting repayment of a $1.2 million loan. Vanshaw's financial circumstance was such that it could not immediately pay back the loan. Mr. Van Der Kooy began looking for another source of funding by initially contacting other large financial institutions, without success.

[13] At this time Jim Sekora was working for Vanshaw to improve the company's financial situation, holding himself out as Vanshaw's Chief Financial Officer (CFO). Whether or not he

was the CFO is unclear from the whole of the evidence. However, I accept that, at the very least, Mr. Sekora worked for Vanshaw as a paid consultant and as the Casino's financial monitor.

[14] Mr. Sekora was also working with Gordon Reykdal, the CEO of Prospect Financial Inc. ("Prospect Financial"), to address Vanshaw's poor financial performance. As a creditor of Vanshaw, Prospect Financial had a vested interest in seeing the Casino remain financially viable.

[15] On May 1, 2015, Mr. Reykdal emailed the President and CEO of DC Payments, Jeffrey Smith, attaching documents relating to Vanshaw's financials and a separate document titled "Vanshaw Casino Deal Outline" (the "Deal Outline").

[16] The Deal Outline stated that the Casino needed $1.4 million in financing to address the BMO loan, with the surplus required for other payables and to maintain a float. It explained Vanshaw's current financial situation and listed nine "Conditions and Covenants", one of which was that "[t]he ATM contract is pledged as additional security".

[17] DC Payments' primary business was placing ATMs in various establishments, including casinos. DirectCash Bank ("DC Bank"), a separate legal entity from DC Payments, is a Schedule 1 bank in Canada and was to be the entity that funded the loan.

[18] Mr. Reykdal then arranged a meeting between Mr. Smith and Mr. Van Der Kooy, during which they discussed the Deal Outline and Vanshaw's need for financing.

[19] Mr. Smith was aware that Vanshaw had an existing ATM provider in the Casino. When Mr. Smith inquired of Mr. Van Der Kooy about the existing provider, Mr. Van Der Kooy replied that ATM Cash was failing to maintain and fill the ATMs in the Casino and, accordingly, Vanshaw could get out of the ATM Cash Contracts.

[20] The Deal Outline effectively evolved into a term sheet that was sent from DC Payments' corporate counsel, Paul Carbonelli, to Mr. Smith on June 4, 2015 (the "Term Sheet"). Mr. Smith forwarded the Term Sheet to Mr. Reykdal that same day.

[21] The Term Sheet provided that DC Payments would make a one-time payment to pay out the BMO loan of $1.2 million. The Term Sheet also included details of an ATM agreement that would be required between Vanshaw and DC Payments.

[22] This ATM agreement imposed on Vanshaw a minimum monthly payment of $28,000 to service the loan, payable through a surcharge collected during transactions conducted on DC Payments' ATMs in the Casino. If the aggregate surcharges in a month did not constitute the whole monthly payment, Vanshaw was responsible to make up the difference. The amortization period for the loan was five years.

[23] The Term Sheet also contained two important features. First, Vanshaw provided representations and warranties that on entering into the agreement Vanshaw had the necessary "consents, authorizations, licenses, permits, approvals, notices, [and] filings" to enter into the agreement; and that entering the agreement would not breach any of Vanshaw's existing contracts.

[24] Second, Vanshaw was obliged to deliver a copy of the ATM Cash Contracts to DC Payments prior to the credit facility being established, including a release from the Plaintiff.

[25] On June 5, 2015, Mr. Sekora confirmed to DC Payments that Mr. Van Der Kooy was ready to sign the Term Sheet. When the Term Sheet and final agreements were executed on June 8-9, the parties were represented by counsel.

ii. Meeting between Mr. Van Der Kooy and Mr. Steiert

[26] On June 9, 2015, Mr. Van Der Kooy met with Mr. Steiert at a restaurant. Mr. Van Der Kooy explained to Mr. Steiert that the Casino was facing financial difficulties and Vanshaw was going to enter into a new financing agreement with DC Payments, part of which required placing DC Payments' ATMs in the Casino in lieu of those belonging to the Plaintiff.

[27] Mr. Van Der Kooy offered Mr. Steiert $1.2 million in "exit money" to buy out the ATM Cash Contracts. Mr. Steiert wanted time to speak with his investor before agreeing to Mr. Van Der Kooy's offer.

[28] However, within 24 hours of their meeting, Mr. Van Der Kooy called Mr. Steiert to withdraw the offer of "exit money". Mr. Van Der Kooy also told Mr. Steiert that ATM Cash could sue Vanshaw as Vanshaw planned to pursue the financing agreement with DC Payments.

iii. The Plaintiff Commences Litigation

[29] On June 11, 2015, the Plaintiff made an *ex parte* application seeking an injunction to prevent Vanshaw from breaching the ATM Cash Contracts, and to stop DC Payments' ATMs from being installed in the Casino. An interim injunction was granted with direction for the matter to return to court on June 17, 2015, on notice to Vanshaw, to argue whether the injunction should be confirmed.

[30] On June 23, 2015, the Plaintiff filed a Statement of Claim against Vanshaw, DC Payments, and other parties. On that same day Justice Jeffrey heard the injunction come-back hearing. Not being satisfied that the Plaintiff had demonstrated irreparable harm or that there was a clear breach of the ATM Cash Contracts, the Court set the interim injunction aside.

[31] On June 26, 2015, Vanshaw and DC Payments signed: (i) an ATM Agreement which granted DC Payments an exclusive license over ATMs in the Casino; and (ii) an ATM Maintenance & Renewal Agreement setting out maintenance, insurance options, and fees for the ATMs (collectively, the "DC ATM Agreement").

[32] In the DC ATM Agreement, Vanshaw represented and warranted that performing the agreement would not violate or breach any pre-existing contractual arrangement. Vanshaw further represented and warranted that it was entitled to install and operate the DC Payments' ATMs in the Casino.

[33] On July 1, 2015, the Plaintiff's ATMs were removed from the Casino floor and placed into on-site storage. DC Payments' ATMs were installed in their place.

[34] On or about August 18, 2016, the financing deal between Vanshaw and DC Payments closed, at which time the loan was funded.

[35] On May 8, 2018, the Plaintiff settled its claim with Vanshaw and the other defendants though a Pierringer agreement, leaving only DC Payments and Kevin Van Der Kooy as the remaining defendants.

[36] On September 25, 2023, the Plaintiff discontinued its action against Mr. Van Der Kooy.

[37] The Plaintiff's present claim alleges that DC Payments induced Vanshaw to breach the ATM Cash Contracts.

III. Issue

[38] The central issues in this case are whether DC Payments induced Vanshaw to breach its contracts with the Plaintiff; and if so, whether DC Payments intended to induce that breach of contract.

IV. Law

a. Inducing a Breach of Contract

[39] Inducing a breach of contract is an intentional tort, not a tort of negligence. In a series of three cases decided by the UK House of Lords and cited in ***Brae Centre Ltd v 1044807 Alberta Ltd***, 2008 ABCA 397, Lord Nicholls described the tort as follows:

> ... With the inducement tort the defendant is responsible for the third party's breach of contract which he procured. In that circumstance this tort provides a claimant with an additional cause of action. The third party who breached his contract is liable for breach of contract. The person who persuaded him to break his contract is also liable, in his case in tort. Hence this tort is an example of civil liability which is secondary in the sense that it is secondary, or supplemental, to that of the third party who committed a breach of his contract. It is a form of accessory liability.
>
> ***Douglas v Hello! Limited, OBG Limited v Allan, Mainstream Properties Limited v Young***, [2007] UKHL 21, [2007] 4 All ER 545 at para 172 (collectively, "***OBG***"):

[40] The common law, and tort law in particular, has developed in a manner to ensure "some elbow-room [many would say much elbow-room] for the aggressive pursuit of self-interest": ***AI Enterprises Ltd v Bram Enterprises Ltd***, 2014 SCC 12 at para 31. [Square brackets in original]

[41] In ***AI Enterprises*** the Supreme Court also stated that a person cannot be liable in tort when they have "done nothing more against the plaintiffs than pursue to the bitter end a war of competition waged in the interest of their own trade": para 31, citing ***Mogul Steamship Company v McGregor, Gow, & Co* (1889)**, 23 QBD 598 (CA), at 614, aff'd [1892] AC 25 (HL). The law has "never recognized a sweeping right to protection from economic harm": ***AI Enterprises*** at para 30, citing ***RWDSU, Local 558 v Pepsi-Cola Canada Beverages (West) Ltd***, 2002 SCC 8 at para 72.

[42] As noted by Lord Nicholls in ***OBG***, "[c]ompetition between businesses regularly involves each business taking steps to promote itself at the expense of the other. … Far from prohibiting such conduct, the common law seeks to encourage and protect it. The common law recognises the economic advantages of competition": ***OBG*** at para 142.

[43] The seven elements of inducing a breach of contract were set out by the Alberta Court of Appeal in ***369413 Alberta Ltd v Pocklington***, 2000 ABCA 307 at para 13:

> (i) the existence of a contract;
>
> (ii) knowledge or awareness by the defendant of the contract;
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> (iii) a breach of contract by the contracting party;
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> (iv) the defendant induced the breach;
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> (v) the defendant, by his conduct, intended to cause the breach;
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> (vi) the defendant acted without justification; and
>
> (vii) the plaintiff suffered damages.

[44] The parties agree that the first two elements are made out. At issue in this case are three elements: (iii) breach of contract by the contracting party, (iv) inducement; and (v) intent. For the reasons that follow, I find the Plaintiff failed to prove the elements of inducement and intent. Therefore, DC Payments is not liable for inducing a breach of contract. Consequently, I decline to address justification or damages.

i. Breach of Contract

[45] Before finding inducement, a contracting party must have committed an actionable breach of contract. To ground liability, the defendant must have acted to procure the breach and is therefore liable as an accessory to the wrongful conduct: ***OBG*** at paras 3-5 per Lord Hoffman.

[46] A breach of contract can be anticipatory. An anticipatory breach occurs when a party's words or conduct demonstrates that they do not intend to perform or be bound by the contract: ***Potter v New Brunswick Legal Aid Services Commission***, 2015 SCC 10 at para 149, per Cromwell J, concurring. This intention can be shown by refusal to perform the contract, even if the party mistakenly believes they are exercising a contractual right: ***Guarantee Co of North America v Gordon Capital Corp***, [1999] 3 SCR 423 at para 40.

[47] "When the anticipated future non-observance relates to important terms of the contract or shows an intention not to be bound in the future, the anticipatory breach gives rise to anticipatory repudiation": ***Potter*** at para 149.

[48] The effect of repudiation differs depending on how the non-repudiating party responds. If the non-repudiating party affirms the contract by treating it as still in full force and effect, then the contract remains in force, and each party can sue for damages for past or future breaches of

the contract: ***Gordon*** at para 40. If the non-repudiating party accepts the repudiation, then the contract is terminated: ***Gordon*** at para 40.

ii. Direct Inducement

[49] A direct inducement of a breach of contract means that the defendant directly persuaded or incentivized the contracting party to breach the contract: ***Luan v ADP Canada Co***, 2020 ABQB 387 at para 179.

[50] As stated in *The Law of Torts*, examples of a direct inducement to breach a contract:

> include words of encouragement, threats, incentives, entering into contractual arrangements with another person which, to the knowledge of the defendant, are incompatible with the person's contractual obligations to the plaintiff, and giving reasons why another party should breach her contract.
>
> Philip H Osborne, *The Law of Torts*, 6th ed (Toronto: Irwin Law, 2020) at 351.

[51] A defendant will not be liable for inducing a breach of contract when they merely provide information about options, including a breach of contract, as long as that information is provided in a dispassionate and neutral manner, and does not seek, even subtly, to pressure or encourage the contracting party to breach the contract: Osborne, *The Law of Torts* at 351.

iii. Intent

[52] The plaintiff bears the burden to prove the defendant intended to induce the breach of contract at issue: ***Pocklington*** at para 38. Intent "is proven by showing that the defendant acted with desire to cause a breach of contract, or with the substantial certainty that a breach of contract would result from the defendant's conduct": ***Brae Centre*** at para 27.

[53] Intention does not require malicious motive, unlawful conduct, hatred, or an intention to harm the plaintiff: ***Pocklington*** at para 38. Frequently, defendants are simply motivated to advance their own interests rather than to harm the plaintiff: Osborne, *The Law of Torts* at 352.

[54] Historically, intent had to be established based on the defendant's wilful, deliberate, and direct conduct: ***Friesen v Silverberg & Associates Inc***, 2024 ABKB 518 at para 18; ***Pocklington*** at para 39. However, courts have since recognized that intent may be inferred when it is clear the defendant's actions would necessarily or predictably lead to certain consequences, since "people are presumed to intend the reasonable consequences of their acts": ***Pocklington*** at paras 39-40; ***Friesen*** at para 18.

[55] This means a plaintiff can prove a defendant intended for a third party to breach its contract with the plaintiff by demonstrating the defendant acted with the substantial certainty that a breach of contract would result from their conduct: ***Brae Centre*** at para 27.

[56] However, even if a breach of contract occurs, this does not necessarily mean that the defendant is liable for inducing that breach. As Lord Hoffman stated in ***OBG*** at paragraphs 42-43:

> It is necessary for this purpose to distinguish between ends, means and consequences. If someone knowingly causes a breach of contract, it does not normally matter that it is the means by which he intends to achieve some further end or even that he would rather have been able to achieve that end without causing a breach. ...
>
> On the other hand, if the breach of contract is neither an end in itself nor a means to an end, but merely a foreseeable consequence, then in my opinion it cannot for this purpose be said to have been intended. That, I think is what judges and writers mean when they say that the claimant must have been "targeted" or "aimed at".
>
> [emphasis added]

[57] Intent can also be established where the defendant was reckless or wilfully blind to a breach: ***Pocklington*** at para 41. The defendant does not need to know the precise contractual terms, or that their goal could only be accomplished through a breach of contract to be liable under this tort: ***Pocklington*** at para 41.

[58] However, "[i]f the defendant acted under a *bona fide* belief that contractual rights would not be infringed, liability will not be found even though the belief turned out to be mistaken. But for a mistaken belief to be *bona fide*, rather than the result of recklessness or wilful blindness, some basis for the belief must exist, and some reasonable effort must have been made by the defendant to learn the truth": ***Brae Centre*** at para 28 citing ***Pocklington*** at para 43.

[59] A defendant will be considered to have turned a blind eye if the defendant failed to seek advice or failed to use available means to obtain the necessary knowledge: ***Pocklington*** at para 42.

[60] Defendants who sought legal advice have been found not liable even where their belief was described as "illogical": ***Pocklington*** at para 43, citing ***British Industrial Plastics Ltd v Ferguson***, [1940] 1 All ER 479 (HL(E)). In ***Z-Mark International Inc v Leng Novak Blais Inc*** (1996), 12 OTC 33 (Gen Div), appeal dismissed, 1999 CanLII 1904 (ON CA), after making inquiries the defendant obtained assurances and a warranty, and the court held that the defendant did not have a reason to doubt the assurances or warranty and was therefore not knowingly or recklessly indifferent to a breach of contract: ***Pocklington*** at para 43.

[61] If there are competing legal interpretations and the defendant pursues an interpretation that interferes with the plaintiff's rights, the defendant must show that they were advised and had an honest belief that they were legally entitled to take that course: ***Pocklington*** at para 42; ***Luan*** at para 183.

[62] The defendant's main objective does not need to be breach of contract. It is sufficient if the defendant's interference is necessarily incidental to attaining the defendant's main objective: ***Friesen*** at para 19; ***Pocklington*** at para 40. Though to be clear, negligence and carelessness are not actionable under the tort of induing a breach of contract: ***OBG*** at para 191, per Lord Nicholls.

V. Analysis

[63] The following analysis focuses on: (a) whether Vanshaw breached the ATM Cash Contracts; (b) if so, whether DC Payments induced the breach; and (c) if so, whether DC Payments intended to induce the breach.

a. Vanshaw breached the ATM Cash Contracts

[64] As noted above, central to the ATM Cash Contracts was an exclusive right for the Plaintiff to operate ATMs in the Casino. Vanshaw evinced its intention not to be bound by the ATM Cash Contracts when Vanshaw entered into a subsequent agreement with DC Payments to install their ATMs in the Casino, together with Mr. Van Der Kooy advising Mr. Steiert that Vanshaw would be replacing the Plaintiff's ATMs in the Casino. In doing so, Vanshaw repudiated its contract with the Plaintiff.

[65] Further, on July 1, 2015, Vanshaw breached the ATM Cash Contracts by replacing the Plaintiff's ATMs with those belonging to DC Payments.

[66] DC Payments argues that there is a live issue as to whether the Plaintiff repudiated the ATM Cash Contracts first, by failing to properly fill the machines. If so, and Vanshaw accepted the Plaintiff's alleged repudiation, DC Payments argues that Vanshaw was lawfully entitled treat the ATM Cash Contracts as at an end.

[67] This argument has no merit. The 2006 Addendum imposed upon *Vanshaw* the responsibility to fill the ATMs with money. Vanshaw was to receive $60,000 in $500/month installments as consideration for performing this task.

[68] The 10-year extension executed in October 2012 eliminated the $500/month payment (clause 1) but expressly left the responsibility with Vanshaw "to supply and maintain appropriate cash levels in the machines at all times" (clause 6.d). Further, this agreement made clear that the 2012 "contract shall apply to the current number of ATM machines on the premises …" (clause 10).

[69] These were the operative contract terms when Vanshaw began negotiating the Term Sheet with DC Payments. In the absence of evidence to the contrary, I do not accept that the Plaintiff was under a contractual obligation to supply cash and fill the ATM machines.

[70] This was expressly a Vanshaw responsibility, notwithstanding Mr. Van Der Kooy's evidence that he told Mr. Smith that he was frustrated that the Plaintiff was not maintaining and filling the machines, and that the Plaintiff was in breach of the ATM agreement as a result. If the ATMs were not being appropriately supplied and filled with cash, that was Vanshaw's failure alone.

[71] Mr. Van Der Kooy's conduct is also at odds with his claim. At no time prior to Vanshaw repudiating the contracts did Vanshaw treat them as at an end. Moreover, if Mr. Van Der Kooy genuinely believed that Vanshaw had accepted the Plaintiff's repudiation of those contracts, Vanshaw would have been relieved of all prospective obligations. In this circumstance, there

would be no reason for Mr. Van Der Kooy to offer Mr. Steiert $1.2M in “exit money”, or to tell Mr. Steiert to sue.

[72] In the result, I am satisfied that Vanshaw breached the ATM Cash Contracts both on an anticipatory basis when it signed the DC ATM Agreement that violated the exclusive license granted to the Plaintiff; and when it replaced the Plaintiff’s ATM machines with DC Payment’s machines on July 1, 2015.

b. DC Payments did not induce the breach of contract

[73] For the following reasons, I am unable to conclude that DC Payments induced Vanshaw to breach the ATM Cash Contracts:

(i) Vanshaw was independently motivated to breach the ATM Cash Contracts;

(ii) Vanshaw approached DC Payments through Prospect Financial;

(iii) The ATM business was not an inducement; and

(iv) DC Payments did not offer “exit money” for the Plaintiff to exit the ATM Cash Contracts.

[74] Each of these reasons are addressed in turn.

i. Vanshaw was independently motivated to breach the ATM Cash Contracts

[75] As I understand Mr. Van Der Kooy’s evidence, after BMO called its loan Vanshaw was effectively insolvent or close to it. This risked ruining Mr. Van Der Kooy’s 20-year business legacy and financially devastating 85-100 Casino employees who relied on the Casino for their income. Mr. Van Der Kooy badly wanted to avoid both.

[76] Mr. Van Der Kooy tried unsuccessfully to obtain replacement financing from other large, traditional lending institutions. Through a contact at ATB Financial, Mr. Van Der Kooy was put in touch with Mr. Sekora, who was working with Mr. Reykdal (the CEO at Prospect Financial). When Prospect Financial declined to fund the loan directly, Mr. Reykdal recommended that Mr. Van Der Kooy reach out to Mr. Smith at DC Payments.

[77] In advance of introducing Mr. Van Der Kooy to Mr. Smith, Mr. Reykdal forwarded to Mr. Smith the outline of a financing deal that included, among other things, DC Payments obtaining the ATM business at the Casino. The Deal Outline was the genesis for the eventual agreement between Vanshaw and DC Payments that permitted Vanshaw to avoid insolvency and possible bankruptcy.

[78] The Plaintiff argues that DC Payments knew Vanshaw was desperate to secure new financing and used this fact to induce Vanshaw to breach the ATM Cash Contracts. While it is true that Vanshaw was in financial distress, it does not necessarily follow that DC Payments

leveraged that vulnerability to pressure Vanshaw to breach the ATM Cash Contracts and sign a new ATM agreement with DC Payments.

[79] Mr. Van Der Kooy and Mr. Smith both agreed that the only way the deal would have gone forward was with the Casino's ATM business. The financing agreement – structured to repay the loan through ATM transaction fees – included a form of repayment security that was necessary before DC Payments would lend money to the financially distressed Casino.

[80] In other words, repayment security via the Casino's ATM business was a necessary component of DC Payment's contract consideration, without which the financial risk of funding a loan to Vanshaw was too great to close a deal. This was a commercially reasonable and prudent position for DC Payments to take in light of all the circumstances.

[81] In my view, Vanshaw's decision to proceed was a function of its own commercial calculation, not inducement. It is clear from Mr. Van Der Kooy's evidence that he weighed the risks and consequences of insolvency against the risks and consequences of breaching the ATM Cash Contracts. He opted to incur the latter. Without comment on the propriety of intentionally breaching one's contractual obligations, Mr. Van Der Kooy's decision permitted him to save the jobs of his employees and preserve his business legacy.

ii. Vanshaw approached DC Payments through Prospect Financial

[82] Direct inducement involves active persuasion or incentivization for the contracting party to breach its contract: ***Luan*** at para 179. DC Payments was not actively looking for this deal. Rather, the Deal Outline came to DC Payments through Mr. Reykdal at Prospect Financial.

[83] Prior to being introduced by Mr. Reykdal, Vanshaw and DC Payments were strangers. When introduced, Mr. Smith knew that Mr. Reykdal was working with the Casino to improve its financial situation, and he understood that Mr. Reykdal was working with Mr. Van Der Kooy to secure financing for the Casino.

[84] Notably, Prospect Financial had an outstanding bridge loan with Vanshaw that was at risk if Vanshaw declared bankruptcy. To that extent, Prospect Financial's effort to help Vanshaw secure alternative financing could be seen as motivated by a desire to protect its own interests.

[85] While I received no direct evidence as to who, specifically, drafted the Deal Outline, I draw the inference that Mr. Reykdal was the author, and that he did so with the agreement of Mr. Van Der Kooy. The following clauses in the Conditions and Covenants section are informative:

> 1) My company gets paid a $10,000 monthly fee for a guaranteed 60 months secured by a GSA behind the lenders security [sic]. This fee is paid regardless if the financing is paid out early.
>
> ...
>
> 3) Jim Sekora, their CFO, and myself have full control over all financial matters. All cheques will require sign off by Jim or myself or alternatively be set up EPAY.

4) The CFO and myself control all bank accounts and they are swept twice a week.

[Underlining added]

[86] Given that Mr. Reykdal was the individual who forwarded this document by email to Mr. Smith, I am satisfied the first-person references in the Deal Outline refer to Mr. Reykdal.

[87] The Deal Outline includes a delegation of the Casino's financial control to Mr. Sekora and refers to Mr. Van Der Kooy's personal economic requirements (i.e., a $120,000 annual salary and $30,000 in cash to service his personal debts and pay a prior shareholder). On this evidence I infer that Mr. Reykdal drafted the Deal Outline with input from, and the agreement of, Mr. Van Der Kooy acting on behalf of Vanshaw.

[88] The Deal Outline became the genesis for a more formal Term Sheet that was drafted by DC Payment's lawyers. If a third party persuaded Vanshaw to offer the Casino's ATM business as loan security in violation of the Plaintiff's exclusive license – a finding I decline to make – it is conceivable that this occurred as a product of whatever discussions took place between Messrs. Reykdal, Sekora and Van Der Kooy that resulted in the terms of the Deal Outline.

[89] In my view, the evidence did not demonstrate that DC Payments induced, persuaded, or procured Vanshaw to breach its contract with the Plaintiff. To the contrary, for reasons entirely unrelated to DC Payments, Vanshaw was in a difficult financial position when BMO called Vanshaw's loan.

[90] DC Payments was simply an entity willing to fund a loan after Vanshaw's previous efforts to secure alternate funding had failed. It was no doubt a relief for Mr. Van Der Kooy to encounter a party willing to provide the financing that he badly wanted and needed. There is no liability for inducing a breach of contract where the breaching party did so of its own volition, even where the desperation of its circumstances motivated it to act.

[91] In this case, I find that DC Payments simply provided the option that Vanshaw was looking for in response to the Deal Outline that Mr. Van Der Kooy either expressly or implicitly authorized Mr. Reykdal to advance.

iii. The ATM business was not an inducement

[92] The Plaintiff argues that DC Payments' offer to finance Vanshaw's loan in exchange for the Casino's ATM business served as an inducement that caused Vanshaw to breach its exclusive licensing agreement with ATM Cash. I disagree with Plaintiff's framing of the circumstances.

[93] In my view, DC Payments did not initiate an "offer of financing". Instead, Vanshaw made an "offer to borrow" that included terms violative of its exclusive license agreement with the Plaintiff. In basic contract terms, Vanshaw made an offer that DC Payments accepted.

[94] In essence, the Plaintiff argues that including the ATM business as consideration in the contract, without more, should ground the inducement. In support, the Plaintiff provided several

cases said to stand for the proposition that consideration offered in a contract can constitute an inducement for a third party to breach an existing contract.

[95] While I do not quarrel with the proposition that terms of a contract *can* constitute an inducement, whether they do in any given case is factually driven. The cases advanced by the Plaintiff are both factually and legally distinguishable, and they do not assist in the determination of the dispute before me.

[96] ATM Cash cited ***38274 Yukon Inc v Borealis Fuels***, 2024 YKSC 11. In that case, a propane supplier alleged its competitor induced several of its customers to breach their contracts and enter into agreements with the defendant by offering preferential contract terms: ***Borealis*** at para 16. The defendant brought an application to strike the claim because the plaintiff pled insufficient facts to support the defendant's alleged knowledge of the contracts at issue.

[97] The Court did not decide the issue of inducement on its merits. Rather, the motions judge ordered the plaintiff to provide particulars of which contracts the plaintiff alleged the defendant knew about: ***Borealis*** at para 43. In rendering its decision, the Court acknowledged that competitive conduct, like offering discounts or free services, may be actionable when combined with the defendant's knowledge of, and specific interference with, lawful contracts. Given the materially different factual and legal context in which that case was decided, ***Borealis*** does not assist in the determination of the case at bar.

[98] Nor does the Court's acknowledgment above move the needle in this case. If the facts before me were otherwise – such that DC Payments approached Vanshaw and offered to replace its existing credit facilities on preferential terms but required the ATM business in exchange knowing that Vanshaw had granted an exclusive license to another provider – the tort might be made out. But those are not the facts.

[99] The Plaintiff also cites ***Johnson v BFI Canada Inc et al***, 2010 MBCA 101. This is another "competitor case". A longtime customer of the appellant had signed a new contract for waste management services with the respondent. To retain the business, the appellant countered with a new offer on better terms for the customer, which resulted in the customer terminating its contract with the respondent.

[100] All parties agreed the trial judge erred in not assessing the case through the lens of inducing a breach of contract (as pled and argued), and in failing to address the asserted defence of justification. Rather, the trial judge found the appellant had committed the tort of intentional interference with contractual relations and granted judgment accordingly.

[101] At the request of the parties, the Court of Appeal determined the case afresh based on the trial record. While the Court held that the trial judge's factual findings supported a conclusion that the appellant induced the customer to breach its contract with the respondent, the Court held the appellant was justified in doing so and allowed the appeal. As with ***Borealis***, the factual and legal context is sufficiently distinct as to not offer any meaningful guidance to the case before me.

[102] In my view, the most pertinent statement from ***Johnson*** comes at para 102, but it runs counter to the Plaintiff's argument in the instant case:

> Finally, I note that courts should be slow to expand the scope of the economic torts, especially in situations like the present, where both parties have legitimate and competing interests. See *Correia v. Canac Kitchens*, 2008 ONCA 506, 294 D.L.R. (4th) 525, where Rosenberg and Feldman JJ.A. wrote (at para. 101):
>
> > …. The two economic torts [inducing breach of contract and causing loss by unlawful means] are strictly limited in their purpose and effect in the commercial world, where much competitive activity is not only legal but is encouraged as part of competitive behaviour that benefits the economy.

[103] Here, both parties had legitimate and competing interests. The Plaintiff understandably wanted to enforce its exclusive license to operate ATMs in the Casino. DC Payments understandably wanted to have an appropriate level of payment security if it was to lend money to a financially distressed entity. Both commercial parties acted to protect themselves. This is entirely unlike the "competitor cases" and is a good example of why the common law should be slow to expand the scope of economic torts.

[104] The Plaintiff also advanced ***Harry Winton Investments Ltd v CIBC Development Corporation***, 2001 CanLII 24039 (ON CA), in which the Ontario Court of Appeal affirmed the summary dismissal of an action that alleged inducement of a breach of contract and interference with contractual relations.

[105] At para 21, the Court noted that the motions judge found there was no evidence that the defendant procured a tenant to breach its lease agreement with a former landlord. The result in that case was factually driven and does not assist the Plaintiff in this case.

[106] Here, Vanshaw was motivated to breach the ATM Cash Contracts because it required financing to keep the Casino afloat. Mr. Van Der Kooy was actively hunting for new financing. Through its association with Prospect Financial, an offer was drafted by Mr. Reykdal with the agreement of Vanshaw and presented to DC Payments.

[107] Now the Plaintiff seeks to characterize DC Payments as the hunter, rather than the hunted. It was not. Mr. Van Der Kooy made this clear at trial when he was re-examined by Plaintiff's counsel:

> Q. Why did you approach DirectCash Payments Inc.?
> A. I approached them for financing to save the casino.

[108] While the ATM business was part of the consideration in the final bargain, the context detailed above cannot be ignored: (i) Vanshaw pursued DC Payments; (ii) Vanshaw offered the ATM business in the Deal Outline; and (iii) capturing loan repayments through ATM transaction fees was necessary security before DC Payments would lend money to a financially distressed entity.

iv. DC Payments did not offer "exit money" for the Plaintiff to exit the ATM Cash Contracts

[109] The Plaintiff argues that Mr. Van Der Kooy's offer of $1.2M to the Plaintiff to secure Vanshaw's release from the ATM Cash Contracts is significant because it shows that Vanshaw (and by extension, DC Payments) understood that breaching the Plaintiff's exclusive licence required compensation. The Plaintiff also argues that DC Payments used this representation to "ease" Vanshaw into breaching the contract, reinforcing the Plaintiff's theory on inducement.

[110] Mr. Van Der Kooy testified that he was told by either Mr. Smith or Mr. Carbonelli that DC Payments or DC Bank would provide "exit money" to the Plaintiff. Mr. Van Der Kooy testified that the offer of exit money was made verbally with no written record.

[111] Mr. Van Der Kooy offered the "exit money" to Mr. Steiert in person on June 9, 2015. Mr. Van Der Kooy stated that within 24 hours of doing so, he had a call with someone from DC Bank or DC Payments who said that DC Payments did not authorize funds to pay out Mr. Steiert. Shortly after this call, Mr. Van Der Kooy withdrew the offer of "exit money".

[112] In general, Mr. Van Der Kooy presented as an honest and forthright witness. I believe that he had a genuine interest in saving his company and protecting 85-100 employees of the Casino and their families. However, it was clear through Mr. Van Der Kooy's evidence that he felt badly for Mr. Steiert losing the ATM business and, in my view, Mr. Van Der Kooy appeared motivated to assist the Plaintiff at trial. This suggests I approach his evidence with caution.

[113] In the final analysis, I do not accept Mr. Van Der Kooy's evidence that DC Payments or DC Bank ever authorized him to offer Mr. Steiert any "exit money". First, Mr. Van Der Kooy was never acting as an agent for DC Payments. They were on opposite sides of the proposed deal, and neither the Deal Outline nor the Term Sheet contemplated DC Payments paying compensation to secure a release.

[114] Second, any compensation owing to the Plaintiff on account of terminating the ATM Cash Contracts was Vanshaw's obligation alone. Layering a $1.2M payout on top of an already risky loan would mean that DC Payments would be funding Vanshaw's rescue and compensating a third party without any contractual obligation to do so, or guaranteed return, making the deal commercially irrational. Obviously, DC Payments was not gifting more than a million dollars to a previously unknown party with whom it had no relations.

[115] Third, "exit money" in that quantum would entirely erode the profit of the proposed deal from DC Payments' perspective. The transaction made sense only if DC Payments could recover its loan and earn revenue through ATM operations over time. Absorbing a large, upfront payment to Mr. Steiert would have materially undermined the commercial viability of the arrangement.

[116] While I accept that Mr. Van Der Kooy originally made such an offer to Mr. Steiert, I do not accept that DC Payments authorized him to do so. Nor do I accept that there was any intention by DC Payments to fund any "exit money".

[117] I find that Mr. Van Der Kooy's offer of "exit money" was the result of Mr. Van Der Kooy's own misunderstanding, however formed.

[118] I pause to note that the Plaintiff urges the Court to prefer the evidence of Mr. Steiert and Mr. Van Der Kooy over that of Mr. Smith, where they conflict. That position flows from a breach of rule 8.13 of the *Alberta Rules of Court*, Alta Reg 124/2010 based on Mr. Smith acknowledging that he was briefed by his counsel about Mr. Steiert's evidence despite an order excluding witnesses from trial.

[119] I decline to prefer Mr. Van Der Kooy's evidence in relation to this contradiction in the evidence. I do not find that Mr. Smith was untruthful. Moreover, the nature of the proposed commercial transaction speaks strongly in corroboration of Mr. Smith's denial that DC Payments ever authorized Mr. Van Der Kooy to offer "exit money" to Mr. Steiert. It would not have made any business sense to do so.

c. DC Payments did not intend to induce Vanshaw to breach the ATM Cash Contracts

[120] The Plaintiff bears the burden to prove that DC Payments intended to induce Vanshaw to breach the ATM Cash Contracts. The Plaintiff focuses the question of intention on whether DC Payments was wilfully blind to the ATM Cash Contracts, or whether the Defendant was reckless in not obtaining a copy of the ATM Cash Contracts when pursuing its own agreement with Vanshaw.

[121] DC Payments argues that it did not intend to induce Vanshaw into breaching its contracts with the Plaintiff. Rather, DC Payments asserts that it reasonably relied on Vanshaw's verbal and written representations and warranties that Vanshaw could lawfully exit the ATM Cash Contracts, and this reliance should not attract liability.

i. Presumed Intent

[122] As an intentional tort, versus a tort of negligence, there is no liability for inducing a breach of contract without a finding of intent: ***Brae Centre*** at para 29. In ***AI Enterprises*** the Supreme Court noted the plaintiff bears the burden to prove that the defendant understood it was procuring a contractual breach: para 93.

[123] The Plaintiff asks this Court to evolve the common law by recognizing a new presumption of intent. The Plaintiff analogizes from the law surrounding fraudulent preferences where intent may be presumed when a voluntary conveyance occurs in suspicious circumstances: ***Lay v Lay***, 2023 ABKB 354 at para 50 citing ***Moody v Ashton***, 2004 SKQB 488 at paras 139-143.

[124] According to the Plaintiff, adapting this premise to the tort of inducing a breach of contract would trigger a presumption of intent after a plaintiff has proven the elements of breach, knowledge, and inducement. The onus would then shift to the defendant to rebut the presumption.

[125] The Defendant opposes the Plaintiff's invitation for the Court to evolve the common law in this way. DC Payments argues that difficulty in proving intent is not a reason to disturb well-established case law informing how this tort must be established. I agree.

[126] The historical development and the narrow scope of economic torts militate against recognizing the presumption of intent advocated by the Plaintiff: ***AI Enterprises*** at paras 26 and 29. In ***Watkins v Olafson***, [1989] 2 SCR 750 at 760-61, the Supreme Court cautioned trial judges to be slow to evolve the common law, and for good reason:

> The court may not be in the best position to assess the deficiencies of the existing law, much less problems which may be associated with the changes it might make. The court has before it a single case; major changes in the law should be predicated on a wider view of how the rule will operate in the broad generality of cases. Moreover, the court may not be in a position to appreciate fully the economic and policy issues underlying the choice it is asked to make.

[127] Further, "and perhaps most importantly, there is the long-established principle that in a constitutional democracy it is the legislature, as the elected branch of government, which should assume the major responsibility for law reform": ***Wakins*** at 761.

[128] The Supreme Court has also observed that economic torts have developed to allow space for the aggressive pursuit of self-interest, and that a defendant is not liable when they have merely pursued competition to the bitter end in the pursuit of their own trade: ***AI Enterprises*** at para 31. Lord Nicholls noted that the common law recognizes the economic advantages of competition and seeks to encourage and protect it: ***OBG*** at para 142.

[129] A narrow approach to intention is an important safeguard against attaching liability to vigorous but lawful competitive behaviour: ***AI Enterprises*** at para 97. Economic harm to a competitor is often foreseeable, but mere foreseeability does not meet the strict requirement to prove intention.

[130] It can be challenging to prove intent in claim alleging the inducement of a breach of contract: ***Parks West Mall Ltd v Jennett***, 1995 ABCA 472 at para 17. However, an objective inference of intent may be drawn from a party's voluntary conduct and the natural, probable, or inevitable consequences arising therefrom, without introducing a new legal presumption or shifting the burden away from the party obliged to prove its case.

[131] In my view, the foregoing considerations persuasively operate against recognizing a new presumption of intent in the context of this tort, and I decline to do so.

ii. DC Payments was not wilfully blind or reckless

[132] The Plaintiff asserts that DC Payments was either willfully blind to the ATM Cash Contracts or reckless in not obtaining them while contemplating its own agreement with Vanshaw. The Plaintiff submits that DC Payments need not have made Vanshaw's breach its primary aim, so long as the breach was necessarily incidental to obtaining an exclusive ATM agreement in the Casino.

[133] The Plaintiff points out that, in law, its onus does not require it to prove that DC Payments wilfully, deliberately, and directly intended to induce Vanshaw to breach of the ATM Cash Contracts. The Plaintiff can prove intent by demonstrating that DC Payments acted with "substantial certainty" that its actions would lead Vanshaw to breach the ATM Cash Contracts: ***Brae Centre*** at para 27.

[134] DC Payments argues that there is no evidence of intent. DC Payments asserts that it reasonably relied on Vanshaw's representations and warranties regarding its ability to lawfully exit the ATM Cash Contracts. Even if those representations were untrue, DC Payments says liability should not attach because it made reasonable efforts to learn the truth. Furthermore, DC Payments emphasizes the fact that both parties were represented by counsel during negotiations and during the execution of the contract.

[135] For the reasons below, I find there was a basis for DC Payments *bona fide* belief that it could proceed with the transaction without Vanshaw breaching its existing contractual arrangements with the Plaintiff, even though this later proved not to be the case.

a. The ATM business was not intended as an inducement

[136] The Plaintiff contends that because the transaction contemplated financing in exchange for replacing the Plaintiff's ATMs in the Casino, that DC Payments intended to induce Vanshaw to breach the ATM Cash Contracts.

[137] The Plaintiff also argues that DC Payments had previously aided a company in distress by offering financing in exchange for putting its ATMs on that company's property. This past occurrence is said to support an inference that DC Payments' primary objective was to get its ATMs in Vanshaw's Casino, and the breach of the ATM Cash Contracts was necessarily incidental to that goal.

[138] As discussed above, DC Payments was not the party who offered the deal to Vanshaw. It was the other way around – Vanshaw approached DC Payments to secure financing. The primary consideration was 12% interest on a million-dollar loan repayable over five years. Acquiring the ATM business was essential from DC Payments' perspective to secure repayment of the loan, not to induce Vanshaw to participate in the bargain.

[139] The mere fact that DC Payments was in the ATM business does not inexorably lead to the conclusion that DC Payments intended to induce Vanshaw to breach the ATM Cash Contracts, or that the breach was necessarily incidental to placing its ATMs in the Casino.

[140] This argument fails to account for the fact that DC Payments was operating on both verbal representations from Mr. Van Der Kooy that the proposed agreement would not breach Vanshaw's contractual obligations to other parties, and written warranties to the same effect. Moreover, the agreement was negotiated between sophisticated commercial parties both of whom were represented by counsel.

[141] Without more, the fact that DC Payments had previously entered into a similar agreement for financing and placement of its ATMs is not probative of the intent to induce a breach of

contract. While Mr. Smith acknowledged a similar transaction in the past, the Plaintiff attempts to stretch the relevance of this occurrence further than it can be logically taken.

[142] As I understood this portion of the evidence, counsel did not suggest to Mr. Smith that this other transaction resulted in the distressed entity breaching any contractual obligations to a third party. Absent this crucial feature, this evidence is not relevant. The fact that DC Payments previously negotiated a loan agreement to place its ATMs in a counterparty's location, without more, is not logically probative of an underlying intention for that counterparty to breach its contractual obligations to others.

[143] In my view, the breach of the ATM Cash Contracts was not an end in and of itself, nor a means to an end. As discussed below, DC Payments took steps to understand Vanshaw's relationship with its current ATM provider and protect against this very litigation by including Vanshaw's representations and warranties in the Term Sheet, and by including a requirement for Vanshaw to produce a release from the Plaintiff in respect of the ATM Cash Contracts.

b. DC Payments held a *bona fide* belief that contractual rights would not be infringed

[144] As noted, Vanshaw gave express representations and warranties, both in the Term Sheet and in the DC ATM Agreement, that it possessed all necessary consents, authorizations, licenses, permits, approvals, notices, and filings to enter into the agreement, and that by entering these agreements Vanshaw would not breach any contractual obligations it owed to others.

[145] Further, the Term Sheet specifically obliged Vanshaw to deliver a copy of the ATM Cash Contracts to DC Payments prior to the credit facility being established, and a release from the Plaintiff in relation to the same. Including these assurances in the Term Sheet is inconsistent with an intention on the part of DC Payments to induce Vanshaw to breach the ATM Cash Contracts.

[146] The Plaintiff also argues that because DC Payments had knowledge of the Plaintiff's existing exclusive ATM license, it should not have relied on Mr. Van Der Kooy's representations. Instead, the Plaintiff argues that DC Payments should have reviewed the ATM Cash Contracts to determine whether Vanshaw could, in fact, get out of them.

[147] According to the Plaintiff, DC Payments should not have blindly relied on Mr. Van Der Kooy's word, particularly because there were concerns regarding Mr. Van Der Kooy's past financial management of the Casino. Further, DC Payments became aware of the Plaintiff's application for an injunction to prevent its ATM machines from being removed from the Casino.

[148] With respect, this argument goes too far and asks too much of a party to a commercial transaction. Beyond the ordinary requirements of due diligence, there is no obligation on a commercial party to investigate the internal affairs of the party opposite.

[149] Sophisticated commercial entities represented by counsel ought to be able to reasonably rely on the representations and warranties given to one another. To hold otherwise would import an unacceptable level of uncertainty into commercial transactions.

[150] Moreover, any argument premised on what the injunction application ought to have caused DC Payments to do, or not do, is based on a logical fallacy. The Term Sheet – which included the representations and warranties – was signed by all parties on June 8-9, before the *ex parte* injunction application was granted on June 11, 2015.

[151] In Mr. Van Der Kooy's meeting with Mr. Steiert on June 9, Vanshaw clearly communicated to the Plaintiff its intention to no longer be bound by, or perform, the terms of the ATM Cash Contracts. In doing so, Vanshaw repudiated those agreements.

[152] By obtaining an injunction, the Plaintiff can be taken to have rejected Vanshaw's repudiation, instead affirming the contracts and insisting on performance.

[153] Objectively, the injunction litigation suggested to DC Payments that Vanshaw and the Plaintiff were *already* in a dispute. On June 23, the Court vacated the injunction. This would have been an encouraging development for both Vanshaw and DC Payments. With the Term Sheet having already been signed, the injunction now vacated, and the benefit of counsel advising both parties, it was not unreasonable for DC Payments to move forward with the other constituent agreements forming part of the overall transaction.

[154] From Vanshaw's perspective, if the Plaintiff pursued its claim and Vanshaw was later found to have breached the ATM Cash Contracts, that downstream possibility may have been preferable relative to foregoing the financing it needed to sustain its operations in the short term. Delay may have been advantageous to Vanshaw since the possibility of a future settlement or damages would have bought time for the Casino to try and regain its footing and improve its financial performance.

[155] In my view, the Plaintiff's argument attempts to cloak in the language of inducement a positive obligation for DC Payments to refrain from moving forward with a contract that Vanshaw had already entered on its own volition. Under the law, DC Payments owed no such obligation to the Plaintiff.

[156] While there is a distinction between the Term Sheet (executed on June 8-9, 2015) and the DC ATM Agreement (executed on June 26, 2015), in my view this distinction is irrelevant. Any allegation of inducement must be considered in relation to the negotiation of the Term Sheet. Later steps, such as executing the DC ATM Agreement and funding the loan, were taken only to give effect to the earlier bargain reached between the parties.

[157] If DC Payments acted under a *bona fide* belief that contractual rights would not be infringed, liability will not be found even though the belief turned out to be mistaken. For a mistaken belief to be *bona fide*, rather than the result of recklessness or wilful blindness, some basis for the belief must exist, and some reasonable effort must have been made by DC Payments to learn the truth: ***Brae Centre*** at para 28.

[158] In this case, I am satisfied that DC Payments held such a belief. Further, in the totality of circumstances, I am satisfied that belief was *bona fide*.

[159] DC Payments sought and received: (i) the ATM Cash Contracts; (ii) Vanshaw's verbal assurance that these contracts were not a bar to proceeding with the agreement; (iii) Vanshaw's

written representations and warranties to the same effect documented in the Term Sheet; and (iv) Vanshaw's written warranty in the Term Sheet that proceeding with the transaction would not breach any contractual obligations that Vanshaw owed to others.

[160] The Plaintiff also argues that DC Payments' waiver of Vanshaw's requirement to produce a release from the Plaintiff suggests that DC Payments did not make a reasonable effort to learn the truth. Specifically, the Plaintiff argues that by waiving the requirement of a release, DC Payments was wilfully blind to the fact that Vanshaw could not get out of the ATM Cash Contracts.

[161] In my view, nothing turns on the fact that DC Payments waived the requirement for Vanshaw to obtain a release from the Plaintiff. Once DC Payments became aware of the injunction and was named as a defendant in the Statement of Claim filed on June 23, 2015, it was obvious that the Plaintiff was not consenting to the termination of the ATM Cash Contracts.

[162] By that time, DC Payments was entitled to perform its contract with Vanshaw. Insisting on a waiver that DC Payments knew would never come would serve no purpose. The waiver does not logically support the proposition advanced by the Plaintiff.

VI. Conclusion

[163] The Plaintiff's claim is dismissed.

Heard on June 2-5, 2025 and December 5, 2025.
Dated at the City of Calgary, Alberta this 28 day of April 2026.

D. Jugnauth
J.C.K.B.A.

Appearances:

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