



Date: 20260422

Docket: T-1420-23

Ottawa, Ontario, April 22, 2026

PRESENT: Madam Justice Pallotta

BETWEEN:

**STEELHEAD LNG (ASLNG) LTD. AND
STEELHEAD LNG LIMITED
PARTNERSHIP**

Plaintiffs

and

**CEDAR LNG PARTNERS LP, CEDAR LNG
PARTNERS (GP) LTD. AND PEMBINA
PIPELINE CORPORATION**

Defendants

ORDER AND REASONS

I. Introduction

[1] The moving parties and defendants (collectively, Cedar) bring this motion under rule 51 of the *Federal Courts Rules*, SOR/98-106 to appeal a December 31, 2025 order of Associate Judge Crinson, the case management judge (the CMJ), that did not grant Cedar the relief they were seeking in their motion. Cedar's motion sought to end this action for infringement of Canadian patent number 3,027,085 (085 patent) on the basis that the plaintiffs (collectively,

Steelhead) had breached their undertaking to discontinue it if the 085 patent claims they asserted against Cedar in this action were invalidated in a different patent action, T-1488-20, against other defendants.

[2] According to Cedar, the CMJ made key findings—that Steelhead had failed to comply with their undertaking, should not be relieved of the undertaking, and should be sanctioned for failing to fulfill it voluntarily. They say those findings should have ended the inquiry and the action. Instead, the CMJ effectively did relieve Steelhead of their undertaking, by making an order that allowed the action to continue and allowed Steelhead to amend the statement of claim to allege infringement of 085 patent claims that were held to be valid in T-1488-20. Cedar allege that the CMJ got there through a series of errors that led him to the wrong result, and a result that essentially sanctioned an abuse of process by allowing Steelhead to “litigate by instalments” and now plead that Cedar have infringed or will infringe different 085 patent claims. On this motion, Cedar ask the Court to strike Steelhead’s statement of claim without leave to amend and dismiss the action with costs payable forthwith.

[3] According to Steelhead, Cedar improperly seek to overturn a discretionary decision of the CMJ using the guise of an appeal to get “a second kick” at their motion. In the motion below, Cedar had promoted a “proactive approach to litigation management” and argued that the CMJ had latitude to manage the proceeding as he saw fit. The CMJ did not exercise his discretion in the precise manner Cedar requested, and now they pivot, arguing that he was bound inexorably to their preferred result. Steelhead submit there is no series of errors and no reason to disturb the CMJ’s order. The CMJ considered the appropriate legal and factual circumstances, including the

parties' and the Court's interests in securing the just, most expeditious, and least expensive outcome. He held, correctly, that Steelhead never undertook to forgo asserting valid 085 patent claims, and he ordered a practical result by granting leave to amend the pleading instead of forcing a new action.

[4] I am dismissing Cedar's motion. The CMJ did not make findings that compelled him to end the action. The question of the appropriate relief for not fulfilling an undertaking was a factually suffused exercise of discretion. Cedar have not established errors with the CMJ's determination of what he deemed to be appropriate relief, or his resulting order, that would warrant my intervention.

II. **Background**

[5] Steelhead commenced this action in July 2023, alleging that Cedar had infringed or would infringe (including by inducement) 33 claims of the 085 patent: 1, 2, 3, 7, 8, 10, 11, 13, 15, 16, 19, 20, 21, 22, 23, 26, 36, 37, 41, 42, 44, 45, 46, 47, 48, 49, 56, 57, 66, 67, 68, 69, and 70. The pleading defined these 33 claims as the "Asserted Claims."

[6] In August 2023, Cedar served a notice of motion to strike the statement of claim on grounds that Steelhead's allegations of past or present infringement were based on acts of design, development, and marketing for a facility that does not yet exist, and that Steelhead's pleading could not sustain a cause of action for future or induced infringement. Cedar were challenging the nature of the infringement allegations, regardless of the claims being asserted. Their position was that the past/present infringement allegations made against them in this action were

essentially identical to those made against the defendants in T-1488-20 that had been found legally untenable on summary trial (*Steelhead LNG (ASLNG) Ltd v ARC Resources Ltd*, 2022 FC 998¹), the requirements of a *quia timet* cause of action were not met, and there were no acts of direct infringement to induce.

[7] Steelhead’s counsel proposed to Cedar’s counsel that this action and Cedar’s motion to strike be informally or formally stayed pending a decision on the counterclaim in T-1488-20, which challenged the validity of every claim of the 085 patent and had just been heard by Justice Manson. On October 5, 2023, Steelhead’s counsel sent an email to the Court providing her team’s availability for the motion, and stating:

In any event, Steelhead proposes that the parties and the court hold off on scheduling the defendants’ motion to strike pending a decision on the validity of the patent at issue in Court File T-1488-20. The trial in that action was concluded on September 22, 2023. If all the asserted claims are held to be invalid, which is one possible outcome, Steelhead will discontinue this action and the defendants’ motion will be moot. If any asserted claim is held to be valid, the parties can proceed with scheduling the defendants’ motion to strike.

We proposed the above to the defendants last week and while they are continuing to consider the proposal, they do not agree at this time. Nonetheless, in our view, it is a waste of this Court’s resources to schedule, hear or decide the defendants’ motion to strike when there is a decision pending that may render it moot.

[8] Cedar did not agree to the proposed stay and the CMJ did not hold off on scheduling the motion. He directed that Cedar’s motion to strike would be heard on November 14, 2023, and he

¹ Later, the Federal Court of Appeal affirmed the summary trial decision (2024 FCA 67) and the Supreme Court of Canada denied leave to appeal (2025 CanLII 62426).

set a timetable for the parties' materials. Associate Judge Cotter heard the motion on November 14 and reserved his decision.

[9] On December 13, 2023, Justice Manson issued his decision in T-1488-20 on the validity of the 085 patent claims. He held that:

- claims 24, 25, 27, 28, and 29 are valid;
- claims 26, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55 are valid insofar as they depend on claims 24, 25, 27, 28, and 29, directly or indirectly, and are otherwise invalid;
- claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, and 84 are invalid.

[10] Cedar's counsel then wrote to Steelhead's counsel, stating that Steelhead undertook to the Court to discontinue the action against Cedar if all asserted patent claims were held invalid in T-1488-20, and given that they were, Cedar wanted confirmation that Steelhead would discontinue the action and that Cedar's motion to strike would therefore be moot. Steelhead's counsel responded that Cedar's motion was not moot, all asserted patent claims were not invalidated, and Steelhead intended to amend their pleading to assert at least claim 24.

[11] Basically, the parties disagreed on what the condition "[i]f all the asserted claims are held to be invalid" meant.

[12] The CMJ scheduled a case management conference in January 2024. Cedar took the position that all claims asserted against them in this action were invalid because, while 11 of the 33 claims in the pleading (namely, claims 26, 36, 37, 41, 42, 44, 45, 46, 47, 48, and 49) were held valid insofar as they depend on claims 24, 25, 27, 28, and 29, those 5 claims were not asserted against Cedar and it was evident from certain paragraphs of the statement of claim that Steelhead had not alleged that the unique elements of the 5 valid claims were part of the allegedly infringing facility. Steelhead took the position that there was no issue to be resolved. Not all 33 asserted claims were held invalid and therefore Steelhead had no reason to discontinue the action. Claims 26, 36, 37, 41, 42, 44, 45, 46, 47, 48, and 49 (already asserted) are valid to the extent they depend on claims 24, 25, 27, 28, and 29, and Steelhead would file an amended pleading to assert claim 24 and remove the asserted claims that were held invalid. Steelhead were not resiling from any undertaking.

[13] During the case management conference, the CMJ shared his initial impressions, which were:

- there was an undertaking to the Court;
- asserting claims is not merely a mechanical exercise of listing them—the factual elements must be pleaded;
- the factual elements of certain claim dependencies did not seem to be pleaded;

- it seemed that, when the undertaking was given, it was an undertaking to discontinue the proceeding if the asserted claims were held invalid, which really means the factually asserted claims and not claim 24 and its dependencies;
- whatever an undertaking to discontinue means—if it means Steelhead starts another proceeding, so be it—there should be an opportunity to fulfill the undertaking;
- he was not inclined to issue an order in the context of the case management conference;
- he would hold the matter for a couple of weeks to give the parties time to reflect on his view that an undertaking was given, and if the action is not discontinued, provide an opportunity for a motion in writing to enforce the undertaking.

[14] After the case management conference, the CMJ directed the parties to: (i) discuss and attempt to resolve the impact of the T-1488-20 validity decision on this action; (ii) bring any motion related to the impact in writing, by January 26, 2024; and (iii) take no other steps to advance the action until the latter of January 27, 2024 or the resolution of the motion.

[15] The parties did not reach a resolution. Cedar brought a motion to enforce the undertaking, asking for:

- an order pursuant to rule 385 and/or the Court’s plenary powers declaring that Steelhead must comply with their undertaking to discontinue this action and ordering them to discontinue the action forthwith;
- in the alternative, an order pursuant to rule 74 and/or the Court’s plenary powers removing the statement of claim from the Court file;
- in the further alternative, an order pursuant to rule 221 striking the statement of claim and dismissing the action.

[16] Cedar’s motion was perfected on February 9, 2024.

[17] On December 31, 2025, the CMJ issued his decision. Since the parties did not dispute that Steelhead gave an undertaking, he identified the issues as: whether the terms of Steelhead’s undertaking were met, whether Steelhead should be released from the undertaking, and what remedy was appropriate.

[18] On the first issue, while the CMJ agreed with Steelhead that a party can allege infringement of dependent claims without alleging infringement of the claims from which they depend, this proposition did not address the requirement to allege material facts. He found that, in the absence of any specific pleading or particulars of asserted dependencies, it was appropriate to conclude that “what is not pleaded is not alleged or asserted in this action.” After reviewing

the pleading, the CMJ found that claims 26, 36, 37, 41, 42, 44, 45, 46, 47, 48, and 49 (he defined these 11 claims as the “Enumerated Claims”) had not been asserted to the extent that they depend on claims 24, 25, 27, 28, or 29 (he defined these 5 claims as the “Valid Claims”) because the elements of claims 24, 25, 27, 28, or 29 had not been fully pleaded. The CMJ went on to say:

[13] ...The conclusion that must be drawn is that no asserted claim has been held to be valid. The precondition to the undertaking given by Steelhead has been met. If the undertaking is to be fulfilled Steelhead should not be allowed to proceed with the currently asserted claims of the 085 Patent.

[19] The CMJ considered whether Steelhead should be released from the undertaking and noted that Steelhead had not brought a motion to be released; rather, they argued they should be released in response to Cedar’s motion. The CMJ found that the evidence on the motion before him did not establish that Steelhead should be fully released from the undertaking. Rather, the evidence and arguments advanced by Steelhead were relevant to the appropriate remedy for the failure to fulfill the undertaking that had been given voluntarily.

[20] The CMJ stated that two factors to be considered before determining the appropriate remedy were (i) the existence of special circumstances, and (ii) the weighing of injustice between the parties (*Sanofi-Aventis Canada Inc v Apotex Inc*, 2008 FC 320 at para 20) and that he had considered the circumstances to determine whether the interests of justice would be served by granting any relief from the undertaking.

[21] After setting out the parties’ arguments, the CMJ wrote:

[19] Determination of the appropriate remedy requires the Court to consider the parties interests and the interest of the Court in securing the just, most expeditious and least expensive outcome of

every proceeding. The just outcome requires that Steelhead not be permitted to pursue that which it undertook to discontinue, i.e. Steelhead undertook to no longer pursue infringement of any of the Enumerated Claims to the extent they were determined in [T-1488-20] to be invalid. However, it is also clear that Valid Claims were excluded from the scope of the undertaking and that Steelhead did not undertake to forego its right to pursue Valid Claims or claims which depend from them.

[20] This undertaking arose in an unusual circumstance in which some claims of the 085 Patent were held to be both invalid and valid (*Steelhead LNG (ASLNG) Ltd. v. ARC Resources Ltd.*, 2023 FC 1684 at paras 317-319) depending upon which claim they depended from, when typically a claim of a patent is held to be either invalid or valid. The most just outcome in the present unusual circumstances is to prevent Steelhead from continuing with the presently asserted claims but to allow Steelhead to amend its statement of claim to allege any claims of the 085 Patent which are valid and it believes are infringed.

[21] The Statement of Claim shall be struck with leave to amend the Statement of Claim to allege infringement of those claims of the 085 Patent which have been previously held to be valid in [T-1488-20] within 30 (thirty days of this Order). This remedy also provides for an expeditious determination of the proceeding on its merits.

[22] Finally, the CMJ stated that a party in breach of an undertaking who does not bring a motion to be released from that undertaking is deserving of sanction, and found Steelhead's conduct was "worthy of sanction in the form of costs."

[23] The CMJ made an order with terms:

1. striking the statement of claim;
2. granting Steelhead leave to amend the statement of claim to allege infringement of 085 patent claims that were held valid in T-1488-20;

3. granting Cedar costs at mid-column V of the pre-December 2025 tariff, payable by Steelhead forthwith.

[24] On January 30, 2026, Steelhead served and filed an amended statement of claim alleging that Cedar had infringed or would infringe (including by inducement) claim 24 and the 11 previously asserted claims 26, 36, 37, 41, 42, 44, 45, 46, 47, 48, and 49 as they depend directly or indirectly on claim 24.

[25] Associate Judge Cotter has not issued a decision on Cedar's motion to strike that was heard in November 2023. At the hearing for this motion, the parties confirmed that Associate Judge Cotter's decision was being held pending the CMJ's decision on the motion below, and it is now being held pending my decision on this appeal.

III. **Issues and Standard of Review**

[26] Cedar contend that the CMJ erred in law and/or by exercising his discretion on wrong principles by granting Steelhead leave to amend the statement of claim, instead of ordering Steelhead to discontinue the action, removing the statement of claim from the court file, or dismissing the action. They say the CMJ's decision was premised on a succession of legal and factual errors and sanctioned an abuse of process, and the CMJ's order should be partly set aside so that Steelhead's statement of claim is struck without leave to amend and the action is dismissed with costs. Specifically, Cedar seek an order amending term 1 of the CMJ's order to add "and the action is dismissed," deleting term 2, and amending term 3 to grant Cedar costs of the action at mid-column V of the pre-December 2025 tariff, payable by Steelhead forthwith.

[27] Steelhead submit that the CMJ made no error of law, and he made no factual errors—reviewable or otherwise—to warrant intervention on appeal.

[28] There is no dispute that the standard of review on a rule 51 appeal is palpable and overriding error for questions of fact and questions of mixed fact and law, and correctness for questions of law and questions of mixed fact and law where there is an extricable legal principle at issue: *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 79, citing *Housen v Nikolaisen*, 2002 SCC 33. A palpable and overriding error is an error that is obvious and goes to the very core of the outcome of the case: *Canada v South Yukon Forest Corporation*, 2012 FCA 165 at para 46.

IV. Arguments

A. *Cedar's arguments*

[29] Cedar argue that parties who breach undertakings are deserving of the strongest sanction.

[30] Cedar say there is no dispute that Steelhead gave an undertaking. Steelhead did so voluntarily and for strategic reasons, to persuade Cedar and the Court to stay the action and delay the motion to strike. Cedar also say that Steelhead's undertaking was unambiguous: if the 085 patent claims asserted to be infringed in this action are invalidated in T-1488-20, then Steelhead "will discontinue this action and the defendants' motion will be moot."

[31] Cedar submit that the CMJ's unchallenged findings—that Steelhead gave an undertaking whose terms were met, and that Steelhead should not be relieved of their undertaking—ought to have led inexorably to the conclusion that the statement of claim should be struck without leave

to amend, bringing the action to an end. The CMJ ought never to have undertaken the ensuing analysis of the appropriate remedy. In doing so, he made a series of errors that led him to the wrong result:

- The CMJ applied the wrong jurisprudence, the wrong legal test, and the wrong considerations to determine the appropriate remedy for failure to fulfill an undertaking to the Court. He relied on *Sanofi* when it has no application to this case because it was about relief from an implied undertaking on discovery, not a voluntary and explicit undertaking to discontinue an action, and it does not even reflect the Supreme Court of Canada's test for relief from implied undertakings in *Juman v Doucette*, 2008 SCC 8.
- The CMJ should have instead considered the test for relief from a voluntary undertaking. His finding (in preceding paragraphs of the reasons) was that Steelhead had not satisfied the test for relief from their undertaking.
- While the CMJ stated that the just outcome requires that Steelhead not be permitted to pursue that which they undertook to discontinue, he then mischaracterized the undertaking:
 - the CMJ stated, incorrectly, that Steelhead undertook to no longer pursue infringement of any of the 11 Enumerated Claims to the extent they were determined to be invalid in T-1488-20, that the 5 Valid Claims were excluded from the scope of the undertaking, and that Steelhead did not

undertake to forgo the right to pursue Valid Claims or claims that depend from them;

- the CMJ erred in his statement of what Steelhead undertook to do, which was to discontinue the action, and his suggestion that Steelhead only undertook to not pursue invalid patent claims is difficult to comprehend—as a matter of law, a patentee cannot pursue invalid patent claims;
- Steelhead necessarily undertook to forgo the right to pursue valid claims that they had not asserted in this action, otherwise Cedar’s motion to strike would not be rendered moot; the undertaking meant that Steelhead would not assert other claims;
- the CMJ read words into the undertaking, as though Steelhead undertook to discontinue the action if the asserted claims were invalidated and Steelhead chose not to assert additional claims; he interpreted the undertaking in a way that would have made no sense had it been given at the time.
- the CMJ made a legal error when he held that the undertaking arose in an unusual circumstance; patent claims are commonly held to be both invalid and valid based on their dependencies.

[32] Cedar argue that these errors led the CMJ to mistakenly conclude that the “most just outcome” was to allow Steelhead to amend the statement of claim to allege valid claims they

believe are infringed. Contrary to the CMJ's statement that the just outcome requires that Steelhead not be permitted to pursue that which they undertook to discontinue:

- the order did not require Steelhead to discontinue the action as they promised to do (and refused to do voluntarily after the case management conference);
- the order kept the action alive by allowing Steelhead to assert claims they had never seen fit to assert until the validity decision issued in December 2023; and
- Cedar's motion to strike is not moot, as Steelhead said it would be, even though all the asserted claims were invalidated.

[33] Cedar contend the CMJ's order is not "the most just outcome." And not only that. They say the order effectively permits Steelhead to abuse the Court's process. In the patent context, the Federal Court of Appeal has repeatedly held that relitigating patents is an abuse, whether against the same or different parties, whether in respect of infringement or invalidity, or whether in respect of some patent claims or all.

[34] According to Cedar, the CMJ's order expressly permits Steelhead to split their case and litigate by instalments, and it sets a troubling precedent of allowing successive allegations of infringement of different claims. Having started an infringement action and lost, Steelhead were effectively permitted to start a new and different infringement action against the same defendants. If this action had come to an end, a new infringement action based on claim 24 of the 085 patent would be estopped by the doctrine of *res judicata* for offending the rule against raising issues that should have been raised in a previous proceeding: *Danyluk v Ainsworth*

Technologies Inc, 2001 SCC 44 at para 24; *AB Hassle v Apotex Inc*, 2005 FC 234 at paras 73-74, 98, aff'd 2006 FCA 51.

[35] Finally, Cedar allege that Steelhead's amended statement of claim goes beyond the CMJ's order, recasting the bases for alleging infringement and making new allegations that are not connected to a Valid Claim. However, Steelhead are correct that the question of whether their amended statement of claim exceeds what the CMJ's order permitted them to do is not for me to decide on this motion. It is therefore unnecessary to address this allegation further.

B. *Steelhead's arguments*

[36] Steelhead say they made an undertaking to the Court, not a contract, and the Court has inherent jurisdiction and discretion to relieve a party from an undertaking. Steelhead submit that the CMJ turned his mind to the law in this regard, cited it appropriately, and a made a discretionary finding of what he considered to be a just outcome. This was not a mechanical exercise and the CMJ's decision should be given deference. The matter should not be considered *de novo* as Cedar try to do.

[37] Steelhead point to the fact that the action is at an early stage and pleadings are not closed. They say the CMJ has discretion to proactively manage the litigation—Cedar themselves argued in favour of the broad case management powers under rule 385 and the Court's plenary powers to fix proceedings that are contrary to law, miscast, chaotic, or any of these things: *Sport Maska Inc v Bauer Hockey Ltd*, 2019 FCA 204 at paras 35-37. The CMJ had discretion not to enforce the undertaking, and he made a discretionary decision about the appropriate remedy.

[38] Steelhead contend there is no basis for intervention on appeal.

[39] First, Cedar fabricate a legal error where none exists. They profess that the CMJ applied the wrong jurisprudence, wrong legal test, and wrong considerations, without identifying the right ones. Steelhead argue that:

- The CMJ did not err by relying on *Sanofi*. There is no legal distinction between implied and voluntary undertakings—both engage the Court’s discretion in their enforcement, modification, or the determination of an appropriate remedy (*Barreiro v Canada (National Revenue)*, 2008 FC 858 at paras 17, 20)—and the principles in *Sanofi* are not materially different from *Juman*. Furthermore, Cedar should not now be allowed to allege an error based on principles they did not challenge in the motion below.
- Moreover, the CMJ’s alleged errors of relying on *Sanofi* and failing to consider his preceding finding are premised on a misreading of the reasons. Contrary to Cedar’s submissions, the CMJ did not deny Steelhead’s request to be relieved of the undertaking. He found that Steelhead should not be fully released from the undertaking. This is not a case where the CMJ’s findings led to a single outcome, but rather, a case that called for a factually suffused exercise of discretion.

[40] Second, the CMJ did not make a series of factual errors—reviewable or otherwise—that justify the Court’s intervention on appeal:

- The CMJ understood the undertaking, and Cedar’s suggestion that he mischaracterized it or read in words should be rejected. The CMJ correctly stated that it remained open to Steelhead to assert infringement of remaining valid claims because they never undertook not to.
- The real issue on this appeal is about what the CMJ decided to do in light of the undertaking. In this regard, the Court should reject Cedar’s argument that the only remedial options were to relieve or not relieve Steelhead of the undertaking:
 - Cedar’s own submissions accepted that remedial powers are permissive and the Court has options;
 - the CMJ relied on that same standard, stating that, rather than resorting to the strongest sanction as Cedar suggested, the Court should assess the appropriateness of the method of enforcing an undertaking “in each circumstance in a systematic and thoughtful way” (citing *Taherkhani v Este*, 2020 BCCA 226, a decision Cedar put forward);
 - this is what the CMJ did—he considered whether the interests of justice would be served by granting any relief from the undertaking, and he exercised discretion to afford partial relief and craft an appropriate remedy.

- Cedar incorrectly frame the finding of “unusual” circumstances as a legal error. The CMJ’s appreciation of the circumstances and their impact is factual. The circumstances of Steelhead’s undertaking are not typical just because courts have found patent claims to be valid and invalid subject to their dependencies. Moreover, Cedar do not explain how the alleged error would have affected the outcome of their motion. It is not enough to pull at leaves and branches and leave the tree standing: *South Yukon* at para 46.

[41] Steelhead submit that the CMJ’s allegedly mistaken conclusion, that allowing Steelhead to amend was the “most just outcome,” was a matter of pure discretion. The Court should not entertain Cedar’s arguments that the conclusion was an error or that it sanctioned an abuse of process. Steelhead’s pleading had asserted claims that remained valid on certain dependencies. Cedar took the position that the valid dependencies were not asserted because material facts were missing. Steelhead proposed an amended pleading to add material facts. The CMJ granted leave to amend, as the Court routinely does, and he propagated no injustice by doing so.

V. Analysis

[42] Cedar’s arguments start from what they say are unchallenged findings of the CMJ: Steelhead gave an undertaking, the terms of the undertaking were met, and Steelhead should not be relieved of their undertaking. Cedar modified the last point in oral argument, acknowledging that the CMJ found that Steelhead should not be fully relieved from the undertaking. Nonetheless, they say the CMJ’s order was incompatible with that finding because he did fully relieve Steelhead from their undertaking.

[43] At the hearing, Cedar focused on what they allege are two related errors about the undertaking (the CMJ's statement that Steelhead undertook to no longer pursue infringement of any of the Enumerated Claims to the extent they were determined to be invalid in T-1488-20, and his statements that Valid Claims were excluded from the scope of the undertaking and Steelhead did not undertake to forgo the right to pursue Valid Claims or claims that depend from them), and a third error about the consequence of permitting Steelhead to proceed in a manner that is an abuse of process.

[44] The central alleged error, according to Cedar, was that the CMJ's statement in paragraph 19 of the reasons, about what Steelhead undertook to do, differs from what they actually undertook to do—and the difference cannot be reconciled. They say the CMJ's recasting does not make sense because it reduces Steelhead's undertaking to a purposeless promise not to allege infringement of patent claims that do not exist at law. Cedar submit that I am equally placed to construe the undertaking, and if paragraph 19 mistakes the undertaking, that is the basis for intervention. The logical outcome of the rest of the CMJ's findings, which are unchallenged and unappealed, is that Steelhead should be forced to discontinue this action as they promised.

[45] The standard of review depends on the nature of the alleged error. As I will explain, Cedar have not persuaded me of any errors on questions of law or questions of mixed fact and law where there is an extricable legal principle. I agree with Steelhead that the CMJ's conclusion about the appropriate relief was a discretionary decision based on the facts and circumstances of the case.

[46] Accordingly, the deferential standard of palpable and overriding error applies. A palpable error is one that is obvious or apparent—not a needle in the haystack but a beam in the eye: *Salomon v Matte-Thompson*, 2019 SCC 14 at para 33; *South Yukon* at para 46; see also *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at paras 61-65 and *Maximova v Canada (Attorney General)*, 2017 FCA 230 at para 5. A palpable error is overriding if it vitiates the integrity of the reasons or affects the outcome: *ibid.*

[47] There is no merit to Cedar’s allegation that the CMJ applied the wrong jurisprudence or legal test for determining the appropriate remedy. Cedar do not say what law or test the CMJ should have applied, and I agree with Steelhead that this allegation attempts to fabricate a legal error where there is none.

[48] I also agree with Steelhead that the alleged errors of relying on *Sanofi* and failing to consider a finding the CMJ made in previous paragraphs are premised on a misreading of the reasons. Cedar now acknowledge that the CMJ did not say there should be no relief. The question of what he deemed to be appropriate relief was a factually suffused exercise of discretion. Cedar are wrong that the CMJ’s findings ought to have led “inexorably” to a conclusion that the statement of claim should be struck without leave to amend. The CMJ did not make findings that compelled that singular outcome or even any particular outcome.

[49] The basis for my intervention must be an error with the CMJ’s discretionary determination and his resulting order, and in my view, Cedar have not identified any errors that call for correctness review. Cedar’s arguments relate to the circumstances that the CMJ took into

consideration to determine what was the just and appropriate relief. It is in that sense that they allege the CMJ applied the “wrong considerations.” Even assuming there was a legal error with one or more of the circumstances the CMJ considered to decide what relief was appropriate, that does not, in my view, provide a shortcut to intervene and substitute my own conclusion on relief. In my view, if there was any error in the CMJ’s appreciation of the circumstances that informed his conclusion on relief, I must not intervene unless it was a palpable error that, alone or together with others, affected his conclusion on relief or the resulting order. I am not satisfied that the CMJ made such errors.

[50] In addition, I find Cedar have not established a legal error with the circumstances the CMJ took into account to reach his conclusion on relief. Therefore, even if I assume that Cedar’s points call for correctness review, the CMJ was not wrong.

[51] Beginning with the CMJ’s statement that the undertaking arose in an unusual circumstance, Steelhead are right that this should not be framed as a legal error. It was a factual question about the circumstances of the undertaking and their impact. There was ambiguity about the meaning of “asserted claims.” Steelhead said they meant the 33 claims listed in their pleading and they were contemplating a binary outcome (one being that all 33 claims were invalid, the other being that not all 33 claims were invalid), not an outcome where some of the 33 were partly invalid. In my view, it is this point that the CMJ was considering as part of the overall circumstances, and Cedar have not established any palpable or overriding error on this point. In any event, I would also find it appropriate to consider this circumstance in determining whether any relief is appropriate, and if so, what the relief should be.

[52] Turning to Cedar's central argument that the CMJ's statements in paragraph 19 show that he mistook the undertaking, I find Cedar have not established a palpable or overriding error:

- The CMJ did not misunderstand or fail to appreciate that Steelhead undertook to discontinue the action if the condition for their undertaking was met. Paragraph 19 was not recasting what Steelhead promised to do (discontinue) or what would trigger the requirement to do it (all "asserted claims" are found invalid in T-1488-20). The point the CMJ was making in paragraph 19 was about the import of the undertaking. He was getting at what the undertaking meant in terms of what Steelhead promised to give up.
- The CMJ's statement about no longer pursuing the 11 Enumerated Claims was to make the point that Steelhead only undertook to discontinue the action if all the claims in it were invalid. This statement was the flip side of the CMJ's statement that Valid Claims were excluded from the scope of the undertaking and Steelhead did not undertake to forgo the right to pursue Valid Claims or claims that depend from them. In other words, Steelhead only undertook to discontinue invalid claims, and they did not promise to forgo the right to pursue valid claims.
- Cedar have not established that either statement was an error that would vitiate the CMJ's conclusion on what relief was appropriate. While parts of paragraph 19 are perhaps imprecise or awkwardly worded, the CMJ did not rewrite the undertaking. There are no irreconcilable differences between what the CMJ said in paragraph 19 and what Steelhead promised to give up.

[53] If I assume that Cedar's points call for correctness review, I still would not intervene. Regardless of how one interprets "asserted claims" in the undertaking,² the CMJ correctly characterized what Steelhead promised to give up. Steelhead's undertaking was not more than a promise to discontinue an action founded entirely on invalid claims. I reject Cedar's arguments to the contrary. Steelhead did not promise they would not, in future, assert valid claims against Cedar, that they would forgo the right to assert 085 patent claims other than those they had already chosen to assert in this action, or that, if the undertaking's terms were met, this would amount to a concession that Steelhead "lost" this infringement action in a way that would preclude a new action on valid claims. Steelhead's statement that Cedar's motion to strike would be moot does not show that they "necessarily" undertook to forgo the right to pursue valid claims. Steelhead said the motion to strike would be rendered moot by a discontinuance. I agree with Steelhead that the CMJ correctly held that they did not undertake to forgo the right to pursue Valid Claims or claims that depend on them.

[54] As I stated above, the CMJ's findings that an undertaking was given and that its condition was met did not, in my view, mandate any particular outcome on the question of the appropriate relief. Cedar believe that anything short of a discontinuance fully relieves Steelhead from their undertaking. The CMJ thought otherwise. Considering what Steelhead promised to give up and the circumstances surrounding the undertaking, he made the order he deemed to be appropriate.

[55] There is no merit to Cedar's argument that the CMJ's order permits Steelhead to abuse the Court's process. Cedar speculate that a new infringement action would be estopped, based on

² Had I been the one deciding the motion in the first instance, I would have found that the precondition to the undertaking had not been met.

assumptions that Steelhead promised to forgo rights to assert valid patent claims and that the CMJ ought to have dismissed the action. Steelhead did not start an action and “lose” according to their undertaking, and the CMJ was not compelled to dismiss the action with prejudice. The CMJ’s order does not foreclose a remedy for abuse of process, should it be required.

[56] Cedar say it has been over two years since they brought the motion below and they have been prejudiced: ever since Steelhead commenced the action in July 2023, Cedar’s complex project has been plagued by a spurious lawsuit that should have been brought to an end. But that does not mean the undertaking was the way to end it, and I am not satisfied Cedar have suffered any prejudice that would alter my decision on this appeal. If the lawsuit is indeed unfounded then there are other ways to end it, one being Cedar’s motion to strike that is under reserve. Whether the action should be dismissed for being premature or for any other ground Cedar rely on in that motion are open questions for Associate Judge Cotter to decide.

VI. Conclusion

[57] In conclusion, the CMJ considered the circumstances and whether the interests of justice would be served by granting any relief from Steelhead’s undertaking, and he exercised discretion to make the order he deemed appropriate. Cedar have not established an error that warrants my intervention. There is no fundamental error with the CMJ’s exercise of discretion that is incompatible with his conclusion on relief or his order. In any event, if I were to intervene, I would not grant Cedar the relief they seek.

[58] Cedar's rule 51 appeal is dismissed. As the successful parties, Steelhead shall be awarded their costs of this motion, in any event of the cause. Steelhead ask that costs be payable forthwith. I am not satisfied that I should order Cedar to pay costs forthwith, either on grounds that the motion should not have been brought (rule 401(2)) or in the Court's discretion. The motion did not lack a reasonable foundation, nor was it apparent from the outset that the motion had no chance of success.

[59] If the parties require a disposition on the amount of the costs award, they shall have 5 days to jointly propose a disposition or alternatively propose a timetable for written submissions.

ORDER IN T-1420-23

THIS COURT ORDERS that:

1. The defendants' rule 51 motion is dismissed with costs to the plaintiffs in any event of the cause.
2. If the parties require a disposition on the amount of the costs award, they shall have 5 days to jointly propose a disposition or alternatively propose a timetable for written submissions.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1420-23

STYLE OF CAUSE: STEELHEAD LNG (ASLNG) LTD. AND STEELHEAD
LNG LIMITED PARTNERSHIP v CEDAR LNG
PARTNERS LP, CEDAR LNG PARTNERS (GP) LTD.
AND PEMBINA PIPELINE CORPORATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 8, 2026

ORDER AND REASONS: PALLOTTA J.

DATED: APRIL 22, 2026

APPEARANCES:

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