Court of King's Bench of Alberta

Citation: Axiom Foreign Exchange International v Rudiger Marketing Ltd, 2024 ABKB 224

Date: 20240416
Docket: 1601 01352
Registry: Calgary

Between:

Axiom Foreign Exchange International

Plaintiff

- and -

Rudiger Marketing Ltd., Calvin Lee Rudiger, and Morgan Rudiger

Defendants

Reasons for Judgment
of the
Honourable Justice Colin C.J. Feasby

Introduction

[1] Axiom Foreign Exchange International ("Axiom") obtained judgment against Rudiger Marketing Ltd ("RML") and discovered during the enforcement process that there were no assets remaining in the company to satisfy the judgment. Axiom now seeks to hold Calvin and Morgan Rudiger personally responsible in tort for alleged misrepresentations that Axiom claims caused its losses.

[2] Axiom's claims require the Court to consider under what circumstances corporate agents may be held personally responsible for their words. Calvin and Morgan Rudiger claim that they were always acting in their roles as corporate agents of RML and did not act in a personal

capacity or undertake personal liability to Axiom. Axiom submits that Calvin and Morgan Rudiger made the alleged misrepresentations and that is enough to attract personal liability.

[3] Axiom further submits that Calvin Rudiger used RML to commit fraud and that the Court should pierce the corporate veil and allow RML's liabilities to be enforced against Calvin Rudiger. Axiom points to personal transactions conducted through RML, RML's use of Calvin Rudiger's line of credit and the carousel of transactions caused by that practice, and RML's payments to Calvin Rudiger after RML had defaulted on its obligations to Axiom.

Background

[4] Calvin Rudiger was the President and sole shareholder of RML. He operated RML for over 40 years.

[5] Morgan Rudiger is Calvin Rudiger's son. At the end of 2014 or in early 2015, Morgan Rudiger became an employee of RML.

[6] At the time relevant to this litigation, RML was in the business of exporting vehicles to the United States. RML would buy vehicles in Canada with Canadian dollars, fix them up, transport them to the US, and sell them for US dollars.

[7] RML used a $4 million CAD line of credit from Automotive Finance Corporation ("AFC") to finance its vehicle purchases. For vehicle repairs and other business expenses, RML used Calvin Rudiger's personal line of credit.

[8] RML required currency exchange services because its revenue was denominated in USD and its expenses were mostly denominated in CAD. RML sought out specialized currency exchange services to obtain better rates and faster service.

[9] RML used Western Union for currency exchange in 2014. RML's point of contact with Western Union was Matthew Bennett. Mr. Bennett moved to Axiom in late 2014 and RML followed him to Axiom.

[10] Calvin Rudiger completed a Corporate Application Form on December 4, 2014, as part of his onboarding process as a client of Axiom. Calvin Rudiger disclosed that he was the 100% owner of RML. The Corporate Application Form identified Calvin Rudiger and Morgan Rudiger as authorized representatives of RML for the purpose of trading currency.

[11] Axiom conducted a corporate search on RML on December 23, 2014, that confirmed that Calvin Rudiger was the sole owner of RML.

[12] Calvin Rudiger testified that prior to moving RML's business to Axiom, RML had only engaged in spot currency transactions. Spot transactions are settled on the same day or the following day, so there is minimal exposure to currency fluctuations.

[13] Shortly after RML started doing business with Axiom, RML entered open forward contracts for currency exchange. The open forward contracts between RML and Axiom obliged RML to purchase a set amount of CAD at a fixed exchange rate within a specified period.

[14] The open forward contracts appear to have been authorized for RML by Morgan Rudiger. Calvin Rudiger, on several occasions, indicated to Mr. Bennett that Morgan Rudiger was new to the business. Morgan Rudiger's testimony suggested to me that he had a poor understanding of the risk that RML was taking on when it entered the open forward contracts.

[15] Axiom presented a document titled "Terms of Business and Privacy Agreement" ("TBPA") to Morgan Rudiger on April 28, 2015. Mr. Bennett told Morgan Rudiger that the TBPA must be signed if RML wished to continue using Axiom's services. Morgan Rudiger signed the TBPA and indicated on the line below his name marked "Title" that he was an "Owner."

[16] The following day, Mr. Bennett had a telephone conversation with Calvin Rudiger. The conversation was recorded as permitted by the TBPA. Mr. Bennett advised Calvin Rudiger that Axiom required deposits in respect of the open forward contracts that had been placed. Calvin Rudiger resisted the obligation to place deposits because it would tie up RML's working capital.

[17] The CAD-USD exchange rate rose steadily from the end of April 2015 through the end of the year. The movement of the exchange rate was prejudicial to RML. On July 22, 2015, Mr. Bennett wrote to Calvin and Morgan Rudiger as follows:

> I think as a strategy definitely take advantage of Spot while it's strong and then piece away at the hedges or use them if the spot is worse. Axiom won't mind us extending the hedges but will likely require a deposit at some point. Note they haven't asked yet for a deposit but I think they see that you're regularly drawing down and using up what you book so aren't too worried about holding positions for you guys without any security.

[18] On August 5, 2015, Mr. Bennett advised RML that a deposit of $120,000 was required to extend the open forward contracts beyond their expiry on August 28, 2015.

[19] As of August 25, 2015, the marked-to-market losses on the RML open forward contracts stood at approximately $50,000.

[20] On August 27, 2015, the day prior to the expiry of the open forward contracts, Mr. Bennett and Calvin Rudiger had a telephone conversation. Calvin Rudiger indicated to Mr. Bennett that RML would chisel away at the outstanding amounts owed to Axiom.

[21] Nearly a month later, on September 22, 2015, Mr. Bennett and Axiom President, David Kelcher, spoke to Calvin Rudiger by telephone. During the call Mr. Kelcher demanded that RML come up with a plan to pay what it owed to Axiom and Calvin Rudiger pleaded for patience. Mr. Kelcher repeatedly asked that RML commit to giving all its business to Axiom until the amount owing was paid off. After demurring a few times, Calvin Rudiger agreed that RML would use Axiom until the outstanding amounts were paid.

[22] After the September 22, 2015, call, Calvin Rudiger changed his mind and moved RML's currency exchange business to Vancity Credit Union. A little over a week later, on September 30, 2015, Mr. Bennett wrote to Calvin Rudiger to advise him that the marked-to-market loss on RML's open forward contracts was over $200,000 and that it appeared that RML's business with Axiom had "completely dried up."

[23] On November 3, 2015, Mr. Kelcher emailed Calvin Rudiger to inquire about the decline in the volume of business from RML. He further explained, "[w]e cannot continue to roll these contracts without some activity towards drawing them down or without receiving some collateral to maintain the positions."

[24] The marked-to-market loss on the RML open forward contracts went from $223,495.83 on December 8, 2015, to $242,911.21 on December 11, 2015, to $298,500.50 on December 17, 2015. Axiom crystallized the loss on December 31, 2015, at $312,161.46.

[25] This action was commenced on January 27, 2016. The original Statement of Claim named only RML. Calvin Rudiger was added as a defendant by way of an amendment filed on November 8, 2017.

[26] The parties commenced settlement discussions in early 2018. A telephone call took place on February 28, 2018, and then there was a face-to-face meeting at National on 10th Avenue. The discussions resulted in a Settlement Agreement dated April 23, 2018.

[27] Pursuant to the Settlement Agreement, RML issued a Promissory Note in the amount of $292,067.46. Payments on the Promissory Note were to commence on July 1, 2018, and run through June 1, 2021. As part of the settlement, the parties and Morgan Rudiger entered into a Standstill Agreement that preserved the parties' rights as of the date of the Standstill Agreement. The Settlement Agreement provided that once the payment obligations pursuant to the Promissory Note were satisfied this action would be discontinued and Axiom would release the Defendants from all further claims.

[28] RML encountered significant business difficulties. Though the details are not clear, Calvin Rudiger and Morgan Rudiger said the difficulties stemmed from a change of the US Department of Transportation rules for the import of cars. Calvin Rudiger and Morgan Rudiger testified that in June 2018, AFC pulled RML's line of credit and seized RML's inventory of vehicles. This event effectively put RML out of business.

[29] RML did not make the July 1, 2018, payment to Axiom due pursuant to the Settlement Agreement and Promissory Note, nor did RML make any subsequent payments.

[30] Axiom resumed this proceeding and amended its pleading on November 23, 2018, to add Morgan Rudiger.

[31] Axiom was granted judgment against RML in the amount of $292,067.46 with interest calculated from December 31, 2015, at 12% per annum. To date, Axiom has not realized anything on the judgment owing by RML.

Credibility

[32] The only witness called by Axiom was Mr. Kelcher. Mr. Kelcher was the President of Axiom and oversaw all business operations. Mr. Kelcher, however, was not involved with RML on a day-to-day basis. The relationship between Axiom and RML was managed by Mr. Bennett. Mr. Bennett unfortunately passed away prior to trial. The evidence of Mr. Bennett's communications with Calvin and Morgan Rudiger comes from recorded telephone conversations, emails, and text messages.

[33] Mr. Kelcher was personally involved with RML once it became clear that RML was not going to honour the open forward contracts in August 2015. He played an active role in negotiating with Calvin Rudiger and with collection efforts. I found Mr. Kelcher to be an honest and forthright witness, but his testimony added little to the recorded conversations and email communications in evidence.

[34] Calvin and Morgan Rudiger both testified. Both Rudigers testified that Mr. Bennett had told them that they could roll over the open forward contracts indefinitely so that they could be made whole when the Canadian dollar recovered its value. There is some support for this in the documentary evidence, but it is not believable that Axiom would permit the contracts to be rolled over in perpetuity. The evidence of Calvin and Morgan Rudiger, particularly Morgan Rudiger, indicated a lack of understanding of currency trading that suggested that they were in over their heads dealing in open forward contracts.

[35] I found Calvin and Morgan Rudiger to be honest witnesses. To the extent that they were argumentative or evasive, it was in defence of their competence as businessmen. On the points that matter to the issues in this case, their evidence was coherent and believable.

[36] There is little conflict between the evidence offered by Axiom and Calvin and Morgan Rudiger in the present case. Indeed, there is no issue on which I am forced to choose between the evidence of Mr. Kelcher and the evidence of Calvin or Morgan Rudiger. The issue is not what was said, but how to interpret what was said. On the critical issue of whether the Rudigers undertook liability in their personal capacities to Axiom, I draw my conclusions from the substance of what was said, which in most cases was from recorded and transcribed conversations, and the context in which the words were said.

Can Axiom, as a Dissolved Partnership, Maintain an Action?

[37] A threshold issue that must be decided is whether Axiom, which was dissolved as a partnership may maintain this action. The Defendants submit that a dissolved partnership has no capacity to sue or maintain an action.

[38] At common law, a dissolved corporation could not commence or maintain an action because it had ceased to be an entity. Before an action could be commenced or continued, the corporation had to be restored: ***Berroy Holdings Ltd v Cowen***, 1977 CanLII 635 (AB Dist Ct). The issue of the continuance of actions commenced in the name of a dissolved corporation is now addressed by *Alberta Business Corporations Act*, RSA 2000, c – B-9, s 227 ("*ABCA*").

[39] The Defendants submit that *Partnership Act*, RSA 2000, c P-3, s 113 provides that an action "by an unregistered partnership ... may be stayed on application of the defendant or party opposite in interest until the partnership becomes registered or until the declaration is filed, as the case may be."

[40] Axiom is not just an unregistered partnership, it is a dissolved partnership. It cannot be registered because it no longer exists. Unlike the *ABCA*, the *Partnership Act* does not address the continuance of actions commenced in the name of a dissolved partnership.

[41] The answer to this problem lies in the nature of a partnership. A partnership is not a distinct legal person, a partnership is a group of legal persons "carrying on business in common with a view to profit": *Partnership Act*, s 1(g). The name of the partnership is a convenient label by which to describe the group; it does not signify the existence of a distinct legal entity.

[42] The *Rules of Court* recognize that an action by or against a partnership may be brought in the name of the partnership or the individual partners: Rule 2.2. Master Funduk put it this way in ***Bleau v Michetti Pipe Stringing,*** 1994 CanLII 9008 (AB QB) at para 7:

> When a named plaintiff or named defendant is a firm the lawsuit is still a lawsuit by the partners or against the partners. The firm name is just a convenient way of designating the partners composing it. It is just a label which is synonymous with naming the partners who make up the partnership.

[43] An action commenced using the name of a partnership, which is really an action by or against the partners, does not cease to exist because the partnership is dissolved. The action continues to be an action by or against the partners who comprised the former partnership. As a matter of good litigation practice, after dissolution of the partnership, the style of cause of an action should be amended to identify the individual partners, but a failure to do so is not fatal.

[44] The former partners of Axiom have leave to amend their pleading to disclose their individual names pursuant to Rule 3.65. An amended pleading shall be filed within 14 days of these Reasons.

The Alleged Misrepresentations

[45] Axiom in final argument presented five alleged misrepresentations. Axiom submitted that the alleged misrepresentations were made fraudulently or negligently. I reject one of the misrepresentations because, in my view, it is conceptually incompatible with the judgment that Axiom has already obtained against RML. The other four alleged misrepresentations are sufficiently plausible that it must be considered whether they satisfy the tests for either the tort of fraudulent misrepresentation or negligent misrepresentation.

Alleged Misrepresentation #1 – Morgan Rudiger

[46] The first alleged misrepresentation is that Morgan Rudiger signed the TBPA on behalf of RML and on the line marked "Title" wrote "Owner." Morgan Rudiger admitted at trial that this was a false statement. He essentially said that it was a stupid thing to write down and he doesn't know why he did it.

[47] Axiom contends that absent Morgan Rudiger's representation that he was an "Owner" of RML, Axiom would not have entered into the TBPA and permitted RML to place open forward contracts and, accordingly, Axiom would not have suffered any losses.

[48] I do not accept Axiom's assertion of detrimental reliance for several reasons. First, Axiom knew that Calvin Rudiger was the 100% owner of RML because Calvin Rudiger advised Axiom of this fact when he completed the Corporate Application Form in December 2014, and Axiom confirmed Calvin Rudiger's ownership through a corporate search later the same month. Second, Morgan Rudiger was authorized to conduct business on behalf of RML with Axiom. There is no evidence to suggest that if Morgan Rudiger had used his correct title that Axiom would have refused to deal with RML. Third, the trading history shows that Axiom and RML entered into open forward contracts before the TBPA was signed and there is no reason to believe that they would not have continued to do so. Lastly, even if it is believed that Axiom would not have accepted the TBPA signed by Morgan Rudiger, the most likely "but for" scenario is that Axiom would have requested that Calvin Rudiger sign the TBPA and that Calvin Rudiger would have done so. I am not persuaded that it was realistic that Axiom would walk away from RML's business in April 2015.

[49] Quite apart from the lack of evidence of detrimental reliance, Axiom's theory of the case is that the TBPA is valid. Axiom sued RML for breach of the TBPA and obtained judgment

against RML. Whether the judgment is interpreted as being for breach of the TBPA or breach of the Settlement Agreement, it amounts to one and the same thing because the Settlement Agreement was a compromise of Axiom's breach of contract claim against RML.

[50] Axiom cannot obtain judgment on the TBPA and when that judgment proves difficult or impossible to enforce, seek judgment against Morgan Rudiger, an individual agent of the corporation that was party to the TBPA, on the theory that but for a misrepresentation made by him, the TBPA would not have bound the parties and Axiom would not have traded with RML. As a plaintiff, Axiom may plead inconsistent causes of action and theories of the case, but when a case comes to judgment, inconsistent pleadings must give way to a coherent outcome.

Alleged Misrepresentation #2 – Calvin Rudiger

[51] On April 29, 2015, Mr. Bennett told Calvin Rudiger that Axiom required RML to post deposits with respect to the open forward contracts that had recently been placed. Axiom submitted that the obligation of RML to post deposits stemmed from the TBPA that Morgan Rudiger had signed on behalf of RML the previous day. Regardless, of whether Axiom had a contractual right to collect deposits from RML, it was open to Axiom to request deposits as a condition of continuing to do business with RML.

[52] Calvin Rudiger persuaded Mr. Bennett to cause Axiom to continue dealing with RML without requiring deposits. Calvin Rudiger reminded Mr. Bennett that RML had never reneged on any of its currency contracts and said that he would "honour the cost" of the open forward contracts that had been placed.

[53] There is no evidence before the Court concerning the truth or falsity of the first part of the alleged misrepresentation – that RML had never reneged on any of its currency contracts. The second part of the alleged misrepresentation – that Calvin Rudiger or RML would honour the cost of the open forward contracts that had been placed – is a statement of intention not a statement of fact. The extent to which statements of intention or future conduct can ground an action for misrepresentation will be discussed later in these Reasons.

Alleged Misrepresentation #3 – Calvin Rudiger

[54] During a telephone call on August 27, 2015, Calvin Rudiger told Mr. Kelcher that he would "chisel away" at the contracts "over a number of weeks." He further stated that he was not the "kind of person" who would "walk away from contracts" and that Axiom would not "have a problem as long as [Axiom would] work" with RML.

[55] Axiom asserts that Calvin Rudiger's representation that he would "chisel away" at the obligation to Axiom caused Axiom to forbear from immediate enforcement actions. Like Alleged Misrepresentation #2, this alleged misrepresentation is a statement of intention not a statement of fact. Axiom asserts that RML's exposure on the open contracts grew from approximately $50,000 on August 25, 2015, to approximately $220,000 on September 22, 2015.

Alleged Misrepresentation #4 – Calvin Rudiger

[56] During the phone call on September 22, 2015, Mr. Kelcher extracted a commitment from Calvin Rudiger that RML would deal exclusively with Axiom until the amounts owing were paid off. Mr. Kelcher testified that this commitment caused Axiom to forbear from commencing legal proceedings. The result of the forbearance was that Axiom's loss continued to grow until it was

crystallized on December 31, 2015. Like Alleged Misrepresentation #2, this alleged misrepresentation is a statement of intention not a statement of fact.

Alleged Misrepresentation #5 – Calvin & Morgan Rudiger

[57] During the negotiations that led to the Settlement Agreement, including in the meeting at National, Calvin and Morgan Rudiger represented that RML would pay the amounts that would be set out in the Promissory Note. Again, statements to the effect that RML would pay Axiom are statements of intention or statements concerning future conduct of RML. Further, these statements were given contractual force when the parties agreed to the settlement amount and the payment schedule in the Settlement Agreement and Promissory Note.

[58] The statements made by Calvin and Morgan Rudiger at National and in the lead up to the Settlement Agreement can also be understood as representations that RML was credit worthy and, at least as of the time the statements were made, had the financial capacity to make the payments contemplated in the Settlement Agreement and Promissory Note. A representation as to the credit worthiness of RML is a statement of fact, not a statement of intention.

The Tort of Fraudulent Misrepresentation

[59] Karakatsanis J, writing for the Court in ***Bruno Appliance and Furniture, Inc. v Hryniak,*** 2014 SCC 8 at para 21, explained that the tort of fraudulent misrepresentation, or civil fraud as she called it, has four elements:

(1) a false representation made by the defendant;

(2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness);

(3) the false representation caused the plaintiff to act; and

(4) the plaintiff's actions resulted in a loss.

[60] The discussion that follows shows that the evidence is not consistent with Calvin or Morgan Rudiger knowing that the alleged misrepresentations were false at the time that they were made. As such, the analysis proceeds using the negligent misrepresentation framework.

The Tort of Negligent Misrepresentation

[61] Justice Iacobucci held in ***Queen v Cognos Inc***, [1993] 1 SCR 87 that there were five requirements of the tort of negligent misrepresentation at 110:

(1) there must be a duty of care based on a "special relationship" between the representor and the representee;

(2) the representation in question must be untrue, inaccurate, or misleading;

(3) the representor must have acted negligently in making said misrepresentation;

(4) the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and

(5) the reliance must have been detrimental to the representee in the sense that damages resulted.

[62] The Supreme Court of Canada revised its approach to the first requirement – the existence of a special relationship required to establish a duty of care – in ***Deloitte & Touche v Livent Inc (Receiver of),*** 2017 SCC 63 ["***Livent***"] and ***1688782 Ontario Inc. v Maple Leaf Foods Inc,*** 2020 SCC 35 ["***Maple Leaf***"]. ***Livent*** and ***Maple Leaf*** modify the duty of care analysis in ***Cooper v Hobart***, 2001 SCC 79 which focuses on reliance and proximity.

[63] Professors Klar and Jeffries explain in *Tort Law*, 7th ed, (Toronto: Thomson Reuters, 2023) at 300 that in ***Livent*** and ***Maple Leaf***, "[t]he traditional 'special relationship' test based on reasonable and foreseeable reliance was supplanted by consideration of the nature of the defendant's undertaking and assumption of responsibility." The Court must first consider whether the parties are in a proximate relationship. Proximity is assessed by inquiring into "the intended purpose of the defendant's undertaking in making its representation, and the use made of the representation by the plaintiff" (Klar & Jeffries at 300). Brown and Martin JJ in ***Maple Leaf*** explained at para 32 "the proximate relationship is formed when the defendant undertakes responsibility which invites reasonable and detrimental reliance by the plaintiff upon the defendant for that purpose."

[64] Iacobucci J in ***Cognos*** at 129 observed that there were cases that held "only representations of existing facts, and not those relating to future occurrences, can give rise to actionable negligence." Iacobucci J, however, was careful to say that in making that observation he was not deciding the issue. The Alberta Court of Appeal in ***S Maclise Enterprises Inc v Union Securities Ltd,*** 2009 ABCA 424 at paragraph 22 expressed a similar view holding "[r]epresentations or opinions about future conduct are generally only actionable if they become covenants between the parties."

[65] Professors Klar and Jeffries in *Tort Law* at 308 suggest that distinguishing between fact and opinion is "fraught with difficulty" and "that it would best be avoided." Cromwell JA, as he then was, considered a representation as to future employment in ***Smith v Union of Icelandic Fish Producers Ltd,*** 2005 NSCA 145. He observed at paragraph 76 that "the distinction between representations as to future events and those relating to present facts can be elusive." While he recognized that certain aspects of the representation might relate to future conduct, the essence of the representation implied that a job opening existed and that was a matter of present fact. See also, ***Cognos*** at 131.

Corporate Agents' Liability in Tort

[66] The Defendants submit that the alleged misrepresentations were all made during the course of their duties as corporate agents of RML and with a view to the best interests of RML. The Defendants submit that they did not represent at any time that they were prepared to accept personal liability for the dealings of RML. The Defendants pointed out that Axiom never asked them for personal financial information or asked them to provide a personal guarantee. The Defendants submit that to find them personally liable to Axiom would undermine the principle that corporations are legal persons independent from their shareholders that was articulated in ***Saloman v A Saloman & Co Ltd,*** [1897] AC 22 (HL) and enshrined in *ABCA* s 16(1).

[67] The Canadian law concerning the liability of corporate agents in tort has been a mess for at least a quarter century. Early in my career, I expressed the view that "guidance is needed from the Supreme Court of Canada": C Feasby, "Corporate Agents' Liability in Tort: A Comment on *ADGA Systems International Ltd v Valcom Ltd*" (1999) 32 CBLJ 291 at 306. More recently, Professor O'Byrne and her co-authors called the area of law a "morass": Shannon O'Byrne,

Yemi Phillip, and Katherine Fraser, "The Tortious Liability of Directors and Officers to Third Parties in Common Law Canada" (2017) 54 Alta L Rev 871 at 874. Writing in 2023, Professors Klar and Jeffries in *Tort Law* at 329 charitably said that the law of director and officer liability in tort "remains unclear." For a thorough catalogue of the many Canadian legal academics who bemoan the state of the law in this area, peruse the footnotes of the article by O'Byrne *et al*.

[68] The problem is rooted in two arguably contradictory decisions of the Ontario Court of Appeal from the 1990s: ***ScotiaMcLeod Inc v Peoples Jewellers Ltd***, 1995 CanLII 1301 (ON CA) ["***ScotiaMcLeod***"]and ***ADGA Systems International Ltd v Valcom Ltd***,1999 CanLII 1527 (ON CA) ["***ADGA***"]. ***ScotiaMcLeod*** is widely viewed to stand for the proposition that directors and officers will only be personally liable if they are not acting in the best interests of the corporation. ***ADGA*** is typically understood to stand for the proposition that directors and officers of a corporation are always liable for their own torts, even when acting in the best interests of the corporation. Most subsequent cases concerning corporate agents' liability in tort choose to follow either ***ScotiaMcLeod*** or ***ADGA*** or their respective progeny.

[69] Justice Marriott observed that "[d]espite the seemingly different approaches in ***ADGA*** and ***ScotiaMcLeod***, the SCC has cited both cases with approval" in ***Rudichuk v Genesis Land Development Corp,*** 2019 ABQB 132 at para 18. See also, Grosse J, as she then was, referring to "competing lines of authority with respect to the test for personal liability for tortious conduct by directors": ***Alberta Beverage Container Recycling Corporation v Cochrane Bottle Depot Ltd,*** 2022 ABQB 181 at para 49. The Alberta Court of Appeal in ***Hall v Stewart,*** 2019 ABCA 98 at paragraph 18 observed that "[t]he law on when personal liability will attach to corporate torts is not clear."

[70] The ***ScotiaMcLeod*** approach has generally prevailed in Alberta while the ***ADGA*** approach has been more prevalent elsewhere in Canada. Justice Côté, writing for the majority, in ***Blacklaws v Morrow***, 2000 ABCA 175, citing ***ScotiaMcLeod***, observed at paragraph 41 that where the actions of a corporate agent "are themselves tortious or exhibit a separate identity or interest from that of the corporation so as to make the act or conduct complained of their own, they may well attract personal liability." Justice Rowbotham, writing for herself and Justice O'Brien, reaffirmed ***Blacklaws*** in ***Hogarth v Rocky Mountain Slate Inc,*** 2013 ABCA 57 at para 12 ["***Hogarth***"].

[71] The continuing division in the law concerning corporate agents' liability in tort can be illustrated using incongruous quotations from two recent appellate decisions, one from British Columbia and one from Alberta:

> ***The Owners, Strata Plan KAS 3410 v Meritage Lofts Inc.***, 2022 BCCA 109 at para 28:
>
> ...while companies and their owners, principals and employees have separate legal personalities, the rule that persons are responsible for their own tortious conduct applies even when they are acting *bona fide* within the course of employment in pursuit of corporate purposes and the company is vicariously liable for their actions. [citations omitted, emphasis in original]
>
> ***Driving Force Inc v I Spy-Eagle Eyes Safety Inc***, 2022 ABCA 25 at para 64:
>
> While it is recognized that corporations can only act through their human agents, and often a corporate tort will involve those human agents, concurrent liability is

> not always appropriate. There is no fixed rule that a tort by a corporation always involves a concurrent tort by one of its human agents. Further, "control" of the corporation does not necessarily mean there was personal involvement in the tort. However, to date no unifying test has been identified for determining when concurrent personal liability will be imposed for corporate torts. [citations omitted]

[72] Justice Slatter attempted to provide a way forward in his concurring reasons in ***Hogarth***. Slatter JA explained that the analysis of a corporate agent's liability in tort should start with consideration of the nature of the duty of care as provided for in ***Cooper v Hobart***, 2001 SCC 79. As discussed earlier in these reasons, the question of duty of care rests on two pillars, proximity and foreseeability. According to Slatter JA, the idea of separate corporate personality and limited liability should be considered as part of the proximity analysis. He explained as follows at para 121:

> There is one important barrier between the investors and the appellant Simonson that undermines any finding of proximity: the limited liability corporate enterprise. The investors knew they were dealing with a limited liability partnership, and they must be taken to be aware of the legal consequences of that. They willingly accepted and relied on representations from that corporate entity. The only reasonable expectations they could have had was that they were dealing with a corporation.

[73] Slatter JA went on to observe that even if proximity and foreseeability between a corporate agent and a stranger to the corporation alleging a tort was established, the ***Cooper*** analysis requires a court to consider whether residual policy concerns prevent the imposition of a duty of care. He intimated at para 126 that the well-established exception to a corporate agent's liability for the tort inducing breach of contract in ***Said v Butt***, [1920] 3 KB 497 may be understood to be an example of a residual policy concern negating the existence of a duty of care.

[74] Slatter JA's ***Hogarth*** concurrence has been cited favourably by subsequent decisions, but it remains unclear if it is the law in Alberta: see, for example, ***Abt Estate v Cold Lake Industrial Park GP Ltd.***, 2019 ABCA 16 at para 48 and ***Hall v Stewart***, 2019 ABCA 98 at para 18. Professors O'Byrne and Shipani opined that "Justice Slatter's approach in ***Hogarth*** appears to point the way forward...": Shannon Kathleen O'Byrne & Cindy A. Schipani, "Personal Liability of Directors and Officers in Tort: Searching for Coherence and Accountability" (2019) 22 U Pa L Rev 81 at 132. They further explain at 132 that the ***Hogarth*** concurrence stands for the proposition that corporate agents "*can* be liable for ordinary negligence causing pure economic loss but only once the court has undertaken a contextualized and policy-laden analysis of whether a duty of care exists in the first place" [emphasis in original].

[75] I agree that the ***Hogarth*** concurrence is the best way to bring order to this area of the law.[1] The logic of the ***Hogarth*** concurrence has been reinforced by the developments in ***Livent*** and ***Maple Leaf*** discussed earlier in these Reasons. The focus in ***Livent*** and ***Maple Leaf*** on

[1] In my 1999 article cited at paragraph 67, I was critical of the approach that Slatter JA later adopted in ***Hogarth*** and proposed a different solution for the problem of corporate agents' liability in tort. The ***Hogarth*** concurrence, not my proposed approach, is consistent with the development of the law over the last two decades and is the best solution today.

whether there has been an undertaking of responsibility as part of the proximity analysis is very much in keeping with Slatter JA's approach. The focus in ***Livent*** and ***Maple Leaf*** on an undertaking of responsibility is something of a return to the original ***Hedley Byrne & Co Ltd v Heller & Partners,*** [1964] AC 465 emphasis on an "assumption of responsibility" being necessary to the existence of the special relationship that supports the finding of a duty of care.

[76] The ***Hogarth*** concurrence, modified to take account of ***Livent*** and ***Maple Leaf***, also resembles the approach seen in ***Williams v Natural Life Health Foods Ltd,*** [1998] 1 WLR 890 (HL) which was recently affirmed in ***Barclay-Watt v Alpha Panareti Public Limited***, [2022] EWCA 1169. For a discussion of ***Williams*** and the UK "reliance-based approach to the personal liability of corporate agents," see my article cited above in para 67 at 300-301. In ***Barclay-Watt***, Justice Males wrote at para 79:

> It is significant in this regard that it could not be suggested that [the Defendant] had undertaken any contractual responsibility to the claimants. That would run directly counter to *Salomon v Salomon*. Rather, the liability which it is sought to impose on him is liability in tort, but it is liability for a tort arising out of a relationship memorably described by Lord Devlin in the leading case of *Hedley Byrne & Co Ltd v Heller & Partners* [1964] AC 465 at page 529 as "equivalent to contract, that is, where there is an assumption of responsibility in circumstances in which, but for the absence of consideration, there would be a contract". It should not be surprising, therefore, that the principle of limited liability which shields a director or senior manager from personal liability in contract should also apply in the case of a tort, liability for which depends on the existence of a relationship which is equivalent to contract.

[77] The approach in the ***Hogarth*** concurrence does not exempt corporate agents from liability as the preceding passage from ***Barclay-Watt*** could be interpreted as doing. Rather, it requires the principle of separate corporate personality to be balanced with competing concerns – specifically, the importance of holding individuals accountable for their actions and injured parties being compensated for their losses – on a case-by-case basis.

[78] The ***Hogarth*** concurrence provides a methodology, not a rule. In my view, the approach in the ***Hogarth*** concurrence is a reasonable and flexible foundation for assessing the personal tort liability of corporate agents, which provides much needed structure for this area of the law.

Application to the Present Case – Negligent Misrepresentation

[79] ***Livent*** and ***Maple Leaf*** require me to consider the nature of the undertakings in issue. The nature of the undertakings in the present case can only be understood against the backdrop of the relationship between the parties. The context surrounding the representation is essential to determining "whether it was reasonable for the plaintiff to rely on the individual defendant's connection to the representation as engaging a personal duty on the part of that defendant": ***Hogarth*** at para 123 *per* Slatter JA.

[80] Axiom knew from the outset of its dealings with RML that RML was a limited liability corporation owned by Calvin Rudiger. The Corporate Application Form completed by Calvin Rudiger disclosed this information and the corporate search performed by Axiom confirmed it. Axiom did not do any of the usual things that businesses do when they are concerned about dealing with a limited liability company – for example, Axiom did not ask for a personal

guarantee from Calvin Rudiger. The dealings between Axiom and RML indicate that Axiom knew that it was dealing with a limited liability corporation and that it was content to accept the risk inherent in doing so.

[81] Axiom's baseline expectation was that its dealings were with RML, not Calvin or Morgan Rudiger in their personal capacity. The question that must be considered with respect to each of the alleged misrepresentations is whether the statements by Calvin and Morgan Rudiger amounted to an undertaking of personal responsibility to Axiom for RML's obligations.

(1) Alleged Misrepresentation #2

[82] Alleged Misrepresentation #2 was Calvin Rudiger's statement on April 29, 2015, that he would honour the cost of the open forward contracts. Properly understood, the statement was that RML, not Calvin Rudiger, would honour the cost of the open forward contracts because, of course, the contracts were between RML and Axiom. A statement that RML would honour its contractual obligations amounts to nothing because RML was legally obliged to fulfill its contractual obligations or pay damages.

[83] Calvin Rudiger's statement that he would honour the cost of the open forward contracts was not an undertaking of personal responsibility to Axiom. Viewed in context, nothing about what Calvin Rudiger said indicated that he intended to forsake the shield of limited liability and take on personal liability for RML's contractual obligations. Indeed, there is no evidence to suggest that Mr. Bennett understood Calvin Rudiger's words to be undertaking a personal obligation to Axiom.

[84] To interpret Calvin Rudiger's words as tantamount to a personal guarantee of RML's contractual liability and to give them legal force through the tort of negligent misrepresentation would substantially undermine the *Guarantees Acknowledgement Act,* RSA 2000, c G-11. The *GAA* s 3 requires that for a guarantee to have legal effect, a person must appear before a lawyer, acknowledge to the lawyer that the person executed the guarantee, and the lawyer complete a certificate.

[85] Further, I do not accept that Axiom acted on the alleged misrepresentation or relied to its detriment or in any way on what Calvin Rudiger said about honouring the cost of the forward contracts. The evidence shows that Axiom waived the deposit requirement because Mr. Bennett had a long history of dealing with RML and Axiom did not want to lose a client over the deposit issue. Axiom's allegation has all the hallmarks of something that was pleaded after it was discovered during the litigation process. Indeed, this misrepresentation was first alleged in Axiom's third pleading (*i.e.* Amended Amended Statement of Claim).

[86] Lastly, I am not persuaded that the representation that RML would honour the cost of the open forward contracts was false. Of course, it proved to be false in the sense that RML did not pay what was owed to Axiom and eventually went out of business. But at the time that the statement was made, I accept that Calvin Rudiger, being the directing mind of RML, intended that RML would honour the cost of the open forward contracts.

(2) Alleged Misrepresentation #3

[87] Alleged Misrepresentation #3 was Calvin Rudiger's statement on the August 27, 2015, telephone call that he would "chisel away" at the obligations to Axiom. Axiom asserts that it relied on this representation and that over the next month RML's exposure on the open contracts grew more than fourfold.

[88] Calvin Rudiger's representation that he would "chisel away" at the obligation was clearly a representation concerning the future conduct of RML and not in any way an undertaking of personal responsibility by Calvin Rudiger for RML's contractual liability. The contractual obligation was RML's and the chiselling that was to be done was clearly understood by the participants on the telephone call to be done by RML.

[89] The accompanying representation that Calvin Rudiger was not the sort of person to walk away from contracts could be construed as referring to Calvin Rudiger's personal characteristics separate from RML. The question is whether this is an undertaking of personal responsibility to Axiom. Viewed in context, I find that it is not an undertaking of personal responsibility to Axiom. The discussion was about contractual obligations and the contract in question was in the name of RML, not Calvin Rudiger. He was essentially saying that because of his personal integrity, he would not let RML walk away from its contractual obligation. He was not offering to take on personal liability. There is nothing in the evidence to suggest that Axiom understood Calvin Rudiger's statement to be anything other than a statement concerning the future conduct of RML.

(3) Alleged Misrepresentation #4

[90] Alleged Misrepresentation #4 was Calvin Rudiger's statement on the September 22, 2015, telephone call that RML would use Axiom exclusively for currency exchange services until the amounts owing on the open forward contracts were paid off. This alleged misrepresentation is quasi-contractual in nature because the *quid pro quo* was Axiom's forbearance. A party's commitment as to future conduct made in exchange for a corresponding commitment of future conduct by another party fits more cogently under the rubric of contract but I must deal with what was pleaded – negligent representation.

[91] Again, Calvin Rudiger's statement that RML will use Axiom exclusively for currency exchange transactions concerns what RML will do in the future and does not evince any intention to assume personal responsibility to Axiom for RML's contractual obligations. I accept Calvin Rudiger's evidence that in the moment he intended for RML to give Axiom its currency exchange business but that he quickly changed his mind after the telephone call.

[92] If Calvin Rudiger had signed a contract on behalf of RML with Axiom committing RML to exclusively use Axiom for currency exchange services until RML's debt was paid off, Calvin Rudiger could have caused RML to break that contract without fear of personal liability for the tort of inducing breach of contract. This is because the rule in ***Said v Butt*** provides that a corporate agent cannot be held personally liable for procuring the breach of a contract with the corporation.

[93] The tort of negligent misrepresentation cannot impose personal liability on Calvin Rudiger for making a quasi-contractual commitment on behalf of RML and then changing his mind and causing RML to break that commitment. For the law to have any coherence, the rule in ***Said v Butt*** must extend to situations where the alleged misrepresentation is quasi-contractual as in the case of Alleged Misrepresentation #4. The words of Justice Males in ***Barclay-Watt*** quoted earlier in these Reasons are apposite.

(4) Alleged Misrepresentation #5

[94] Alleged Misrepresentation #5 was Calvin and Morgan Rudiger's statement that RML would pay the settlement amounts later agreed to in the Settlement Agreement and Promissory

Note. Alternatively, Alleged Misrepresentation #5 can be understood as a representation of RML's creditworthiness and ability to pay the amounts that would become due pursuant to the Settlement Agreement and Promissory Note.

[95] To the extent that the alleged misrepresentation concerns the future conduct of RML, those obligations were subsequently embodied in contract – the Settlement Agreement and Promissory Note. Justice Iacobucci in ***Cognos*** held at 113 that a plaintiff's recourse for statements subsequently captured in a contract is limited to the law of contract:

> When considering the effect of the subsequent contract on the representee's tort action, everything revolves around the nature of the contractual obligations assumed by the parties and the nature of the alleged negligent misrepresentation. The first and foremost question should be whether there is a specific contractual duty created by an express term of the contract which is co-extensive with the common law duty of care which the representee alleges the representor has breached. Put another way, did the pre-contractual representation relied on by the plaintiff become an express term of the subsequent contract? If so, absent any overriding considerations arising from the context in which the transaction occurred, the plaintiff cannot bring a concurrent action in tort for negligent misrepresentation and is confined to whatever remedies are available under the law of contract.

[96] Moreover, I accept Calvin and Morgan Rudiger's evidence that in making such representations concerning the future conduct of RML they were not intending to undertake personal liability to Axiom. Nor was there anything about the representations that should have caused Axiom to believe that Calvin and Morgan Rudiger were acting as anything other than representatives of RML. Specifically, they were not asked to, nor did they offer to, personally guarantee the obligations of RML pursuant to the Settlement Agreement and Promissory Note. I further accept Calvin and Morgan Rudiger's evidence that at the time of the National meeting they honestly believed that RML would make the payments contemplated in the Settlement Agreement and Promissory Note.

[97] The alternative representation of fact – that RML is credit worthy or viable – is consistent with the type of representations that have been found to support the existence of a special relationship or duty of care: see, for example, ***Hedley Byrne*** where a bank was found to owe a duty of care in providing an assessment that a third party was credit worthy. Though Calvin and Morgan Rudiger did not give any indication that they were undertaking personal responsibility for the accuracy of the statement, given the context surrounding the Settlement Agreement including that personal claims against Calvin and Morgan Rudiger would be put on hold it was reasonable for Axiom to understand the representation to be made in their personal capacities. Calvin and Morgan Rudiger also knew or ought to have known that Axiom had limited knowledge concerning the state of RML's business and would rely on Calvin and Morgan Rudiger's representations. Accordingly, I conclude that the necessary quality of proximity existed which, in turn, justifies a finding that there was a duty of care.

[98] Was Calvin and Morgan Rudiger's implicit representation that RML was credit worthy false? The meeting at National took place in March 2018 and the Settlement Agreement and Promissory Note are dated April 23, 2018. The bank records of RML show that starting in December 2017 and running through May 2018, Calvin and Morgan Rudiger injected significant

amounts of their personal funds into RML to keep it afloat. The evidence of Calvin and Morgan Rudiger is that they would not have put their own money into RML if they believed that it was not a viable business. I accept the evidence of Calvin and Morgan Rudiger that when their statements to Axiom in March and April 2018 were made, they had an honest belief that RML was a viable business and they expected that RML would be able to make the payments pursuant to the Settlement Agreement and Promissory Note.

[99] Whether the implicit representation that RML was a viable business in March and April 2018 was actually true is impossible to determine on the evidence before the Court. Calvin and Morgan Rudiger testified that RML was conducting business as usual at this time and that with the support of their personal funds was not in any financial danger. They further testified that sometime in 2018 the US Department of Transportation changed the rules for importing vehicles from Canada in a way that was prejudicial to RML. That rule change was followed in June 2018 by AFC calling RML's line of credit and seizing RML's inventory of vehicles, effectively putting RML out of business. Axiom disputes the evidence of Calvin and Morgan Rudiger but provides no alternative evidence or explanation. Though I find the evidence of the demise of RML to be frustratingly vague and uncorroborated by documents, I cannot conclude that it is incorrect. Accordingly, I am unable to conclude that Calvin and Morgan Rudiger's implicit representation that RML was credit worthy or a viable business in March and April 2018 is false.

Piercing the Corporate Veil, Fraudulent Preference, and Unjust Enrichment

[100] As an alternative to its misrepresentation claims, Axiom submits that RML's corporate identity should be disregarded and liability should be imposed personally on Calvin Rudiger. Axiom identifies several RML cheques that paid Calvin Rudiger's personal expenses, RML's use of Calvin Rudiger's personal line of credit, and two transactions in which RML transferred a total of $60,000 to Calvin Rudiger shortly after the effective demise of RML's business and after it had defaulted on the Promissory Note. Axiom asks that Calvin Rudiger be found to be personally responsible for the whole $292,067.46 judgment plus interest owed by RML to Axiom.

[101] Antonio JA, writing for the majority, in ***Aubin v Petrone,*** 2020 ABCA 13 reviewed the law concerning "piercing" or "lifting" the "corporate veil" at paragraphs 20-26. She identified the test in ***Transamerica Life Insurance Co of Canada v Canada Life Assurance Co,*** (1996) 28 OR (3d) 423 (Gen Div) as restated in ***Arsenault v Arsenault,*** (1998) 38 RFL (4^{th}) 175 (Ont Gen Div) at para 24 to be the appropriate test to determine whether to disregard a corporation's identity and impose personal liability. The test requires that the following be proved:

1. The individual exercises complete control of finances, policy, and business practices of the company.
2. That control must have been used by the individual to commit a fraud or wrong that would unjustly deprive the complainant of his or her rights.
3. The misconduct must be the reason for the third party's injury or loss.

[102] Shortly after Antonio JA's decision in ***Aubin***, the Court of Appeal in ***Driving Force Inc*** observed at paragraph 53 that ***Transamerica*** is a "frequently cited case" but went on to conclude that "[i]n the absence of a unifying test, lifting-the-veil cases tend to be decided on their own facts and circumstances." Be that as it may, I conclude that the ***Transamerica*** test as restated in

Arsenault and adopted by Antonio JA in ***Aubin*** is appropriate for use in the present circumstances.

[103] Calvin Rudiger exercised complete control over RML as is common in small enterprises owned by a single shareholder. The more difficult questions are whether Calvin Rudiger's control over RML was used to commit fraud, and whether any fraud committed was the reason for Axiom's loss.

[104] Axiom identifies several RML cheques that paid Calvin Rudiger personal expenses. Calvin Rudiger's evidence, which I accept, is that these expenses were, in his words, "T-4'd" and treated as income by his accountant. This may not be an optimal business or accounting practice, but it is not unusual in a one-person company and it was not the reason for Axiom's losses. Similarly, RML's use of Calvin Rudiger's personal line of credit and the funds flowing into and out of RML to balance Calvin Rudiger's line of credit was not fraudulent or otherwise improper and was not the reason for Axiom's loss.

[105] Axiom also points to several transactions in July and August 2018 – after the effective demise of RML's business and after RML had defaulted on the Promissory Note – where Calvin Rudiger caused RML to pay him substantial funds out of RML's account rather than causing RML to pay its debt to Axiom. As will be discussed below, these transactions bear the hallmarks of fraudulent preferences. Axiom did not learn of the arguably fraudulent preferences until after obtaining judgment against RML in 2019 and commencing enforcement.

[106] *The Fraudulent Preferences Act*, RSA 2000, c F-24 ("*FPA*"), s 1 provides that every payment:

> (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and
>
> (b) with the intent to defeat, hinder, delay or prejudice the person's creditors or any one or more of them,
>
> is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

[107] In this case, the evidence demonstrates that RML made several payments to Calvin Rudiger at a time when RML was insolvent due to its failure to make payments on the Promissory Note when due, and that those payments had the effect of removing funds from RML that otherwise could and should have been used to pay RML's obligations to Axiom. The question is therefore whether these payments met the intent requirement in *FPA* s 1(b).

[108] In cases involving alleged frauds on creditors, there is rarely an admission by the debtor of fraudulent intent. The court must therefore attempt to glean intent from the debtor's actions. This usually involves an examination of "badges of fraud" – that is, factors which indicate that a transaction was fraudulent. The existence of several badges of fraud creates a rebuttable presumption that an impugned transaction was fraudulent: ***Krumm v McKay***, 2003 ABQB 437 at paras 19-21.

[109] In this case, the transactions identified by Axiom in July and August 2018 bear several badges of fraud: the transactions were between an individual and the corporation he controlled; there was no consideration given for the payments; the transactions were made shortly following

the events that effectively put RML out of business; and the transactions were made after RML failed to make payments on the Promissory Note when due. Calvin Rudiger did not explain these transactions adequately, or at all. He has therefore failed to rebut the presumption arising from the above factors that the transactions were a fraudulent preference.

[110] A fraudulent preference transaction is void as against the creditors injured. When an impugned transaction is voided, the recipient of the fraudulent preference is ordinarily ordered to return the money to the debtor or the bankruptcy trustee if one has been appointed; this restores the *status quo* in place at the time of the transfer, so that the debtors assets can be divided according to the normal insolvency process: see M A Springman, *Frauds on Creditors: Fraudulent Conveyances and Preferences* (Toronto: Thomson Reuters, 2023) (loose-leaf updated 2023, release 10) at §7:6.

[111] Such an order cannot work in this case because RML no longer exists. Given the passage of time and the demise of RML, there is no easy way to recreate the pre-transfer *status quo*.

[112] Axiom argues that in these specific circumstances, it is appropriate to pierce the corporate veil and thereby allow Axiom to recover its full damages directly from Calvin Rudiger. I find such a remedy too drastic. Although Calvin Rudiger exercised complete control of RML, and used that control to commit a fraud, that misconduct did not cause all or even most of Axiom's damages.

[113] At the same time, I find that it would be unjust to allow Calvin Rudiger to keep the proceeds of his fraudulent transactions. He ought not have removed assets from RML which was effectively insolvent to the detriment of RML's creditors; specifically, Axiom.

[114] Unjust enrichment may be found where: (1) the defendant has been enriched; (2) the plaintiff has suffered a corresponding loss; and (3) there is no juristic reason for the benefit and corresponding detriment: ***Kerr v Baranow***, 2011 SCC 10 at paras 36-40. I find that the three elements are met in this case. Calvin Rudiger has been enriched by $60,000. Axiom has suffered a corresponding loss. There was no juristic reason for the enrichment – indeed, the enrichment was the result of a fraudulent preference.

[115] In the normal course, the appropriate response to a fraudulent preference is to order the money returned to the debtor and directions may be given concerning the payment of creditors. If it was possible or practicable to return to the pre-transfer *status quo*, then both Axiom and Calvin Rudiger could have sought payment as creditors of RML. However, given the specific facts of this case – namely, (1) returning to the *status quo* is impossible or impractical, (2) there are no known creditors of RML other than Axiom and Calvin Rudiger, and (3) Calvin Rudiger was both the directing mind behind, and the beneficiary of, the fraudulent preference transactions – I find that the fairest and most efficient result is to find Calvin Rudiger liable for $60,000 in damages to Axiom for unjust enrichment.

Conclusion

[116] The claims Morgan Rudiger are dismissed. Axiom is granted judgment against Calvin Rudiger in the amount of $60,000. All other claims against Calvin Rudiger are dismissed.

Heard on the 25th day of March, 2024 to the 27th day of March, 2024 with additional written submissions received April 3 & 8, 2024.
Dated at the City of Calgary, Alberta this 16th day of April, 2024.

Colin C.J. Feasby
J.C.K.B.A.

Appearances:

Andrew F. Sunter & Kylan S. Kidd, Burnet Duckworth & Palmer LLP
for the Plaintiff

James M.B. Clark, Beaumont Church LLP
for the Defendants