KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 214**

Date: **2024 12 11**
File No.: QBG-RG-00308-2022
Judicial Centre: Regina

BETWEEN:

RICHARDSON PIONEER LIMITED

PLAINTIFF

- and -

ROSS LAMB

DEFENDANT

Date: **2024 12 11**
File No.: QBG-RG-00316-2022
Judicial Centre: Regina

BETWEEN:

RICHARDSON PIONEER LIMITED

PLAINTIFF

- and -

LAMB FARMS LTD.

DEFENDANT

Counsel:

James Kroczynski	for the plaintiff
Kevin C. Mellor	for the defendant

FIAT — ROBERTSON J.
December 11, 2024

INTRODUCTION

[1] This decision addresses an application for summary judgment under Rule 7-2 of *The King's Bench Rules*. On this application, the parties asked for a ruling only on whether the application was suitable for summary judgment, recognizing neither party was ready to proceed to argue the merits of the claims and counter-claim.

[2] For the reasons which follow, the application is dismissed because it is premature.

BACKGROUND

Affidavit evidence

[3] The parties have filed the following affidavits:

(a) QBG-RG-00308-2022

(i) Richardson Pioneer Limited

(A) Whitney Staruiala sworn February 10, 2023

(B) Aaron Anderson sworn June 3, 2024

(ii) Ross Lamb

(A) Ross Lamb sworn March 7, 2023:

(B) Ross Lamb sworn August 7, 2024

(b) QBG-RG-00316-2022

(i) Richardson Pioneer Limited

(A) Aaron Anderson sworn May 24, 2024 [Anderson Affidavit]

(ii) Lamb Farms Ltd.

(A) Nothing filed

[4] The affidavits of Aaron Anderson filed by Richardson Pioneer Limited do not comply with Rule 13-34(5).

Chronology of events

[5] The court file records the following events:

2020

October 23 Richardson Pioneer Limited [Richardson] and Lamb Farms Ltd. [Lamb Farms] enter into purchase contract for canola

2021

January 21 Richardson and Ross Lamb enter into purchase contract for barley

February 22 Richardson and Ross Lamb enter into second purchase contract for canola

November 8 Richardson cancels all three contracts for alleged failure to deliver

2022

January 21 Richardson files statements of claim for breach of contact against Lamb Farms in QBG-RG-00316-2022 seeking

	damages of $118,434.01 and Ross Lamb in QBG-RG-00308-2022 seeking damages of $536,619.39
April 18	Ross Lamb files statement of defence in QBG-RG-00308-2022
April 25	Lamb Farms Ltd. files statement of defence and counterclaim in QBG-RG- 00316-2022
2023	
March 14	Bergbusch J. grants consent order in QBG-RG-00316-2022 for Richardson to amend its statement of claim
March 16	Amended statement of claim issued in QBG-RG-00316-2022
2024	
June 21	Richardson files notice of application seeking leave to enter final judgment in both QBG-RG-00308-2022 and QBG-RG-00316-2022, relying upon Rule 7-2 of *The King's Bench Rules*
July 4	McMurtry J. adjourns applications to July 24
July 24	Applications adjourned by consent to August 8
August 8	Wildeman J. adjourns applications to September 5
September 5	Robertson J. hears applications for consent orders to set filing schedule for summary judgment applications; decision reserved

September 6 Robertson J. issues fiat granting consent order, but with amendment to clause 1(e) to add the following underlined words instead of the deleted words "hearing date":

> e) Exchange of Briefs of Law 15 days prior to the <u>chambers date for final review of the application for summary judgment</u>
>
> [Emphasis in original]

October 3 Norbeck J. issues fiat directing Regina Registrar to schedule hearing "to argue whether the matters are appropriate for disposition by summary judgment."

November 25 Robertson J. hears argument with decision reserved

ISSUES

[6] The issue is whether the Richardson's claims are suitable for determination by summary judgment?

POSITION OF PARTIES

Plaintiff

[7] The plaintiff argues that there is no genuine issue requiring trial and, as such, the claim is capable of decision on summary judgment. The claim is for damages arising from breach of contract. The parties entered into three contracts in 2021 under which the defendants agreed to deliver grain to the plaintiff. The defendant Lamb Farms delivered some grain under the first contract, but not enough to meet the contractual obligation. The defendant failed to deliver any grain under the second contract. Under the draft orders filed, the plaintiff seeks judgment against Lamb Farms Ltd. of $138,627.79 and $397,991 and against Ross Lamb of $118,434.01, all as of November 8, 2021 plus interest to date of judgment of 3% and costs.

[8] If the Court found that the claims were not suitable for determination on summary judgment, then the plaintiff asked the claims be set for trial.

Defendant

[9] The defendant argues this dispute is not suitable for summary judgment. The defendant filed statements of defence disputing the claims. The facts are controverted. The Anderson Affidavit in support of the plaintiff's application is completely improper because there is no basis for belief on hearsay. There are genuine issues which require a trial.

ANALYSIS

[10] I will first review the law, Rules and Practice Directive governing summary judgment applications and then turn to the issue of whether this application is suitable for summary judgment. I conclude that the application is premature because the materials required for hearing are not yet filed and the decision of whether an application is suitable is best left to the justice hearing the application on the merits.

Summary Judgment Applications

[11] The Supreme Court of Canada, in *Hryniak v Mauldin*, 2014 SCC 7 at para 5, [2014] 1 SCR 87 [*Hryniak*], endorsed the summary judgment procedure, recognizing that it promotes "fair access to the affordable, timely and just adjudication of claims." As Karakatsanis J. wrote in *Hryniak* at para 4:

> [4] … In my view, a trial is not required if a summary judgment motion can achieve a fair and just adjudication, if it provides a process that allows the judge to make the necessary findings of fact, apply the law to those facts, and is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.

[12] The Court went on at para. 34 to comment that "summary judgment is available where there is no genuine issue for trial."

> [34] The summary judgment motion is an important tool for enhancing access to justice because it can provide a cheaper, faster alternative to a full trial. With the exception of Quebec, all provinces feature a summary judgment mechanism in their respective rules of civil procedure. Generally, summary judgment is available where there is no genuine issue for trial.
>
> [Footnotes omitted]

[13] In *Tchozewski v Lamontagne*, 2014 SKQB 71, [2014] 7 WWR 397, Barrington-Foote J. (as he then was) summarized the key elements of the "roadmap" from *Hryniuk* to determine whether a dispute was suitable for summary judgment.

[14] In *Casbohm v Winacott Spring Western Star Trucks*, 2019 SKQB 44 at para 10, [2019] 9 WWR 714, Kalmakoff J. (as he then was) cautioned that, even if the parties agree that a matter should be determined this way, the Court must independently assess whether the summary judgment process is appropriate and will not compromise "the fairness of the procedure or the justness of the outcome."

[15] In *Frank and Ellen Remai Foundation Inc. v Bennett Jones LLP*, 2024 SKCA 71 at para 13 [*Remai*], the Court of Appeal held that only the justice who hears the application for summary judgment on its merits "can determine what evidence is necessary or sufficient to adjudicate a dispute pursuant to Rule 7-5."

The King's Bench Rules

[16] The applicant relies upon Rules 7-2 of *The King's Bench Rules*. Part 7 of the Rules provides procedures for resolving claims without a full trial. Division 2 of Part 7 provides for summary judgment. This alternative procedure is consistent with the foundational rules, the purpose of which is stated in Rule 1-3(1) as intending "to provide a means by which claims can be justly resolved in or by a court process in a timely and cost effective way."

[17] Rule 7-2 authorizes application for summary judgment.

> **Application for summary judgment**
>
> **7-2** A party may apply, with supporting affidavit material or other evidence, for summary judgment on all or some of the issues raised in the pleadings at any time after the defendant has filed a statement of defence but before the time and place for trial have been set.

[18] Rule 7-5(1) of *The King's Bench Rules* requires the court to be "satisfied that there is no genuine issue requiring a trial with respect to a claim or defence" or "the parties agree to have all or part of the claim determined by summary judgment and the Court is satisfied that it is appropriate to grant summary judgment."

[19] Rule 7-5(2) allows the court, "[i]n determining … whether there is a genuine issue requiring trial" some discretion in making factual determinations:

> **7-5(2)** …
>
> (b) …
>
> (i) weighing the evidence;
>
> (ii) evaluating the credibility of a deponent; [and]
>
> (iii) drawing any reasonable inference from the evidence.

[20] Applications for summary judgment usually rely upon agreed facts and affidavit evidence. Disputes which require factual determinations may not be suitable for summary judgment. Summary judgment is usually unsuitable where credibility assessments are required to decide who to believe and what happened.

General Applications Practice Directive #9

[21] Counsel for both parties agreed that General Application Practice Directive #9 "Scheduling of Summary Judgment, Set Aside and Judicial Review Applications" [GA-PD9] applies to this application. GA-PD9 provides a two-stage process for summary judgment applications.

[22] The first stage involves a review of the application to ensure it is both

suitable for summary judgment and ready for hearing. GA-PD9 responded to the Court's experience with hearing summary judgment applications that were either not suitable or not ready for hearing. Those failed hearings wasted both Court time and counsel time, with attendant cost to the public purse and to litigants. When that occurred, it frustrated the very intent of the summary judgment application. The first stage is intended to screen out those applications which are obviously unsuitable for summary judgment and to ensure those applications which proceed to hearing are ready for hearing. This review process is intended to ensure successful summary judgment hearings.

[23] The second stage is a hearing on the merits, including whether the case is suitable for summary judgment.

[24] GA-PD9 has been applied to require filing of all materials, including briefs of law, at the first stage. See: *Standing Buffalo Dakota First Nation v Ron S. Maurice Professional Corporation (Maurice Law Barristers and Solicitors),* 2023 SKKB 42 at para 41; *Kuffner v Jacques*, 2023 SKKB 14 at para 67; *Yildir v Athol Murray College of Notre Dame*, 2021 SKQB 278 at paras 15-16; and ***Chernick v Chernick***, 2020 SKQB 168 at para 18. This ensures the chambers judge conducting the review at the first stage is able to certify it as ready to proceed to hearing. Since the review is both as to content and format, it is preferable for the parties to agree to relevant facts and records and for the applicant to file all of the materials intended for the hearing in a binder with an index and tabbing of contents. This promotes a better hearing where both the lawyers and hearing judge can easily locate and refer to the materials at the hearing.

Suitability for hearing and determination

[25] In my fiat of September 6, 2024 at para. 5, I drew counsel's attention to the Court of Appeal's decision in *Remai* at para 11 "that only the justice who hears the

application for summary judgment on its merits 'can determine what evidence is necessary or sufficient to adjudicate a dispute pursuant to Rule 7-5.'" I went on at para. 7 to emphasize the need for proper organization and presentation of the materials supporting a summary judgment application.

> 7. I usually also require that a copy of the materials be submitted to the first stage review judge in an organized and tabbed binder, so that at the second stage the hearing judge and counsel are all working from the same materials. This must necessarily follow the steps for exchange of materials set out in the consent order. I also encourage the parties to file an agreed statement of facts and exhibits, recognizing that they may be supplemented with affidavit evidence on contentious allegations.

[26] In this case, the parties have not yet filed the materials intended for the hearing of the summary judgment application. The parties confirmed that they intend cross-examination on affidavits and exchange of supplementary affidavits.

[27] Given that the materials on which the parties intend to rely are not yet filed, it is premature to ask the Court to rule on whether the application is suitable for summary judgment. That would skip over the first stage review to determine whether the applications are ready for hearing.

[28] Nor can the Court, at this point, decide with any assurance whether the applications are suitable for summary judgment. To decide that question, the parties and the Court must know the evidence and arguments. Further, the question of whether a dispute is suitable for determination by summary judgment is best left to the justice hearing the application at the second stage, as a preliminary question. That is the clear intent of GA-PD9. This application is literally out of order, having regard to the carefully crafted process set out in GA-PD9. That process should not be avoided or by-passed.

[29] The parties asked, if I did not allow the application to proceed to summary judgment, that I direct the claims be set down for trial. I decline to make such an order.

Such an order at this point would again bypass established process, including pre-trial conference.

[30] In *Roske v Samuel, Son & Co. Limited*, 2023 SKKB 201 at paras 8-9, the Court commented on the stages to trial and ability of parties who cooperate to move to trial.

> [8] Saskatchewan is fortunate in that timely justice is possible, provided both sides cooperate. Civil actions can realistically proceed through the stages of litigation from commencement of action to trial within two years. Those stages may be summarized as: 1) exchange of pleadings; 2) mandatory mediation; 3) discovery through exchange of documents and questioning; 4) pre-trial conference; and 5) trial. There are also alternatives to trial, including application for summary judgment and binding pre-trial conference. *The Queen's Bench Rules* provide deadlines for steps through those stages to promote timeliness.
>
> [9] Both parties have a responsibility to move cases forward to resolution. Plaintiffs should not commence a claim and then sit on it. Nor should defendants delay proceedings through a failure to cooperate or obstructive tactics. If either party causes delay, the other party can obtain the assistance of the court, including through case conferences, case management, scheduling orders, award of costs or, as a last resort, striking of the claim or defence.

[31] As it now stands, Richardson has applied to determine suitability for summary judgment. I dismiss that application because it is premature. If Richardson now wishes to abandon its summary judgment applications in favour of trials, it can withdraw its applications and then follow the usual Rules to move to trial. Those Rules include requirement for pre-trial conference under Rule 4-11.

Decision

[32] The applications to decide whether summary judgment is suitable are dismissed as premature. Richardson may apply to determine whether the summary judgment applications are ready to proceed after all materials intended to be relied upon for those applications are filed in the manner described in this fiat.

Costs

[33] Neither party sought costs on the applications. While I considered ordering costs in the cause, I have decided not to make any order for costs.

J.
D.N. ROBERTSON