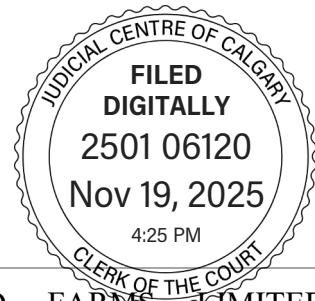


COURT FILE NO. 2503-10998  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON

Clerk's Stamp



PLAINTIFF COMPEER FINANCIAL, PCA

DEFENDANTS SUNTERRA FARMS LTD., SUNWOLD FARMS LIMITED,  
SUNTERRA ENTERPRISES INC., RAY PRICE and DEBBIE  
UFFELMAN

COURT FILE NO. 2501-06120  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SUNTERRA FOOD CORPORATION, TROCHU  
MEAT PROCESSORS LTD., SUNTERRA QUALITY FOOD MARKETS  
INC., SUNTERRA FARMS LTD., SUNWOLD FARMS LIMITED,  
SUNTERRA BEEF LTD., LARIAGRA FARMS LTD., SUNTERRA  
FARM ENTERPRISES LTD., SUNTERRA ENTERPRISES INC.

DOCUMENT **BRIEF OF THE APPLICANT, COMPEER FINANCIAL, PCA**

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Chambers Application Scheduled for December 4-5, 2025  
before The Honourable Justice Lema

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## **I. INTRODUCTION**

1. The fundamental elements of fraud have been conceded by Sunterra and its principals. There are no material facts in dispute. Compeer seeks summary judgment.

2. The fraud committed by Sunterra is known as cheque kiting. This is a fraud where worthless cheques are cycled between two or more accounts maintained at different banks but controlled by the same person. There are insufficient underlying funds to satisfy the cheques. The fraud takes advantage of the float made available by each bank during the time between when a cheque is deposited and the time that cheque clears. If the fraudster ensures fresh cheques are deposited (taking advantage of the float from a cheque deposited in the other bank) before funds are debited to satisfy earlier cheques that were written, the fact that there are no funds will be concealed. This cycle continues until one of the banks disallows further cheques to be written, at which point the scheme collapses.

3. Sunterra and its most senior financial and executive officers, Ray Price, Debbie Uffelman, and Craig Thompson, have admitted to deliberately participating in a scheme to kite cheques. Sunterra accounts held with Compeer and NBC were used to perpetuate this fraud, which, by the time of its collapse in 2025, had become such an integral part of Sunterra's business that they coined a phrase to euphemistically describe their fraud: the "account coverage practice".

4. Ray Price, Debbie Uffelman, and Craig Thompson perpetuated the fraud by causing the worthless cheques to be issued, keeping track of the cheques (and, by extension, keeping track of the actual – negative – balance in Sunterra's accounts net of cheques in transit), and actively concealing from Compeer the fact that – for years – Sunterra was issuing cheques which it did not have sufficient funds to pay. That these funds did not exist – and the cheques were NSF – is evident from the result: when Compeer intervened and caused the kiting to stop, there were no funds available to cover the cheques that had been on deposit with Compeer at that point. Compeer's corresponding loss is \$35 million USD.

5. Compeer seeks recovery in fraudulent misrepresentation. By issuing and then depositing cheques with Compeer, Sunterra represented that funds existed to satisfy those cheques. That was false and known by Sunterra to be false. No funds existed. The NSF cheques

were deposited with Compeer to induce Compeer to credit Sunterra's US accounts with funds that Sunterra could then use to write cheques back to Sunterra in Canada. This resulted in loss to Compeer when the cheques that had been deposited were returned NSF after the fraud unraveled. Ray Price, Debbie Uffelman, and Craig Thompson all had detailed knowledge of, and participated in, this fraud. They are all personally liable to Compeer.

6. The only arguments raised in response are that Compeer knew of Sunterra's fraud, consented to being defrauded, and somehow failed to mitigate its losses by not allowing Sunterra's fraud to continue after it had been discovered. Those arguments must fail. At law, blaming the victim for failing to uncover a fraud sooner is no defence. In any event, the evidence establishes the opposite. Compeer had no knowledge, never consented, and the steps taken since discovering the fraud are entirely reasonable.

7. In addition to a judgment against Sunterra Canada, Sunwold Canada, Ray Price, Debbie Uffelman, and Craig Thompson for USD \$35,330,968.94 plus interest and costs, Compeer also seeks:

- (a) Summary judgment against Sunterra Enterprises, which failed to honour contractual guarantees provided as part of Sunterra's lending relationship with Compeer. There is no dispute that the guarantee was called on the amount of \$29,132,187.91 USD<sup>1</sup> and has gone unsatisfied and so Compeer seeks summary judgment on its guarantee for this amount, plus interest and costs;
- (b) Declarations under Sections 5.1(2)(b) and 19(2) of the *CCAA* which are required to permit Compeer to enforce its judgment and prevent it from being discharged or compromised; and
- (c) A declaration under Section 5.1(2)(b) of the *CCAA* to preserve Compeer's right to pursue other Sunterra directors, David Price, Arthur Price and Glen Price, following the completion of the *CCAA* process if such derivative claims ultimately prove necessary and Compeer chooses to do so.

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<sup>1</sup> The difference in quantum between the overall loss and the amount of the guarantee arises from the fact that some of the guarantees have contractual limits.

## II. STATEMENT OF FACTS

### A. The Parties

8. Compeer Financial, PCA ("**Compeer**") is a member-owned, farm credit cooperative serving and supporting agriculture and rural communities. For more than twenty years, Compeer provided financial services to: Sunterra Farms Iowa, Inc. ("**Sunterra US**") and Sunwold Farms, Inc. ("**Sunwold US**" and, together with Sunterra US the "**US Sunterra Entities**"), which are two of the Sunterra Group's corporate entities based in the United States. While Compeer is not a bank in the traditional sense, the financial services that Compeer provided to the US Sunterra Entities included the extension of credit through revolving lines of credit ("**RLOCs**") and permitted the US Sunterra Entities to write and deposit cheques. At the material time, Compeer had extended an RLOC with a maximum credit limit of \$7,500,000 USD to the two US Sunterra Entities.

9. Two of the other corporate entities in the Sunterra Group are Sunterra Farms Ltd. ("**Sunterra Canada**") and Sunwold Farms Ltd. ("**Sunwold Canada**" and, together with Sunterra Canada, the "**Canadian Sunterra Entities**"). These entities are based in Canada and banked with Canadian Western Bank, which was subsequently acquired by the National Bank of Canada ("**NBC**").

10. Sunterra Enterprises Inc. (the "**Guarantor**"), is the parent of the US Sunterra Entities and guaranteed their obligations to Compeer under the RLOCs (along with the obligations of Lariagra, defined below). Compeer's summary judgment application includes a request for judgment against the Guarantor for failing to make payments on its guarantees.

11. Lariagra Farms South, Inc. ("**Lariagra**") is another Sunterra Group entity based in the United States. While the accounts used by the Lariagra entity have not been directly implicated in the cheque kiting fraud, at the relevant times, Compeer had extended a RLOC to Lariagra with a maximum credit limit of \$4,000,000 USD and the RLOCs of Lariagra and the US Sunterra Entities were all cross-collateralized and collectively guaranteed by the Guarantor. As a result, the obligations of Lariagra are germane to the efforts that Compeer has taken to seek recovery following the discovery and collapse of the fraud and are included in the claim against the Guarantor.

12. The Canadian Sunterra Entities are the corporate entities subject to these proceedings and against which Compeer seeks judgment. The US Sunterra Entities (and Lariagra) are subject to a receivership being carried out under the supervision of the United States District Court of South Dakota, which granted a Receivership Order on March 28, 2025.<sup>2</sup> The receivership is ongoing but, to date, has not resulted in any distributions.<sup>3</sup>

13. The individuals against whom Compeer seeks summary judgment in this application are the following:

- (a) Ray Price: During the course of the kiting fraud, Ray Price was the President of the US Sunterra Entities and the Canadian Sunterra Entities (among other Sunterra Group entities).<sup>4</sup> He was the most senior executive officer of these companies during the course of the fraud, and he personally directed and oversaw the cheque kiting fraud. He was the primary point of contact for Compeer at all relevant times.
- (b) Debbie Uffelman: Debbie Uffelman is the vice-present of corporate finance for the US Sunterra Entities and the Canadian Sunterra Entities (among other Sunterra entities). Debbie Uffelman is a signing authority for these companies and prepared board-level financial reporting and oversaw and managed the accounting and payroll departments in the Sunterra Group.<sup>5</sup> She held herself out as CFO in her interactions with Compeer.<sup>6</sup> She reported directly to Ray Price.<sup>7</sup>
- (c) Craig Thompson: While Craig Thompson describes himself as a Controller on LinkedIn<sup>8</sup>, he tried to downplay his title in this proceeding as "Accounting". Craig Thompson is one the signing authorities for the US Sunterra Entities and the Canadian Sunterra Entities. He reports directly to Debbie Uffelman.<sup>9</sup>

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<sup>2</sup> Grosland Affidavit at para. 38; See also Affidavit of Sei Na, sworn on April 21, 2025 at Exhibit 'A'.

<sup>3</sup> Grosland Affidavit at para. 39.

<sup>4</sup> Affidavit of Ray Price, sworn on September 5, 2025 at para. 1 ["**Ray Affidavit**"].

<sup>5</sup> Affidavit of Debbie Uffelman, sworn on September 5, 2025 at paras. 1, 5, 8, 11 ["**Uffelman Affidavit**"].

<sup>6</sup> Affidavit of Nicholas Rue, sworn on June 19, 2025 at Exhibits '5' and '6' ["**Rue Affidavit**"].

<sup>7</sup> Transcript of Oral Questioning of Debbie Uffelman, October 6, 2025, Court File No. 2503-10998, Page 7, Line 23 ["**Uffelman Transcript**"].

<sup>8</sup> Transcript of Oral Questioning of Craig Thompson, October 6, 2025, Court File No. 2503-10998, Pages 8-11 ["**Thompson Transcript**"].

<sup>9</sup> Affidavit of Craig Thompson, sworn on September 5, 2025 a para. 5 ["**Thompson Affidavit**"].

14. David Price, Arthur Price and Glen Price were directors of one or more of the Canadian Sunterra Entities or the Guarantor at the relevant periods. The relief sought against them is limited to a declaration under Section 5.1(2)(b) of the *CCAA* to preserve Compeer's rights to later pursue other Sunterra directors, if necessary, for any derivative liability resulting from their roles as directors during the course of the kiting fraud.

**B. The Credit Facilities with Compeer**

15. The credit facilities the US Sunterra Entities and Lariagra held with Compeer were most recently renewed on October 7, 2024, with a maturity date of May 1, 2025.<sup>10</sup> The total amount of the credit extended by Compeer across the three RLOCs was USD \$11,500,000.<sup>11</sup>

16. The RLOCs were coupled with financial products called Farm Cash Management ("FCM") accounts, which worked together (the RLOC and FCM account collectively referred to as a "**Compeer Account**", which is how those accounts are presented on the account statements issued by Compeer). The FCM feature allowed the US Sunterra entities to combine a Money Market Account with the RLOCs, so they could choose to maintain positive balances in the Compeer Account.<sup>12</sup> The US Sunterra Entities were able to write cheques in amounts equal to the combined total of their credit limit and any positive balance in their FCM accounts.<sup>13</sup> For example, if Sunwold US was in a net "draw" position of USD \$5,000,000 (on a RLOC of USD \$7,000,000), it could write cheques up to USD \$2,000,000 against its Compeer Account.<sup>14</sup> Conversely, if Sunwold US had a net "balance" of USD \$5,000,000, it could write cheques up to USD \$12,000,000 against its Compeer Account.<sup>15</sup>

17. Compeer obtained security from the US Sunterra Entities to support the RLOCs. These security agreements were cross-collateralized between the assets of the US Sunterra Entities and Lariagra.<sup>16</sup> The security agreements were signed off by Ray Price, as "President", and Debbie Uffelman, as "Chief Financial Officer".<sup>17</sup> In addition, each of the RLOCs was supported by a Guarantee provided by Sunterra Enterprises in favour of Compeer. Pursuant to

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<sup>10</sup> Transcript of Oral Questioning of Nicholas Rue, Court File No. 2503-10998, October 21, 2025, at Page 18, Lines 3-6 ["**Rue Transcript**"].

<sup>11</sup> Rue Affidavit at para. 12.

<sup>12</sup> Rue Affidavit at paras. 15-17.

<sup>13</sup> Rue Affidavit at paras 16-17.

<sup>14</sup> Rue Affidavit at paras. 16-17.

<sup>15</sup> Rue Affidavit at paras. 16-17.

<sup>16</sup> Rue Affidavit at para. 14.

<sup>17</sup> Rue Affidavit at Exhibit 4.

those Guarantees, Sunterra Enterprises agreed to perform the obligations of the US Sunterra Entities and Lariagra.<sup>18</sup>

**C. Compeer's Discovery of the Fraud**

18. In February of 2025, Compeer discovered that Sunterra was perpetrating the cheque kiting scheme. Since then, Compeer has compiled evidence, including in the form of bank records and cheque copies not previously available to it, that confirm the scheme. There is no evidence to the contrary. In their affidavits delivered in response to this proceeding, none of Ray Price, Debbie Uffelman, or Craig Thompson even attempt to deny having undertaken the cheque kiting scheme. Instead, their affidavits confirm that they knowingly undertook the cheque kiting scheme, which they then further and repeatedly admitted under cross-examination.

19. In February of 2025, Compeer identified that more than \$80,000,000 in cheques in the course of a few days had gone in and out of accounts held by the US Sunterra Entities.<sup>19</sup> The matter was escalated within Compeer, which, as a first step, asked for an explanation from Ray Price on February 11, 2025. As noted in the correspondence that Compeer sent to Ray Price following that call:

We have observed that these back and forth transfers are occurring on a daily basis, involving numerous checks written each day instead of one check, and that the amounts going back and forth between accounts are roughly the same, so they simply offset each other. We do not understand why these funds are being transferred back and forth every day in this manner. **You advised that it is due to a timing issue but stated that you would need to follow-up with internal personnel so you could more fully explain it to us.**<sup>20</sup> (Emphasis Added)

20. Ray Price has confirmed that this February 11, 2025 conversation occurred.<sup>21</sup> When first confronted, Ray Price never mentioned what he knew about the account coverage practice. Rather, he continued to hide it as he had for years.

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<sup>18</sup> Rue Affidavit at Exhibits 7-9.

<sup>19</sup> Rue Affidavit at para. 56.

<sup>20</sup> Rue Affidavit at Exhibit 28.

<sup>21</sup> Ray Affidavit at para. 4, 43; See also Transcript of Oral Questioning of Ray Price, October 7, 2025, Court File No. 2503-10998, Ray Transcript ["**Ray Transcript**"], Page 53, Lines 1-10.



21. After this exchange on February 11, 2025, Compeer halted any outgoing cheques originating from the US Sunterra Entities to the Canadian Sunterra Entities.<sup>22</sup> Once the outgoing cheques stopped, there were no cheques to be deposited into the accounts of the Canadian Sunterra Entities to generate balances that could be used to pay the cheques that had previously been written against those accounts and deposited into the US Sunterra Entities' Compeer Accounts. The kite collapsed. Cheques – ultimately totaling \$59,900,000 USD – were dishonored as being NSF. The result was a total negative balance in the US Sunterra Entities' Compeer Accounts of \$35,924,307.05 USD.<sup>23</sup>

22. Once Compeer advised Ray Price that cheques could no longer be issued by the US Sunterra Entities, he had to know that the kiting fraud would soon unravel. At least for a time, Ray Price tried to show contrition and accept responsibility for what had gone on. Indeed, on a telephone call with Compeer the next day, February 12, 2025, Ray Price conceded that he knew there were not enough funds to cover the cheques that had been issued to Compeer for deposit.<sup>24</sup> As Ray Price concedes in his own affidavit, at that time, he apologized to Compeer about what had been done and acknowledged "it was wrong that we ended up in this position".<sup>25</sup>

23. After the fraud came to light, the handling of Sunterra's accounts within Compeer was transferred to Steve Grosland, who also tendered an Affidavit in relation to this matter as he has first-hand knowledge of what transpired following Compeer's discovery of the fraud. Mr. Grosland's evidence was not materially challenged in cross-examination.

24. Notably, at this time, the US and Canadian Sunterra Entities refused to permit Compeer and NBC to communicate about Sunterra's accounts so that they could collectively review the circumstances of the cheques that were being exchanged by Sunterra between Canada and the United States.<sup>26</sup> As discussed below, this maintained the divide that Sunterra had always kept between Compeer and NBC, whereby Compeer had no insights into the Sunterra accounts at NBC, and vice versa.<sup>27</sup>

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<sup>22</sup> Grosland Affidavit at para. 29(a).

<sup>23</sup> Grosland Affidavit at paras. 33 -34.

<sup>24</sup> Nic Rue Affidavit at para. 60.

<sup>25</sup> Ray Price Affidavit at para. 45.

<sup>26</sup> Transcript of Oral Questioning of Arthur Price, October 8, 2025, Court File No. 2503-10998 at Page 27, Lines 9-25.

<sup>27</sup> Ray Transcript at Page 27, Lines 12-21.

25. Following the discovery of the fraud, Compeer promptly acted on its security to try to mitigate its losses. A receiver was appointed in the United States over the affairs of the US Sunterra Entities. The receivership is ongoing. Although Compeer has to date received no proceeds, the Receiver has sold assets in accordance with the Receiver's powers and pursuant to a Court approved sale.<sup>28</sup> On March 10, 2025, Compeer also issued notices of defaults and demands for payment to the US Sunterra Entities and Lariagra.<sup>29</sup> Following non-payment a demand on the Guarantees was issued on April 11, 2025. Sunterra Enterprises has neglected and/or refused to pay any amounts to Compeer.

**D. Sunterra's Evidence Confirms the Fraudulent Cheque Kiting Scheme Occurred**

26. Presumably, as a consequence of acknowledging the facts underlying a cheque kiting fraud, each of Ray Price, Debbie Uffelman, and Craig Thompson have sworn affidavits in this matter seeking to invoke the protections of section 5(2) of the *Canada Evidence Act*.<sup>30</sup> Their evidence confirms that – on a daily basis – they were involved in kiting cheques between the accounts of the US Sunterra Entities and the Canadian Sunterra Entities. Ray Price, as the senior-most executive officer within the US and Canadian Sunterra Entities, admits he authorized and directed the fraud.<sup>31</sup>

27. The process began with Craig Thompson, the financial controller who reported to and was working under Debbie Uffelman's direction.<sup>32</sup> Each business day, he would log into both the NBC and Compeer online banking portals to see what cheques would need to be written for deposit to make sure that accounts would not go into overdraft as previous cheques that had been issued were cleared.<sup>33</sup> This review included looking at opening day account balances and then reconciling those balances with outstanding cheques and deposits. This was all tracked on a daily basis in a "living" spreadsheet that Craig Thompson updated.<sup>34</sup> This spreadsheet was used to determine the precise amount of funds needed to avoid overdrafts in

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<sup>28</sup> Grosland Affidavit at Exhibit 30.

<sup>29</sup> Grosland Affidavit at para. 36.

<sup>30</sup> *Canada Evidence Act*, R.S.C., 1985, c. C-5. [TAB 21]

<sup>31</sup> Ray Transcript at Page 30, Line 25 to Page 31, Lines 1-21; Page 33 Lines 1-25 to Page 34, Lines 1-19.

<sup>32</sup> Transcript of Oral Questioning of Craig Thompson, October 6, 2025, Court File No. 2501-06120, at Page 13, Lines 1-25, Page 14, Lines 1-22 ["NBC Thompson Transcript"].

<sup>33</sup> Thompson Affidavit at paras 12-16. ; See also Thompson Transcript at Page 17, Lines 10-25 to Page 18-24; Page 27, Line 25 to Page 27, Lines 1-7.

<sup>34</sup> Thompson Transcript at Page 21, Lines 8-13; Thompson Affidavit at paras. 12-15. Thompson Affidavit at paras. 12-15; See also Thompson Transcript, at Page 17, Lines 10-21.

each account.<sup>35</sup> The complexity of the spreadsheet itself is telling. It spans multiple worksheets (one for each account), is structured to track each package of daily cheques, and, most importantly, included the tabulation of how much money each of the Sunterra entities actually had in each account net of the outstanding cheques that it had issued. While the daily data has now mostly been deleted by Sunterra before the record was produced in the litigation, the headings in the tables depict what Craig Thompson was tracking contemporaneously.<sup>36</sup> Among other things, the worksheet for Sunterra US included:

Date	Deposits	Account Balance	Outstanding Cheques	Bal less O/S Cheques
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28. Similarly, the worksheet for Sunwold US contained the following:

Date	Deposits	Account Balance	Outstanding Cheques	Bal less O/S Cheques
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29. Put differently, in the course of carrying out the kiting fraud, Sunterra maintained records showing exactly how much money was missing and needed to be covered through the perpetuation of the kiting scheme to maintain the illusion that the accounts of the Sunterra entities had positive account balances. These records tabulated how each cheque sent to Compeer was NSF.

30. Once Craig Thompson determined the total value of the shortfall that would need to be covered on a particular day, he then broke that amount down into a series of cheques to be issued. These would be tallied every day in an e-mail that would be sent to Debbie Uffelman for her review and approval.<sup>37</sup> Craig Thompson could not offer any cogent explanation for how he approached this step (in terms of the number of cheques or the amounts):

Q. Okay. So we have these cheques here, Mr. Thompson, and they add up to, by my tally here, \$8,980,000 [the particular day's shortfall]. Would it not have been simpler to just write one cheque for that total amount?

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<sup>36</sup> Undertaking Response #3 of Craig Thompson – Responses to Undertakings from Cross Examination by Compeer Financial, PCA on October 6, 2025, Court File No, 2503-10998.

<sup>37</sup> Thompson Transcript at Page 37, Lines 18-25 to Page 38, Lines 1-6; See also Thompson Affidavit at paras. 12-15.

A. It was our account coverage practice to do it in this manner.

[...]

Q. So am I right then in understanding that when you were told to carry out this account coverage practice by Sunterra's senior management, you were also told that this was the way that it was done to break it up into -- break the shortfall payment up into smaller amounts below a million?

A. Yes.<sup>38</sup>

...

Q. And as you see here, there is six cheques that are issued on this particular day [to cover the shortfall]. One for 873,000, one for 866,000, one for 857,000, one for 853,000, one for 833,000, and then one for 718,000. Do you see that?

A. Yes.

...

Q. And so is it the typical business practice to use random numbers as part of transferring funds between the entities?

A. That's the methodology that I did on a daily basis.<sup>39</sup>

31. While Craig Thompson could not articulate why he was choosing random amounts for the cheques (because aside from perpetrating the fraud there could be no coherent reasons for writing cheques in random amounts), he did concede that the numbers were not related to any specific commercial activity that was being carried out by Sunterra.<sup>40</sup>

32. Craig Thompson knew the cheques were NSF. He confirmed that, in calculating what cheques would need to be issued, he did not actually consider whether there were funds in the originating account because he knew the cheque that he was writing would not clear the same day:

Q. What do you do to ensure that there's sufficient money in the Sunwold Canada account?

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<sup>38</sup> Thompson Transcript at Page 35, Lines 16-21, Page 36, Lines 1-7.

<sup>39</sup> Thompson Transcript at Page 50, Lines 2-17.

<sup>40</sup> Thompson Transcript at Page 32, Lines 22-25 to Page 33, Lines 1-4.

- A. The Sunwold Canada cheque that we are writing isn't going to clear the same day so, therefore, I know that that account will not go overdrawn.<sup>41</sup>

33. Debbie Uffelman, in turn, confirmed that – on a daily basis – she too reviewed the online starting day balances for the accounts that the Canadian Sunterra Entities held with NBC and so would have known exactly how much money those entities did (or did not) have available.<sup>42</sup> Debbie Uffelman then approved the daily cheques to be issued and deposited into the NBC and Compeer Accounts, all in random amounts under \$1 million<sup>43</sup>. As noted in the Affidavit tendered by Erin Depoe of NBC, \$1 million was the hold limit that was applicable for cheques deposited with NBC,<sup>44</sup> meaning that any cheque for less than \$1 million would result in float (in that the amount of the cheque would be immediately available to Sunterra before the clearing process completed) whereas no float would arise for cheques over \$1 million (because for these cheques there would be no time delay between the deposited funds being available and the cheque clearing). There was no hold limit for cheques deposited into Compeer's accounts.<sup>45</sup>

34. Both Craig Thompson and Debbie Uffelman acted as signatories for the cheques that were issued as part of the kiting fraud and had actual knowledge that these cheques were being deposited with Compeer so that funds would be credited.<sup>46</sup>

35. All of this was done at the direction of Ray Price for the acknowledged purpose of avoiding overdrafts.<sup>47</sup> Ray Price himself concedes that he was aware that the kiting activities Sunterra was carrying out would create "conditional credit" (the phrase he used to describe the concept of the float)<sup>48</sup> and conceded he was aware that this could be happening in the NBC and Compeer accounts simultaneously (which means he was aware that there were no actual funds in the accounts collectively).<sup>49</sup> In this way overdrafts in the accounts were notionally avoided – not because Sunterra actually had the funds – but through the creation of "floats" from the deposit of the cheques which created the illusion of positive cash balances.<sup>50</sup> Net of

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<sup>41</sup> NBC Thompson Transcript at Page 17, Lines 13-17.

<sup>42</sup> Uffelman Affidavit at paras 9-10; See also Uffelman Transcript at Page 16, Lines 3-25 to Page 18, Line 17.

<sup>43</sup> Uffelman Affidavit at paras. 13-15; See also Uffelman Affidavit at Exhibits 'B', 'C'.

<sup>44</sup> Affidavit of Erin Depoe affirmed September 29, 2025, filed in Alberta Court of King's Bench Action 2501-06120.

<sup>45</sup> Grosland Affidavit at para. 6.

<sup>46</sup> See e.g., Grosland Affidavit at Exhibits 7, 9, 13; See also Uffelman Transcript, Page 29, Line 25 to Page 30, Lines 1-3.

<sup>47</sup> Thompson Transcript at Page 50, Lines 8-17, Page 51, Lines 7-21; See also Transcript of Oral Questioning of Ray Price, October 7, 2025, Court File No. 2501-06120, Page 14, Lines 17-25 to Page 15, Lines 1-2 ["NBC Ray Transcript"].

<sup>48</sup> Ray Affidavit at Page 38, Lines 24-25 to Page 39, Lines 1-2.

<sup>49</sup> Ray Transcript at Page 48, Lines 1-15.

<sup>50</sup> Rue Affidavit at para. 63.

the cheques, there were insufficient funds. Despite this, at all times and even during the pendency of these proceedings, representations were made to Compeer that Sunterra was "profitable" and "materially cash flow positive".<sup>51</sup> Ray Price directed and was fully aware of the nature and purpose of the cheque kiting that was being carried out by Craig Thompson and Debbie Uffelman:

Q. And you knew that to do that, they would look at the accounts at Compeer; right?

A. Yes.

Q. And you knew that they would look at the accounts at CWB; right?

A. Yes.

Q. And you knew as well that in order to avoid the shortfalls or the overdrafts, that they would have to send funds between the accounts at Compeer and CWB; right?

A. Yes.

Q. And the purpose, as you've stated, being to avoid shortfalls or overdrafts, you're trying to avoid those shortfalls and overdrafts in both accounts at Compeer and CWB; right?

A. Yes.

Q. And as a more practical matter, the way that you did that was to send cheques between Compeer and CWB right?

A. Yes.

...

Q. If cheques were not sent back and forth between Compeer and CWB accounts, you knew that one of the results would be insufficient funds in the accounts at Compeer?

A. We were always making sure that both CWB and Compeer accounts would not be overdraft.

Q. And to make sure of that, you had to send the cheques back and forth; right?

A. Cheques would have to be sent to one or the other **or both** to ensure that.<sup>52</sup> (emphasis added)

36. Writing cheques between both accounts simultaneously makes clear that there was no money available (as there are shortfalls in both accounts and so, by definition, there cannot be

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<sup>51</sup> Affidavit of Arthur Price ["Art Affidavit"] sworn September 5, 2025 at paras. 58-59.

<sup>52</sup> Ray Transcript at Page 35, Lines 11-25 to Page 36, Lines 1-24.

funds). This is the definition of a cheque kite. There is no debate on the evidence that cheque kiting occurred – none of Ray Price, Debbie Uffelman, or Craig Thompson attempt to deny it.

37. An after the fact review of the bank records and copies of the cheques (appended to Mr. Grosland's Affidavit) confirms Sunterra's cheque kiting. These provide clear examples and documentary evidence that there was insufficient funds to back the cheques that were going back and forth between the US and Canadian Sunterra Entities.<sup>53</sup> While Compeer previously had access to the US Sunterra Entities' bank accounts at Compeer, until after the collapse of the scheme, Compeer never had access to any records from the Canadian Sunterra Entities' accounts with NBC. Without records from both banks (Compeer and NBC), Compeer had no way of knowing that there were insufficient funds to back the cheques that were being written between those accounts.<sup>54</sup>

38. Ray Price, Debbie Uffelman, and Craig Thompson admit to perpetrating the kiting scheme in their affidavits. While relying on the phrase "account coverage practice", they admit that they undertook that practice to artificially avoid overdrafts and maintain the appearance of positive balances.<sup>55</sup> This is simply another way of saying that the purpose of the transaction was to perpetuate the cheque kiting fraud. The practice was not a legitimate method of addressing cash flow issues between related entities but a deliberate effort to create "float" and conceal the absence of funds. As conceded by Ray Price, while his hope was that – one day – Sunterra would be able to repay the amounts that had been generated from kiting cheques, that cash did not exist at the time the fraud collapsed:

Q: Right. So your hope in what you were really telling [Mr. Rue] or what you were thinking when you told him that, was that your hope or your plan for the future was to develop enough legitimate commercial revenue to cover those amounts; right?

A. Our expectation was that we knew that we had Trochu fire insurance coming, that we had some other asset sales coming, and that that would increase our working capital. And with that increased working capital, the amount of cheques that we would have to move back and forth would reduce.

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<sup>53</sup> See e.g., Grosland Affidavit at paras.16 and 17, Exhibits 2-4, 9-10, 13.

<sup>54</sup> Grosland Affidavit at para.15.

<sup>55</sup> Thompson Affidavit at para. 9.

Q. Until that time, you had to keep sending the cheques back and forth; right?

A. As we had done for several years.

Q. And until that time, the cheques were clearing based on conditional credit; right?

A. The cheques generated -- the account coverage practice generated some conditional credit.<sup>56</sup>

**E. Sunterra Concealed the Nature of the Fraud**

39. At the highest, in response to Compeer's application, Sunterra asserts that its cheque kiting was not fraudulent because Compeer was aware of Sunterra's conduct and, according to Sunterra, fully approved it. Put differently, Sunterra asserts that its fraud was so brazen that Compeer must have known (and therefore consented to the conduct).

40. In addition to Sunterra's assertion being legally irrelevant (as discussed below), as a matter of fact, Compeer was never aware of or approved Sunterra's fraudulent conduct. Any suggestion to the contrary does not even make sense. Compeer was the victim of the cheque kiting scheme. It obviously would not have approved of that scheme had it of known it was being undertaken, which it did not.

41. The commercial relationship between Sunterra and Compeer has been ongoing for many years. Since 2022, the primary point of contact between Compeer and Sunterra has been Nicholas Rue, Compeer's relationship manager. In August of 2022, Mr. Rue met with Ray Price and Debbie Uffelman to understand the nature of Sunterra's business and facilitate the ongoing lending relationship.<sup>57</sup> Mr. Rue had first-hand direct knowledge and involvement in dealings with Sunterra in the years leading up to Compeer's ultimate discovery of Sunterra's fraud. His evidence was not materially challenged in cross-examination.

42. At the time (and unbeknownst to Mr. Rue), Sunterra was engaging in an ongoing kiting fraud described above. This had been going on since October of 2011<sup>58</sup> and was a concerted

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<sup>56</sup> Ray Transcript at Page 58, Line 8 – Page 59, Line 12.

<sup>57</sup> Rue Affidavit at para. 20.

<sup>58</sup> Uffelman Affidavit at para 9.



daily effort undertaken by Sunterra to maintain the appearance of a positive balance in its accounts (both in Canada with NBC and in the United States with Compeer).<sup>59</sup>

43. No mention of this daily practice was made to Mr. Rue, who was unaware at the time that Sunterra was using cheques to move money. However, shortly after his first meeting with Sunterra in 2022, Mr. Rue became aware that Sunterra was using cheques to move funds between its operations in Canada and the United States. This did not come about because of any disclosure from Sunterra, rather, Mr. Rue learned that Sunterra was using cheques to move money based on a concern (unrelated to the present issues surrounding cheque kiting) about whether someone had defrauded Sunterra.<sup>60</sup>

44. Once Mr. Rue became aware that Sunterra was using cheques in this manner, he began making inquiries, both out of concern for Sunterra and to try to reduce administrative burdens for Compeer because Sunterra's use of cheques was cumbersome. Over the next two years, Mr. Rue engaged in an ongoing dialogue with Sunterra to try to support Sunterra's business needs – as detailed by Sunterra – while also exploring whether it was possible to use alternative means to move funds to reduce administrative burdens associated with using cheques to move funds. Sunterra's affiants confirm the same version of events – Mr. Rue's focus was on how burdensome the process of using cheques was (which was a reflection that he was not aware Sunterra was kiting cheques and depositing NSF cheques into Compeer accounts).<sup>61</sup> What is salient from these exchanges, as it pertains to this action is that:

- (a) At no time did Ray Price (or Debbie Uffelman, Craig Thompson, or anyone else) ever disclose to Mr. Rue that Sunterra did not have sufficient funds for the cheques that were being issued for deposit to Compeer.<sup>62</sup>
- (b) To the contrary, Ray Price repeatedly reassured Mr. Rue that the use of cheques was for legitimate business purposes supported by actual funds (such as payments for pig sales deferred due to income tax considerations or management fees).<sup>63</sup> These explanations are false. Craig Thompson (who

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<sup>59</sup> Ray Transcript at Page 30, Line 1 - Page 34, Line 19.

<sup>60</sup> Rue Affidavit at para. 24.

<sup>61</sup> Ray Affidavit at para. 45; See also Ray Affidavit at Exhibits F, G.

<sup>62</sup> Rue Affidavit at paras. 61-62.

<sup>63</sup> Rue Affidavit at para. 61; See also Ray Affidavit at Exhibit F.

generated the cheques used in the fraud) confirmed that the cheques issued as part of the kiting scheme were issued to avoid overdrafts (i.e. to prop up the illusion of value in the account) and not tied to any particular business event or transaction.<sup>64</sup> This was eventually conceded by Ray Price under cross-examination.<sup>65</sup> Debbie Uffelman was present at meetings with Compeer where Ray Price discussed these topics, but stayed silent.<sup>66</sup>

45. In short, from August 2022 to January 2025, Ray Price strung Mr. Rue and Compeer along with explanations and justifications, including holding out various "solutions" (which never materialized) about how to address Mr. Rue's concerns about the administrative burden of cheques. These "solutions" included a proposed amalgamation of various Sunterra entities to "simplify" the banking relationship.<sup>67</sup> Indeed, Ray Price himself concedes that he told Mr. Rue that "we would find another solution as soon as possible."<sup>68</sup> However, no "solution" to the use of cheques would have been possible because Sunterra did not have the funds to pay all of the cheques that were already in circulation between its various accounts.

46. In cross-examination, Craig Thompson<sup>69</sup> and Debbie Uffelman both confirmed that their belief that Compeer was aware of and approved the fraudulent conduct was based on their assumption that Compeer could have ascertained what Sunterra was doing based on a review of Compeer's account statements. They purported to hold this belief despite there being no evidence that any positive affirmation, consent, or approval was either sought from (or provided) by Compeer. As conceded by Debbie Uffelman:

Q: All right. So am I right in understanding that you had the same view that you heard from Mr. Thompson, that your understanding was based on what you believed Compeer had access to in terms of account records, rather than any specific advice or approval that you sought from Compeer? Is that fair?

A: Yes<sup>70</sup>

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<sup>64</sup> Thompson Transcript at Page 27, Lines 14-24, Page 32, Lines 22-25 to Page 33, Lines 1-4

<sup>65</sup> Thompson Transcript at Page 16, Lines 1-7; Page 40, Line 19 to Page 41, Line 24. Ray Transcript, Page 20 Line 13 – Page 21 Line 5.

<sup>66</sup> Uffelman Affidavit at para. 25; Rue Affidavit at para. 44.

<sup>67</sup> Rue Affidavit at paras. 34, 35, 37, 39, 41-42.

<sup>68</sup> Ray Affidavit at para. 36.

<sup>69</sup> Thompson Transcript at Page 54, Lines 4-25 to Page 55, Line 13.

<sup>70</sup> Uffelman Transcript at Page 53, Lines 21-25 to Page 54, Lines 1-2.

47. Ray Price also conceded that Compeer never had access to all of the information that would have been required for Compeer to have put the pieces of the fraud together – namely access to the accounts of both the US and Canadian Sunterra Entities<sup>71</sup>. He further conceded that he had never told Compeer that Sunterra lacked the funds necessary to back the cheques that were being deposited into, and drawn from, the Compeer Accounts<sup>72</sup> or that the cheques that were being issued were only clearing based on the use of conditional credit (another phrase that has been used to describe the float) from other cheques:

Q: And you didn't -- to go back to my question, you didn't tell [Compeer] that the cheques were clearing based on conditional credit; right?

A: I don't believe I would have said those specific words, that's true.

Q. And you didn't -- not just those specific words, but you didn't, whatever words you would have used, tell them that's the case because, as you say in your affidavit, your understanding was based on what you call their oversight of your business and accounts; right?

A. Yes, they were looking at our accounts, and they were reviewing our accounts on a regular basis.<sup>73</sup>

48. The uncontroverted evidence from Compeer is that Compeer did not have knowledge of the fraud, did not approve it, and would have closed Sunterra's accounts if Compeer had known.<sup>74</sup> This is exactly what happened when the fraud was discovered. As noted by Mr. Rue, when Ray Price finally acknowledged the truth of what had been going on, it came as a shock:

Ray Price's comments on our call on February 12, 2025 came as a complete surprise to me and were contrary to everything he had told me in the previous three years. Up until that point, I had trusted the information that Ray Price and Debbie Uffelman had often provided in explaining to me that the inter-company transfers were being done for operational reasons and that they took the form that they did for tax planning purposes and that there would be funds available to support the cheques. It was only on February 12, 2025 that I came to learn that these statements had been a lie.<sup>75</sup>

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<sup>71</sup> Ray Transcript at Page 27, Lines 12-17.

<sup>72</sup> Ray Transcript at Page 57, Line 18 – Page 59, Line 24.

<sup>73</sup> Ray Transcript at Page 60, Line 19 – Page 61, Line 6.

<sup>74</sup> Rue Affidavit at para. 62.

<sup>75</sup> Affidavit of Nic Rue at 61

**F. Guarantee Obligations arise from Consequences of Fraud and are Owing**

49. The guarantees provided by the Guarantor broadly require the Guarantor to satisfy "all indebtedness and liabilities of any kind, whenever and however incurred, absolute or contingent" owed to Compeer by the US Sunterra Entities or Lariagra arising from credit that had been granted. Following discovery of the fraud, Compeer exercised its contractual entitlement to demand payment of the amounts owing.<sup>76</sup> The contract is unambiguous. As a result of the liabilities incurred by the US Sunterra Entities and Lariagra (which they have been unable to satisfy as a result of the collapse of the kiting fraud) the Guarantor was obligated to pay pursuant to the Guarantees.<sup>77</sup> Despite this, the Guarantor has failed to pay in response to Compeer's demands.<sup>78</sup> The total amount payable under the terms of the Guarantees as of November 13, 2025 is \$29,132,187.91 USD.

**III. ISSUES**

50. The issues to be determined are:

- (a) Should summary judgment be granted in favour of Compeer against the Canadian Sunterra Entities, Ray Price, Debbie Uffelman, and Craig Thompson;
- (b) Should summary judgment be granted in favour of Compeer against Sunterra Enterprise Inc. for breaching its obligations under the Guarantees;
- (c) Should the Court grant declarations to ensure that Compeer's claims are not compromised or released in the *CCAA* proceedings commenced by Sunterra, specifically:
  - (i) that the claims of Compeer, set out in the Amended Statement of Claim as against the Canadian Sunterra Entities, are debts or liabilities resulting from obtaining property or services by false pretenses or fraudulent misrepresentations and so are exempt from any compromise

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<sup>76</sup> Grosland Affidavit at para. 36.

<sup>77</sup> Rue Affidavit at Exhibits 7-9.

<sup>78</sup> Grosland Affidavit at para. 36.

or arrangement pursuant to Section 19(2) of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "*CCAA*");

- (ii) that the claims of Compeer, set out in the Amended Statement of Claim as against Ray Price, Debbie Uffelman, and Craig Thompson, are claims arising from misrepresentations made by them and so are exempt from being released in connection with any compromise or arrangement pursuant to Section 5.1(2)(b) of the *CCAA*; and
- (iii) that any Claims (as defined in the Claims Procedure Order) that Compeer may have as against certain directors of Sunterra Farms Ltd., Sunwold Farms Limited, and Sunterra Enterprises Inc., namely, David Price, Arthur Price and Glen Price, and any outstanding claims that Compeer may have as against Ray Price, remain subject to further order unaffected by the *CCAA* action.

#### IV. ARGUMENT

##### A. The Test for Summary Judgment

51. Compeer's claims are amenable to resolution on a summary basis and the assessment of Compeer's claims on this basis has been endorsed by the parties through their agreement to a Consent Order establishing the process by which this application for judgment has been brought.

52. Summary judgment is an important tool to reduce strain on judicial resources and encourage efficient, lower cost dispute resolution.<sup>79</sup> Rule 7.3 of the *Alberta Rules of Court*<sup>80</sup> governs an application for summary judgment.

53. The proper approach to summary judgment has recently been discussed at length by the Alberta Court of Appeal. The core principles are as follows:

[47] The proper approach to summary dispositions, based on the *Hryniak v Mauldin* test, should follow the core principles relating to summary dispositions, the standard of proof, the record, and fairness. The test must be

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<sup>79</sup> *Weir-Jones Technical Services Incorporated v. Purolator Courier Ltd.*, 2019 ABCA 49 at para 15 [*Weir Jones*]. [TAB 1]

<sup>80</sup> *Alberta, Rules of Court, Alta Reg 124/2010*, Rule 7.3. [TAB 22]

predictable, consistent, and fair to both parties. The procedure and the outcome must be just, appropriate, and reasonable. The key considerations are:

- a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?
- b) Has the moving party met the burden on it to show that there is either "no merit" or "no defence" and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
- c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party's case, by identifying a positive defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.
- d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.<sup>81</sup>

54. The Court has confirmed that there will be no genuine issue requiring a trial when the process:

- (a) allows the judge to make the necessary findings of fact;
- (b) allows the judge to apply the law to the facts; and
- (c) is a proportionate, more expeditious and less expensive means to achieve a just result.<sup>82</sup>

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<sup>81</sup> [Weir-Jones](#) at para. 47. [TAB 1]

<sup>82</sup> [Weir-Jones](#) at para. 25. [TAB 1]

**B. Summary Judgment Warranted for Compeer's Fraud Claims**

**1. Cause of Action Arising from a Cheque Kiting Fraud**

55. The Court has described cheque kiting as follows:

Essentially, the illegal practice of "cheque kiting" begins when a cheque is issued from a bank account whose balance is insufficient to cover it. To create confusion, money is recorded in more than one bank account at one moment in time. In most cases, the money is in transit or quite simply fictitious. The circulation of cheques between various accounts is jointly controlled...

Thus, cheques and registered funds are circulated from one bank to another and from one account to another, in a manner that maintains fictitious bank balances in some accounts while depositing the very same amounts in other accounts.

Obviously, masterminds who undertake this type of fraud take advantage of the clearance periods that are inherent to cheque processing in the banking system.

Cheques are circulated so quickly that an account at one banking institution is debited one day and credited the next. Over time, the false increase in bank balances varies from one bank to another, until one of the banks involved realizes that it is part of a kiting scheme and denounces the fraud...<sup>83</sup>

56. Where the pattern and frequency of cheques takes the cheque writing practice out of the realm of innocently benefiting from delays in the banking system, cheque kiting with a fraudulent intent will be assumed.<sup>84</sup> Cheque kiting conduct is deceitful: transactions are presented as legitimate while creating an artificial float to obtain funds which the perpetrator is not entitled to. This can give rise to judgment in fraud.<sup>85</sup>

57. Cheque kiting is inherently fraudulent<sup>86</sup> and has long been recognized as being a form of fraudulent misrepresentation.<sup>87</sup> A cause of action in fraudulent misrepresentation consists of four elements:

- (a) A representation was made;
- (b) The representation was false;

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<sup>83</sup> *Royal Bank of Canada v. Location Bristar Idealease Inc.*, 2012 QCCS 211 at paras. 7-10 [TAB 2]

<sup>84</sup> *Lloyd's London, Non-Marine Underwriters v. National Armoured Ltd.*, 1996 CanLII 8104 at para. 106. [TAB 3]

<sup>85</sup> *Royal Bank of Canada v. Hejna*, 2013 ONSC 1719 ["Hejna"] aff'd 2014 ONCA 306 at para. 92. [TAB 4]

<sup>86</sup> *Hejna*, supra at para. 87. [TAB 4]

<sup>87</sup> *Hejna*, supra at para. 92 [TAB 4]; *McCrea (Plaintiff): Respondent v. Barhan-Jenkins, Commission Company (Defendant) Appellant and Raby (Defendant)*, 1930 CanLII 652 [TAB 5]

- (c) The false representation was made knowingly, without belief in, or with indifference to its truth; and
- (d) The plaintiff relied on the representation.<sup>88</sup>

58. These elements are satisfied for each of the Canadian Sunterra Entities, Ray Price, Debbie Uffelman, and Craig Thompson.<sup>89</sup>

## **2. Canadian Sunterra Entities and the Individual Defendants Committed Fraudulent Misrepresentation**

### **(a) False Representation Inherent in Cheque Issuance**

59. Inherent in issuing a cheque is the representation by the issuer that the issuer has funds available to honour the cheque.<sup>90</sup> Each of the Canadian Sunterra Entities issued numerous cheques payable to Compeer for deposit into the Compeer Accounts held by the US Sunterra Entities. The Canadian Sunterra Entities in presenting cheques for deposit, represented they had sufficient funds to honour the cheques. Each of Ray Price, Debbie Uffelman, and Craig Thompson participated in the issuance of the NSF cheques to Compeer:

- (a) Ray Price's own evidence is that he – as the most senior executive officer of the Canadian Sunterra Entities – personally directed Debbie Uffelman and Craig Thompson to carry out the kiting scheme and so directed that the misrepresentations they made through the issuance, signing, and depositing of cheques, occur;
- (b) Both Debbie Uffelman and Craig Thompson were intimately involved in the process of signing, issuing, delivering, and presenting the cheques to Compeer for deposit. In doing so they represented to Compeer that the Canadian Sunterra Entities had sufficient funds to honour the cheques.

60. The representations made (that there were sufficient funds to pay the cheques) were false. The Canadian Sunterra Entities did not actually have funds available to honour the

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<sup>88</sup> *Alberta Securities Commission v Hennig*, 2021 ABCA 411 at para. 110. [TAB 6]

<sup>89</sup> In addition to fraudulent misrepresentation, carrying out the cheque kiting fraud engages other causes of action, including civil conspiracy.<sup>89</sup> This cause of action was pled as an alternative basis for relief. For the purposes of this application it is unnecessary to address these causes of action as the ultimate remedy arising from these causes of action would be the same and summary judgment can be granted on the basis of fraudulent misrepresentation alone.

<sup>90</sup> *Rex v McManus*, [1924] 3 DLR 297, 1923 CanLII 441 at page 256 [TAB 7]: "The mere fact of a person giving a cheque when he knows he has no money in the bank to meet the cheque is a **false representation**".



cheques that had been deposited. By kiting cheques (through the admitted "account coverage practice"), the temporary illusion of funds could be maintained, but in totality, there were no funds to support the cheques: only float. There can be no dispute that funds did not exist as, when the scheme unraveled, there were insufficient funds and Compeer suffered a loss. If the cheques that were being issued were supported by funds, this would not have occurred.

**(b) Knowledge of the Fraudulent Representations**

61. The Canadian Sunterra Entities knew there were insufficient funds to support the cheques. The Canadian Sunterra Entities operated under common control and management with the US Sunterra Entities and, as has been conceded by its senior executive officers (Ray Price, Debbie Uffelman, and Craig Thompson) through its "account coverage practice", corporate records were maintained tabulating precisely how much float was being generated and taken advantage of, and calculating the quantum of the shortfall in terms of the actual funds that the Canadian Sunterra Entities had available net of the cheques that had been cycled as part of the kiting scheme.

62. Each of Ray Price, Debbie Uffelman, and Craig Thompson knew that the representation that the Canadian Sunterra Entities had sufficient funds to honor the cheques was false. They have admitted that they actively and knowingly carried out all the elements of the kiting scheme and knew that there were insufficient funds to cover the cheques that were being issued.

63. That they had knowledge is reinforced by their conduct. Ray Price misrepresented to Compeer the status of the Sunterra Group's financial situation and the purpose of the cheques by repeated reference to business transactions being the underlying explanation for the cheques. Ray Price ultimately conceding in cross-examination that he knew that cheques were not tethered to commercial activity (only speculating that some might have been). Craig Thompson maintained the spreadsheet to track the scheme, and took active steps to generate cheques that were in random smaller amounts than was actively being kited (and so, would have provided support to Ray Price's advice that the cheques were associated with business transactions rather than kiting activity). Debbie Uffelman reviewed Craig Thompson's work on a daily basis and conceded she attended meetings where Ray Price provided explanations to Compeer for the use of cheques but stayed silent. She did this despite knowing the truth.

These false explanations and deceptions would not have been necessary if the conduct was thought to be legitimate.

64. Together, Ray Price, Debbie Uffelman, and Craig Thompson actively and persistently participated in the cheque kiting scheme. They did this knowing that the very purpose of the cheques was to conceal the shortfalls in the Compeer and NBC accounts and obtain access to funds to which they were not entitled.

**(c) Compeer Relied on the Representations and Suffered Loss**

65. Compeer relied on the representation made by the Canadian Sunterra Entities, Ray Price, Debbie Uffelman, and Craig Thompson, by accepting the cheques issued from the accounts of the Canadian Sunterra Entities and permitting the US Sunterra Entities to use the funds that were being deposited before those funds made their way to Compeer through the process of cheque clearance. At all material times, Compeer believed that Sunterra had the funds to back the cheques that they were depositing. Compeer credited the Compeer Accounts of the US Sunterra Entities based on that belief. Once the fraud unraveled, Compeer was left with a loss. Had the truth been known, Compeer would have closed Sunterra's accounts. The Canadian Sunterra Entities, Ray Price, Debbie Uffelman, and Craig Thompson are liable for the fraud.

**C. The Guarantor is Liable on the Guarantee**

66. Following discovery of the fraud, Compeer demanded payment from the Guarantor to satisfy the liabilities incurred by the US Sunterra Entities and Lariagra. These liabilities arose as a consequence of the fraud associated with the credit that had been extended by Compeer. The guarantees are unambiguous and the Guarantor should be held to its obligations. No evidence has been tendered in response to Compeer's claim against the Guarantor. There is no genuine issue requiring a trial and no defence, the Guarantees are valid and enforceable.

**D. Quantum**

67. Before the fraud unraveled, there were positive balances in the accounts held by the US Sunterra Entities with Compeer. Once the fraud was uncovered and cheques that had been deposited (and credited) came back NSF, those same accounts then had a negative balance of of USD \$35,924,307.05 by February 28, 2025. Which has since increased as a result of interest

and costs associated with recovery to \$37,326,682.29 as of November 13, 2025.<sup>91</sup> This amount represents Compeer's loss.

**E. Sunterra's Defence is Without Merit**

**1. Defences in the Context of Summary Judgment**

68. Two defences have been asserted in response to Compeer's claim, neither of which are meritorious:

- (a) Sunterra argues that Compeer knew or ought to have known about the cheque kiting and therefore acquiesced to being defrauded; and
- (b) Compeer failed to mitigate its damages by seeking and obtaining the appointment of a Receiver in the United States and conducting the liquidation of the assets of the US Sunterra Entities in a way that Sunterra disagrees with.

69. The onus is on a respondent in asserting a defence, to put its best foot forward and demonstrate a meritorious defence on the record raising a genuine issue requiring a trial to resist summary judgment.<sup>92</sup> This does not obligate Compeer to disprove defences. Further, this Court has held that "the plaintiff-applicant does not need to *disprove* positive defences for which the defendant has the onus of proof ... the identification of positive defences is one way that a defendant-respondent can meet its burden in resisting summary judgement."<sup>93</sup> Sunterra asserts what are effectively two positive defences: Compeer caused its own loss by acquiescing to the fraudulent conduct and Compeer failed to properly mitigate its losses. There is no merit to either.

**2. Blaming the Victim is Not a Defence**

70. Courts have held that "A person who commits fraud on another person cannot blame the victim by telling him that he should have watched his money more carefully".<sup>94</sup> Even if Compeer could have discovered the fraud sooner (which it could not have due to the misrepresentations and concealment by Ray Price, Debbie Uffelman, and Craig Thompson and

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<sup>91</sup> Affidavit of Steve Grosland sworn November 2025 at paras. 4 and 6.

<sup>92</sup> *Weir-Jones, supra* at paras. 17 and 47. [TAB 1] *JBuck and Sons v. Resource Land Fund V, LP*, [2023 ABKB 308](#) at para 7. [TAB 8]

<sup>93</sup> *McDonald v Sproule Management GP Limited*, [2023 ABKB 587](#) at para 56. [TAB 9]

<sup>94</sup> *International Longshore & Warehouse Union Local 502 v. Ford*, [2014 BCSC 65](#) at para. 12 [TAB 10]; *Wilson v. Bobbie*, [2006 ABCQB 22](#) at paras. 20-26. [TAB 11]

the lack of knowledge Compeer had about the NBC accounts) a victim's negligence or carelessness affords no defence, partial or otherwise, to an allegation of dishonesty. This includes any operation of the Alberta *Contributory Negligence Act*.<sup>95</sup> The defence Sunterra seeks to articulate in this case has been categorically rejected by the Supreme Court of Canada:

The appellants' concept of a due diligence defence in a fraud case was rejected over 125 years ago by Lord Chelmsford L.C. who said, "when once it is established that there has been any fraudulent misrepresentation or wilful concealment by which a person has been induced to enter into a contract, it is no answer to his claim to be relieved from it to tell him that he might have known the truth by proper inquiry. He has a right to retort upon his objector, 'You, at least, who have stated what is untrue, or have concealed the truth, for the purpose of drawing me into a contract, cannot accuse me of want of caution because I relied implicitly upon your fairness and honesty'".<sup>96</sup>

71. Compeer, and in particular Mr. Rue, relied on the fairness and honesty of Ray Price, Debbie Uffelman, and Craig Thompson. They lied and made misrepresentations to him and Compeer to carry out the scheme and to conceal it. The uncontradicted evidence is that when Ray Price admitted to Mr. Rue what was going on in February of 2025, Mr. Rue was shocked that he had been deceived. Compeer promptly took steps to intervene to prevent the fraud from continuing though, by that point, the damage for which Compeer seeks recovery in this action had already been done.

72. Compeer never knew of the scheme and there is no rational reason why it would permit the fraud (*being perpetuated against it*) to continue if it did know. Obviously, the exact opposite happened as soon as it was discovered. No evidence has been tendered to suggest that anyone from Compeer actively consented. To the contrary, the evidence of each of Ray Price, Debbie Uffelman and Craig Thompson is that they did not share with Compeer specific information about what was going on in relation to the "account coverage practice" or advise Compeer that cheques were being issued without sufficient funds to honour them. There was no consent or acquiescence. Such consent was never asked for (because it never would have been granted).

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<sup>95</sup> *Lepine v. Sherwood Park Dodge Chrysler Jeep Ltd.*, [2018 ABPC 12](#) [*Lepine*] at paras. 134-170 [TAB 12]; *Kowal v. Sun Star Energy Inc.*, [2020 ABQB 244](#) at paras. 392-393 [TAB 13]; *Kelemen v. El-Homeira*, [1999 ABCA 315](#) at para. 26 [TAB 14]; *Ontario v Madan*, [2023 ONCA 18](#) at paras. 18-19 [TAB 15]; and *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.* [2002 SCC 19](#) [*Sylvan*] at paras. 69-70. [TAB 16]

<sup>96</sup> *Sylvan*, *supra* at paras. 69-70 [TAB 16]

73. In the absence of positive consent, Sunterra's position boils down to an allegation that Compeer did not act diligently enough. As noted above, in law, this cannot be a defence to fraud. However, even if it could, the facts here do not support Sunterra's position. Compeer did not have access to the bank account records for the accounts the Canadian Sunterra Entities held with NBC (though this information was known to the Canadian Sunterra Entities and was accessed and reviewed on a daily basis by Craig Thompson and Debbie Uffelman). Without that information, it would have been impossible for Compeer to have, on its own, discovered that the cheques that were being issued were unsupported by funds. Issuing cheques between accounts is not in and of itself fraudulent, regardless of how many cheques are issued (or for what amounts). Any assertion that Compeer knew that the Sunterra entities were issuing cheques misses the point. Knowledge of cheques is not knowledge of fraud. The deception is that cheques are being issued with no underlying funds and that fact is concealed (potentially indefinitely) by the kiting of the cheques. New cheques cover up the fact that no funds were available to support the old.

74. Ultimately, Compeer trusted its customer in circumstances where Compeer was being deceived. Compeer's relationship manager was told, and believed, that the cheques that were being issued were for a legitimate business purpose. Those that lied and perpetuated a dishonest scheme to obtain funds should be held to account. That their deception was effective is no defence.

### **3. Alleged Mitigation Concerns are a Meritless Collateral Attack**

75. Compeer has acted appropriately in taking reasonable steps to mitigate its damages and preserve its security, through the issuance of demands and the seeking of an appointment of a Receiver in the United States.<sup>97</sup> Compeer was entitled to the appointment of the Receiver under the Security Agreements executed by Ray Price and/or Debbie Uffelman.<sup>98</sup> This process was endorsed and approved by the U.S. Court (who holds jurisdiction over the US Sunterra Entities as they are corporations in the United States) with notice to the US Sunterra Entities – which

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<sup>97</sup> Grosland Affidavit at paras. 36-40.

<sup>98</sup> Grosland Affidavit at Exhibits '4', '5' and '6' at para. 5.2.

were represented by counsel throughout the process in the United States – and with their participation.<sup>99</sup>

76. Although Compeer has to date received no proceeds, the Receiver sold assets in accordance with the Receiver's powers and pursuant to a Court approved sale.<sup>100</sup> Parties were provided an opportunity to object to the sale and in fact objections were received. Notwithstanding those objections, the Court found that the Receiver marketed the assets and there were no offers competitive with the offer chosen and that the sale was an exercise of the Receiver's reasonable business judgment, in the best interest of the estate and its creditors.<sup>101</sup>

77. Rather than a fire sale as suggested by Arthur Price, the evidence of Mr. Grosland is that the pigs sold through the receivership attracted a premium price.<sup>102</sup> The evidence before the U.S. Court was that the industry standard price for pigs is \$100 per pig, the price under the purchase agreement approved by the court was greater, at \$143.66 per pig.<sup>103</sup>

78. Sunterra proposed an alternative arrangement that would have seen Compeer continuing to extend credit to Sunterra in hopes that its business would one day, years later, be able to generate the funds required to repay the stolen amounts. Arthur Price now claims that Compeer erred and should be faulted for refusing to accept that arrangement. That arrangement was absurd on its face and, as described by the U.S. Court, was in essence "If we would be funded, there would be a payoff within eight years."<sup>104</sup> In rejecting that proposal, the U.S. Court noted that it was speculative, there was no concrete evidence to consider that proposal, the proposal would have required Compeer to fund the plan indefinitely and the U.S. Court did not think it was appropriate to do so.<sup>105</sup>

79. The Respondents argue that Compeer failed to mitigate its damages, seeming to suggest Compeer should have continued to permit their perpetuation of the kiting scheme, on the theory that Compeer could have avoided losses (which, at the highest, would have shifted the losses to NBC) or agreed to accept a restructuring proposal that would have necessitated that

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<sup>99</sup> Grosland Affidavit at Exhibit '29', para. 1.

<sup>100</sup> Grosland Affidavit at Exhibit '30'.

<sup>101</sup> Grosland Affidavit at Exhibit '30' at page 4.

<sup>102</sup> Grosland Transcript at Page 66, Line 7 to Page 67, Line 15.

<sup>103</sup> Affidavit of Stephanie Dumoulin sworn on November 17 [ "**Dumoulin Affidavit**" ], Exhibit 'E' at page 11.

<sup>104</sup> Dumoulin Affidavit, Exhibit 'E' at page 20.

<sup>105</sup> Dumoulin Affidavit, Exhibit 'E' at page 21.

Compeer extend further credit in hopes of being repaid over a number of years. This is not what is required by a party in terms of mitigation.<sup>106</sup>

80. While the Respondents may not be satisfied with the steps taken in the U.S. Receivership, their remedies were to appeal those decisions (which they did not do), not to seek to relitigate them in these proceedings. Such arguments are barred as they are a collateral attack on the U.S. insolvency proceedings.

**F. Declarations Sought under the CCAA are Appropriate**

81. The CCAA prohibits a compromise or arrangement in respect of certain types of claims, including those based on allegations of misrepresentation or wrongful or oppressive conduct.<sup>107</sup> This Court has confirmed that allegations against directors based on wrongful or oppressive conduct are not to be included in a compromise or arrangement whether brought by "creditor" or any other party and has permitted such claims to proceed notwithstanding the stay of proceedings.<sup>108</sup>

82. Courts have held that cheque kiting is the type of activity that gives rise to claims that should be preserved and not compromised by the operation of either section 5.1 or 19(2) of the CCAA. In *Hejna*, a case dealing with cheque kiting, the Court found that the claims against the defendant would survive.<sup>109</sup> While such a determination was made in the bankruptcy context, the Supreme Court of Canada has held that section 178(1)(e) is analogous in every respect" to Section 19(2)(d) of the CCAA.<sup>110</sup>

83. The collateral declarations that Compeer seeks permit it to move forward with seeking recovery for conduct and claims that could not be compromised by the CCAA:

- (a) The claims of Compeer against the Canadian Sunterra Entities (or any judgment arising from such claims) are debts or liabilities resulting from obtaining property or services by false pretenses or fraudulent misrepresentations and so

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<sup>106</sup> *La Trace v. Warkentin Building Movers*, [2025 ABKB 412](#) at para. 307-312. [TAB 17]

<sup>107</sup> *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#) at sections 5.1(2) and 19(2)(d). [TAB 23]

<sup>108</sup> *Liberty Oil & Gas Ltd. (Companies' Creditors Arrangement Act)*, [2002 ABQB 949](#) at para. 5-9. [TAB 18]

<sup>109</sup> *Hejna*, *supra* at paras. 89-92. [TAB 4]

<sup>110</sup> *Montreal (City) v Deloitte Restructuring Inc.*, [2021 SCC 53](#) at para. 24 [TAB 19]; *Poonian v. British Columbia (Securities Commission)*, [2024 SCC 28](#) at para. 58. [TAB 20]

are exempt from any compromise or arrangement pursuant to Section 19(2) of the *CCAA*.

- (b) The claims of Compeer as against Ray Price, Debbie Uffelman, and Craig Thompson (or any judgment arising from such claims) are claims arising from misrepresentations made by those individuals and their fraud is wrongful and oppressive conduct that would be exempt from any release that might be granted in connection with any compromise or arrangement pursuant to Section 5.1(2)(b).

84. Similarly, Compeer seeks declaratory relief confirming that any claims that Compeer might seek to pursue against Arthur Price, David Price, or Glen Price (as they are directors of the Canadian Sunterra Entities and Sunterra Enterprises) are preserved. There is no prejudice to any parties in granting the declarations sought, as it simply preserves entitlements as they relate to claims that could not, in any event, be subject to releases given the operation of Section 5.1(2)(b) of the *CCAA*.

## **V. RELIEF SOUGHT**

85. Compeer has suffered significant losses arising out of the protracted and intentional cheque kiting fraud. The Canadian Sunterra Entities, Ray Price, Debbie Uffelman, and Craig Thompson all knowingly participated in the fraud. There is no merit to any of the defences advanced by these parties, all of which would operate to permit them to retain the benefit of the fraud. Compeer's application should be granted and the following relief directed:

- (a) Summary judgment as against Sunterra Farms Ltd., Sunwold Farms Limited, Ray Price, Debbie Uffelman, and Craig Thompson in the amount of \$ 35,330,968.94 USD, plus interest in accordance with the *Judgment Interest Act*;
- (b) summary judgment as against Sunterra Enterprises Inc. in the amount of \$29,132,187.91 USD;
- (c) A declaration that the judgment of Compeer, arising from the Action against Sunterra Farms Ltd. and Sunwold Farms Limited, are debts or liabilities resulting from obtaining property or services by false pretenses or fraudulent




misrepresentations and so are exempt from any compromise or arrangement pursuant to Section 19(2) of the *CCAA*;

- (d) A declaration that the judgment of Compeer, arising from the Action as against Ray Price, Debbie Uffelman, and Craig Thompson, are claims arising from fraudulent misrepresentations made by those individuals or the wrongful or oppressive conduct of those individuals and so are exempt from being released in connection with any compromise or arrangement pursuant to Section 5.1(2)(b) of the *CCAA*;
- (e) A declaration confirming that any Claims (as defined in the Claims Procedure Order) that Compeer may have as against certain directors of Sunterra Farms Ltd., Sunwold Farms Limited, and Sunterra Enterprises Inc., namely, David Price, Arthur Price and Glen Price, and any outstanding claims that Compeer may have as against Ray Price, remain subject to further order unaffected by the *CCAA* Action; and
- (f) Costs of this application on a solicitor and client basis.

86. ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 19<sup>th</sup> day of November, 2025.

Estimated Time for  
Argument: 240 minutes

BENNETT JONES LLP

Per:   
\_\_\_\_\_  
Keely Cameron/Lincoln Caylor/Nathan  
Shaheen/Mathieu LaFleche, Counsel for the  
Respondent,  
Compeer Financial, PCA

## VI. TABLE OF AUTHORITIES

Tab	Jurisprudence
1.	<i>Weir-Jones Technical Services Incorporated v. Purolator Courier Ltd.</i> , <a href="#">2019 ABCA 49</a>
2.	<i>Royal Bank of Canada v. Location Bristar Idealease Inc.</i> , <a href="#">2012 QCCS 211</a>
3.	<i>Lloyd's London, Non-Marine Underwriters v. National Armoured Ltd.</i> , <a href="#">1996 CanLII 8104</a>
4.	<i>Royal Bank of Canada v. Hejna</i> , <a href="#">2013 ONSC 1719</a> aff'd <a href="#">2014 ONCA 306</a>
5.	<i>McCrea (Plaintiff:) Respondent v. Barhan-Jenkins Commission Company (Defendant) Appellant and Raby (Defendant)</i> , <a href="#">1930 CanLII 652</a>
6.	<i>Alberta Securities Commission v. Hennig</i> , <a href="#">2021 ABCA 411</a>
7.	<i>Rex v McManus</i> , [1924] 3 DLR 297, <a href="#">1923 CanLII 441</a>
8.	<i>JBuck and Sons v. Resource Land Fund V, LP</i> , <a href="#">2023 ABKB 308</a>
9.	<i>McDonald v. Sproule Management GP Limited</i> , <a href="#">2023 ABKB 587</a>
10.	<i>International Longshore &amp; Warehouse Union Local 502 v. Ford</i> , <a href="#">2014 BCSC 65</a>
11.	<i>Wilson v. Bobbie</i> , <a href="#">2006 ABQB 22</a>
12.	<i>Lepine v. Sherwood Park Dodge Chrysler Jeep Ltd.</i> , <a href="#">2018 ABPC 12</a>
13.	<i>Kowal v. Sun Star Energy Inc.</i> , <a href="#">2020 ABQB 244</a>
14.	<i>Kelemen v. El-Homeira</i> , <a href="#">1999 ABCA 315</a>
15.	<i>Ontario v. Madan</i> , <a href="#">2023 ONCA 18</a>
16.	<i>Performance Industries Ltd. v. Sylvan Lake Golf &amp; Tennis Club Ltd.</i> , <a href="#">2002 SCC 19</a>
17.	<i>La Trace v. Warkentin Building Movers</i> , <a href="#">2025 ABKB 412</a>
18.	<i>Liberty Oil &amp; Gas Ltd. (Companies' Creditors Arrangement Act)</i> , <a href="#">2002 ABQB 949</a>
19.	<i>Montreal (City) v. Deloitte Restructuring Inc.</i> , <a href="#">2021 SCC 53</a>
20.	<i>Poonian v British Columbia (Securities Commission)</i> , <a href="#">2024 SCC 28</a>

Tab	Legislation
21.	<i>Canada Evidence Act</i> , <a href="#">RSC 1985, c C-5</a>
22.	<i>Alberta Rules of Court</i> , <a href="#">Alta Reg 124/2010</a> , vol 1
23.	<i>Companies' Creditors Arrangement Act</i> , <a href="#">RSC 1985, c C-36</a>