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COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF/[RESPONDENT	COMPEER FINANCIAL PCA
DEFENDANTS/APPLICANTS	SUNTERRA FARMS LTD., SUNWOLD FARMS LIMITED, SUNTERRA ENTERPRISES INC., RAY PRICE , DEBBIE UFFELMAN, CRAIG THOMPSON, DAVID PRICE, ARTHUR PRICE and GLEN PRICE

DOCUMENT

BRIEF OF THE APPLICANT

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**BRIEF OF THE APPLICANTS, SUNTERRA FARMS LTD ET AL, REGARDING OBJECTIONS MADE
DURING ORAL SUBMISSIONS ON DECEMBER 4, 2025**

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I. INTRODUCTION

1. On the December 4, 2025 of this Action No. 2501-19283 (the “Compeer Action”), counsel for the defendants in the Compeer Action (hereafter referred to as “Sunterra”) made objections in oral submissions concerning the production of certain evidence before the court by the plaintiffs in this action, Compeer Financial, PCA (hereafter referred to as “Compeer”).
2. This brief shall focus only on the grounds for these objections in the Compeer Action, and shall not address any objections made by Sunterra during:
 - (a) The oral reply of Compeer on December 5, 2025; or
 - (b) The oral submissions of the plaintiffs in Action No. 2501-06120 (the NBC Action”) on December 4, 2025

II. FACTS

3. On June 19, 2025 Nicholas Rue of Compeer (“Rue”) sworn an affidavit in the Compeer Action (the “Rue Affidavit”). At paragraph 61 of the Rue Affidavit, Rue states that “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.”¹ [emphasis added].
4. On September 5, 2025, Ray Price of Sunterra (“Price”) sworn an affidavit in the Compeer Action (the “Price Affidavit”). In the Price Affidavit, Price provided the following evidence:
 - (a) That as “part of the Account Coverage practice, we have worked to manage the cash flow needs between the Canadian Hog Farm Entities and the US Hog Farm Entities arising from the difference between cash accounting used in respect of taxation of the Canadian Hog Farm entities, and accrual accounting which is required to be used in the US for the US Hog Farm Entities”²
 - (b) That during a meeting in August 2022, Price had explained to Compeer that “that the Canadian Hog Farm Entities and the holding companies use cash accounting for taxation purposes, whereas the US Hog Farms Entities are required to use accrual accounting because of their Canadian ownership, and that we therefore work to minimize income in

¹ Affidavit of Nicholas Rue, sworn June 19, 2025, filed in these proceedings [*Rue Affidavit*] at para 61 [Joint Application Record TAB 24, Bates No. 000387]

² Affidavit of Ray Price, sworn September 5, 2025, filed in these proceedings [*Price Affidavit*] at para 7 [Joint Application Record TAB 37 at Bates No. 005639]

the US entities by deferring the payment for piglets supplied for up to two years. I explained that this necessitated a flow of funds between the companies in the US and Canada to help ensure adequate cash flow for the US Hog Farm Entities”³

- (c) The Price Affidavit additionally attached in exhibit “F” an email between Ray Price and Compeer from February 2025 containing a conversation concerning Sunterra’s LRP (Livestock Risk Protection) insurance coverage.⁴
5. On October 7th 2025, Price was cross-examined by Compeer on the Price Affidavit. At no time during this cross examination was Price ever questioned with respect to the topics outlined in paragraphs 4 (a) – (c) above. Price was further never examined by Compeer in any respect concerning:
- (a) Sunterra’s taxation practices
 - (b) Sunterra’s use of accrual accounting
 - (c) The truthfulness or accuracy of any statements made by Price to Compeer concerning (a) and (b) above.
6. On October 30, 2025 Compeer responded to the undertakings of Sunterra from the cross-examination of Rue. In response to Undertaking #13, Compeer produced an email from Ray Price to Compeer from October 2024, in which Price answered a question concerning Compeer’s borrowing base with Sunterra.⁵
7. On November 27, 2025, Compeer submitted its brief of argument in the Compeer Action (the “Compeer Brief”). At paragraph 44(a)-(b) of the Compeer Brief, Compeer states that:

*“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. 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). This explanation was false.”*⁶ [emphasis in original]

³ *Ibid* at para 25

⁴ *Price Affidavit*, *supra* note 2 at Bates No. RP Aff 000092

⁵ Undertaking Responses of Nicholas Rue, provided October 30, 2025 [Rue Undertakings] [Joint Application Record at Bates No. 010327]

⁶ Brief of Compeer Financial PCA, Submitted November 27, 2025, filed in these proceedings, at para 44

8. On December 4, 2025 Compeer made oral submissions in the Compeer Action. During its oral submissions, Compeer made the same claim with respect to the credibility or truthfulness of Price's statements concerning Taxes or accrual accounting as outlined in paragraph 7 above, and as evidence provided the court with the following documents:

- (a) The excerpt from paragraph 61 of the Rue Affidavit
- (b) Exhibit "F" of the Price Affidavit.
- (c) Undertaking #13 of the Rue Affidavit.

9. Sunterra objected to the production of this evidence on the grounds of the rule in *Browne v Dunn*.

III. ISSUES

10. Can counsel for Compeer advance the evidence outlined in both written and oral argument, as it is for the purpose of contradicting evidence by Sunterra?
11. Has counsel for Compeer fulfilled its obligations pursuant to the rule in *Browne v Dunn* to Price as a witness, and Sunterra as a defendant?

IV. ARGUMENT

A. *The Rule in Browne v Dunn*

12. If a party seeks to "suggest that a witness is not speaking the truth upon a particular point, his attention must be directed to the fact by cross-examination showing that that imputation is intended to be made, so that he may have an opportunity of making any explanation which is open to him".

***Browne v Dunn* [H.L.] (1894) 6 R.J. at page 70**

13. Further, "one party at a trial deliberately elects to fight one question on which he is beaten, he cannot afterwards on appeal raise another question, although that question was at the trial open to him on the pleadings and on the evidence.'

***Browne v Dunn* [H.L.] (1894) 6 R.J. at page 76**

14. In other words, if a party has neglected to challenge the statement of an affiant on a cross-examination, they cannot then attempt to discredit that statement at a later time, in argument, without having providing the affiant with the opportunity to provide explanation or support for their statements.
15. The rule in *Browne v Dunn* is not a procedural rule, but a rule of fundamental fairness in the legal system: this includes fairness to the witness who ought be given the opportunity to address a

contested point, fairness to the opposing party in the questioning, who ought to know on which points their witness's evidence will be contested, and fairness to the trier of fact in providing them with sufficient information to properly evaluate the credibility of the witness.

***R v Harris*, 2019 ABQB 456 at para 24**

16. The judge has broad discretion with respect to the rule in *Browne v Dunn*, and the judge must determine whether the failure to cross-examine the witness on the given point was unfair to the other side.

***R v Cormier*, 2023 ABKB 543 at para 7, quote *R v Sawatzky*, 2017 ABCA 179 at para 21**

17. The "rule" in *Browne v Dunn* requires an inquiry as to whether "a party leading evidence in chief that would contradict or impeach the evidence of the opposing party's witness on a significant matter without having first cross-examined the opponent's witness on the same matter?"
18. If is answered in the affirmative, the second inquiry is "what can be done to ensure fairness or cure the unfairness"?

***SSG v SKG*, 2022 ABQB 130 at para 163, quoting *Chandoo c. R.*, 2018 QCCA 1429 at para 13**

19. "It is insufficient that a party 'know', in general terms, that his or her behaviour, parenting ability, or other facet of character will be attacked by the opposing party. It is neither fair, nor judicially efficient, to require witnesses to anticipatorily defend and explain themselves against as-of-yet unmade allegations."

***SSG v SKG*, 2022 ABQB 130 at para 164**

B. Compeer led evidence intended to contradict evidence of Sunterra

20. In both its oral and written submissions, Compeer submitted the affidavit of Rue, Exhibit R of the Price Affidavit, and the Undertaking of Nic Rue, in an attempt to contradict the assertions in the affidavit of Ray Price that he had made truthful statements to Compeer with respect to taxation and accrual accounting, and that he had disclosed such practices to Compeer.

C. This was evidence on a significant matter

21. Compeer's allegations of intentional deception and lying by Sunterra concerning the above-outlined matters form the backbone of Compeer argument for fraudulent misrepresentation by both Price and by all of the other named Defendants. In other words, Compeer is attempting to lead evidence on the core of the action in question, without having provided Price (or any Sunterra witness) with

any attempt to respond to such allegations and, further, are relying upon this lack of information, resulting from Compeer's failure to inquire on the contradictory evidence, in order to draw an adverse inference on the Sunterra Parties in support of their claim. This created a fundamental unfairness that deprived Price of leading evidence to weaken the contradictory assertions of Compeer.

D. Compeer failed to Cross-examine Mr. Price on this matter

22. As outlined above, at no time was Price ever asked on his cross-examination about any statements made with respect to accrual accounting, taxation, or operation costs. Nor was he ever questioned or cross-examined on the truthfulness of the statements he made to Compeer at any time.

E. This Action was Unfair to Price and to Sunterra

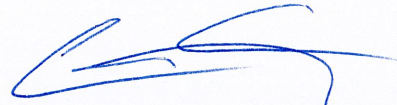
23. As stated in *SSG v SKG*, the obligation to inquire of Price with respect to contradictory evidence falls squarely with Compeer, and to require any disclosure from Price without having being asked such questions on cross-examination is unfair and judicially inefficient. Compeer, therefore, had the primary obligation in this matter, and did not meet that obligation.
24. This is therefore not only a clear breach of the rule in *Browne v Dunn*, but a clear breach warranting the exercise of judicial discretion and intervention in order to attempt to minimize the unfairness which has resulted from this breach.

V. CONCLUSION

25. In leading evidence in support of statements alleging to contradict the evidence of Price, without having provided Price with the opportunity on cross examination to respond to such statements in any capacity, was a clear breach of the rule in *Brown v Dunn* and therefore warrants the application of judicial discretion an the imposition of a remedy which would help to undo the unfairness resulting from such a breach.

RESPECTFULLY SUBMITTED THIS 15 day of December, 2024.

BLUE ROCK LAW LLP



Scott Chimuk, Counsel for Sunterra Farms Ltd
et al

VI. **AUTHORITIES**

<u>Tab</u>	<u>Authority</u>
1.	<i>Browne v Dunn</i> [H.L.] (1894) 6 R.J
2.	<i>R v Cormier</i> , 2023 ABKB 543
3.	<i>R v Sawatzky</i> , 2017 ABCA 179.
4.	<i>SSG v SKG</i> , 2022 ABQB 130
5.	<i>R v Harris</i> , 2019 ABQB 456