

**COURT OF APPEAL OF ALBERTA**

**Form AP-1**  
[Rules 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER:

TRIAL COURT FILE NUMBER: 2501 19283

REGISTRY OFFICE: Calgary

PLAINTIFF/APPLICANT: Compeer Financial, PCA

STATUS ON APPEAL: Respondent

DEFENDANT/RESPONDENT: Sunterra Farms Ltd, Sunwold Farms Ltd, Sunterra Enterprises Inc. and Ray Price

STATUS ON APPEAL: Appellant

DOCUMENT: **CIVIL NOTICE OF APPEAL**

APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION:

Blue Rock Law LLP  
700-215 9 Avenue SW  
Calgary AB T2P 1K3  
Attention: David W. Mann KC/Scott Chimuk  
Phone: (403) 605-3992/(587) 390-7041  
Fax: (825) 414-0831  
Email Address: david.mann@bluerocklaw.com  
scott.chimuk@bluerocklaw.com  
File No. 1375-00001

Registrar's Stamp

**WARNING**

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

**1. Particulars of Judgment, Order or Decision Appealed From:**

Date pronounced: January 27, 2026

Date entered: January 27, 2026

Date served: January 27, 2026

Official neutral citation of reasons for decision, if any:

(do not attach copy) **Compeer Financial PCA v Sunterra Farms Ltd, 2026 ABKB 57**

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

**2. Indicate where the matter originated:**

**Court of King's Bench**

Judicial Centre: Calgary

Justice: Michael J. Lema

On appeal from a King's Bench Applications Judge or a Justice of the Court of Justice?:

Yes  No

Official neutral citation of reasons for decision, if any, of the Applications Judge or Justice of the Court of Justice: (do not attach copy)

(If originating from an order of a King's Bench Applications Judge or a Justice of the Court of Justice, a copy of that order is also required: Rule 14.18(1)(c).)

**Board, Tribunal or Professional Discipline Body**

Specify Body: N/A

**3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).**

Permission not required, or  Granted:

Date:

Justice:

(Attach a copy of order, but not reasons for decision.)

**4. Portion being appealed (Rule 14.12(2)(c)):**

Whole, or

Only specific parts (if specific part, indicate which part):

All portions of the appeal aside from the rulings that Debbie Uffelman, Craig Thompson were not liable for fraudulent misrepresentation, and dismissing the applications against David Price, Glen Price and Arthur Price.

(Where parts only of a family law order are appealed, describe the issues being appealed, e.g. property, child support, parenting, etc.)

**5. Provide a brief description of the issues:**

The Honourable Justice M. Lema, in his decision on January 27, 2026, erroneously granted summary judgement against the Appellants, Sunterra Farms Ltd, Sunwold Farms Limited, Sunterra Enterprises Inc (the “**Corporate Defendants**”) and Ray Price (collectively, the “**Appellants**”), and further determined, incorrectly, that that the Appellants had engaged in and are liable for fraudulent misrepresentation against Compeer Financial, PCA (“**Compeer**”) and were subsequently liable for the losses claimed by Compeer in its application for summary judgement. Specifically, the Honourable Justice made errors of law, fact, and mixed fact and law in:

(a) Granting summary judgement against the Appellants, and specifically:

- a. Failing to apply the correct standard for summary disposition of a claim, and specifically
  - i. Shifting the burden of proof in summary disposition from the plaintiff to the defendant;
  - ii. Failing to adequately consider deficiencies in the evidentiary record;
  - iii. Evaluating the credibility of the Appellant deponents, when such issues of credibility were never raised by Compeer;
  - iv. Making determinations on the credibility of witnesses in the absence of *viva voce* evidence; and
  - v. Failing to evaluate whether there were genuine issues requiring trial.

(b) With respect to the retraction of cheques,

- a. Wrongfully rejecting the application of the Appellants requesting undertakings and further evidence with respect to the retraction of cheques;

- b. Ignoring that, if Compeer suffered a loss (which is denied), that the actual loss was not caused by a misrepresentation by the Appellants to Compeer but was the result of a retraction by the National Bank of Canada (“**NBC**”), and in failing to take any steps to assess whether the retraction was lawful;
  - c. Failing to assess whether a wrongful retraction was an independent intervening event for which NBC, and not the Appellants, would be liable; and
  - d. Failing to draw an adverse inference against Compeer for the lack of evidence on the issue of retractions, when Compeer refused to advance any evidence with respect to same, and further objected to and refused any questions and undertakings by the Appellants on the issue of retractions.
- (c) Failing to draw a negative inference against Compeer for its refusal to advance evidence concerning the source of its losses and, specifically, the retraction of cheques by NBC and Compeer;
- a. Accepting the quantum of damages identified by Compeer, despite no evidence being advanced to justify such a quantum; and
  - b. Reversing the onus for proof of quantum of damages, and requiring that Sunterra disprove the quantum of damages identified by Compeer.
- (d) Finding the Corporate Defendants liable for fraudulent misrepresentation and specifically:
- a. Applying the incorrect tests and burdens of proof for fraudulent misrepresentation;
  - b. Making findings on fraudulent misrepresentation by way of adverse inference, rather than evidence;
  - c. Shifting the burden of proof from the plaintiffs to the defendants for claims of fraudulent misrepresentation;
  - d. Failing to consider all relevant circumstances and factors in evaluating a claim of fraudulent misrepresentation;
  - e. Failing to consider causation in making a finding of fraudulent



evidence.

- (h) Accepting the evidence of Compeer as to “cheque kiting”.
- (i) Accepting and allowing the quantum of damages pled by Compeer, and specifically,
  - a. Reversing the onus of proof and finding that the Appellants had the duty to disprove the damages claimed rather than Compeer having the burden to prove those damages;
  - b. Finding the Appellants liable for damages despite no evidence with respect to same;
  - c. Allowing the quantum of damages despite having no evidence as to justification or support for that quantum, and despite such evidence being available to Compeer;
  - d. Ruling that Compeer had the opportunity to prove damages after the fact and after the conclusion of the application;
  - e. Making findings with respect to the existence and quantum of damages on the reliance of evidence previously struck from the record;
  - f. Allowing for a quantum of damages on the basis of an estimation not founded by evidence, and not confirmed or updated to reflect any actual damage suffered; and
  - g. Failing to account for the results of the sale of assets of the US Entities in the US Receivership process as well as the profits of the businesses within the US Receivership.
- (j) Failing to consider whether Compeer had behaved in a commercially reasonable manner in the circumstances.
- (k) In the alternative, determining that Compeer had behaved in a commercially reasonable manner despite no evidence to support such conclusions and therefore shifting the burden of proof to the Appellant.
- (l) Piercing the corporate veil between the Corporate Defendants and the US Entities, despite a lack of evidence being advanced by Compeer to satisfy the requirements for the piercing of the corporate veil.

- (m) Finding Ray Price personally liable for fraudulent misrepresentation, and specifically:
- a. Making a finding of personal liability by way of inference, rather than evidence; and
  - b. Making the same errors in the finding of liability for Ray Price as listed in (d) a-i above.
- (n) Finding that the defence of mitigation was not available to the Appellants, and specifically,
- a. Failing to evaluate the defence of mitigation on the correct standard; and
  - b. Erroneously relying upon a judgement of a court in the United States in evaluating the defence of mitigation, rather than evaluating the defence on its own merits.
- (o) Erroneously relying upon a judgement of the United States which had not been properly recognized pursuant to the procedure established in the *Companies Creditors Arrangement Act*.
- (p) Allowing a judgement of the United States to be entered as evidence in rebuttal submissions by Compeer, after closed of evidence and in violation of the Claims Procedure Order and other orders of the court regarding evidence.
- (q) Wrongfully ignoring the Appellants' argument that the steps taken in the US Receivership by Compeer were unreasonable and a failure to mitigate
- (r) Failing to consider the uncontested affidavit evidence of Arthur Price with respect to Compeer's failure to mitigate, despite no contradictory evidence being presented by Compeer with respect to same.
- (s) Relying upon the lack of steps taken by the Appellants in the US Receivership as evidence as to the Appellants, when the Appellants were not parties to the US Receivership.
- (t) Holding the Appellants liable for actions taken by the US Entities when,
- a. the US Entities were not named as parties to these proceedings; and
  - b. There were no allegations or evidence of civil conspiracy, collusion, or compliance between the Appellants and the US Entities.

- (u) Failing to strike out the contradictory pleadings of Compeer.
- (v) Making errors of procedural fairness in:
  - a. Refusing to grant the application of the Appellants of November 13, 2025 requesting further evidence and undertakings by Compeer;
  - b. Allowing Compeer to present further evidence, outside the scope and timeframe of the Claims Procedure Order and Consent Order agreed to by the parties; and
  - c. Allowing Compeer to submit and rely upon evidence which had been previously struck from the record.

**6. Provide a brief description of the relief claimed:**

The Appellant respectfully requests that the claim from the court below be dismissed in its entirety, with costs awarded to the Appellant.

**7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)**

Yes       No

**8. Does this appeal involve the custody, access, guardianship, parenting time, decision-making responsibility, contact or support of a child? (Rule 14.14(2)(b))**

Yes    No

**9. Will an application be made to expedite this appeal?**

Yes       No

**10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)**

Yes    No

**11. Could this matter be decided without oral argument? (Rule 14.32(2))**

Yes    No

**12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e), 14.83)**

Yes       No

If yes, provide details: See attached copy of Sealing Order (Attach a copy of any order.)

**13. List respondent(s) or counsel for the respondent(s), with contact information:**

**BENNETT JONES LLP**

Barristers and Solicitors  
4500, 855 – 2nd Street S.W.  
Calgary, Alberta T2P 4K7

Lincoln Caylor  
[caylorl@bennetjones.com](mailto:caylorl@bennetjones.com)  
Nathan J. Shaheen  
[shaheenn@bennettjones.com](mailto:shaheenn@bennettjones.com)  
Keely Cameron  
[cameronk@bennettjones.com](mailto:cameronk@bennettjones.com)  
Mathieu J. LaFleche  
[laflechem@bennettjones.com](mailto:laflechem@bennettjones.com)

Telephone No.: 403-298-3100  
Fax No.: 403-265-7219

*Counsel for Compeer Financial, PCA*

*If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).*

**14. Attachments (check as applicable)**

Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

Earlier order of Applications Judge, etc. (Rule 14.18(1)(c))

Order granting permission to appeal (Rule 14.12(3)(a))

X Copy of any restricted access order (Rule 14.12(2)(e))

*If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.*