Court of King's Bench of Alberta

Citation: Interra Energy Services Canada Ltd v Yangarra Resources Ltd, 2026 ABKB 387

Date: 20260520
Docket: 2301 15823
Registry: Calgary

Between:

Interra Energy Services Canada Ltd

Plaintiff

- and -

Yangarra Resources Ltd

Defendant

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

I. Introduction

[1] Interra Energy Services Canada Ltd ("Interra") entered into an agreement to provide fracking products and services to Yangarra Resources Inc ("Yangarra") in 2023. The Yangarra drilling program did not turn out as planned. Yangarra blamed Interra and refused to pay Interra's invoices for the supply of hydraulic fracturing ("Fracking") products and services. Interra commenced this action seeking payment of its invoices. Yangarra defended on the grounds that Interra had supplied defective products and negligent services and counterclaimed for what it styled "additional costs" and "production losses." Interra rejects Yangarra's claims and pleads that the limitation of liability provisions in the agreement between the parties preclude Yangarra's claims.

[2] Interra applied for: (1) summary judgment on its claim on the grounds that the products were provided and the services were rendered such that the invoices were payable; and (2) summary dismissal of the counterclaim based on the contractual limitations of liability. Applications Judge Farrington issued an unpublished Endorsement granting Interra's applications on May 1, 2025.

[3] Yangarra now appeals Applications Judge Farrington's decision. Since the decision, Yangarra has filed four additional affidavits. Interra cross-examined two of the affiants and filed the transcripts. Yangarra argues that the contract between the parties imposes duties on Interra and that Interra breached those duties. Yangarra submits that the limitations of liability are not part of the contract between the parties, and if the limitations of liability are a part of the contract, then the limitations of liability cannot be interpreted to extinguish Interra's liability to Yangarra. Yangarra submits that its arguments raise genuine issues for trial such that Applications Judge Farrington's decision granting summary judgment on Interra's claim and summary dismissal of Yangarra's counterclaim must be overturned.

II. Standard of Review and the "Dispiritingly Dysfunctional" Rule 6.14

[4] Appeals of Applications Judges are heard *de novo* and where no additional evidence is filed, the standard of review is correctness: ***Lesenko v Wild Rose Ready Mix Ltd***, 2024 ABKB 333 at paras 13-15. I explained at length almost two years ago in ***Lesenko*** that this is not a good thing for the administration of justice and is not required by the *Constitution*. Since then, several Justices of this Court have agreed that the standard of review for appeals of Applications Judges should be the normal appellate standard set out in ***Housen v Nikolaisen***, 2002 SCC 33. See, for example, ***Bruce Mintz Professional Corporation v Fairclough,*** 2026 ABKB 349 at para 2; ***10060 Jasper Avenue Building Limited v Scotia Place Tower III Inc,*** 2026 ABKB 275 at para 9; ***Liberty Land Corporation v Kinnear,*** 2026 ABKB 248 at paras 13 and 18; ***Opabin Sand and Gravel Inc v Tsuu T'ina Contracting Limited Partnership,*** 2025 ABKB 623 at para 35; ***Intact Insurance Company v 1063878 Alberta Ltd,*** 2025 ABKB 315 at para 12.

[5] The present appeal is best characterized as a *de novo* application because four affidavits attaching expert reports and two cross-examination transcripts have been filed since the Applications Judge's decision. For good measure, Yangarra retained new counsel for the appeal and advances some new arguments. Rule 6.14, as interpreted in ***Bahcheli v Yorkton Securities Inc***, 2012 ABCA 166 at para 16, permits Yangarra to adduce additional relevant and material evidence but in doing so it makes a mockery of the idea in ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49 at para 47 that "the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial." The presence of four additional affidavits on this appeal is a testament to the fact that Yangarra did not put its best foot forward before the Applications Judge.

[6] Justice Devlin in ***Radi v Audet***, 2024 ABKB 168 at para 37 was faced with an argument that Rule 6.14 applied to appeals from decisions of the Alberta Court of Justice and functioned to permit new evidence to be filed without meeting the standard in ***R v Palmer***, [1980] 1 SCR 759. He found that Rule 6.14 was limited to appeals of Applications Judge decisions and observed that it was a "dispiritingly dysfunctional rule [that] thankfully has no application in any other context." I could not agree more. And the present case with four new affidavits and two new cross-examination transcripts is an excellent example of why the rule is both dispiriting and

dysfunctional. When the record before the Applications Judge is transformed on appeal the whole exercise in front of the Applications Judge turns out to have been a colossal waste of time and money. Quite apart from the burden that this imposes on private litigants, permitting new evidence to be filed on Applications Judge appeals incentivizes the wrong behaviour in litigants to the detriment of the efficient management and fair allocation of a scarce public resource – court time.

[7] Counsel for Yangarra at the commencement of argument noted the views that I expressed concerning the standard of review and the use of new evidence in Applications Judge appeals in ***Lesenko*** and which I have repeated in the preceding paragraphs. I assured counsel that despite my conviction that the admission of new evidence and continued use of the correctness standard of review on appeals of Applications Judge decisions are contrary to the interests of litigants and the efficient administration of justice, I recognize that I am bound to apply the law as it is, not as I think it should be. Accordingly, I address the case before me on a *de novo* basis having regard to Applications Judge Farrington's reasons to the extent that they remain relevant given the additional evidence adduced since his decision.

III. The Summary Judgment Standard

[8] Rule 7.3(1)(a) provides that the Court may grant "summary judgment in respect of all or part of a claim" if "there is no defence to a claim or part of it" or if "there is no merit to a claim or part of it." The Supreme Court of Canada in ***Hryniak v Mauldin***, 2014 SCC 7at para 49 set out a three-part test to determine whether summary judgment is appropriate:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[9] Justice Slatter adopted this approach in ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49 at para 21.

IV. Background

[10] Interra made a proposal on March 1, 2023 to provide products and services to Yangarra. The proposal included, among other things, a copy of Interra's General Terms and Conditions (the "Ts&Cs"). Prior to Yangarra accepting Interra's proposal, there were discussions between the parties concerning the nature and scope of work. During these discussions, a representative of Interra indicated to Yangarra that questions about, amongst other things, the Ts&Cs were welcome.

[11] Yangarra subsequently agreed to two other Interra proposals to provide products and services that also included the Ts&Cs. As with the earlier proposal, Interra personnel indicated to Yangarra that questions about the proposals were welcome.

[12] The parties disagree whether the Ts&Cs were brought to the attention of Yangarra personnel, but it is not disputed that Yangarra personnel were aware that Ts&Cs were included with the various Interra proposals. However, the specific limitation of liability clauses in the Ts&Cs were not highlighted by Interra for Yangarra.

[13] The contract between the parties is comprised of the proposals and the communicated acceptance or acceptance by conduct. There is no formal signed agreement between the parties.

[14] Interra provided fracking products and services to Yangarra from March through August 2023 in respect of five wells. Both parties acknowledge that there were challenges in fracking the wells and it is alleged by Yangarra that the wells were not properly fracked because of Interra's defective products or negligent services.

[15] Yangarra paid Interra's first invoice but refused to pay all remaining invoices. Interra points out that some of the invoices were reduced because of discussions on site and the revised invoice totals were approved by Yangarra personnel on site. The unpaid invoices before interest total $853,889.40.

[16] Yangarra states that it did not discover the extent of the problems until after the wells were put into production and it realized that "production was far below what would have been expected had the Wells been successfully fracked with proper Zonal isolation."

[17] One of Yangarra's new experts opined that Interra's fracking system did not perform as intended. But he was unable to determine the root cause of the failure without obtaining further data and conducting engineering analysis of information concerning the design and manufacture of the fracking darts. Another of Yangarra's new experts concluded that the Wells did not produce as expected because they were not full fracked. He further explained that offsetting wells fracked using products from a different supplier performed much better and the only explanation for the difference is related to Interra's fracking system. Yangarra submits that the tentative conclusions of its experts reflect the need to obtain additional information through the pre-trial record production and questioning process.

V. Do the Terms & Conditions Form a Part of the Contract?

[18] A threshold question is whether the Ts&Cs, which include the limitation clauses, form part of the contract between Interra and Yangarra. Yangarra submits that the Ts&Cs are not a part of the contract because its personnel did not read the Ts&Cs and Interra did not bring the content of the Ts&Cs specifically to the attention of Yangarra personnel.

[19] Applications Judge Farrington made the following findings on this issue:

> There was no express attempt by Interra to specifically highlight or bring the Terms and Conditions to the attention of Mr. Latos. It appears that the Terms and Conditions were not read by anyone at Yangarra. Nevertheless, they were provided with the very quotes which formed the basis of the agreement between the parties.
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> ...
>
> Yangarra argues that the Terms and Conditions supplied by Interra do not form part of the contract because they were not specifically brought to its attention. I reject that argument.
>
> The Terms and Conditions were clearly included with the quotes. Interra and Yangarra were experienced entities in the oil and gas business. There was no inequality of bargaining power. Yangarra had every opportunity to review the

> Terms and Conditions in making its decision as to whether to proceed with Interra's products and services.

[20] At the outset, I note that the parties submitted that the law has one standard for the incorporation of standard form terms and conditions into a contract and a higher standard for the incorporation of limitations of liability into a standard form contract. Since the key provisions in question in the present case are limitations of liability, the discussion that follows focuses only on the inclusion of the limitations of liability.

[21] The law concerning liability exclusions in standard form contracts has its origins in the 19th century UK ticket cases. See, for example, ***Parker v South Eastern Ry Co***, (1877) 2 CPD 416. Building on those cases, Lord Denning in ***Thornton v Shoe Lane Parking Limited***, [1971] 1 All ER 686 considered when a person using a coin operated machine is bound by a limitation of liability purported to be imposed by the owner of the machine. He held at 689 that, "[t]he terms of the offer are contained in the notice placed on or near the machine stating what is offered for the money. The customer is bound by those terms as long as they are sufficiently brought to his notice before-hand, but not otherwise." See also, ***Jaques v Lloyd D. George & Partners Ltd***, [1968] 1 W.L.R. 625 at 630.

[22] Canadian law has adopted and developed the principle in the UK cases. Justice Fitzpatrick, as she then was, summarized Canadian law in ***Repap (aka Skeena) v Electronic Technology Systems, et al***, 2002 BCSC 539 at para 11(b):

> If a standard form document is not signed but is merely delivered to the other party, the terms upon which the delivering party wishes to rely must be brought to the notice of the contracting party before or at the time the contract is made. If it is not communicated until afterwards, it will be of no effect.

Justice B. Nixon, as he then was, in ***Nexen Energy ULC v ITP SA***, 2020 ABQB 83 at paras 235-39 accepted this as an accurate statement of the law of Alberta.

[23] A higher standard of notice applies where it is asserted that a limitation of liability is included in a standard form contract. The Ontario Court of Appeal in ***Tilden Rent-A-Car Co v Clendenning***, (1978) 18 OR (2d) 601 (CA) considered the enforceability of an exclusion clause in a standard form car rental agreement. Justice Dubin for the majority held at 609 that "the party seeking to rely on [an exclusion or limitation of liability clause] should not be able to do so in the absence of first having taken reasonable measures to draw such terms to the attention of the other party."

[24] Though Justice Dubin in ***Tilden*** was concerned about the power imbalance between the parties, the same principle is applied to commercial contracts between parties with equal bargaining power. Justice Tarnopolsky, considering an exclusion clause in a carriage of goods contract, explained in ***Trigg v MI Movers International Transport Services Ltd***, (1991) 4 OR (3d) 562 (CA) at 566: "the general rule is that a limitation or exemption clause is not imported into a contract unless it is brought home to the other party so prominently that he or she must be taken to have known it and agreed to it" This remains good law in Ontario: ***MacQuarie Equipment Finance Ltd. v. 2326695 Ontario Ltd. (Durham Drug Store)***, 2020 ONCA 139 at paras 33-36.

[25] Interra submits that the general rule stated in ***Trigg*** does not apply and relies instead on ***Motkoski Holdings Ltd v Yellowhead (County)***, 2010 ABCA 72. Yellowhead County sold land

to Mr. Motkoski and inserted a clause into the purchase and sale agreement that disclaimed any representations and warranties with respect to the condition of the soil on the property. This was significant because there was a possibility that the property had been used as a landfill. Mr. Motkoski persuaded the trial judge that the insertion of the clause disclaiming responsibility for the condition of the soil was concealed from him by Yellowhead County. The Court of Appeal overturned the trial judge and observed at para 72 that:

> It has never been the law that the party drafting an agreement must read it out loud to the other party, or must somehow insist that the other party read the whole contract before signing it. The law is clear that a party cannot sign a contract without reading it, and then later complain that he did not know what was in it. The agreement was given to Mr. Motkoski, and he was given ample opportunity to read it, review it, and discuss it with his advisers. He was invited to contact counsel for the appellant if he had any concerns. The disclaimer clause was there to be read, and this finding of "concealment" is a combination of errors of law and palpable and overriding errors of fact, as is any suggestion that any legal consequences flow from Mr. Motkoski's failure to read the contract.

[26] Though the Court in ***Motkoski*** does not expressly say so, its conclusion is an example of the application of the principle in ***L'Estrange v Graucob, Ltd***, [1934] 2 KB 394 where at 403 Scrutton LJ held that "[w]hen a document containing contractual terms is signed, then, in the absence of fraud, or, I will add, misrepresentation, the party signing is bound, and it is wholly immaterial whether he has read the document or not." The Court in ***Tilden*** explained that this principle, at least in Canada, does not apply to standard form agreements even if signed.

[27] Properly understood, ***Motkoski*** is not a rejection of the general rule stated in ***Trigg***. ***Motkoski*** must be distinguished on the facts. ***Motkoski*** did not involve a standard form because the purchase and sale agreement was drafted by counsel for the specific transaction in question. Moreover, because the Court of Appeal did not consider ***Trigg*** or any other cases involving exclusion or limitation of liability clauses in standard form contracts, it should not be taken to have rejected the well-established line of authority that includes ***Tilden*** and ***Trigg***.

[28] Interra further argues that the appropriate framework for considering the enforceability of limitation of liability clauses is found in ***Tercon Contractors Ltd v British Columbia (Transportation and Highways)***, 2010 SCC 4. But the framework in ***Tercon*** only applies once it has been determined that the limitation of liability clause is part of the contract. This is evident from ***MacQuarie*** where the Court decided the case on the question of whether there was sufficient notice of the limitation of liability clause without reference to ***Tercon***.

[29] Based on the law reviewed in the preceding paragraphs, I must determine if the question of whether limitations of liability in Interra's standard form Ts&Cs were brought to the attention of Yangarra is a genuine issue for trial.

[30] Interra submits that it discharged its onus by providing the Ts&Cs with each Interra proposal to Yangarra. The cover emails enclosing the proposals note that Ts&Cs are included with the proposals. The pages of the proposals and Ts&Cs are numbered sequentially indicating that the Ts&Cs form an integral part of the proposals.

[31] Mr. Latos, the Yangarra employee who received the Interra proposals, deposed that he did not read the Ts&Cs. Counsel for Yangarra cross-examined Mr. Malin, the Interra sales

manager who provided the proposals to Mr. Latos. Mr. Malin admitted on cross-examination that he did not point out to Mr. Latos or anyone else at Yangarra that the Ts&Cs included limitation of liability clauses. Indeed, he admitted that he did not identify for Yangarra any specific clauses in the Ts&Cs.

[32] Based on this evidence, I am persuaded that Interra should not have been granted summary dismissal in respect of the Yangarra counterclaim. Interra has an arguable position on the facts and law that it did not have sufficient notice of the limitation of liability clauses and that such clauses are not part of the agreement between the parties. This is a genuine issue for trial. I am further persuaded that the claim and counterclaim are intertwined such that it was inappropriate to grant summary judgment in respect of Interra's main claim. If Yangarra succeeds in establishing that the limitations of liability are not part of the contract, then it is possible that its other claims will succeed such that the contract amounts are not owing or there are losses that must be set-off against the contract amounts. The claim and counterclaim should proceed to trial together.

[33] At first glance, the result of this application may seem unfair because it allows a commercial party that did not read terms and conditions that were provided to it on multiple occasions to maintain its claim, but that is the result required by well established law. Some perspective may also be gained by considering how car rental contracts evolved after ***Tilden***. Now, when a person rents a car, they are typically required to put their initials or signature next to the limitations of liability to indicate that they have read and accept the provisions in the standard form rental agreement. This kind of simple innovation is available to all commercial parties that use standard form terms and conditions.

VI. Conclusion

[34] The decision of Applications Judge Farrington is set aside. If the parties are unable to agree on costs, they may make submissions of three pages or less supported by a bill of costs.

Heard on the 15th day of May, 2026.
Dated at the City of Calgary, Alberta this 20th day of May, 2026.

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

Appearances:

Craig O. Alcock and Hani Lee
for the Plaintiff

Andrew Wilson, KC and Chunyi Huang
for the Defendant