

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 99**

Date: **2026 05 20**
File No.: KBG-RG-02773-2024
Judicial Centre: Regina

BETWEEN:

TOTAL OILFIELD RENTALS LTD.

PLAINTIFF

- and -

PROSPER PETROLEUM LTD.

DEFENDANT

Counsel:

Paul J. Harasen
Scott Giroux

for the plaintiff
for the defendant

FIAT
May 20, 2026

DAVIS J.

I. Introduction

[1] The plaintiff company, Total Oilfield Rentals Ltd. [Total], rents out equipment for use in the oilfield. The defendant company, Prosper Petroleum Ltd. [Prosper], was engaged in fossil fuel extraction. Both companies operate in Saskatchewan and Alberta. The parties had dealings with each other in both provinces.

[2] In December 2022, Prosper contracted with Total for the provision of oilfield equipment to service some of its Saskatchewan oil wells. Total supplied that equipment and invoiced Prosper. Prosper did not pay its invoice. It did not pay because

it claimed that several years ago in Alberta, in an unrelated transaction, Total lost or converted some of Prosper's goods. Prosper wants to offset its historic losses against the value of the present-day equipment rental contract or otherwise deal with both claims at once.

[3] This decision is about the scope of an action under *The Builders' Lien Act*, SS 1984-85-86, c B-7.1 [*BLA*]. Total filed a Statement of Claim alleging that it provided services that improved the land. Prosper did not pay its invoice as required.

[4] Prosper filed a Statement of Defence in which it did not dispute its failure to pay the invoice. It did dispute the interest Total claims was payable under the contract, and it submitted that the parties agreed interest would not begin to accrue until at least August 31, 2023. The Statement of Defence claims that Total's historical obligations to Prosper should be set off against Prosper's obligation to pay its invoice.

[5] Additionally, Prosper filed a counter claim for damages arising out of Total's alleged historical loss of its property. It submitted it should receive damages or that these should be set off against the amount it owed Total.

[6] Total applies to strike the counterclaim as not being permissible in an action under the *BLA*. It submits the set-off defence should be struck as disclosing no reasonable defence, and that the defendant's pleadings should be struck as an abuse of process.

[7] I agree with Total that the counterclaim should be struck. The purpose of the *BLA* is to protect those who provide services and materials on credit, and to protect the commercial interests of others, including project financiers. This purpose is served, in part, through the restricted and expedited processes which the *BLA* creates to deal with claims.

[8] Allowing the defendant to proceed with its set-off and/or counterclaim, both of which arise from a wholly unrelated transaction many years ago in a different province, would frustrate that purpose. It would greatly complicate and prolong the trial while delivering virtually no efficiencies. The actions are wholly unrelated; there is no overlap in evidence or issues, and permitting either the set-off defence or counterclaim would slow and complicate what should be an expeditious process.

[9] As to the set-off defence, it is plain and obvious to me that it is bound to fail because the prerequisites for claiming a set-off defence have not been pled and cannot be established.

[10] In one respect, however, I feel compelled to permit the defence to proceed. Prosper agrees that it owes money to Total, but it disputes the quantum of that debt. Specifically, Prosper disputes the rate at which interest has been accruing, and the date from which interest began to accrue. The basis of the dispute is not a matter of accounting but involves questions of contractual interpretation which I cannot resolve on the materials in front of me.

[11] I am striking the set-off portion of Prosper's defence but permitting it to proceed with its dispute as to the nature and extent of its obligation to Total. However, Prosper should carefully consider whether it is reasonable and to its advantage to continue to press this aspect of its defence.

II. Essential facts

[12] Total and Prosper entered a contract with each other in December 2022. Under that contract, Total supplied oilfield equipment to Prosper to service the latter's oil wells in Saskatchewan. Clause 2 of the contract's terms and conditions provides for accrual of interest at 24% per year if payment is not made within 30 days of the invoice date. Total sent Prosper an invoice for \$71,540.84 on December 31, 2022. Prosper did

not pay that invoice. Total registered a lien against Prosper's mineral interests in the Saskatchewan well sites.

[13] Total filed its Statement of Claim in November, 2024. It seeks judgment in the amount of the invoice plus interest at the rate stipulated in the contract and a declaration that it has a valid builders' lien. The parties agree that Total's provision of equipment for use in the oil well sites constitutes an "improvement" in the meaning of s. 2(h) of the *BLA*, and that the *Act* is engaged.

[14] Prosper's counterclaim against Total relates to events that happened between 2016 and 2018 in Alberta. At that time, Prosper was storing a large amount of tubing at a third party's property. In March of 2016, Prosper asked Total to pick up the tubing and transfer it to Total's storage lot in Peace River, Alberta. Thereafter, Total became, in the defendant's words, a "gratuitous bailee" of Prosper's goods. That is because Total and Prosper never had a contract related to storing the tubing and Prosper never paid Total for this service.

[15] Between 2016 and 2017, Total transported various shipments of tubing to different purchasers at Prosper's request. Prosper received, and paid, invoices for these shipments. These invoices do not account for all the tubing that originally came into Total's possession. Roughly 159 joints of tubing, out of more than 400, do not appear to be accounted for in the invoices Prosper placed before the Court.

[16] Total disputes that any tubing remained in its possession after 2017, and, through affidavit evidence, attests that all Prosper's tubing was distributed in accordance with its requests. The Peace River lot closed in 2019.

[17] Between 2020 and 2023, Prosper made sporadic inquiries after its tubing. Representatives from Total attempted to determine whether any of Prosper's tubing remained in its possession at some other storage yard. These inquiries do not appear to

have yielded any information beyond what is outlined above.

[18] Prosper's Statement of Defence questions the interest payments which Total says are due to it. Prosper also claims a set-off defence related to the value of the 159 joints of tubing which it claims Total either lost or converted. It filed a counterclaim, related to the same tubing, in which it seeks damages including general damages of \$73,350.

[19] I may strike pleadings pursuant to Rule 7-9 of *The King's Bench Rules* where it is plain and obvious on the face of the pleadings that the claim or defence cannot succeed. Pleadings may be struck because they fail to disclose a reasonable cause of action or a reasonable defence, are frivolous or vexatious, or are an abuse of the Court's process. Striking – and especially striking without leave to amend – is a serious power which I must exercise sparingly. I may only strike pleadings where it is plain and obvious that the particular claim or defence must fail: *Nazeer v Fink*, 2025 SKCA 112 at paras 15-16.

[20] It is plain and obvious to me that Prosper's set-off defence and its counterclaim must fail. Accordingly, the counterclaim and portions of the Statement of Defence are struck. I first address why the counterclaim is not a permissible action under s. 89(2) of the *BLA*. I then address Prosper's claim that it owes Total a different amount of interest from what Total claims; I allow this aspect of Prosper's defence to proceed. Finally, I address why Prosper cannot raise a set-off defence in this action.

III. Should Prosper's counterclaim be struck as precluded under the *BLA*?

[21] I am striking Prosper's counterclaim because s. 89(2) of the *BLA* precludes Prosper from bringing it. Prosper's counterclaim is not permissible because it is not "related to the making of the improvement" as required by s. 89(2).

[22] Generally, a defendant may counterclaim against a plaintiff or against another defendant. *The King's Bench Rules* and the common law take a permissive approach to allowing a counterclaim to proceed unless doing so would “unduly complicate or delay the trial of the main action, or cause undue prejudice to any party”: Rule 3-46(3). Counterclaims need not relate to the subject matter of the original claim.

[23] When it comes to actions under the *BLA*, however, these general rules have been supplanted by more specific provisions: *Wellington Insurance Co. v Saskferco Products Inc.*, 1999 CanLII 12236 at para 15, 170 DLR (4th) 625 (SKCA). Section 89 of the *BLA* limits both the scope of a plaintiff's claim and the extent to which a defendant to an action under the *BLA* may bring a counterclaim against the plaintiff or another party:

89(1) A trust claim and a lien claim may be joined in the same action and, subject to subsection (2) and unless otherwise ordered, a party may join with his lien or trust claim a claim for breach of his contract or subcontract.

(2) A party may, within the time limited by *The King's Bench Rules* for delivery of a defence:

- (a) counterclaim against the plaintiff;
- (b) crossclaim against a co-defendant; or
- (c) claim against a third party who is not already a party;

in respect of a matter related to the making of the improvement, whether or not the party against whom a claim is made delivers a statement of defence.

[24] A counterclaim must be limited to “a matter related to the making of the improvement”. While I should not apply a narrow or technical approach to determining what is related to an “improvement”, I must look to the main contract and the services associated with it. In this case, the main contract is Total's provision of oilfield equipment for installation at Prosper's Saskatchewan well sites.

[25] Section 89(2) is in keeping with the broader purpose of the *BLA*. As the Court of Appeal said in *JV&M Civil Constructors Inc. v Farnham*, 2025 SKCA 72 at para 27, “the *BLA* was enacted to grant protection....to those who provide their services and materials on credit, while also safeguarding the commercial interests of the owner and the financier of the improvement.” The *BLA* supplements the law of contract in a manner that protects service providers, promotes capital investments, and lubricates transactions that add value to land: *Axcess Capital Partners Inc. v Allsteel Builders(2) Limited*, 2015 SKCA 33 at paras 57-58.

[26] The *BLA* furthers the Legislature’s pro-investment policy goals by allowing for streamlined adjudication of *BLA* claims. Section 91 of the *BLA* reads as follows:

91(1) The object of this Act being to enforce liens at the least expense, the procedure shall be as far as possible of a summary character having regard to the amount and nature of the liens in question.

(2) Except where otherwise provided by this Act, no interlocutory proceedings shall be permitted without an order of the court or the consent of all parties on the application.

[27] It is the Legislature’s intention that lien claims be dealt with in a summary fashion. This promotes the objectives outlined above. Service providers might be reluctant to provide services on credit if they thought doing so was likely to entangle them in a lengthy trial, just to get paid.

[28] The summary process to adjudicating lien claims also benefits defendants; it places an onus on plaintiffs to move their actions forward and prevents plaintiffs from indefinitely encumbering a defendant’s land.

[29] A summary process must be limited in scope. A claim or counterclaim must be limited to the improvement that gave rise to the lien or matters related to that improvement.

[30] In this case, the counterclaim is wholly unrelated to the subject matter of the *BLA* claim. It is wholly unrelated to any improvement. The actions arose in different provinces, years apart. They do not relate to the same transaction, the same contract, the same project, or the same land.

[31] The parties themselves do not consider there to be any link between their Alberta and Saskatchewan interactions; Mr. Kennedy, Prosper's director, did not even appear to realise he was dealing with the same company until Total asked Prosper to pay its invoice.

[32] The counterclaim is clearly precluded by s. 89(2) of the *BLA*. It is accordingly struck pursuant to Rule 7-9(2) without prejudice to Prosper's right to assert its claim in a separate action (Rule 3-46(3)(b)). No amendment could cure the defect in the counterclaim in this action. Accordingly, Prosper does not have leave to file an amended counterclaim.

IV. Should I strike the Statement of Defence as disclosing no reasonable defence or being frivolous, vexatious, or an abuse of process?

[33] Total asks that I strike Prosper's Statement of Defence in its entirety under Rule 7-9(2) as disclosing no reasonable defence and as being frivolous, vexatious, and an abuse of process. Prosper argues that it has pled a reasonable defence or, if I find that some portion of the defence is bound to fail, that I should not strike the entirety of the defence.

[34] Prosper agrees that it had a contract with Total, that Total provided the equipment and services as alleged, and that Prosper did not pay. There are two main aspects to Prosper's defence.

[35] Prosper disputes the quantum of its obligation to Total because it disputes the interest rate and the date on which interest began to accrue. It characterised this

issue as comprising a “significant portion” of its defence.

[36] Additionally, Prosper pleads that Total owes it moneys in the amount of \$73,350 for the lost or converted tubing, and that this amount should be set off against Prosper’s own obligations.

A. Dispute regarding the interest owing

[37] Prosper contests the quantum of the debt it owes because it takes issue with two aspects of the claim for interest. Prosper states that interest was not to accrue at 24% as provided in the contract, but at some other rate. It also states that interest was not to accrue from the date it was invoiced but that, some time after entering into the contract, Total agreed that interest would not begin to accrue until at least August 31, 2023.

[38] A mere dispute over the quantum of an obligation may require only a limited determination of the disputed facts. Such a dispute is generally better dealt with through an accounting than through a trial or other litigation: *Smith v The Toronto-Dominion Bank*, 2023 SKCA 81 at paras 19-20 [*Smith*]. However, when the nature of the dispute involves more than a matter of accounting – for example when it involves disagreement over the interpretation of a contractual term – a judge should deal with it, rather than the local registrar: *Smith* at para 22.

[39] Prosper’s defence appears largely to rest on bare assertions with few supporting facts pled. However, the assertion that the parties had agreed interest would not begin to accrue until August 31, 2023 is reasonably specific, and relates to Prosper’s assertion that the parties agreed interest would not accumulate while Total was investigating the issue of Prosper’s tubing.

[40] While I do not understand why or how the parties would have agreed to delay the accrual of interest, or on what basis they agreed to alter the seemingly clear

terms of the contract, that is not a matter I am able to address solely on the pleadings and supporting record.

[41] As to the interest rate, Total has produced the contract while Prosper has not pointed to any variation to that agreement or other contract which might provide for a different rate of interest. I should not give weight to the absence of extrinsic documentary evidence supporting Prosper's assertions when I address whether the pleadings disclose a reasonable defence: *Smith* at para 17.

[42] Total claimed the parties contracted for interest to accrue at the rate of 24% per year, as stipulated in the contract. Prosper claims interest accrues at a lower rate and that a 24% rate is penal in nature and is unenforceable.

[43] I note that the parties are both sophisticated businesses and that they contracted for a particular interest rate. Twenty-four percent is a high rate of interest, but it is not obviously illegal or unconscionable. However, I cannot say Prosper has failed to plead a reasonable defence.

[44] In *Smith*, Chief Justice Richards stated the following at para. 23:

[23] ... I find it difficult to understand how an assertion in a statement of defence that the amount claimed by the plaintiff is not the amount owing under an agreement can be seen as not revealing a reasonable defence with the result that the statement of defence should be struck out. ...

[45] I conclude that Prosper has pled a reasonable defence by challenging the interest rate and the date from which interest began to accrue. Prosper should be aware that, according to Total and according to what appear to be the terms of the contract, interest is continuing to accrue, and the amount of unpaid interest will soon be comparable to the amount of the unpaid invoice.

[46] Even on Prosper's telling, interest may have been accruing since September 1, 2023. Prosper's situation may not improve with continued litigation, and it might get substantially worse.

B. Set-off defence

[47] The defendant argues that it should be able to plead a set-off defence, whether or not its counterclaim proceeds. Generally, a party may advance a set-off defence provided certain requirements are met as provided by Rule 3-47:

Claiming a set-off

3-47(1) A matter that might be claimed by set-off may be claimed by counterclaim or by pleading set-off as a defence or by both.

(2) A defendant may plead that a claim be set-off against the claim of the plaintiff if:

(a) there are mutual debts between the plaintiff and the defendant;

(b) in the case where either party sues or is sued in a representative capacity, there are mutual debts between the person represented and the other party; or

(c) a claim, whether of an ascertained amount or not, by the defendant arises out of the same dealings, transactions or occurrence giving rise to the claim of the plaintiff.

[48] Set-off defences fall into two categories: legal or statutory set-off, and equitable set-off. The requirements for legal set-off are those set out in Rule 3-47(2)(a) and (b). Legal set-off may be pled where the parties each owe the other a debt: *Holt v Telford*, 1987 CanLII 18, [1987] 2 SCR 193 (SCC).

[49] In this case, there are no mutual debt obligations. Prosper owes Total a sum certain for Total's performance of services and provision of goods. Prosper alleges

that, after serving as an unpaid bailee for many years, Total lost or converted some of Prosper's property, giving rise to a claim for damages. In my view, this is not a mutual debt. Prosper cannot plead legal set-off.

[50] Rule 3-47(c) incorporates aspects of the equitable set-off doctrine. Equitable set-off remains a less onerous defence that can arise where the obligations are not mutual, or where the cross obligations are not debts: *RIP Beverages Co. Ltd. v Dunn*, 2026 SKCA 10 at paras 71-72.

[51] Equitable set-off may be pled where the party advancing it can show some equitable reason why it should be protected from the other party's claim. To plead equitable set-off, the obligations however characterised must "go to the very root of the plaintiff's claim" such that it would "be manifestly unjust to allow the plaintiff to enforce payment" without taking into account the set-off defence: *Kozak v Gruza*, 1989 CanLII 5138 at para 42, 80 Sask R 197 (SKCA), citing *Coba Industries Ltd. v Millie's Holdings (Canada) Ltd.*, 1985 CanLII 144, [1985] 6 WWR 14 at p 22 (BCCA).

[52] Prosper's plea for a set-off does not go to the root of the plaintiff's claim. It does not have anything to do with the plaintiff's claim, and I cannot find that it would be "manifestly unjust" to allow Total to recover what Prosper owes it while Prosper's unrelated tubing claim is still pending.

[53] It is plain and obvious to me that the set-off defence is bound to fail because Prosper has not pled the essential elements of either a legal or equitable set-off and the factual matrix, as outlined by the pleadings, demonstrates that no such defence is available. Accordingly, I am striking Prosper's set-off pleading because it fails to disclose a reasonable defence.

V. Conclusions

[54] As to what this means for the Statement of Defence, I feel compelled to permit paragraphs 1 – 4 and 19 to stand. It is equally clear to me that paragraphs 17 and 18 must be struck, as they advance a set-off defence which is bound to fail for the reasons addressed immediately above.

[55] The situation is more challenging with respect to paragraphs 5 – 16. In those paragraphs, Prosper sets out the factual basis for its claim that Total retained possession of the joints of tubing. I have found that Prosper cannot claim in relation to that tubing either as a counterclaim or by advancing a set-off defence.

[56] However, Prosper claims that in the course of negotiations around the tubing, Total agreed to forego collection of interest on the invoice that is the subject matter of its Statement of Claim. These paragraphs address those negotiations and Prosper's claim that Total should be estopped from pursuing its full claim for interest given the representations it made at the relevant time.

[57] What matters here is not whether Total was in fact in breach of any obligations to Prosper, or whether Total ever owed Prosper anything. What matters is what – if anything – the parties agreed to as regards the date on which interest would start to accrue.

[58] Similarly, what matters as regards the interest rate is whether there is some basis – equitable, contractual, or otherwise – on which a judge might reasonably relieve Prosper from what appears to be its obligations under the contract.

[59] I find I must permit paragraphs 1 – 16 and 19 of the Statement of Defence to stand. Paragraphs 17 and 18 and the Counterclaim are struck without leave to amend.

[60] The plaintiffs have been largely successful, and they are entitled to costs calculated in accordance with Column 2.

J.
A.S. DAVIS