



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Bennington Financial Corp. v. Wade's Off-Road Vac Services Ltd.*,

2026 NLSC 80

Date: June 26, 2026

Docket: 202301G2220

2026 NLSC 80 (CanLII)

BETWEEN:

BENNINGTON FINANCIAL CORP.

PLAINTIFF

AND:

**WADE'S OFF-ROAD VAC SERVICES
LTD.**

FIRST DEFENDANT

AND:

**ULTRA CLEAR WATER AND
BREWING CENTRE (2016) LTD.**

SECOND DEFENDANT

AND:

CARL DWANE WADE

THIRD DEFENDANT

AND:

TRINA ROXANE WADE

FOURTH DEFENDANT

Before: Justice Philip Osborne

Place of Hearing:

St. John's, Newfoundland and Labrador

Date of Hearing:

November 26, 2025

Appearances:

Anna W. Wadden	Appearing on behalf of the Plaintiff
Gregory J. French	Appearing on behalf of the Defendants

Authorities Cited:

CASES CONSIDERED: *Brook Construction (2007) Inc. v. North Atlantic Cement and Construction Ltd.*, 2020 NLCA 42; *Burin Peninsula Community Business Development Corp. v. Grandy*, 2010 NLCA 69; *Uber Technologies Inc. v. Heller*, 2020 SCC 16; *Walsh v. TRA Company Limited*, 2022 NLSC 6

STATUTES CONSIDERED: *Personal Property Security Act*, S.N.L. 1998, c. P-7.1

REASONS FOR JUDGMENT

OSBORNE, J.:

INTRODUCTION

[1] The Defendants defaulted on a lease agreement with the Plaintiff involving a truck acquired to provide vacuum services to the mining industry in Newfoundland and Labrador. After the default, the Plaintiff took possession of the truck and sold it. The Plaintiff claims the Defendants are liable under the contract in the amount of \$251,218.07, plus the costs of enforcement of the debt, and contractual interest at the rate of 26.82%.

[2] The Defendants do not dispute they entered a contract with the Plaintiff, or that there was default, but they argue the contract should not be enforceable because it is an unconscionable transaction signed under duress and entered into based on misrepresentations made by the Plaintiff. The Defendants further argue that the Plaintiff did not mitigate its damages, and they assert that the Plaintiff's quantification of damages is inflated.

[3] On May 9, 2025, I found that the matter passed the threshold step for summary trial. Having reviewed and considered the affidavit evidence and the submissions of counsel, and considering the test outlined in *Brook Construction (2007) Inc. v. North Atlantic Cement and Construction Ltd.*, 2020 NLCA 42, I am satisfied the matter is suitable for determination by summary trial procedure. The matter is not complex. The evidentiary record is sufficient to enable adjudication of the issues and there are no factors making it otherwise unfair to proceed by way of summary trial. A summary trial is a proportionate procedure in the circumstances of this matter, and it is an appropriate means to decide the genuine issues of if the Defendants are liable on the contract, if the contract is enforceable and if the Plaintiff has proven the quantum of damages.

[4] For the reasons that follow, I find the Defendants defaulted on the contract, the contract is enforceable, and the Plaintiff is entitled to damages.

BACKGROUND

[5] The Plaintiff filed affidavit evidence and exhibits through two employees, Melanie Darling and Marine Ryskin, providing, among other things:

- the lease agreement with the Defendants;
- results of a Companies search for the First and Second Defendants;
- a credit application;
- a purchase order for the truck;
- a delivery and acceptance certificate for the truck;
- Registration Verification under the Personal Property Registry;
- payment statement information;
- Notice of Intention to enforce Security;
- notice pursuant to section 60(8) of the *Personal Property Security Act*, S.N.L. 1998, c. P-7.1 (*PPSA*);
- particulars of the Plaintiff's collection efforts;
- particulars of the Plaintiff's efforts to sell the truck; and

- a statement of accounts for the calculation of the deficiency pursuant to the lease.

[6] The Defendants filed affidavits from Trina Wade and Carl Wade, who are the Third and Fourth Defendants. In my reasons on the threshold stage, I described the evidence provided by the Defendants as thin and general in nature.

[7] Trina and Carl Wade are spouses of each other and are the sole directors of the First and Second Defendants. The First Defendant was incorporated to purchase a truck to provide vacuum services to remove drill mud from mining sites. The purchase price of the truck was \$400,000 plus taxes (the “Truck”).

[8] It is uncontested that in December 2020, Mr. Wade completed a credit application seeking financing to purchase the Truck. He explained in his credit application that there was a new law requiring all drill mud to be immediately removed from drill sites and that there is no truck in the province capable of this task. Mr. Wade stated in the credit application that there was a dire need in the province for an off-road vacuum truck to access drill sites to complete the required tasks. He continued to outline his business experience and offered that he was the current owner of two businesses, the First and Second Defendants.

[9] On January 14, 2021, all the Defendants were approved for financial assistance to acquire the Truck. On January 22, 2021, all the Defendants entered into a lease agreement with the Plaintiff (the “Contract”). Relevant provisions of the Contract include:

- The Defendants jointly and severally agreed to lease the Truck from the Plaintiff for one payment of \$170,000 plus taxes, followed by 60 monthly payments of \$5,719.93 plus taxes.
- In the event of default, the Plaintiff could enter on the Defendants’ property to take possession of the Truck.

- In the event of default, the parties agreed that there would be an interest rate of 26.82% on the amount due on default.

[10] The Defendants took delivery of the Truck. It is not disputed that in May 2021, the Defendants stopped making payments and defaulted on the Contract. The Plaintiff demanded payment, but the obligation remained unpaid by the Defendants. The Defendants do not dispute that in September 2021, the Plaintiff issued a warrant to locate and take possession of the Truck or that the Plaintiff subsequently took possession of the Truck. In December 2022, the Plaintiff sold the Truck for \$225,000, plus taxes.

[11] I find that the Plaintiff has proven that the Defendants defaulted on the Contract.

ISSUES:

[12] The issues to be determined are:

1. Should either of the Defendants be relieved from the Contract because either:
 - a) the Defendants entered the Contract under duress;
 - b) the Contract is unconscionable; or
 - c) the Plaintiff misrepresented the Contract?
2. Did the Plaintiff fail to mitigate its damages?
3. Has the Plaintiff proven its damages?

1. Should the Defendants be relieved from the Contract?

[13] Although all the Defendants signed the Contract knowing it was a lease, they now argue they should be relieved of liability because they wanted a purchase agreement. They argue that they felt compelled to sign the lease because of the speed at which the dealings progressed; the element of time pressure they say was created by the Plaintiff; and the necessity that acquiring the Truck presented to the success and operation of the First Defendant's business.

a) Should either of the Defendants be relieved from the Contract because of Duress?

[14] For the reasons that follow, I dismiss this defence because I do not find the preconditions for duress are established, and I find that the Defendants consented to the transaction.

[15] The Defendants argue they felt pressure in the circumstances surrounding the lease dealings and they felt pressure by the Plaintiff to complete the financing process on an accelerated timeline. The Defendants argue that they should be relieved of the contractual obligations with the Plaintiff because of this economic duress.

[16] The cornerstone of the doctrine of economic duress is the lack of consent by the coerced party. A finding of economic duress is dependent on two conditions precedent:

1. The contractual variation must be extracted by pressure in the form of a demand or threat; and

2. The exercise of pressure must be such that the coerced party has no practical alternative but to comply with the demand or threat.

If these conditions are met, then the focus shifts to whether the coerced party consented to the contractual variation (*Burin Peninsula Community Business Development Corp. v. Grandy*, 2010 NLCA 69, paragraphs 23-26).

1. There is no contractual variation extracted by pressure in the form of a demand or threat

[17] Mr. Wade thought there were going to be regulations requiring mining companies to immediately vacuum drill-mud at mining sites. Mr. Wade states he felt pressure from the Plaintiff to complete the financing process on an accelerated timeline, and this caused him to acquiesce and add Ms. Wade and Ultra Clear as co-lessees. The source of the pressure, according to Mr. Wade, is that the Plaintiff said that if the Defendants did not lease the Truck, the Truck may be sold to someone else. He said he felt pressure because the Truck was not “widely available in Canada” and that he could not start his new business without such a truck. The Defendants argue this sense of urgency created a coercion because they “felt that the contract as presented to them by the lender was their only option” to quickly acquire the Truck. They argue that if the Truck was sold to someone else, then they might lose out on the opportunity to be the first people in the province with this special equipment and therefore would not have a monopoly on vacuum services for the local mining industry.

[18] Ms. Wade said that she felt pressure to sign the lease both in her personal capacity and as director of the First and Second Defendants, because without the financing, her husband would not be able to finance the Truck and he would not be able to start his new business venture. She said that refusing to sign may have jeopardized what may have been the only opportunity to obtain such a vehicle.

[19] Defence counsel argued that Ms. Wade was a director “in name only” of the First and Second Defendants and that this somehow should relieve her of her contractual obligations. However, this is not a situation where Ms. Wade is called a

director as part of her job title, rather, the uncontradicted evidence demonstrates that Ms. Wade is in fact a corporate director of both the First and Second Defendants. There is no support for the position that she should not be responsible for her actions as a director of the First and Second Defendants.

[20] There was no evidence presented to support the Plaintiff pressured the Defendants. The affidavit evidence from the Plaintiff states that a review of the Plaintiff's business records did not reveal any documents supporting an urgency or pressure to enter the Contract. There is no evidence I accept that supports the Contract was extracted by pressure in the form of a demand or threat. Accordingly, the Defendants failed to make out the first condition precedent of economic duress.

2. The Defendants have not established there were no alternatives

[21] The evidence is that the financing approval was in the name of all Defendants as co-lessees. Mr. Wade states that he felt that the Contract presented to him by the lender was their only option.

[22] The Plaintiff was not the vendor of the Truck, rather, it offered financing for the Defendants. In terms of alternatives, the Defendants did not offer any evidence that the Plaintiff was the only financing institution or that there were no other institutions that could have provided purchase or lease financing options.

[23] Without particulars, Mr. Wade's affidavit states that the Truck was not widely available in Canada. Even if it was assumed that there was no other truck available and no other institution that could offer financing, while it may be that without the Truck, the First Defendant would not be able to start business, there is no doubt that the Defendants had the practicable option to refuse to sign the lease.

[24] The pressure the Defendants felt may have been self-induced as they wanted to be in a position where they would be the beneficiaries of a monopoly by obtaining a unique piece of equipment, they believed mining companies would be obligated to

use. In the context of this case, missing an opportunity to potentially start a business does not rise to the threshold of placing the Defendants in the position of having no practical alternative but to enter the Contract.

[25] I do not find that the preconditions for economic duress have been established. Therefore, the Defendants' request to be relieved of the contractual obligations based on economic duress is denied.

[26] Even if the Defendants met the preconditions, they consented to the transaction. The Defendants' counsel acknowledged the Defendants did not protest the lease with the Plaintiff and acknowledged that neither of the Defendants took any step to disavow the lease on a timely basis. I do not accept that the Defendants established that they had no alternative course open to them.

b) Should either of the Defendants be relieved from the Contract because it is unconscionable?

[27] The Defendants argue that the total amount of the payments of the lease grossly exceeds the value of the Truck and they claim that the doctrine of unconscionability applies to prevent the Plaintiff from recovering on the Contract.

[28] There is a two-step test to apply when considering the doctrine of unconscionability (*Uber Technologies Inc. v. Heller*, 2020 SCC 16 at paragraphs 62-69):

1. Is there an inequality in bargaining power?
2. Is there a resulting improvident bargain?

1. Inequality of bargaining power

[29] I understand that there are no rigid limitations on the types of inequality that may arise between bargaining parties. The Defendants argue the economic size difference between the Plaintiff and the Defendants satisfies the hurdle of inequality of bargaining power.

[30] Inequality of bargaining power exists when one party cannot adequately protect their interests in the contracting process (*Uber*, para 66). Differences in the economic size of the parties may be relevant, but inequality is more than that attribute (*Uber*, para 67).

[31] There is no suggestion or evidence that there was any impairment of either of the Defendants to understand or appreciate the meaning or significance of the Contract, or that there was any impediment to the Defendants ability to protect their interests.

[32] The Defendants have not provided any evidence of any transactional weaknesses in either of the Defendants. There was no suggestion that either Defendant had cognitive, deliberative, or informational deficiencies. There is no evidence that either Defendant had vulnerabilities arising out of the situation leading to a suggestion that either of the Defendants were in a seriously volatile position or otherwise desperately needy, creating a situation where either of the Defendants would be specially disadvantaged because of the “contingencies of the moment.”

[33] There is also no evidence to support that either of the Defendants were so dependent on the Plaintiff that serious consequences would arise from not agreeing to a contract. Nor is there acceptable evidence that the Defendants were a weaker party that would agree to almost any terms because the consequences are so dire.

[34] Although proof of an unfair bargain may support an inference that one party was unable to protect their interests, the evidence does not support that there was an

inequality of bargaining power between the Plaintiff and either of the Defendants in the context of unconscionable transactions. I find that the Defendants have failed to establish an inequality of bargaining power. I am not satisfied that the transaction was an unconscionable transaction. There is no justification requiring equity to intervene to displace the law's normal assumptions about free bargaining in this case. Accordingly, the request to have the Contract set aside on this ground is dismissed.

2. Improvident bargain

[35] In *Uber*, an improvident bargain is described as a contract that unduly disadvantages the vulnerable party or unduly advantages the stronger party and is measured at the time the contract is formed (*Uber*, para 74).

[36] Improvidence is not measured when the circumstances are such that the agreement now works a hardship. Improvidence is assessed contextually. The question is whether the potential for undue advantage or disadvantage created by the inequality of bargaining power has been realized (*Uber*, para 75).

[37] The Defendants have not established any of the hallmarks of an improvident bargain. They have not provided evidence of factors such as market conditions, the market price of the Truck, industry standards, or other factors of the commercial setting to support the position that the bargain was improvident when the Contract was formed. There is no evidence to suggest that the cost of the Contract departs significantly from the usual market price for financing of such equipment.

[38] There was no evidence that the Defendants were unable to receive a substantial benefit from the Contract; or that the financing costs grossly exceeded the cost at which a similar truck might be available to similar consumers; or that the Plaintiff used trickery to induce the Defendants to enter the Contract; or that the Plaintiff took advantage of any extreme necessity or helplessness of the Defendants or some other inability of the Defendants to protect themselves.

[39] Neither of the Defendants have satisfied me that they should be relieved of the Contract based on the doctrine of unconscionability.

c) Should either of the Defendants be relieved from the Contract because of Misrepresentation?

[40] A misrepresentation is a representation, or positive statement of fact, made by one party and relied on by another that is false. The Defendants did not articulate if the alleged misrepresentation was fraudulent, careless, or innocent.

[41] The tests for fraudulent and negligent misrepresentation are set out in *Walsh v. TRA Company Limited*, 2022 NLSC 6, at paragraphs 143-144. To establish fraudulent misrepresentation, the Defendants would need to establish the following elements:

- (i) a false representation of fact by the Plaintiff to the Defendants;
- (ii) knowledge the representation was false, absence of belief in its truth, or recklessness as to its truth;
- (iii) an intention the Defendants act in reliance on the representation;
- (iv) the Defendants acting on the representation; and
- (v) the Defendants suffering a loss in doing so.

[42] As stated in *Walsh*, at paragraph 144, fraudulent misrepresentation has the additional requirement of an intention to deceive.

[43] The Defendants do not assert that there was any false representation of fact made by the Plaintiff, with or without knowledge, or that the Defendants acted on any false representation. Rather, the Defendants' position is simply that they wished

to purchase the Truck, but that the Contract was a lease agreement. The Defendants were fully aware that the Contract was a lease agreement before they signed the Contract, but their position was that when they started the process, in their minds, they wanted to purchase the Truck. The Defendants acknowledge that they were aware that when the credit application was approved, it was for a lease and they acknowledge they signed a lease and were aware at the time they signed the lease that it was a lease and not a purchase agreement.

[44] On the top of the front page of the lease agreement, it states that the agreement is a binding contract and notes that the document contains important legal and financial terms. It states: “please feel free to ask questions before signing.” There is no evidence that the Defendants asked any questions or indicated that they did not want to sign a lease agreement.

[45] There is no evidence submitted to support that the Plaintiff induced or otherwise misrepresented the nature of the agreement. There is no suggestion that the Plaintiff represented that the Contract was a purchase agreement when it was in fact a lease agreement. There is no suggestion, or evidence of a false representation of fact by the Plaintiff.

[46] There is no evidence that the Plaintiff ever made a representation that the Contract was a purchase agreement. Even if there was evidence that the Plaintiff had made such a false statement, the Defendants acknowledge they had full knowledge that the credit application listed them as lessees and they had full knowledge that the Contract they were signing was a lease and not a purchase.

[47] Knowledge of the untruth of a representation would bar relief on this ground as the Defendants cannot assert that they had been misled by the representation. There is no evidence to support that they entered the contract on the belief that it was a purchase agreement. The evidence submitted supports that all the parties were aware that they were contracting to enter a lease agreement.

[48] I find that there are absolutely no grounds argued or found in the evidence to support that the contract the Defendants knowingly signed as a lease should be set aside based on misrepresentation. The Defendants' request to set aside the Contract on the grounds of misrepresentation is denied.

2. Did the Plaintiff fail to mitigate damages?

Plaintiff's efforts to sell the Truck

[49] After the Plaintiff took possession of the Truck, it sought multiple professional opinions regarding the Truck's value. In October 2021, the Plaintiff engaged a New Brunswick company to try to sell the Truck with a listed price of \$400,000. The evidence was that there were no inquiries from any potential purchaser up to January 17, 2022.

[50] In June 2022, the Plaintiff engaged another firm in Ontario to advertise the Truck across Canada and the United States. The evidence is that all offers received were less than \$200,000, except one that was received in December 2022 for \$225,000. The Plaintiff accepted the offer of \$225,000.

[51] The Defendants say that the Plaintiff should not be entitled to the damages claimed because the Plaintiff failed to mitigate its damage. The Defendants assert that the *PPSA* provides that the collateral may be further leased and suggests that the Plaintiff could have done that to mitigate the damages. The Defendants state that because the Plaintiff did not make efforts to further lease the Truck, that they have failed to mitigate its damages under the Contract.

[52] Although the Plaintiff may have been entitled to further lease the Truck, I find that they were not obligated to do so. The Plaintiff's evidence of the attempts to sell the Truck satisfy me that it took reasonable steps to mitigate its loss.

3. Has the Plaintiff proven its damages?

[53] During the summary trial, the Plaintiff asked to amend the Statement of Claim to reflect the correct amount for HST from 13% to 15%, and the amounts spent for enforcement on default. The Defendants objected to the request to amend the Statement of Claim. Defence Counsel stated that he did not need more time to respond to the claim for the new amounts, and that he had no real objection to the amount of HST claimed or the amount asserted for the repossession or enforcement. Further, he acknowledged that the amendment had no impact on his defence and that he would not argue anything differently with the new numbers.

[54] Given that there was no prejudice to the Defendants' position, I allowed the Plaintiff to amend the Statement of Claim as requested.

[55] The Defendants submit that the quantum of damages is inappropriate.

[56] The Defendants acknowledge that as of September 28, 2021, the outstanding amount on the Contract was \$289,685.45 plus taxes. The Defendants state that the Plaintiff should only be able to recover the amount that was due, less the amount the Truck sold for (\$225,000) for a total liability of \$64,685.45.

[57] On default, the Plaintiff asserts that the Defendants became uncooperative leading to unnecessary costs for the recovery and sale of the Truck.

[58] The Plaintiff filed affidavit evidence from Marina Ryskin, a law clerk with the Plaintiff, which includes a Statement of Account and Default Accrued Interest and Event Calculation. The balance owing as of September 28, 2021, was \$333,138.27 (289,695.45 +HST).

[59] The Plaintiff applied the proceeds of the sale of the Truck in the amount of \$225,000 to the deficiency when the Truck sold in January 2023.

[60] The evidence supports that the Plaintiff paid 8,624.34 (\$7,691.34 + HST) for the payment to Morrison Brothers for the repossession of the Truck.

[61] The evidence supports that the Plaintiff paid the following amounts for enforcement of the Truck:

- \$575.00 (\$500.00 +HST) for payment to Morrison Brothers for insuring and advertising the Truck for sale;
- \$7,345.00 (\$6,500 + HST) for payment to Global for transportation of the Truck to Ontario; and
- \$1,522.68 (\$1,347.50 +HST) for costs of repairs to the Truck.

[62] These costs of the repossession and enforcement are allowed under the Contract, and I find that the Plaintiff has proven these costs.

[63] The Defendants did not make any payments on the deficiency since default. Paragraph 21 of the Contract provides that interest at the rate of 26.82%, at the rate of 2% per month compounded monthly, shall apply to the amount of the deficiency.

[64] I accept the accounting in the affidavit of Melanie Darling and supported at Exhibit Z of her affidavit, showing the accounting as of April 13, 2023 including the outstanding balance as of September 28, 2021 \$333,138.27 (\$289,695.45+HST), plus the cost of repossession \$8,624.34 (\$7,691.34+HST listed in a. above), less the proceeds of the sale of the Truck (-\$225,000) plus contractual interest at the rate of 26.82%, for a balance of \$251,218.07. The Plaintiff is also entitled to the amounts noted in paragraph 61 above related to the enforcement of the security on default.

[65] It is ordered that the Plaintiff is entitled to judgment in the amount of \$251,218.07, plus the following amounts related to enforcement:

- a. \$575.00 (\$500.00+HST) for payment to Morrison Brothers for insuring and advertising the Truck for sale;
- b. \$7,345.00 (\$6,500+HST) for payment to Global for transportation of the Truck to Ontario; and
- c. \$1,522.68 (\$1,347.50+HST) for repair costs to the Truck.

[66] The Plaintiff is entitled to pre-judgment contractual interest at the rate of 26.82% per annum from April 18, 2023, to the date of judgment.

[67] The Plaintiff is entitled to column 3 costs.

[68] Order accordingly.

PHILIP OSBORNE
Justice