

Court of King's Bench of Alberta

Citation: ATB Financial v Hastings Ilagan Inc, 2026 ABKB 710

Date: 20261009
Docket: 1901 07618
Registry: Calgary

Between:

ATB Financial

Plaintiff/Respondent

- and -

Hastings Ilagan Inc.

Defendant/Appellant

**Reasons for Decision
of the
Honourable Justice J.D. Martin**

Appeal from the Decision of
The Honourable Applications Judge L.A. Mattis

Dated the 8th day of September, 2025

I. Introduction

[1] This is an appeal from Applications Judge Mattis' Decision of September 8, 2025. The Applications Judge dismissed Hastings Ilagan Inc.'s (the "Appellant") Application for Summary Judgment against itself and granted ATB Financial's (the "Respondent") Application to question the Appellant's corporate representative pursuant to Part 5 of the *Alberta Rules of Court*, Alta Reg 124/2010 (the "*Rules*").

II. Facts

[2] On May 31, 2019, the Respondent commenced this Action by filing a Statement of Claim against the Appellant. The Respondent alleged that the Appellant made deceptive representations or, alternatively, negligently misrepresented material facts, or in the further alternative, breached its contractual obligations. The Respondent claimed to have suffered significant financial losses as a result.

[3] On May 15, 2020, the Appellant filed a Statement of Defence denying liability and asserting that the Respondent's claims were barred by the *Limitations Act*, RSA 2000, c L-12.

[4] On August 20, 2025, the Appellant applied for an order granting judgment against itself, indicating that it would consent to judgment being entered in favour of the Respondent. On August 28, 2025, while opposing the Appellant's application, the Respondent applied for an order compelling the Appellant's corporate representative to attend for questioning.

[5] On November 21, 2025, following the Applications Judge's decision, the Appellant filed a Discontinuance of Defence.

III. The Decision of Applications Judge Mattis

[6] The Applications Judge characterized the Appellant's request for judgment against itself as a unique application. She accepted that, although the Appellant was prepared to admit the allegations in the Statement of Claim, the Respondent retained control of its action and was not required to seek judgment at this stage. She concluded that the Respondent established a valid basis for wanting to question the Appellant's corporate representative, given that the Appellant's affidavit of records listed no records, and the Respondent's need to determine whether the eventual judgment should be based on fraud, negligence, or contract. The Applications Judge therefore dismissed the Appellant's Application for Judgment against itself and granted the Respondent's Application to question under Part 5 of the *Rules*.

IV. Issues on Appeal

[7] The Appellant raises two issues on appeal:

1. The Applications Judge erred in permitting the questioning, as the Appellant is willing to accept the allegations pleaded and relief sought in the Statement of Claim.
2. In the alternative, as the Appellant has now filed a Discontinuance of Defence, there is a deemed admission of the facts pled in the Statement of Claim. The Respondent should therefore be required to pursue remedies pursuant to *Rule 3.37* of the *Rules*.

[8] For the reasons that follow, the Appeal is dismissed.

V. The Standard of Review and Applicable Test

[9] *Rule 6.14(3)* of the *Rules* states:

An appeal from an applications judge's judgment or order is an appeal on the record of proceedings before the applications judge and may also be based on

additional evidence that is, in the opinion of the judge hearing the appeal, relevant and material.

[10] The standard of review on an appeal from an applications judge's decision is correctness: ***Bahcheli v Yorkton Securities Inc***, 2012 ABCA 166 at paras 16-18, 30.

[11] However, where there is new, relevant and material evidence before the Court on appeal, the Court must conduct a *de novo* review: ***Gudzinski Estate v Allianz Global Risks US Insurance Company Limited***, 2012 ABCA 5 at para 24; ***Lesenko v Wild Rose Ready Mix Ltd***, 2024 ABKB 333 at paras 14-15.

[12] Where a *de novo* review occurs, there is no applicable standard of review as the Court must make "an independent determination without deference to any earlier analysis about the matter ... [treating] it as if no previous decision had been made" and with "no presumption of the correctness or validity of any prior finding, recommendation, or conclusion": Bryan A Garner, *Black's Law Dictionary*, 12th ed (St Paul, MN: Thomson Reuters, 2024) sub verbo "*de novo*"; ***Steer v Chicago Title Insurance Company***, 2019 ABQB 318 at paras 8-10.

[13] The filing of the Discontinuance of Defence occurred after the Applications Judge's decision and is both relevant and material to the issues on appeal. I must therefore independently determine whether, in light of the present record, the Respondent is entitled to question the Appellant's corporate representative.

[14] In these circumstances, it is unnecessary to consider the Appellant's two grounds of appeal separately. The Discontinuance of Defence and its legal effect are central to both. The appeal is better viewed as raising a single issue: Is the Respondent permitted to question the Appellant's corporate representative under Part 5 of the *Rules*?

VI. The Alberta Rules of Court

[15] *Rule 1.2(1)* of the *Rules* states that "[t]he purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a Court process in a timely and cost-effective way."

[16] *Rule 3.37(3)* of the *Rules* permits a party to apply to the Court for judgment if a defendant is noted in default or the defendant's Statement of Defence is struck. Upon such an application, the court may take several actions, including: (a) pronounce judgment; (b) make any necessary order; (c) direct a determination of damages; (d) adjourn the application and order additional evidence to be provided; (e) dismiss the claim or a part of it; (f) direct that the claim proceed to trial and that notice be served on every other defendant; and (g) make a costs award in favour of the plaintiff.

[17] Part 5 of the *Rules* has the purpose of allowing parties to (a) obtain evidence that will be relied on in the action, (b) narrow and define the issues between parties, (c) encourage early disclosure of facts and records, (d) facilitate evaluation of the parties' positions and, if possible, resolution of issues in dispute, and (e) discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases the cost of them: *Rule 5.1(1)*. In order to achieve these purposes, the Court may give directions or make any order necessary to achieve the purpose of this Part: *Rule 5.1(2)*. One manner of obtaining evidence is through questioning, and *Rule 5.17(1)* of the *Rules* entitles a party to question other parties who are adverse in interest about "relevant and material records and relevant and material information".

[18] Under *Rule* 4.37(1), a defendant can discontinue their defence by filing a notice of discontinuance and serving it upon the plaintiff. *Rule* 4.37(2)(a) states that upon doing so, the defendant “is in default of defence.” This puts a defendant who discontinues their defence in the same position as a defendant who fails to file a Statement of Defence.

VII. Positions of the Parties

1. Appellant's Position

[19] The Appellant argues that, as it is willing to admit liability and has filed a Discontinuance of Defence, no dispute remains that justifies further questioning under Part 5. The Respondent should be required to proceed directly to judgment.

2. Respondent's Position

[20] The Respondent argues that a willingness to admit liability does not end its right to conduct questioning. It says the parties remain adverse in interest because the Respondent needs further information before deciding how to proceed, including whether any judgment should be based on fraud, negligence, or breach of contract. The Respondent argues that the *Rules* do not permit a defendant to unilaterally terminate a plaintiff's discovery rights simply by being willing to admit liability.

VIII. Analysis

[21] The question is whether a defendant who files a Discontinuance of Defence and expresses a willingness to admit liability ceases to be adverse in interest to the plaintiff for the purposes of *Rule* 5.17 of the *Rules*.

[22] *Towers v Whiting*, [1951] OJ No 296 (Ont H CJ), provides useful guidance. In *Towers*, the Court considered whether a defendant who had withdrawn her defence and sought to discontinue her counterclaim remained adverse in interest to the plaintiff and could therefore be examined for discovery.

[23] The dispute concerned the authenticity of the deceased's will. The defendant challenged the will advanced by the plaintiff on the basis that it was not the deceased's final will or, if it was, it had not been duly executed or was the product of undue influence. After failing to attend for discovery, the defendant withdrew her defence and sought to discontinue her counterclaim. Those steps did not, however, resolve the issue of which document was the deceased's valid will. The Court held that until the issue was resolved, the defendant remained a party adverse in interest and was subject to examination for discovery, *Towers* at paras 17 and 20.

[24] Although *Towers* arose in a different factual context and applied the Ontario Rules of Practice, its legal reasoning remains relevant. It demonstrates that withdrawing a defence does not, by itself, determine whether the parties remain adverse in interest. The determination depends on whether issues remain to be resolved and whether the proposed questioning is directed at those issues. See also *Brylowski v Brylowski*, 1980 CarswellOnt 388, 17 CPC 9 (Ont SC).

[25] The Appellant indicated at the hearing that it was prepared to consent to the judgment sought by the Respondent. A defendant in default of defence is deemed to have admitted the

allegations of facts in the plaintiff's statement of claim: **Argent v Gray**, 2015 ABQB 292 at para 46; **McElroy v Cowper-Smith and Woodman**, 1967 CanLII 70 (SCC) at 428.

[26] However, even if a defendant has been noted in default and has thereby admitted the facts, a Court must still determine whether the plaintiff has made out their alleged cause of action before it can grant default judgment: **Pinsent v Sandstrom**, 2014 ABQB 269 at para 16. As noted in **Spiller v Brown**, 1973 AltaSCAD 76 at para 8:

...[T]he failure to defend is an admission of liability, but the matter does not end there. Neither by pleadings nor admissions can a defendant give a court jurisdiction that it does not otherwise have... and I think it is equally clear that admissions cannot create a cause of action where none exists... [citations omitted].

[27] Ultimately, a defendant's willingness to consent to judgment does not necessarily end the dispute or eliminate a plaintiff's entitlement to obtain information through the litigation process. Parties may remain adverse in interest where uncertainty persists regarding the proper basis for liability, such as whether liability should be found in fraud, negligence, breach of contract, or a combination thereof. This uncertainty may in turn give rise to competing positions regarding the factual findings required to support judgment and the nature of the relief that should be granted.

[28] Further, I do not accept that a defendant can unilaterally require a plaintiff to seek immediate judgment, thereby foreclosing any otherwise available procedural steps, through a willingness to admit liability and filing a Discontinuance of Defence. A plaintiff is not required by the *Rules* to accept a judgment on terms dictated by a defendant. Nor do the *Rules* confer upon a defendant the right to control the timing of judgment or to limit the procedural options otherwise available to the plaintiff.

[29] The Appellant's position is also difficult to reconcile with the language of the *Rules*. *Rule* 3.37 is drafted in permissive, not mandatory, terms. Accordingly, a plaintiff may seek judgment in the circumstances described in the *Rule* but is not required to do so.

[30] Nor do the *Rules* provide that an admission of liability or the discontinuance of a defence either makes an application under *Rule* 3.37 the plaintiff's exclusive procedural option or precludes the plaintiff from first taking otherwise proper steps under Part 5.

[31] Additionally, *Rule* 5.20(2)(a) governs when questioning may take place. In the case of questioning by the plaintiff, this is any time after:

- (a) a statement of defence has been served on the plaintiff, or
- (b) the time for serving the statement of defence has expired.

[32] Subsection (ii) necessarily implies that the *Rules* allow for questioning a defendant who is in default. As mentioned previously, a defendant who has discontinued their defence is considered to have defaulted in defence under *Rule* 4.37(2)(a). A harmonious reading of *Rule* 4.37(2)(a) with *Rule* 5.20(2)(a) suggests that it is permissible to question a defendant that has been deemed in default by virtue of having discontinued their defence.

[33] Further, even where a plaintiff applies for default judgment, the Court is not required to grant judgment immediately. The *Rules* expressly permit the Court to adjourn the application and require additional evidence. It would make little sense to require a plaintiff who reasonably anticipates that further evidence may be required to seek judgment before obtaining that evidence.

[34] That said, a plaintiff's entitlement to take further litigation steps should not be construed as unlimited. The *Rules* require proceedings to be conducted efficiently. Where no practical dispute remains or where further steps serve no useful purpose, the Court has broad authority to control its process and prevent unnecessary litigation steps. If it becomes apparent that no meaningful issue remains, the Court may intervene, including through costs consequences, to ensure that the action proceeds to an efficient conclusion.

[35] Concerns about efficiency are therefore addressed through the Court's supervisory powers, not by treating an admission of liability or the filing of a Discontinuance of Defence as automatically extinguishing a plaintiff's procedural rights.

[36] In the case at bar, the Respondent explained that it required further information before deciding how it wished to proceed, including whether any judgment should be based on fraud, negligence, or breach of contract. The Respondent is therefore not seeking to question the corporate representative merely to prove liability that the Appellant is prepared to concede. It seeks information directed at determining the proper factual and legal characterization of that liability. As discussed above, even where liability is admitted, the Court must still be satisfied that the facts support a recognized cause of action before judgment can issue. Until that issue is determined, as in *Towers*, the parties remain adverse in interest.

[37] On the record before me, I find that the Respondent has identified a legitimate reason for seeking further information through questioning. I therefore conclude that the parties remain adverse in interest notwithstanding the Appellant's willingness to admit liability and the filing of a Discontinuance of Defence. In these circumstances, permitting the questioning to proceed is appropriate.

IX. Conclusion

[38] The Appeal is dismissed. The Respondent may proceed with questioning of the Appellant's corporate representative.

Heard on the 2nd day of September, 2026.

Dated at the City of Calgary, Alberta this 9th day of October, 2026.

J.D. Martin
J.C.K.B.A.

Appearances:

John Regush
Dentons Canada LLP
for the Plaintiff/Respondent

Avnish Nanda
Nanda & Company
for the Defendant/Appellant