

COURT FILE NUMBER **2301-03129**

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS RAMBRIDGE STRUCTURE & DESIGN LTD., BRENT
ANDREW PARKER and CHRISTIANA MAY PARKER

APPLICANT BDO CANADA LIMITED, in its capacity as Court-
appointed receiver and manager of RAMBRIDGE
STRUCTURE & DESIGN LTD.

Clerk's Stamp

NB
C120207

**BOOK OF AUTHORITIES TO THE BENCH BRIEF OF BDO CANADA LIMITED,
in its capacity as Court-appointed receiver and manager of
RAMBRIDGE STRUCTURE & DESIGN LTD.**

**IN SUPPORT OF THE APPLICATION BY RECEIVER FOR FINAL DISCHARGE AND
RELATED RELIEF**

TO BE HEARD BY THE HONOURABLE JUSTICE P. R. JEFFREY

December 14, 2023 at 2:00 P.M. (Commercial List)

ADDRESS FOR
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TABLE OF AUTHORITIES

| <u>TAB</u> | <u>AUTHORITY</u> |
|-------------------|---|
| 1. | <i>Leslie & Irene Dube Foundation Inc v P218 Enterprises Ltd</i> , 2014 BCSC 1855, 17 CBR (6th) 41 |
| 2. | <i>Re Regal Constellation Hotel Ltd</i> , (2004) 50 CBR (4th) 253 (Ont SCJ Comm List), 2004 CanLII 13502 (ON SC) |
| 3. | <i>Re Regal Constellation Hotel Ltd</i> , 2004 CanLII 206 (ON CA), 242 DLR (4th) 689 (CA) |
| 4. | <i>Confectionately Yours Inc, Re</i> , 219 DLR (4th) 72, 116 ACWS (3d) 871 |
| 5. | <i>Servus Credit Union Ltd v Trimove Inc</i> , 2015 ABQB 745, [2015] AJ No 1275 |
| 6. | <i>Bankruptcy and Insolvency Act</i> , RSC, 1985, c B-3 |
| 7. | <i>Personal Property Security Act</i> , RSA 2000, c P-7 |
| 8. | <i>Holland v Chrysler Credit Canada Ltd</i> , 1992 CanLII 6188 (AB KB), 5 Alta LR (3d) 258 |
| 9. | <i>Re Leigh Commercial Builders Inc</i> (8 September 2021), Court File Number 2003-01472 Judicial Centre Edmonton (Burns J) |
| 10. | <i>Re Copperline Excavating Ltd</i> (25 October 2021), Court File Number 2003-03284 Judicial Centre Edmonton (Shelley J) |

TAB 1

2014 BCSC 1855
British Columbia Supreme Court

Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.

2014 CarswellBC 2916, 2014 BCSC 1855, [2014] B.C.W.L.D. 7241, [2014] B.C.W.L.D.
7242, [2015] 1 W.W.R. 606, 17 C.B.R. (6th) 41, 245 A.C.W.S. (3d) 21, 72 B.C.L.R. (5th) 294

Leslie & Irene Dube Foundation Inc. and 1076586 Alberta Ltd., Petitioners and P218 Enterprises Ltd., Wayne Holdings Ltd., Okanagan Valley Asset Management Corporation, Willow Green Estates Inc., BMK 112 Holdings Inc., 0720609 B.C. Ltd., 0757736 B.C. Ltd., 0748768 B.C. Ltd., Dr. T. O'Farrell Inc., Pinloco Holdings Inc., 602033 B.C. Ltd., Andrian W. Bak, MD, FRCPC, Inc., Interior Savings Credit Union, Valiant Trust Company, Mara Lumber (Kelowna) (2007) Ltd., Rona Revy Inc., Rocky Point Engineering Ltd., Mitsubishi Electric Sales Canada Inc., BFI Canada Inc., John Byrson & Partners, Winn Rentals Ltd., 0964502 B.C. Ltd., Denby Land Surveying Limited, Mega Cranes Ltd., Weq Britco LP, Roynat Inc., Mcap Leasing Inc., Bodkin Leasing Corporation, HSBC Bank Canada, and Bank of Montreal, Respondents

G.C. Weatherill J.

Heard: September 24, 2014
Judgment: October 2, 2014
Docket: Vancouver S-139627

Counsel: J.D. Schultz, J.R. Sandrelli, for Receiver, Ernest & Young Inc.
D.E. Gruber, for Petitioners
J.D. Shields, for Valiant Trust Company
C.K. Wendell, for 0964502 B.C. Ltd.
S.A. Dubo, for Interior Savings Credit Union
R.H. Harrison, for Maynards Financial Ltd.

Subject: Corporate and Commercial; Insolvency; Property

Related Abridgment Classifications

Bankruptcy and insolvency

IV Receivers

IV.4 Miscellaneous

Bankruptcy and insolvency

V Bankruptcy and receiving orders

Headnote

Bankruptcy and insolvency --- Bankruptcy and receiving orders — Miscellaneous

Two-phase retail, office and residential real estate development went into receivership — Receiver decided to complete phase one of development and sell it by "stalking horse" sale process — Receiver entered into agreement with stalking horse bidder — Receiver brought application for, inter alia, approval of stalking horse bidding process (bidding procedures order) and conditional order vesting title to development in bidder — Application granted in part on other grounds — Application for bidding procedures order and conditional vesting order dismissed — Receiver failed to prove stalking horse agreement was in best interests of creditors as whole — No course of action other than stalking horse bidding process appeared to have been considered, including traditional tendering process — There was no evidence on extent to which receiver tried to identify other developers who might be interested in bidding through stalking horse bid — Dated appraisals might not accurately reflect current value of development — There was insufficient evidence as to reasonableness of termination fee.

Bankruptcy and insolvency --- Receivers — Miscellaneous

| | | |
|----|--|-------------|
| a) | Phase 1 completion costs: | |
| | i. completion payables: | \$200,000 |
| | ii. parking lot and courtyard landscaping: | \$100,000 |
| b) | interest and fees on financing: | |
| | i. Interest accrued to date: | \$150,000 |
| | ii. future fees and interest: | \$100,000 |
| c) | Professional fees: | \$450,000 |
| d) | fees from leasing activities: | \$125,000 |
| e) | engagement of Colliers for SH Process: | \$50,000 |
| f) | other consulting fees: | \$75,000 |
| g) | office, utility and operating expenses: | \$52,500 |
| h) | contingency: | \$55,000 |
| | TOTAL | \$1,357,500 |

49 The Receiver seeks to amend the Receivership Order pronounced January 27, 2014, as amended February 6, 2014 such that its permitted borrowing charge is increased from \$2.5 million to \$3.5 million.

50 The Bond Holders and the Lien Claimants oppose the increase on the basis that there is no evidence as to where the increase in financing will come from or what the rate will be and that no particulars have been provided as to who the money will be paid to or why.

51 I agree that approval of an increase in the borrowing charge in a vacuum is not desirable. However, I understand that negotiations are underway with the lender. I am satisfied that there is a need for the Receiver's borrowing charge to be increased, particularly given that more work will be required regarding the valuation and marketing of the Development.

52 I am prepared to allow the increase on the condition that the financial terms for the increase are no less favourable to the creditors than the current terms of the Receiver's borrowing charge.

Approval of the Receiver's Activities to Date

53 The Receiver seeks approval of its activities as set out in its first and second reports to the Court dated January 30 and August 14, 2014, respectively.

54 The court has inherent jurisdiction to review and approve or disapprove the activities of a court appointed receiver. If the receiver has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, the court may approve the activities set out in its report to the court: *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (Ont. Gen. Div.) at paras. 3-5, aff'd [1996] O.J. No. 2806 (Ont. C.A.); *Lang Michener v. American Bullion Minerals Ltd.*, 2005 BCSC 684 (B.C. S.C.) at para. 21.

55 I accept that the Receiver has essentially fulfilled its mandate with respect to completion of Phase 1. Its activities as set out in its first report are approved.

56 After completion of Phase 1, the Receiver commenced on a sale process in an attempt to maximize the return for the creditors. It may well be that the Receiver will be able to demonstrate that the steps it took in this regard were objectively reasonable. However, given my previous comments, I am not satisfied that the Receiver has shown that the stalking horse bid process it entered into was done prudently. It is premature to approve its activities in this regard.

Sealing Order

57 Given my ruling on the SH Agreement and my comments that the Altus Group's appraisal dated March 3, 2014 is outdated, there is no need to consider this issue.

TAB 2

2004 CarswellOnt 428
Ontario Superior Court of Justice [Commercial List]

Regal Constellation Hotel Ltd., Re.

2004 CarswellOnt 428, [2004] O.J. No. 365, 128 A.C.W.S. (3d) 646, 37 C.L.R. (3d) 207, 50 C.B.R. (4th) 253

**IN THE MATTER OF the Receivership of Regal Constellation
Hotel Limited, of The City of Toronto, In the Province of Ontario**

AND IN THE MATTER OF s. 41 of the Mortgages Act, R.S.O. 1990 c. M.40.

Farley J.

Heard: January 15, 2004

Judgment: January 15, 2004 *

Docket: 03-CL-5044

Proceedings: affirmed *Regal Constellation Hotel Ltd., Re* (2004), 2004 CarswellOnt 2653 (Ont. C.A.)

Counsel: John J. Pirie for Deloitte & Touche Inc., Court Appointed Receiver and Manager, and for HSBC Bank Canada
Mahesh Uttamchandani for Interim Receiver, Deloitte & Touche Inc.
Robert Rueter for Debtor, Regal Pacific (Holdings) Limited

Related Abridgment Classifications

Debtors and creditors

VII Receivers

VII.6 Conduct and liability of receiver

VII.6.a General conduct of receiver

Real property

III Sale of land

III.6 Judicial sale

III.6.d Vesting order

Headnote

Debtors and creditors --- Receivers — Conduct and liability of receiver — General conduct of receiver
Receiver brought motion for approval of activities as set out in various reports, including sale of hotel to numbered company
— Motion granted — Objective of any receiver is to receive highest value for asset for benefit of stakeholders — All cash and
unconditional offers are generally to be preferred, keeping in mind that one must do reasonable risk/reward analysis — Receiver
acted properly and within mandate given to it by court — Receiver fulfilled its prime purpose of obtaining as high a value as it
could for hotel after approved marketing campaign — Identity of principals of purchaser and fact that there was some overlap
with principals involved in earlier aborted purchase was of no consequence.

Farley J.:

1 Mr. Rueter, counsel for Regal Pacific (Holdings) Limited ("Holdings") asked for an adjournment of the Receiver's (Deloitte & Touche Inc.) motion for various approvals, but specifically the approval of the Receiver's activities as reflected in their various reports (5 plus a supplemental to the 1st which was sealed until the closing of the sale to 2031903 Ontario Inc. ("203")). He wanted a 4-week adjournment indicating that he had just determined that principals involved in 203 were also involved in Hospitality Investors Group LLC ("HIG") as per the *Toronto Star* article of January 10, 2004. A corporate profile report on

8 Indeed when 203 was unable to close on the specified closing date, the Receiver conducted another analysis and determined that it would likely maximize the proceeds by doing another deal with 203, albeit at \$24 million, but keeping in mind the forfeit deposit and the obtaining of a further non-refundable deposit.

9 While Mr. Rueter alludes to "the sales process was manipulated", I do not see that anything that the Receiver did was in aid of, or assisted such (as alleged). The identity of who the principals were was not in issue so long as a deal could be closed without a vendor take back mortgage.

10 Mr. Rueter points out the Cocov (one of the principals) affidavit of June 25, 2003 that the property had an "as is" value of \$30.65 million. However, this fails to take into account that not only was this affidavit before the receivership commenced (July 4, 2003), but it was in fact in an effort to convince the court that a receiver need not be appointed because there was sufficient value to cover the Bank indebtedness. Affidavits of this nature must be taken with a grain of salt regarding puffery. I note as well that receivership sales are believed generally to generate lower amounts than a sale in the ordinary course of a non-pressed vendor.

11 It seems to me that the Receiver acted properly and within the mandate given it from time to time by the court. It fulfilled its prime purpose of obtaining as high a value it could for the hotel after an approved marketing campaign. Vis-à-vis the Receiver and that duty, it does not appear to me that the identity of the principals, but more importantly that there was overlap regarding the aborted purchaser from Holdings prior to the receivership, HIG and 203, is of any moment.

12 Holdings, of course, is free to make whatever allegations it feels appropriate against these entities and their principals and pursue whatever remedies it feels that it may have against them; the approval of the Receiver's activities is not intended in any way to have any impact or in any way to act as a shield for them.

13 In the end result, it appears to me that the adjournment request is merely to facilitate what Holdings believes is in its best interests - namely, it is under water as to its obligations to the Bank and so is drowned by the sale to 203; it hopes that if enough confusion is created in this approval of the Receiver's activities motion, that it will have the opportunity of being raised from the depths and artificial respiration applied. If it is presently drowned, a new sales process cannot do anything worse vis-à-vis it than drown it at a deeper depth. It will still be drowned, but the Bank in first priority position will be prejudiced in having to look to other sources, including Hong Kong based Holdings, for recovery of the deficit, in that case a greater deficit.

14 In the end result, the activities of the Receiver as detailed in its various reports are approved. For greater certainty, the activities of no one else are approved.

Motion granted.

APPENDIX — A

HSBC Bank of Canada and Regal Constellation Hotel Limited

My submission respecting the sale process is that neither my client nor the Court to my knowledge were aware that the purchaser under the offer to purchase recommended to the Court by the Receiver, were the same principals as the principals of the purchaser under the \$45,000,000 agreement to purchase with Regal marked as Exhibit 1 to the Affidavit of Fernandez sworn June 25, 2003, in Responding Motion Record.

The Court and Regal were advised by the Receiver's counsel on September 9/03 that there was an offer from the purchasers under the Regal Agreement but it was withdrawn when the deposit could not be certified.

Therefore the Court was not aware that the principals behind the offer #1 in the sealed Supplemental Report of the Receiver were the same as the principals behind purchaser #4 who was being recommended to the Court. The sale process was manipulated in that the same principals made offer #1 at \$31.0 million and offer #4 at \$25 million and that one of those principals, Mr. Cocov, deposed in an affidavit before this Court sworn 25 June 03, that the Hotel has a value of \$30,650,000

TAB 3

2004 CarswellOnt 2653
Ontario Court of Appeal

Regal Constellation Hotel Ltd., Re

2004 CarswellOnt 2653, [2004] O.J. No. 2744, 132 A.C.W.S. (3d) 215, 188 O.A.C. 97, 23
R.P.R. (4th) 64, 242 D.L.R. (4th) 689, 35 C.L.R. (3d) 31, 50 C.B.R. (4th) 258, 71 O.R. (3d) 355

**In the Matter of the Receivership of Regal Constellation Hotel
Limited, of the City of Toronto, in the Province of Ontario**

And In the Matter of s. 41 of the Mortgages Act, R.S.O. 1990 c. M.40

HSBC Bank of Canada (Applicant) and Deloitte & Touche Inc. (Receiver / Respondent
in Appeal) and Regal Pacific (Holdings) Limited (Respondent / Appellant) and 2031903
Ontario Inc. (Purchaser / Respondent in Appeal) and Aareal Bank A.G. (Intervenor)

Laskin, Feldman, Blair JJ.A.

Heard: May 13, 14, 2004

Judgment: June 28, 2004

Docket: CA C41258, C41257

Proceedings: affirming *Regal Constellation Hotel Ltd., Re* (2004), 2004 CarswellOnt 428 (Ont. S.C.J. [Commercial List])

Counsel: J. Brian Casey, John J. Pirie for Deloitte & Touche Inc.
Robert Rueter, A. Chan for Regal Pacific (Holdings) Limited
Tim Gilbert, Sandra Barton for 2031903 Ontario Inc.
James P. Dube for Aareal Bank A.G.

Related Abridgment Classifications

Debtors and creditors

VII Receivers

VII.6 Conduct and liability of receiver

VII.6.a General conduct of receiver

Real property

III Sale of land

III.6 Judicial sale

III.6.d Vesting order

Headnote

Sale of land --- Judicial sale — Vesting order

Vesting order is court order allowing court to effect change of title directly — Vesting order is also conveyance of title vesting interest in real or personal property in party entitled thereto under order — In its capacity as order, vesting order is in ordinary course subject to appeal — In Ontario, filing of notice of appeal does not automatically stay order and, in absence of stay, it remains effective and may be registered on title under the land titles system — Once vesting order that has not been stayed is registered on title, it is effective as registered instrument and it cannot be attacked except by means that apply to any other instrument transferring absolute title and registered under land titles system.

Table of Authorities

Cases considered by Blair J.A.:

Boucher v. Public Accountants Council (Ontario) (2004), 2004 CarswellOnt 2521 (Ont. C.A.) — referred to

Chippewas of Sarnia Band v. Canada (Attorney General) (2000), 2000 CarswellOnt 4836, 51 O.R. (3d) 641, 195 D.L.R. (4th) 135, 139 O.A.C. 201, 41 R.P.R. (3d) 1, [2001] 1 C.N.L.R. 56 (Ont. C.A.) — considered

Durrani v. Augier (2000), 2000 CarswellOnt 2807, 190 D.L.R. (4th) 183, 50 O.R. (3d) 353, 36 R.P.R. (3d) 261 (Ont. S.C.J.) — considered

Foulis v. Robinson (1978), 21 O.R. (2d) 769, 92 D.L.R. (3d) 134, 8 C.P.C. 198, 1978 CarswellOnt 466 (Ont. C.A.) — referred to

National Life Assurance Co. of Canada v. Brucefield Manor Ltd. (February 23, 1999), Doc. C24863, M20859 (Ont. C.A.) — followed

R.A. & J. Family Investment Corp. v. Orzech (1999), 121 O.A.C. 312, 1999 CarswellOnt 1829, 44 O.R. (3d) 385, 27 R.P.R. (3d) 230 (Ont. C.A.) — referred to

Regal Constellation Hotel Ltd., Re (July 4, 2003), Cumming J. (Ont. S.C.J.) — referred to

Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1, 1991 CarswellOnt 205 (Ont. C.A.) — considered

Royal Trust Corp. of Canada v. Karenmax Investments Inc. (1998), 1998 CarswellAlta 959, 231 A.R. 101, 71 Alta. L.R. (3d) 307 (Alta. Q.B. [In Chambers]) — referred to

Toronto Dominion Bank v. Usarco Ltd. (2001), 2001 CarswellOnt 525, 196 D.L.R. (4th) 448, 17 M.P.L.R. (3d) 57, 142 O.A.C. 70, 24 C.B.R. (4th) 303 (Ont. C.A.) — considered

Statutes considered:

Courts of Justice Act, R.S.O. 1990, c. C.43

s. 100 — considered

Land Titles Act, R.S.A. 2000, c. L-4

s. 191 — referred to

Land Titles Act, R.S.O. 1990, c. L.5

Generally — referred to

Pt. IX — referred to

Pt. X — referred to

s. 25 — referred to

s. 57 — referred to

s. 57(13) — referred to

s. 69 — referred to

s. 69(1) — considered

s. 78 — referred to

s. 78(4) — considered

ss. 155-157 — referred to

Regulations considered:

Land Titles Act, R.S.O. 1990, c. L.5

General, O. Reg. 26/99

Generally

s. 4

Blair J.A.:

63 I would dismiss the appeals for the foregoing reasons.

Disposition

The Appeals

64 For all of the foregoing reasons, the appeal from the vesting order granted by Sachs J. is quashed, and the appeals from the orders of Sachs J. dated December 19, 2003 approving the sale, and the order of Farley J. dated January 14, 2004, are dismissed.

Costs

65 The respondents and the intervenor are entitled to their costs of the appeal, including the motion to quash, which was included in the argument of the appeal.

66 The receiver and 203 requested that costs be fixed on a substantial indemnity basis - the receiver on the ground that the allegations raised impugned its integrity in the conduct of the receivership, and 203 on the ground that the appeal was futile and brought solely for tactical purposes in an attempt to extract a settlement and at great expense to 203 in terms of uncertainty and carrying costs. I would not accede to these requests. Without in any way questioning the integrity of the receiver in the conduct of the receivership, it seems to me that some of the problems could have been avoided had the receiver revealed the involvement of the Orenstein Group in the 203 transactions when it first learned that was the case. While I understand 203's frustration at the delay in finalizing the results of the transaction, it cannot be said that the appeal was frivolous and there is nothing in the circumstances to justify an award of costs on the higher scale: see *Foulis v. Robinson* (1978), 21 O.R. (2d) 769 (Ont. C.A.). I would therefore award costs on a partial indemnity scale.

67 Counsel provided us with bills of costs. Regal Constellation sought \$57,123.25 on a partial indemnity basis if successful. The receiver asks for \$61,919.00 and Aareal Bank requests \$12,224.75. These amounts are inclusive of fees, disbursements and GST and seem somewhat high to me. The draft bill submitted by 203 appears to me to be exceedingly high, given the amounts sought by other parties who carried a similar burden, and notwithstanding the importance of the case for 203. 203 asks us to fix its costs in the amount of \$137,444.68. Such an award is not justified and would simply not be fair and reasonable in the circumstances, in my view, given the nature and length of the appeal and the issues involved: see *Boucher v. Public Accountants Council (Ontario)*, [2004] O.J. No. 2634 (Ont. C.A.).

68 Costs are awarded, on a partial indemnity basis, as follows:

- a) To the receiver, in that amount of \$40,000;
- b) To 203, in the amount of \$40,000; and,
- c) To Aareal Bank, in the amount of \$12,225.

69 These amounts are inclusive of fees, disbursements and GST.

Laskin J.A.:

I agree.

Feldman J.A.:

I agree.

Appeal dismissed.

Footnotes

- 1 I shall refer to Regal Constellation Hotel Limited as "the Hotel" throughout these reasons.
- 2 See, for example, the *Alberta Land Titles Act* R.S.A. 2000, c. L-4, s. 191, which precludes registration of a judgment or order in the absence of consent, an undertaking not to appeal, or proof that all appeal rights have expired.
- 3 Except certain encumbrances that must remain on title by virtue of the *Land Titles Act*.
- 4 For instance, where an instrument would have been absolutely void if unregistered and rectification is ordered, a person suffering by the rectification is entitled to compensation as provided: s. 57(13). Persons fraudulently procuring an entry on the registry may be convicted of an offence under the Act, and where an innocent purchaser has acquired a charge or interest in the lands while the wrongful entry was subsisting on the lands the land registrar may re-vest the lands in the rightful owner but subject to the interests so acquired: ss 155-157.

TAB 4

Most Negative Treatment: Recently added (treatment not yet designated)

Most Recent Recently added (treatment not yet designated): [Triple-I Capital Partners Limited v. 12411300 Canada Inc.](#) | 2023 ONSC 3400, 2023 CarswellOnt 8707 | (Ont. S.C.J. [Commercial List], Jun 6, 2023)

2002 CarswellOnt 3002

Ontario Court of Appeal

Confectionately Yours Inc., Re

2002 CarswellOnt 3002, [2002] O.J. No. 3569, 116 A.C.W.S. (3d) 871, 164

O.A.C. 84, 219 D.L.R. (4th) 72, 25 C.P.C. (5th) 207, 36 C.B.R. (4th) 200

**IN THE MATTER OF THE PROPOSALS OF CONFECTIONATELY YOURS,
INC., BAKEMATES INTERNATIONAL INC., MARMAC HOLDINGS INC.,
CONFECTIONATELY YOURS BAKERIES INC., and SWEET-EASE INC.**

Catzman, Doherty, Borins JJ.A.

Heard: April 8, 2002

Judgment: September 19, 2002

Docket: CA C36486

Proceedings: reversing in part (2001), [25 C.B.R. \(4th\) 24](#) (Ont. S.C.J. [Commercial List])

Counsel: *Martin Teplitsky*, for Appellants, Barbara Parravano, Mario Parravano

Benjamin Zarnett, David Lederman, for Respondent, KPMG Inc.

Katherine McEachern, for Respondent, Laurentian Bank of Canada

Related Abridgment Classifications

Debtors and creditors

[VII Receivers](#)

[VII.8 Remuneration of receiver](#)

[VII.8.a Accounts](#)

Headnote

Receivers --- Remuneration of receiver — Accounts

Court-appointed receiver operated business of debtor companies pending going concern asset sale — Receiver presented report to court for approval — Report recommended that court approve receiver's fees and disbursements as well as fees and disbursements of receiver's solicitors — Shareholders of debtor companies objected to amount of fees and disbursements of receiver and solicitors — Motion judge refused to permit counsel for shareholders to cross-examine representative of receiver on report — Motion judge permitted counsel for shareholders as judge's "proxy" to ask questions of receiver's representative who was not sworn — Motion judge approved fees and disbursements of receiver and solicitors in amount submitted in report without any reduction — Shareholders appealed — Appeal allowed in part — Portion of order of motion judge approving accounts of receiver's solicitors set aside — Motion judge erred in failing to give accounts of receiver's solicitors separate consideration — Accounts of receiver's solicitors were ordered to be resubmitted, verified by affidavit and assessed by different judge — Shareholders had fair opportunity to challenge remuneration of receiver and questioning of receiver's representative was adequate substitute for cross-examining him, however receiver's representative could not speak to accuracy or reasonableness of solicitors' accounts — No representative of receiver's solicitors was available to question or cross-examine — Motion judge erred in equating procedure to be followed for approving receiver's conduct of receivership with procedure to be followed in assessing receiver's remuneration — Better practice is for receiver and its solicitors to each support claim for remuneration by way of affidavit.

H.C.); *Cohen v. Kealey & Blaney* (1985), 26 C.P.C. (2d) 211 (Ont. C.A.) These and other cases also illustrate that courts employ careful scrutiny in determining whether the remuneration requested by a receiver is fair and reasonable in the context of the duties which the court has ordered the receiver to perform. I will now turn to a discussion of what is "fair and reasonable".

(3) Fair and reasonable remuneration

42 As I stated earlier, the general standard of review of the accounts of a court-appointed receiver is whether the amount claimed for remuneration and the disbursements incurred in carrying out the receivership are fair and reasonable. This standard of review had its origin in the judgment of this court in *Atkinson Estate, Re* (1951), [1952] O.R. 685 (Ont. C.A.); aff'd [1953] 2 S.C.R. 41 (S.C.C.), in which it was held that the executor of an estate is entitled to a fair fee on the basis of *quantum meruit* according to the time, trouble and degree of responsibility involved. The court, however, did not rule out compensation on a percentage basis as a fair method of estimating compensation in appropriate cases. The standard of review approved in *Atkinson, Re* is now contained in s. 61(1) and (3) of the *Trustee Act*, R.S.O. 1990, c. T.23. Although *Atkinson Estate, Re* was concerned with an executor's compensation, its principles are regularly applied in assessing a receiver's compensation. See, e.g., *Ibar Developments Ltd. v. Mount Citadel Ltd.* (1978), 26 C.B.R. (N.S.) 17 (Ont. H.C.). I would note that there is no guideline controlling the quantum of fees as there is in respect to a trustee's fees as provided by s. 39(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

43 Bennett notes at p. 471 that in assessing the reasonableness of a receiver's compensation the two techniques discussed in *Atkinson Estate, Re* are used. The first technique is that the quantum of remuneration is fixed as a percentage of the proceeds of the realization, while the second is the assessment of the remuneration claimed on a *quantum meruit* basis according to the time, trouble and degree of responsibility involved in the receivership. He suggests that often both techniques are employed to arrive at a fair compensation.

44 The leading case in the area of receiver's compensation is *Belyea*. At p. 246 Stratton J.A. stated:

There is no fixed rate or settled scale for determining the amount of compensation to be paid a receiver. He is usually allowed either a percentage upon his receipts or a lump sum based upon the time, trouble and degree of responsibility involved. The governing principle appears to be that the compensation allowed a receiver should be measured by the fair and reasonable value of his services and while sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible. Thus, allowances for services performed must be just, but nevertheless moderate rather than generous.

45 In considering the factors to be applied when the court uses a *quantum meruit* basis, Stratton J.A. stated at p. 247:

The considerations applicable in determining the reasonable remuneration to be paid to a receiver should, in my opinion, include the nature, extent and value of the assets handled, the complications and difficulties encountered, the degree of assistance provided by the company, its officers or its employees, the time spent, the receiver's knowledge, experience and skill, the diligence and thoroughness displayed, the responsibilities assumed, the results of the receiver's efforts, and the cost of comparable services when performed in a prudent and economical manner.

46 In an earlier case, similar factors were employed by Houlden J. in *West Toronto Stereo Center Limited, Re* (1975), 19 C.B.R. (N.S.) 306 (Ont. Bkcty.) in fixing the remuneration of a trustee in bankruptcy under s. 21(2) of the *Bankruptcy Act*, R.S.C. 1970, c. B-3. At p. 308 he stated:

In fixing the trustee's remuneration, the Court should have regard to such matters as the work done by the trustee; the responsibility imposed on the trustee; the time spent in doing the work; the reasonableness of the time expended; the necessity of doing the work, and the results obtained. I do not intend that the list which I have given should be exhaustive of the matters to be considered, but in my judgment they are the more important items to be taken into account.

These factors were applied by Henry J. in *Hoskinson, Re* (1976), 22 C.B.R. (N.S.) 127 (Ont. S.C.).

TAB 5

2015 ABQB 745
Alberta Court of Queen's Bench

Servus Credit Union Ltd. v. Trimove Inc.

2015 CarswellAlta 2169, 2015 ABQB 745, [2015] A.J. No. 1275, [2016] A.W.L.D. 488, 260 A.C.W.S. (3d) 677

Servus Credit Union Ltd, Applicant and Trimove Inc. and Geeta Luthra, Respondents

J.B. Veit J.

Heard: November 18, 2015
Judgment: November 24, 2015
Docket: Edmonton 1503-06388

Counsel: Kentigern A. Rowan, Q.C., for Receiver, MNP Ltd.
Thomas Gusa, for Applicant, Servus Credit Union Ltd.
Darren R. Bieganeck, Q.C., for AFSC (Agricultural Financial Service Corporation)
Vishal Luthra, Geeta Luthra, for themselves

Related Abridgment Classifications

Bankruptcy and insolvency

IV Receivers

IV.2 Fees and expenses

Headnote

Bankruptcy and insolvency --- Receivers — Fees and expenses

Court-appointed receiver recovered total of approximately \$1.1 million of which approximately \$863,000 was available to distribute to creditors — Receiver brought application for approval of its fees and its lawyer's fees which together totalled approximately \$82,000 — Application granted — No basis was established for any substantive challenge to fees — Receiver provided detailed information about its activities and about individuals who undertook them and their rates — Amount of work undertaken by receiver was to be assessed in light of all circumstances of case including uncooperative attitude expressed by debtors at outset, difficulties of accounting for rolling stock, and ongoing failure of debtors to provide timely, accurate information — Debtors had contracted to pay receiver's lawyer's fees on full indemnity basis — Contract with respect to fees should be conclusive in absence of any argument that contract itself is invalid — There was no suggestion that legal fees exceeded those which could be said to be essential to and arising within four corners of litigation.

Table of Authorities

Cases considered by J.B. Veit J.:

Alberta Treasury Branches v. Weatherlok Canada Ltd. (2011), 2011 ABCA 314, 2011 CarswellAlta 1883, 343 D.L.R. (4th) 304, (sub nom. *Trinier v. Shurnaik*) 515 A.R. 148, (sub nom. *Trinier v. Shurnaik*) 532 W.A.C. 148, 68 Alta. L.R. (5th) 400 (Alta. C.A.) — referred to

BT-PR Realty Holdings Inc. v. Coopers & Lybrand (1997), 1997 CarswellOnt 1246, 29 O.T.C. 354 (Ont. Gen. Div. [Commercial List]) — considered

Bank of Nova Scotia v. Diemer (2014), 2014 ONCA 851, 2014 CarswellOnt 16721, 20 C.B.R. (6th) 292, 327 O.A.C. 376 (Ont. C.A.) — followed

Belyea v. Federal Business Development Bank (1983), 46 C.B.R. (N.S.) 244, 44 N.B.R. (2d) 248, 116 A.P.R. 248, 1983 CarswellNB 27 (N.B. C.A.) — followed

Confectionately Yours Inc., Re (2002), 2002 CarswellOnt 3002, 36 C.B.R. (4th) 200, 164 O.A.C. 84, 25 C.P.C. (5th) 207, 219 D.L.R. (4th) 72 (Ont. C.A.) — followed

Sidorsky v. CFCN Communications Ltd. (1995), 27 Alta. L.R. (3d) 296, 35 C.P.C. (3d) 239, [1995] 5 W.W.R. 190, 167 A.R. 181, 1995 CarswellAlta 86 (Alta. Q.B.) — referred to

[the receiver] demanded that we release to him all the data and mentioned that his team is out and about looking for our equipment. I assured him at that point, that equipment is safe and there is no risk for the lender's security....

Eric Sirrs gave me 2 hours to compile information for him to satisfy his court order demands.... I provided him the following items ... list of equipment, I recalled from my memory and locations ...

20 Another example of the kind of lack of cooperation complained of is the failure of Trimove, even up to and including the date of this application, to explain how the payment of a Trimove account receivable ended up in the hands of a stranger. At this hearing, the debtors explained that they owned a separate entity, with a very similar name to Trimove Inc., and there had perhaps been a typing error in naming the payee of the cheque.

21 Another example of the problems experienced by the receiver relates to the failure of Trimove to satisfactorily explain the transfer of two of its serial numbered pieces of equipment to a third party who asserted that he had done machinist's work for Trimove over a period of a year and not been paid. That stranger, Khullar, has provided information to the receiver, but management has failed to do so.

22 Another example of the debtor's failure to provide accurate, timely information relates to the failure of Trimove to provide GPS locations for some of its equipment moving on highways even when, by May 12, one unit was still out of the country.

23 Finally, in respect of the Aarbro issue, the debtors filed evidence at this hearing concerning their interest in that property. In light of that late dispute relating to ownership of the company owning the ranch property in question, the disposition of the Aarbro claim is deferred to a separate hearing.

24 In support of the claim for its fees, MNP filed an affidavit attaching docketed time allocations for work done on the receivership, together with an outline of the individuals who worked on the receivership and their billable cost. MNP also approved as part of its receivership expenses the fees of its lawyer.

25 The legal fees claimed are not the subject of an affidavit. There is, however, reference in the law firm's two line claim to invoices relating to the totals claimed. There is no evidence that the debtors ever asked for information about the invoices themselves.

2. Testing receivers' and lawyers' fees

26 I agree with the debtors that general guidance to receivers', and their lawyers', fees can be found in *Belyea* and *Diemer*.

27 In addition to those authorities, I bring to the debtors' attention two additional cases, the first of which is *Bakemates*, which expands on some of the topics relating to the testing of fees and provides a useful outline of the processes by which any necessary examination of fees will be conducted.

28 The other case to which I must refer is *BT-PR Realty Holdings*. That decision is important in the circumstances here where there is a contract relating to fees, specifically the lawyer's fees. A court's general approach to fees must also take into account, not only the general principles as set out in decisions such as *Diemer*, but also any contract in relation to legal fees. As Farley J. said:

I do not particularly quarrel with the list of factors set out in the *Bank of Montreal v. Nicar Trading Co.* (1990), 78 C.B.R. (N.S.) 85 (B.C.C.A.):

(a) the nature extent and value of the cases;

(b) the complications and difficulties encountered;

(c) the degree of assistance provided by the parties;

- (d) time spent by the receiver;
- (e) the receiver's knowledge, experience and skill;
- (f) diligence and thoroughness;
- (g) responsibilities assumed;
- (h) results achieved; and,
- (i) the cost of comparable services.

However I would add

- (j) other material considerations - for example in this case:
 - (i) the April 12 agreement to the fees;
 - (ii) the priority receivership of the Bank in this co-receivership relationship; and (iii) the apparent diversionary and distracting excessive hands on requirements of Miller who all the while is demanding efficiency (more accurately a low fee at any price).

I would think however that where there is a retainer given which indicates that the fee will be based upon the multiplicand of hourly rates and time expended this factor should receive special emphasis as it is what the parties bargained for. See above for my views about allowing the taxi meter to run without taking the passenger along the appropriate route. In the subject case C&L charged on the multiplicand basis. Given their explanation and the lack of any credible and reliable evidence to the contrary, I see no reason to interfere with that charge. It would also seem to me that on balance C&L scores neutrally as to the other factors and of course, the agreement as to the fees should be conclusive if there is no duress or equivalent.

In other words, in *BT-PR Realty Holdings*, Farley J. emphasized that while an outrageous departure from the norm, such as a taxi driver "[taking] his fare from the Courthouse to the Royal York Hotel via Oakville", or, in Edmonton terms, taking a fare from the Law Courts to the MacDonald Hotel via Spruce Grove, will not be tolerated, an agreement about fees is usually conclusive.

3. Applying the principles in this case

a) Receiver's fees

29 Information about the receiver's fees is attached to an affidavit in the manner recommended by *Bakemates*. The debtors do not provide any evidence on the issue of fees.

30 It's true, of course, that this was not a technically complicated receivership. The receiver sold most of the debtors' assets by auction. However, even settling on that procedure entailed some work by the receiver as there were competing offers from auction businesses and the receiver had to do some research to determine why it should prefer one auctioneer's offer to the other.

31 More important than the way in which the receiver disposed of most of the assets is the unfortunate response of the debtor to the initial approach by the receiver, coupled with the nature of the debtor's assets; those two factors justify what the debtors consider to be excessive scrutiny by the receiver.

32 In addition to this main problem, which is represented by the docket in the greater expenditures at the outset of the receivership, there are the continuing problems over the course of the receivership.

33 The debtors never did retain an insolvency expert; therefore, the receiver was dealing with them personally. Dealing with self-represented litigants takes more time and care and provides less comfort than dealing with professionals.

TAB 6

Canada Federal Statutes
Bankruptcy and Insolvency Act
Part IV — Property of the Bankrupt (ss. 67-101.2)
General Provisions

Most Recently Cited in: *Canada v. Canada North Group Inc.*, 2021 SCC 30, 2021 CSC 30, 2021 CarswellAlta 1780, 2021 CarswellAlta 1781, [2021] 10 W.W.R. 1, 91 C.B.R. (6th) 1, 28 Alta. L.R. (7th) 1, 19 B.L.R. (6th) 1, [2021] 5 C.T.C. 111, EYB 2021-397318, 333 A.C.W.S. (3d) 23, [2021 S.C.J. No. 30, 460 D.L.R. (4th) 309, [2021] A.W.L.D. 3408, [2021] A.W.L.D. 3521, 2021 D.T.C. 5080, 2021 D.T.C. 5081 | (S.C.C., Jul 28, 2021)

R.S.C. 1985, c. B-3, s. 81.1

s 81.1

Currency

81.1

81.1(1) Right of unpaid supplier to repossess goods

Subject to this section, if a person (in this section referred to as the "supplier") has sold to another person (in this section referred to as the "purchaser") goods for use in relation to the purchaser's business and delivered the goods to the purchaser or to the purchaser's agent or mandatary, and the purchaser has not fully paid for the goods, the supplier may have access to and repossess the goods at the supplier's own expense, and the purchaser, trustee or receiver, or the purchaser's agent or mandatary, as the case may be, shall release the goods, if

(a) the supplier presents a written demand for repossession to the purchaser, trustee or receiver, in the prescribed form and containing the details of the transaction, within a period of 15 days after the day on which the purchaser became bankrupt or became a person who is subject to a receivership;

(b) the goods were delivered within 30 days before the day on which the purchaser became bankrupt or became a person who is subject to a receivership;

(c) at the time when the demand referred to in paragraph (a) is presented, the goods

- (i) are in the possession of the purchaser, trustee or receiver,
- (ii) are identifiable as the goods delivered by the supplier and not fully paid for,
- (iii) are in the same state as they were on delivery,
- (iv) have not been resold at arms' length, and
- (v) are not subject to any agreement for sale at arms' length; and

(d) the purchaser, trustee or receiver does not, forthwith after the demand referred to in paragraph (a) is presented, pay to the supplier the entire balance owing.

81.1(2) Where goods have been partly paid for

Where, at the time when the demand referred to in paragraph (1)(a) is presented, the goods have been partly paid for, the supplier's right to repossess under subsection (1) shall be read as a right

(a) to repossess a portion of the goods proportional to the unpaid amount; or

(b) to repossess all of the goods on paying to the purchaser, trustee or receiver an amount equal to the partial payment previously made to the supplier.

81.1(3) [Repealed 1999, c. 31, s. 23(2).]

81.1(4) If notice of intention or proposal was filed

If a notice of intention under [section 50.4](#) or a proposal was filed in respect of the purchaser after the delivery of the goods to the purchaser and before the purchaser became bankrupt or became a person who is subject to a receivership, the 30-day period referred to in paragraph (1)(b) is the 30-day period before the filing of the notice of intention or, if there was no notice of intention, the filing of the proposal.

81.1(5) Expiry of supplier's right

A supplier's right to repossess goods under this section expires if not exercised within the 15-day period referred to in paragraph (1)(a), unless the period is extended before its expiry by the trustee or receiver, or by the court.

81.1(6) Ranks above other claims

Notwithstanding any other federal or provincial Act or law, a supplier's right to repossess goods pursuant to this section ranks above every other claim or right against the purchaser in respect of those goods, other than the right of a *bona fide* subsequent purchaser of the goods for value without notice that the supplier had demanded repossession of the goods.

81.1(7) Application to court for directions

The purchaser, trustee or receiver may apply to the court for directions in relation to any matter relating to this section, and the court shall give, in writing, such directions, if any, as it considers proper in the circumstances.

81.1(8) Supplier may appeal to court

Where a supplier is aggrieved by any act, omission or decision of the purchaser, trustee or receiver, the supplier may apply to the court and the court may make such order as it considers proper in the circumstances.

81.1(9) Other rights saved

Nothing in subsection (6) or (7) precludes a person from exercising any right that the person may have under [subsection 34\(1\)](#) or [section 37](#).

81.1(10) No payment

A supplier who repossesses goods pursuant to this section is not entitled to be paid for those goods.

81.1(11) Provincial rights saved

Nothing in this section precludes a supplier from exercising any right that the supplier may have under the law of a province.

81.1(12) Definitions

The following definitions apply in this section.

"person who is subject to a receivership" means a person in respect of whom any property is under the possession or control of a receiver. ("*mise sous séquestre*")

"receiver" means a receiver within the meaning of [subsection 243\(2\)](#). ("*séquestre*")

Amendment History

1992, c. 27, s. 38(1); 1999, c. 31, s. 23; 2005, c. 47, s. 66

Currency

Federal English Statutes reflect amendments current to October 26, 2023

Federal English Regulations Current to Gazette Vol. 157:20 (September 27, 2023)

End of Document

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TAB 7

Alberta Statutes
Personal Property Security Act
Part 1 — General (ss. 2-8.1)

Most Recently Cited in: [Hyduke Drilling Solutions Inc \(Re\)](#) , 2022 ABQB 40, 2022 CarswellAlta 146, 340 A.C.W.S. (3d) 133, [2022] A.W.L.D. 572 | (Alta. Q.B., Jan 13, 2022)

R.S.A. 2000, c. P-7, s. 3

s 3. Application of Act

Currency

3. Application of Act

3(1) Subject to [section 4](#), [this Act](#) applies to

(a) every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral, and

(b) without limiting the generality of clause (a), a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust and transfer of chattel paper where they secure payment or performance of an obligation.

3(2) Subject to [sections 4](#) and [55](#), [this Act](#) applies to

(a) a transfer of an account or chattel paper,

(b) a lease of goods for a term of more than one year, and

(c) a commercial consignment,

that does not secure payment or performance of an obligation.

Currency

Alberta Current to Gazette Vol. 119:15 (August 15, 2023)

Concordance References

Personal Property Security Act Concordance 11, [Application of Act](#)

Personal Property Security Act Concordance CABYCONCORD1, [Table of Concordance](#)

Alberta Statutes
Personal Property Security Act
Part 3 — Perfection and Priorities (ss. 19-41)

Most Recently Cited in: [Bank of Nova Scotia v. Five Star Motor Group Ltd](#), 2020 ABCA 244, 2020 CarswellAlta 1123, [2020] A.W.L.D. 2140, [2020] A.W.L.D. 2145, [2020] A.W.L.D. 2149, 8 Alta. L.R. (7th) 250, 319 A.C.W.S. (3d) 554 | (Alta. C.A., Jun 19, 2020)

R.S.A. 2000, c. P-7, s. 22

s 22. Priority of purchase-money security interest

Currency

22. Priority of purchase-money security interest

22(1) A purchase-money security interest in

(a) collateral, other than an intangible, that is perfected not later than 15 days after the day that

(i) the debtor obtains possession of the collateral, or

(ii) a third party, at the request of the debtor, obtains possession of the collateral,

whichever is the earlier, or

(b) an intangible that is perfected not later than 15 days after the day the security interest attaches

has priority over the interests of persons referred to in [section 20\(a\)](#).

22(2) For the purposes of this section, where goods are shipped by common carrier to a debtor or to a person designated by the debtor, the debtor does not have possession of the goods until the debtor or the third person, at the request of the debtor, has obtained actual possession of the goods or a document of title to the goods, whichever is earlier.

Currency

Alberta Current to Gazette Vol. 119:15 (August 15, 2023)

Concordance References

Personal Property Security Act Concordance 36, [Purchase-money security interest](#)

Personal Property Security Act Concordance CABYCONCORD1, [Table of Concordance](#)

TAB 8

1992 CarswellAlta 151
Alberta Court of Queen's Bench

Holland v. Chrysler Credit Canada Ltd.

1992 CarswellAlta 151, [1992] A.W.L.D. 860, 134 A.R. 130, 36
A.C.W.S. (3d) 476, 4 P.P.S.A.C. (2d) 250, 5 Alta. L.R. (3d) 258

DENNIS R. HOLLAND v. CHRYSLER CREDIT CANADA LTD.

Master Funduk [in Chambers]

Judgment: October 26, 1992
Docket: Doc. Edmonton 9203 20839

Counsel: *P. Frederiksen*, for applicant.
M.K. Olsen, for respondent.

Subject: Insolvency; Property; Corporate and Commercial

Related Abridgment Classifications

Personal property security

I Nature and scope of legislation

I.10 Miscellaneous

Personal property security

III Perfection of security interest

III.3 Repossession

Headnote

Personal Property Security --- Perfection of security interest — Repossession

Personal Property Security --- Transitional provisions

Personal property security — Security interests under Personal Property Security Acts — Operation of legislation — Lessee of motor vehicle leased in Ontario defaulting under lease, bringing vehicle into Alberta and registering it in another person's name — Vehicle being sold to bona fide purchaser without knowledge of lease — Lessor subsequently discovering vehicle's whereabouts and seizing it — Purchaser's interest being superior to lessor's.

Personal property security — Security interests under Personal Property Security Acts — Disposition of subject property — Lessee of motor vehicle leased in Ontario defaulting under lease, bringing vehicle into Alberta and registering it in another person's name — Vehicle being sold to bona fide purchaser without knowledge of lease — Lessor subsequently discovering vehicle's whereabouts and seizing it — Purchaser's interest being superior to lessor's.

Personal property security — Security interests under Personal Property Security Acts — Transactions subject to legislation — Lessee of motor vehicle leased in Ontario defaulting under lease, bringing vehicle into Alberta and registering it in another person's name — Vehicle being sold to bona fide purchaser without knowledge of lease — Lessor subsequently discovering vehicle's whereabouts and seizing it — Personal Property Security Act not applying to transactions entered into in other jurisdictions where no connection existing between that transaction and Alberta.

Personal property security — Security interests under Personal Property Security Acts — Perfection — Lessee of motor vehicle leased in Ontario defaulting under lease, bringing vehicle into Alberta and registering it in another person's name — Vehicle being sold to bona fide purchaser without knowledge of lease — Lessor subsequently discovering vehicle's whereabouts and seizing it — Temporary perfection provided by Personal Property Security Act not applying where bona fide purchaser buying before lease perfected by seizure.

A motor vehicle was leased in Ontario to three lessees by a company which then assigned its interest to the respondent. One of the lessees brought the vehicle into Alberta and registered it in another person's name. That person later sold the vehicle to a purchaser who had searched the appropriate registries in Alberta to verify registered ownership and absence of liens. A

which the efficacy of a title retention provision in a conditional sales contract or a title transfer provision in a chattel mortgage is to be determined.

The concept of "perfection" is defined in section 8(2). Under this definition, a security interest is perfected when it is validly created under the applicable law and when it has the priority status of a security interest created and perfected under the Act. *It should be noted that under this definition, a security interest could be "perfected" even though under the applicable law no public notice measures such as filing or registration are prescribed by that law. However, see section 7(4).*

The "effect of perfection or non-perfection" refers to the priority structure of the applicable law. Under the Act the priority structure of the applicable law is accepted in total in some situations; but in others it is modified to the extent that domestic interests are affected. [emphasis mine; footnotes omitted]

42 As indicated under heading "Two," Ontario law does not require a "true" lease to be registered. The effect of s. 8(2) is that the lease is "perfected" in Ontario even though there is no registration requirement in Ontario.

43 If s. 5 applies in this case the applicant takes title free of the lease.

44 I agree with the authors about what "validity, perfection and effect of perfection or non-perfection" is aimed at. That does not resolve the issue.

45 There is a perfected security interest in Ontario, with the vehicle later being brought into Alberta (without the knowledge or consent of the respondent) and being sold to an Alberta resident without knowledge of the lease and before any possible perfection of the security interest in Alberta by the respondent in accordance with either s. 24 or s. 25.

46 Here the seizure of the vehicle was made by the respondent after it had been sold to the applicant (and while in the applicant's possession) so s. 24 cannot apply. If the respondent did register the lease in Alberta it did so after the vehicle was sold to the applicant so s. 25 cannot apply.

47 Subsections (3) and (4) are not relevant on the facts before me. **The matter then moves to an examination of subs. (2). This is what I extract on that from Cuming and Wood, pp. 54-55:**

Section 5 states a choice of law rule for security interests in goods not falling within sections 6 or 7. The choice of law rule prescribed is the traditional *lex situs* rule of the common law, *i.e.*, the location of the goods at the time the security interest attaches ...

In general approach section 5(2) follows the pattern of pre-PPSA registration legislation, which required foreign security interests to be perfected under the registry system of the province if those interests were to have priority over certain interests in goods acquired in the province. However, the section provides refinements not found in prior legislation.

Section 5(2) provides for a "grace period", or more accurately, a period of conditional temporary perfection without registration or possession by the secured party. In effect, the section recognizes that the perfected status given to the security interest under the *lex situs* at the date of creation continues for the specified period of time after the goods are brought into Alberta, so long as the prescribed re-perfection measures are taken in Alberta. Accordingly, a security interest that is not perfected under the *lex situs* at the date of creation will not be recognized as being temporarily perfected in Alberta. Further, temporary perfection in the province ceases when perfection under the foreign law ceases unless the security interest has been "otherwise perfected in the Province under this Act." See section 5(2)(c) and 5(3).

The temporary perfection granted by section 5(2) is conditional upon ultimate perfection by other means prior to the expiry of the time specified in the section. This should be contrasted with periods of temporary perfection provided elsewhere in the Act which are absolute in that temporary perfection is not conditional upon the secured party perfecting within a prescribed period of time. The security interest is temporarily perfected whether or not it is ever perfected otherwise. See, *e.g.*, section 28(3).

TAB 9



Clerk's stamp:

COURT FILE NUMBER 2003 - 01472
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE EDMONTON
 PLAINTIFF ROYAL BANK OF CANADA
 DEFENDANTS LEIGH COMMERCIAL BUILDERS INC.,
 LEIGH BUILDERS LTD., HEATHER RUMAK,
 RICHARD G. RUMAK, and ANDY JAMES
 RUMAK

DOCUMENT **ORDER FOR FINAL DISTRIBUTION,
 APPROVAL OF RECEIVER'S FEES AND
 DISBURSEMENTS, APPROVAL OF
 RECEIVER'S ACTIVITIES AND DISCHARGE
 OF RECEIVER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 MILLER THOMSON LLP
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 2700, Commerce Place
 10155-102 Street
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Lawyer's
 Name: Susy Trace
 Lawyer's
 Email: strace@millerthomson.com
 File No.: 0255700-0001

DATE ON WHICH ORDER WAS PRONOUNCED: SEPTEMBER 8, 2021
LOCATION WHERE ORDER WAS PRONOUNCED: EDMONTON, ALBERTA
NAME OF MASTER WHO MADE THIS ORDER: THE HONOURABLE JUSTICE M. E. BURNS

UPON THE APPLICATION of Grant Thornton Limited in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertakings, property and assets of Leigh Commercial Builders Inc. ("**LCBI**") and Leigh Builders Ltd. ("**LBL**", and collectively with LCBI, the "**Debtors**") for the final distribution of proceeds, approval of the Receiver's fees and disbursements, approval of the Receiver's activities and discharge of the Receiver; **AND UPON HAVING READ** the Application and the Second Report to the Court of Grant Thornton Limited in its capacity as receiver of the Debtors dated August 31, 2021 (the "**Receiver's Second Report**"), filed, the Confidential Supplement to the Receiver's Second Report (the "**Confidential**"),

Report”), the Supplementary Confidential Appendix “12” to the Confidential Report and the filed Supplementary Appendix “13” to the Receiver’s Second Report; **AND UPON** noting that the Receiver is of the opinion that Royal Bank of Canada has a good and valid security interest in the property of each of the Debtors; **AND UPON** finding that after the Receiver completes the sale of lands owned by LBL and makes its final distributions of the proceeds of the assets of the Debtors, the administration of the receivership will be complete; **AND UPON HEARING** the submissions of counsel for the Receiver and all other interested parties present; **AND UPON** being satisfied that it is appropriate to do so,

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of Notice of this Application and all materials in support (the “**Materials**”) is hereby declared to be good and sufficient, no other person is required to have been served with the Materials and the time required for service of the Materials is abridged to that actually given.

Accounts and Final Distribution

2. The Receiver’s accounts for fees and disbursements incurred in these proceedings, as set out in the Receiver’s Second Report are hereby approved without the necessity of a formal passing of its accounts.
3. The accounts of the Receiver’s legal counsel for its fees and disbursements, as set out in the Receiver’s Second Report are hereby approved without the necessity of a formal assessment of its accounts.
4. The Receiver’s activities as set out in the Receiver’s Second Report, and the Statement of Receipts and Disbursements as attached to the Receiver’s Second Report, are hereby ratified and approved.
5. The Receiver is authorized and directed to make the following distributions:
 - (a) \$103,879 payable to Royal Bank of Canada (“**RBC**”) for amounts borrowed by the Receiver in these Proceedings and secured by the Receiver’s Borrowing Charge ordered in the Receivership Order dated June 15, 2020;
 - (b) \$93,559 to the City of Wetaskiwin for outstanding property taxes owing for the Property; and
 - (c) \$278,989 to RBC to partially repay amounts owing to it by LBL.

Discharge

6. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of fraud, gross negligence or wilful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing, any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.

7. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
8. Upon the Receiver filing with the Clerk of the Court a certificate signed by a licensed Trustee employed by the Receiver confirming that:
 - (a) all matters set out in paragraph 5 of this Order have been completed;
 - (b) the transaction contemplated by the sale of lands owned by LBL has been completed; and
 - (c) the administration of the Receivership estate has been completed;

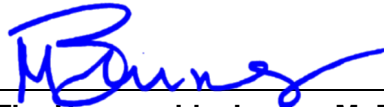
then the Receiver shall be discharged as Receiver of the Debtors without further order of the Court, provided however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

Miscellaneous Matters

9. Service of this Order shall be deemed good and sufficient by:
 - (a) Serving the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and
 - (b) Posting a copy of this Order on the Receiver's website at: <https://www.grantthornton.ca/creditorupdates>; and

Service on any other person is hereby dispensed with.

10. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



The Honourable Justice M. E. Burns

TAB 10

COURT FILE NUMBER 2003 03284
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF ROYAL BANK OF CANADA
DEFENDANT COPPERLINE EXCAVATING LTD., 1496986
ALBERTA LTD., SPRUCE CREEK
CONTRACTING LTD., JAMIE BLACK and
LORI BLACK
DOCUMENT **ORDER FOR FINAL DISTRIBUTION,
APPROVAL OF RECEIVER'S FEES AND
DISBURSEMENTS, APPROVAL OF
RECEIVER'S ACTIVITIES AND
DISCHARGE OF RECEIVER**

Clerk's Stamp

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Sharek Logan & van Leenen LLP, Barristers & Solicitors
2100 Scotia Place, 10060 Jasper Avenue NW
Edmonton, Alberta, T5J 3R8
Phone: 780.413.3100 File 15350/DA
Attn: David Archibold

DATE ON WHICH ORDER WAS PRONOUNCED: OCTOBER 25, 2021
LOCATION WHERE ORDER WAS PRONOUNCED: EDMONTON
NAME OF JUSTICE WHO MADE THIS ORDER: THE HONORABLE JUSTICE D. L. SHELLEY

UPON THE APPLICATION by Ernst & Young Inc. in its capacity as the Court-appointed Receiver (the "Receiver") of the undertaking, property and assets of Copperline Excavating Ltd., 1496986 Alberta Ltd., and Spruce Creek Contracting Ltd. (the "Debtors"); **AND UPON HAVING READ** the Receivership Order dated February 21, 2020 (the "Receivership Order"), the Receiver's Second Report, Supplement to the Receiver's Second Report, bench brief, and the Affidavit of Service; **AND UPON NOTING** it is in the interest of the stakeholders to make a distribution to secured creditors; **AND UPON NOTING** it is in the interest of the stakeholders to conclude the Receivership and discharge the Receiver after certain conclusory steps have occurred;

IT IS HEREBY ORDERED AND DECLARED THAT:

[1] The time for service of the notice of application for this Order is hereby abridged to the time actually given, and service of this Application and supporting materials as advised by counsel is good and sufficient, and this hearing is properly returnable before this Honourable Court today, and further service thereof is hereby dispensed with.

- [2] The activities of the Receiver and its counsel as outlined in the Receiver's Second Report (the "Report") and Supplement to the Receiver's Second Report are hereby ratified and approved.
- [3] The Receiver's Statement of Receipts and Disbursements to September 2, 2021 as set out in the Report is hereby ratified and approved.
- [4] The fees and disbursements of the Receiver as set out in the Report are hereby approved without the requirement of a formal passing of accounts.
- [5] The accounts of the Receiver's counsel, Sharek Logan & van Leenen LLP, for their fees and disbursements, as set out in the Report are hereby approved without the necessity of a formal assessment of their accounts.
- [6] The accounts of counsel for the management of the Debtors for their fees and disbursements as set out in the Report as having been of assistance to the Receiver and its counsel are hereby approved without the necessity of a formal assessment of their accounts.
- [7] On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.
- [8] No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
- [9] The process of winding up or concluding the Receivership as proposed by the Receiver in the Report and Supplement to the Receiver's Second Report are hereby approved. Specifically, the Court directs the following steps to take place in order to bring the Receivership to conclusion:
- a) The Receiver is to close the "0002" payroll and GST accounts opened by the Receiver with the Canada Revenue Agency upon completion of all administrative matters;
 - b) The Receiver is to make a distribution in the amounts as set out in the proposed distribution contained in the Supplement to the Receiver's Second Report at Schedule "A";
 - c) The Receiver and its legal counsel are authorized and directed to file a Notice of Ceasing to Act in any litigation involving the Debtors or the Receiver, and such Notices of Ceasing to Act shall designate the address for service upon the Debtor to be at:

12, 119 First Avenue
Spruce Grove, Alberta, T7X 2H4 (the "Address")

or such other address as may be communicated by counsel for the Defendants
 - d) The Receiver is to arrange for the cancellation of all remaining accounts in its own name, as well as the payment of any outstanding liabilities in respect of those accounts up to the date of cancellation or transfer;

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- e) The Receiver is entitled to pay its reasonable fees and disbursements accruing from September 2, 2021, as well as those of its legal counsel, out of the funds that the Receiver is holding in trust;
- f) The Debtors' former directors and officers shall then have 30 days from the date of this Order to make appropriate arrangements with the Receiver to retain physical possession of the books and records of the Debtor, at their sole cost and expense. In the event that the Debtors' former directors and officers do not exercise their option to retain the books and records, the Receiver is hereby authorized to abandon the books and records to Management;
- g) After payment of all amounts as outlined herein, the Receiver shall pay, subject to reasonable holdbacks not to exceed \$133,412.66 that the Receiver may maintain to address 'windup' steps, all remaining funds from its trust account to Royal Bank of Canada;
- h) Review and settle the beneficial ownership claim as to the Rental Property (as defined in the Reports) or bring an application to this Court to determine entitlement to the holdback funds in relation to this claim; and
- i) Upon completion of the distribution of funds and other administrative matters outlined in this paragraph, the Receiver shall file an affidavit with the Court confirming all steps have been taken, the resolution of the holdback claim as to the Rental Property, together with the final Statement of Receipts and Disbursements.

[10] Upon completing the steps outlined in paragraph 9 of this Order, including the filing of the Affidavit as required by paragraph 9(i), of this Order, the Receiver is fully and finally discharged, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

[11] Both before and after its discharge, the Receiver is authorized and directed to redirect and/or send any correspondence or other documents addressed to the Debtors or the Receiver and received by the Receiver to the Address. Thereafter the Receiver has no other obligation or responsibility in relation to any such correspondence or other documents, and for clarity has no obligation or responsibility to respond to or deal with any such correspondence or document. Notwithstanding the aforesaid, any funds received by the Receiver on account of the Debtors, or any one of them, shall be forwarded by the Receiver to the Royal Bank of Canada.

[12] For clarity, upon the discharge of the Receiver, all of the property of the Debtors, including without limitation, leased property, the books, records, and other documents and information of Debtors, shall revert to the Debtors, and the Receiver shall have no more right, entitlement, obligation or responsibility in respect of or relating to the property or information of the Debtors, including without limitation information to which the Personal Information Protection and Electronic Documents Act, SA 2003, c P6.5 may apply, and the Receiver shall have no responsibility or obligation to maintain any insurance in respect of the property of the Debtors.

[13] The Interlocutory Sealing Order granted June 22, 2020, by the Honourable Justice J. J. Gill is vacated and of no further force and effect. The Clerk of the court is hereby directed to remove the confidential exhibit to the Receiver's First Report from the sealed envelope it is contained within and to file the said confidential Supplement to the Receiver's First Report in this Action.

~~[14] This Order shall have full force and effect in all Provinces and Territories in Canada, outside Canada and against all persons against whom it may be enforceable.~~ ✓

- [15] This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
- [16] This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
- [17] Service of this Order on any party not attending this Application is hereby dispensed with.



The Honourable Justice D. L. Shelley,
Court of Queen's Bench of Alberta, In Commercial
Chambers