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62123.00

Civil Enforcement Fundamentals

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ISBN-10: 1-55093-707-3
ISBN-13: 978-1-55093-707-7

Selected Case Law on Civil Enforcement

Civil Enforcement Fundamentals

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Legal Education Society of Alberta

For presentation in:
Edmonton, Alberta – January 22, 2019
Calgary, Alberta – January 29, 2019

SELECTED CASE LAW ON ENFORCEMENT

Davidson v 1773907 Alberta Ltd., 2017 ABCA 267 2
Prestigious Properties Inc. v. Cold Lake Estates, 2018 ABQB 81 3
E Dehr Delivery Ltd. v Dehr, 2018 ABQB 846 (appeal from Master Breitkreuz's decision) 4

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***DAVIDSON V 1773907 ALBERTA LTD.*, 2017 ABCA 267**

(aff'g 2016 ABQB 2)
(aff'g 177390, 2016 ABQB 2)

Shelley Davidson was a former employee of Silverado Oilfield Venture Ltd. ("Silverado"). Silverado and 1773907 Alberta Ltd. ("177") (which had purchased Silverado's assets through a receivership) alleged that Shelley Davidson ("Shelley") committed fraud, breaches of fiduciary duty and misappropriation during her employment with Silverado. After the civil action commenced, Shelley was also criminally charged with 2 counts of fraud over $5,000. Silverado further sued Richard Davidson, Shelley's husband ("Richard"). The civil and criminal actions were both defended.

177 applied for the extension of an attachment order against Shelley and Richard, under s. 17(2) of the *Civil Enforcement Act*[1]. Section (2) permits a Court to grant an Attachment Order if it is satisfied that:

1. there is a reasonable likelihood that the claimants claim against the defendant will be established, and
2. there are reasonable grounds for believing that the defendant is dealing with the defendant's eligible property, or is likely to deal with that property,
    (a) otherwise than for the purpose of meeting the defendants reasonable and ordinary business or living expenses, and
    (b) in a manner that would be likely to seriously hinder the claimant in the enforcement of a judgment against the defendant.[2]

The Court also noted there was no evidence that Shelley was dealing with her assets other than to meet her living expenses and pay her legal fees. Despite the absence of evidence of dissipation, 177 argued that the Court should apply the "Fraud Exception" and impose the Attachment Order.

Justice Romaine held that, since the requirements for an Attachment Order were statutory and there is no statutory exception, no exception could exist. However, in cases of fraud, the risk of removal or dissipation under s. 17(2)(b) could be established by inference, arising from the circumstances of that particular fraud. In determining whether this inference arose, the Court should examine all the circumstances, including the circumstances of the alleged fraud itself, to determine if a serious risk of dissipation or removal of assets can be demonstrated. Specifically, the Court noted "risk of

[1] RSA 2000, c. C-15 (the "*CEA*").

[2] *Ibid.*

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