

1983 CarswellAlta 960, 20 A.C.W.S. (2d) 69, [1983] A.J. No. 67

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Bank of Montreal v. Chinook Farms Co.

BANK OF MONTREAL Appellant v CHINOOK FARMS LTD. Respondent

Alberta Court of Appeal

McGillivray C.J.A., Leiberman and Stevenson JJ.A

Judgment: April 6, 1983

Docket: None given.

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Counsel: R.A. Low Esq. for the appellant

E.W. Peterson for the respondent

MCGILLIVRAY, C J.A. (FOR THE COURT):

1 In the case of the Bank of Montreal and Chinook Farms Ltd., Mr. Justice Stevenson will pronounce the unanimous judgment of the Court:

STEVENSON, J.A. (FOR THE COURT):

STEVENSON, J.A. (FOR THE COURT): —

2 This is an appeal from two orders dismissing appeals from master's orders made under the removal and sale provisions of *The Seizures Act*.

3 The respondent bank caused a seizure to be made on personal property secured to it under *The Bank Act*. The debtor has sued the bank in other proceedings alleging, among other things, that the bank had agreed to extend some other credit to it. When the bank applied for removal and sale, the order was granted, but stayed. A stay is a means of achieving the suspension which is authorized by section 29 (5) of *The Seizures Act*.

4 The bank raises two issues: Firstly, it objects that the removal and sale order was stayed pending the determination of the other action. Secondly, it objects to provisions of the order which permit the Court to allow the debtor to sell from time to time. some of the seized property (grain and cattle) and to use all or part of the proceeds rather than pay them to the bank..

5 To turn to the second point first. we do not read the statute as permitting the Court to dispose of the secur-

ity for the benefit of anyone other than the security holder. In the particular case the bank's interest is fortified by a specific right to proceeds of sale. We were pointed to section 29 (5) (e) of *The Seizures Act*, which says that the Court may order the release of all or any part of the goods seized, as justifying the provision in question. We can not read that subsection as empowering the Court to release the property from the security absent some determination that the property was not properly subject to the security.

The basis of the stay that was made is that the separate action could result in a determination that the security under which the present seizure was made is impeachable. The statement of claim does not impeach that security. The evidence to which we were referred, including the statement of claim itself, the affidavit the exhibits, and the examination falls far short of justifying a stay pending a determination of that law suit.

6 The Court does, of course, have power to adjourn, or to suspend and the mechanism of staying as a means of implementing a suspension, is not under attack. It is not unusual for stays to be made.

7 The appeal must be allowed and the original order of Master Cairns reinstated subject to the deletion of paragraph 4. The provisions authorizing the sale of individual groups of property under seizure must be set aside, and the respondent must account for the proceeds of any sales of seized property.

8 The order for removal and sale itself was never attacked. It therefore of course, stands. The orders made on appeal are vacated. That leaves us with the order of the Master with paragraph 4 deleted. We stay that order until further order or orders of the Court of Queen's Bench of Alberta. The bank is at liberty to apply to remove the stay, the respondent to extend it. Those applications may, of course, be made from time to time as the parties are advised. We will hear counsel on the matter of costs.

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