

1998 CarswellAlta 925, [1998] A.J. No. 1121

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Hover v. Pleasure Pool Sales Ltd.

John Vincent Hover, Appellant (Applicant) and Pleasure Pool Sales Ltd., Respondent

Alberta Court of Appeal

Bracco, Côté, Hunt JJ.A.

Heard: September 11, 1998

Oral reasons: September 11, 1998

Docket: Calgary Appeal CA01 17562

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Counsel: *R.F. Llewellyn*, for the Appellant (Applicant).

*R. Low*, for the Respondent.

Subject: Estates and Trusts; Property

Execution --- Seizure under execution — Effect of seizure — General

**Statutes considered:**

*Civil Enforcement Act*, S.A. 1994, c. C-10.5

Generally — referred to

APPEAL by judgment debtor from seizure of goods.

***Côté, J.A. (For the Court):***

1 We are now ready to give judgment, and I will give the unanimous judgment of the Court.

2 I will start with substance. This whole seizure in question began when something else had been seized, and the appellant took it upon himself to suggest that the jewellery now in question belonged to him, and would be suitable to be seized in place of what had been seized, and that it would be worth enough. Under those inducements and representations, the judgment creditor seized this jewellery and released the seizure on the other items, which I believe were vehicles. Then this long attempt to bar any execution against the jewellery commenced.

3 There is an obvious estoppel here, and that gives the appellant personally a bar to objecting to this seizure. The other substantive objection made is that supposedly this jewellery, contrary to the representation, belongs to the estate of Dr. Hover's late wife. He has, in the meantime, become the sole administrator of her estate. We notice, however, that the estate has never made a claim to this jewellery, though he has known all these facts intimately from the outset.

4 It is suggested that there may be two other beneficiaries of the estate in the person of the two children of the marriage. One is an adult and the other was an infant at the relevant time. A direction of the court was given that notice be given to the adult child and notice be given to the Public Trustee on behalf of the infant child, so that they might, if they saw fit, intervene in this matter or make a claim of their own in some respect. The estate had not. Though due notice has been given, the adult child has not made a claim. Though the Public Trustee was served, we are told that the Public Trustee advised that he would not take any action, and he certainly has not taken any action.

5 Turning from the merits to the procedure, there are a host of procedural problems. It is now suggested that some replacement security in the form of the stub end of a lease of a dental office in Canada, plus a lake-front lot in the United States, be offered as replacement security. Doubtless for good reason, a chambers judge has refused that offer, and that order seems not to have been appealed. Indeed the only thing which is now under appeal is an order which (if it was set aside), because of its temporary nature, would really seem just to confirm and reinforce an order for sale of the jewellery.

6 The only notice of objection which even arguably was filed in time is one which simply objected to the default judgment which founded the writ of enforcement, and the court has long since upheld that default judgment and refused to set it aside.

7 Other notices of objection raising other grounds were filed much later, and long after the deadline set in the *Civil Enforcement Act*, which gives serious consequences to not objecting in time. I will not go on with the procedural recital further though I could.

8 It is obvious that the appeal must be dismissed, and we dismiss it.

9 Are there any representations as to costs?

**Mr. Low:**

10 We seek that costs follow the event.

**Côté, J.A. (For the Court)::**

11 Mr. Llewellyn is there any reason that your client shouldn't pay the costs of this appeal?

**Mr. Llewellyn:**

12 I can't strenuously offer any reason, My Lord.

**Côté, J.A. (For the Court)::**

13 The appellant will pay the costs of the appeal in any event.

*Appeal dismissed.*

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