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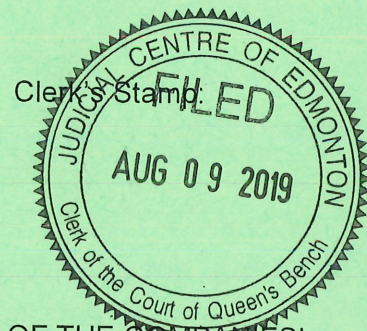
1703-12327

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF
ARRANGEMENT OF 667402 ALBERTA
LTD., 18512398 ALBERTA LTD., 816956
ALBERTA LTD., 1371047 ALBERTA LTD.,
1919209 ALBERTA LTD. AND CANADA
NORTH GROUP LP HOLDINGS LTD.



DOCUMENT

**BRIEF OF 726 REMOTE ACCOMMODATIONS
LTD., 726 MODULAR FINANCE LTD. AND
RELIANT ASSET MANAGEMENT, LLC**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

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MANAGEMENT, LLC**

Clerk's Stamp:

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I. **INTRODUCTION**

1. This Brief is filed on behalf of 726 Remote Accommodations Ltd. ("**726 Accommodations**"), 726 Modular Finance Ltd. ("**726 Finance**") and Reliant Asset Management, LLC ("**RAM**") and, together with 726 Accommodations and 726 Finance, the "**726 Group**") in response to the claim of the municipality of Athabasca County (the "**Municipality**") that certain unpaid taxes of 1371047 Alberta Ltd. and Wandering River Properties Ltd. (collectively, the "**Owners**") constitute a special lien against certain moveable personal property owned by one or more of the 726 Group (the "**726 Equipment**").
2. The 726 Equipment in question is located at the property registered in the names of the Owners in Athabasca County bearing the short legal description 4;17;71;35;NE (the "**Subject Property**").
3. The 726 Group respectfully submits that the provisions of the *Municipal Government Act*, RSA 2000, c M-26 [**MGA**], do not permit the Municipality to claim a special lien against the 726 Equipment. Section 348(d)(i) of the *MGA* provides municipalities with a special lien for unpaid property taxes or local improvement taxes on land and any improvements to the land. The 726 Equipment is not an "improvement" to which section 348(d)(i) of the *MGA* applies.
4. Even if the 726 Equipment is found to be such an "improvement", for section 348(d)(i) of the *MGA* to apply so as to transfer the 726 Group's proprietary rights in the 726 Equipment to the Municipality without compensation, words to such effect need to be express or at least there needs to be a clear implication beyond reasonable doubt that such effect was indeed the intention of the Legislature. Such intention is neither express nor clear beyond reasonable doubt. Any ambiguity or doubt should be resolved in favour of the 726 Group.
5. When one considers the taxation scheme under the *MGA* as a whole, it is apparent that the position of the Municipality that it has a special lien against the 726 Equipment is manifestly unjust as the owner of the 726 Equipment is not also the owner of the Subject Property, from whom the tax arrears are due.

II. BACKGROUND

6. RAM is the parent company of each of 726 Accommodations and 726 Finance. The 726 Group is in the business of leasing commercial modular buildings for remote workforce environments to third parties. On December 29, 2014, 726 Accommodations entered into a limited partnership agreement (the "**Wandering River LP Agreement**") with Canada North Group LP Holdings Ltd. ("**CNG**") and others to form a limited partnership (the "**Wandering River Lodge Limited Partnership**"). Pursuant to a Master Equipment Lease Agreement dated December 29, 2014 (the "**Wandering River Lease Agreement**"), 726 Accommodations leased to Wandering River Lodge Limited Partnership certain equipment to be used at the Subject Property consisting primarily of moveable pre-fabricated trailers for kitchen, dining and dorms, including various wares located therein (collectively, the "**726 Equipment**"). It was an express provision of the Wandering River Lease Agreement that the lease was a true lease and not a sale and, further, that the Wandering River Limited Partnership would not acquire an ownership interest in the 726 Equipment.

Affidavit of Barry Roman sworn October 2, 2018 at
paras 2, 3, 20 to 22

7. The Municipality included the 726 Equipment and the moveable property of other third parties as improvements to the Subject Property for the purpose of levying property and local improvement taxes. As the moveable property of the third parties was moved to and removed from the Subject Property over the years, the assessed value of the Subject Property fluctuated accordingly. The assessed value for the improved commercial land fell from \$8,423,590 for the 2017 year to \$1,024,300 in the 2018 year. The Municipality now seeks to claim a special lien over the 726 Equipment for all tax arrears from 2015 to 2019, including with respect to assessments made against third party property which was located on the Subject Property at the time of the assessments and was subsequently removed from the Subject Property.

Affidavit of Bryan Pysyk sworn July 24, 2019 at
Exhibit "G" and Exhibit "I"

III. ISSUES

8. The issues applicable to the 726 Group are:

- (a) Does section 348(d)(i) of the *MGA* give the Municipality the authority to claim a special lien against the 726 Equipment such the 726 Group's proprietary rights in the 726 Equipment are taken away without compensation, ultimately making the 726 Group liable for the Owners' unpaid property taxes, penalties and other amounts added to the tax rolls for the Subject Property?
- (b) If the answer to issue #1 is in the affirmative, is the 726 Group only liable for the portion of the unpaid property and local improvement taxes, penalties and other amounts which were assessed in respect of the 726 Equipment?

IV. SUBMISSIONS

A. **The *MGA* Does Not Establish a Special Lien against the 726 Equipment**

i. The Special Lien

9. A municipality is given a special lien for unpaid taxes pursuant to section 348 of the *MGA*, which provides:

348 Taxes due to a municipality

- (a) are an amount owing to the municipality,
- (b) are recoverable as a debt due to the municipality,
- (c) take priority over the claims of every person except the Crown, and
- (d) are a special lien
 - (i) on land and any improvements to the land, if the tax is a property tax, a community revitalization levy, a special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy, or
 - (ii) on goods, if the tax is a business tax, a community revitalization levy, a well drilling equipment tax, a community aggregate payment levy or a property tax imposed in respect of a designated manufactured home in a manufactured home community.
[Emphasis added]

MGA, s. 348(d) [Tab 1]

10. It is not disputed that the starting point for the interpretation of section 348 of the MGA requires that we begin with Driedger's modern principle:

The interpretation of s 348(d)(i), like any statutory interpretation exercise, requires that we begin with Driedger's modern principle: "... the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament": E.A. Driedger, *Construction of Statutes*, 2nd ed (Butterworths: Toronto, 1983) at 87; *Balancing Pool v TransAlta Corporation* at para 17.

Northern Sunrise County v Virginia Hills Oil Corp,
2019 ABCA 61, 82 Alta LR (6th) 97 [**Northern
Sunrise**] at para 37 [TAB 2]

11. While the provincial Legislature may be able to create a statutory lien that takes precedence over the interests of a lessor, as the result is a transfer of proprietary rights without compensation, to do so the plain and unambiguous meaning of section 348(d)(i) of the MGA must be that it deprives a lessor of all or part of its ownership interest without compensation.
12. This concept of statutory interpretation was articulated by the Alberta Court of Appeal in *Lloyds Bank Canada v International Warranty Company Limited*, [1990] 60 DLR (4th) 272, 1 WWR 749 [**Lloyds Bank**]:

This same concept was expressed in Maxwell, *Interpretation of Statutes*, 11th ed., 1962, p. 276 as follows:

"Proprietary rights should not be held to be taken away by Parliament without provision for compensation unless the legislature has so provided in clear terms. It is presumed, where the objects of the Act do not obviously imply such an intention, that the legislature does not desire to confiscate the property or to encroach upon the right of persons, and it is therefore expected that, if such be its intention, it will manifest it plainly if not in

express words at least by clear implication and beyond reasonable doubt." [Original emphasis]

Lloyds Bank at p 7 [TAB 3]

13. In *Northern Sunrise*, the Alberta Court of Appeal rearticulated this position:

A provincial legislature can create a statutory lien that takes precedence over the interests of secured creditors. However, to do so "the plain and unambiguous meaning of the section must be that it deprives a properly secured creditor....of all or part of its security without compensation, for the purpose of paying another debt entirely unrelated to the security": *Lloyds Bank Canada v International Warranty Company Limited*, 1989 ABCA 155 (CanLII) at para 10.

Northern Sunrise at para 38 [TAB 2]

14. While the *Northern Sunrise* and *Lloyds Bank* decisions were both dealing with the issue of statutory liens taking precedence over the interests of secured parties, an analogy can be drawn between the secured parties' interests and the interests of lessors as in both cases the interpretation of the statute in question could result in the interests of a party being confiscated without compensation. An application for leave to appeal the *Northern Sunrise* decision has been submitted to the Supreme Court of Canada; however, unless and until this decision is overturned on appeal, it remains good law.
15. Further, if section 348(d)(i) of the *MGA* is open to two or more interpretations, one of which leads to an absurd interpretation, "the absurdity principle may be employed to reject interpretations which lead to negative consequences, as such consequences are presumed to have been unintended by the legislature."

Regent Resources Ltd (Re), 2018 ABQB 669 [Regent Resources] at para 22, citing *R v Canadian Pacific Ltd*, [1995] 2 SCR 1031 [Tab 4]

ii. The 726 Equipment are not “Improvements” for the Purposes of s. 348(d)(i) of the MGA

16. The interpretation of section 348(d) of the *MGA* must be considered in the context of the tax recovery provisions set out in Division 8 and Division 9 of Part 10 of the *MGA* as liens and recovery go hand in hand. The mechanisms associated with tax assessment and collection distinguish between taxes that relate to land and taxes that do not relate to land, as articulated by the Alberta Court of Appeal in *Northern Sunrise*:

In general terms, excluding manufactured homes which have a division to themselves, Division 8 (taxes related to land) equates to s 348(d)(i) whereas Division 9 (taxes not related to land) equates to s 348(d)(ii). These two - very different - regimes cannot be ignored and they must inform the interpretation of s 348(d).

Northern Sunrise at para 50 [TAB 2]

17. Tax arrears are a special lien on “land and any improvements to the lands” if the tax is one of the listed taxes in section 348(d)(i) of the *MGA*, or are a special lien on “goods” if the tax is one of the listed taxes in section 348(d)(ii) of the *MGA*.
18. As the Legislature refers to “land” and “improvements” in section 348(d)(i) of the *MGA* and “goods” in section 348(d)(ii) of the *MGA* it logically follows that the goods subject to section 348(d)(ii) of the *MGA* would not be considered improvements for the purpose of section 348(d)(i) of the *MGA*.
19. Furthermore, the remedies for the recovery of taxes related to land and improvements and the recovery of taxes related to goods are different. The remedy provided to municipalities by Division 8 of Part 10 of the *MGA* for recovering taxes related to land permits a tax notification for tax arrears to be endorsed on the certificate of title for a parcel of land. If tax arrears remain unpaid, the land can be offered for sale at public auction and, if not sold, may be transferred to the municipality. The remedy provided to municipalities by Division 9 of part 10 of the *MGA* for recovering tax arrears with respect to goods is a right of distress and seizure of the goods in question. Notably, goods belonging to the person who is liable to pay the tax arrears or “in which that person has an interest” may be seized pursuant to a distress warrant.

MGA, ss. 410 to 424, 439, 440 and 441 [Tab 1]

20. There is no definition of “goods” in the *MGA*. The *Personal Property Security Act*, RSA 2000, c P-7 [*PPSA*] defines “goods” as follows:

... tangible personal property other than chattel paper, a document of title, an instrument, investment property and money, and includes fixtures, growing crops and the unborn young of animals, but does not include trees that are not crops until they are severed or minerals until they are extracted.

PPSA, s. 1(1)(v) [Tab 5]

21. That any competing claims to the 726 Equipment between the 726 Group and the secured lenders of the Owners would be resolved in accordance with the provisions of the *PPSA* does not appear to be in dispute. The 726 Equipment was leased to the Wandering River Limited Partnership pursuant to the Wandering River Lease Agreement for use at the Subject Property. Wandering River Limited Partnership did not acquire an ownership interest in the 726 Equipment. The 726 Equipment remained at all times the 726 Group’s moveable personal property and was, therefore, goods.

Affidavit of Barry Roman sworn October 2, 2018 at
paras 2, 22, 44 and Exhibit “G”

22. In the event the 726 Equipment is found to be an “improvement” and not “goods”, then it does not automatically follow that the Municipality would then have a special lien over the 726 Property pursuant to section 348(d)(i) of the *MGA*. Section 348(d)(i) of the *MGA* must be read in the context of the *MGA* as a whole.
23. Part 9 of the *MGA* sets out the assessment provisions. Specifically, for the purposes of Parts 9, 10 (including section 348), 11 and 12 of the *MGA*, the “assessed property” is the “property in respect of which an assessment has been prepared.” Section 284(1)(r) of the *MGA* defines “property” as follows:

“property” means

- (i) a parcel of land,
- (ii) an improvement, or

- (iii) a parcel of land and the improvements to it;

MGA, ss. 284(1)(b) and 284(1)(r) [Tab 1]

24. Section 348(d)(i) of the *MGA* provides a special lien against “land” and “improvements to the land” in instances where the tax owing is a property tax or a local improvement tax. If the Legislature intended the land and improvements in section 348(d)(i) of the *MGA* to refer to the parcel of land and improvements that were assessed for the purposes of calculating the tax levy, the Legislature could have easily done so by referring instead to the defined term “assessed property” in section 348(d)(i) of the *MGA*.
25. Moreover, the definition of property in section 284(1)(r) of the *MGA* uses the defined term “parcel of land” and section 348(d)(i) of the *MGA* uses the undefined term “land”.
26. The Legislature’s use of the terms “land” and “improvements” in section 348(d)(i) of the *MGA* must be presumed to be deliberate and implies that the Legislature intended that the land and improvements that are subject to the special lien for unpaid taxes are not necessarily the same parcel of land and improvements that were assessed for the purposes of calculating the tax levy.
27. There is also no triggering event for the special lien in Section 348(d)(i) of the *MGA* to attach to the land and any improvements to the land other than taxes being due and there is also no mechanism for the special lien to be discharged. If the special lien applies to third party moveable property, which were included in the assessed property for the purposes of the property assessment, as argued by the Municipality, then the Municipality’s special lien would continue to attach to such third party moveable property after it is removed from the land and the Municipality could claim a priority interest with respect to such property when it proceeds to enforce its special lien, even against another party who has recently acquired a claim with respect to that property unaware of the Municipality’s prior special lien and unable to conduct any searches to disclose to that encumbrance. This is an absurd result which lead to negative consequences and, as such, such interpretation should be rejected.
28. Two recent Alberta cases dealt with whether the special lien in section 348 of the *MGA* is restricted to lands and improvements located within the geographical boundaries of the municipality. The Courts held that the special lien was limited to the municipal

boundaries, but did not address whether the special lien is restricted to the specific assessed property.

Regent Resources [Tab 4]

Alberta Treasury Branches v COGI Limited Partnership, 2019 ABQB 94 [Tab 6]

29. Section 348(d)(i) of the *MGA* must also be read in the context of the tax recovery provisions set out in Division 8 of Part 10 of the *MGA*. Section 414 of the *MGA*, which deals with removal of improvements from a parcel of land after a tax recover notification has been endorsed on a certificate of title for a parcel of land, provides as follows:

When a tax recovery notification has been endorsed on a certificate of title for a parcel of land, the person who is liable to pay the taxes must not remove from the parcel, unless the municipality at whose request the notification was endorsed on the certificate of title consents, any improvements for which that person is also liable to pay the taxes.
[Emphasis added]

MGA, s. 414 [Tab 1]

30. Section 414 of the *MGA* uses the definite article “the”. The ordinary meaning implies that only the person who is liable to pay the taxes is prohibited from removing any improvements for which that person is also liable to pay the taxes. As such, third party lessors who are not liable to pay taxes who own improvements on a parcel of land would not be prohibited by section 414 of the *MGA* from removing their property from the parcel of land.
31. At no time was any of the 726 Group liable to pay the tax arrears for the Subject Property. If they were, the Municipality would have been obligated to notify them, pursuant to section 412(3) of the *MGA*, that a tax arrears list had been prepared and sent to the Registrar of Alberta Land Registration District. The 726 Group was at all times the owner of the 726 Equipment, which was moveable property, and, as such, the 726 Group was and is able to remove the 726 Equipment from the Subject Property.

MGA, s. 412(3) [Tab 1]

Affidavit of Barry Roman sworn October 2, 2018 at
paras 2, 22, 44 and Exhibit "G"

32. Furthermore, a third party lessor of moveable property is unable to register as a caveat or encumbrance its interest in the moveable property against title to the parcel of land as the lessor's interest is not an interest in land. As such, a third party lessor of moveable property would not be entitled to receive, pursuant to section 417(1) of the *MGA*, notice from the Registrar of an impending sale of the parcel of land at a public auction in the event the tax arrears in respect of the parcel of land are not paid before March 31 of the next year. As the third party lessor would not receive notice that it needs to take steps to protect its interest, this essentially places it at a significant disadvantage when compared to other third parties who may also have moveable property located at the property. For example, a tenant who has an interest in land could register a caveat or lease with respect to its leasehold interest and, if so registered, the tenant would receive notice of the impending sale of the parcel of land. The tenant could then use this advance notice to take steps to protect any of its movable property on the parcel of land.
33. As the 726 Equipment was moveable personal property, the 726 Group could not register the Wandering River Equipment Lease or a caveat in respect thereof against title to the Subject Property.
34. Reading section 348(d)(i) of the *MGA* with sections 284 and Division 8 leads to the logical and fair conclusion that section 348(d)(i) of the *MGA* does not apply to the 726 Equipment.

iii. The 726 Group is not an "Assessed Person" or Taxpayer"

35. The 726 Group was not entitled to file complaints under the provisions of the *MGA* respecting the tax assessments made by the Municipality against the Subject Project for the 2015 to 2019 tax years.
36. Section 460 of the *MGA* sets out the procedure for complaints against property assessments, and defines who may make a complaint:

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

...

(3) A complaint may be made only by an assessed person or a taxpayer.

MGA, ss.460(1) and 460(3) [**Tab 1**]

37. In order to file a complaint, the 726 Group needed to be either a “taxpayer” or an “assessed person”, which are defined in sections 1(1)(bb) of the *MGA* and 284(1)(a) of the *MGA*, respectively, as follows:

1(1)(bb) “taxpayer” means a person liable to pay a tax;

...

284(1) In this Part and Parts 10, 11 and 12,

(a) “assessed person” means a person who is named on an assessment roll in accordance with section 304;

MGA, ss.1(1)(bb) and 284(1)(a) [**Tab 1**]

38. Section 304, which is referred to in the definition of assessed person, provides, in part:

304(1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

Column 1 Assessed Property

Column 2 Assessed Person

...

...

(b) a parcel of land and the improvements to it, unless otherwise dealt with in this subsection;

(b) the owner of the parcel of land;

MGA, s. 304(1) [**Tab 1**]

39. The Owners are named on the assessment rolls in respect of the Subject Property. The Municipality concedes at paragraphs 39 to 42 of its Brief that the Owners are the “assessed persons” for the purposes of the assessments with respect to the 726

Equipment. The Municipality also concedes at paragraph 43 of its Brief that the Owners, being the persons liable to pay the property and local improvement taxes at the time the assessments were prepared, were the “taxpayers” liable for paying the taxes for the 2014 to 2018 assessment years (which correspond with the 2015 to 2019 tax years).

Affidavit of Bryan Pysyk sworn July 24, 2019 at Exhibit “G”.

40. There is no provision in the Wandering River Lease Agreement which imposes an obligation on the 726 Group to pay any part of the property or local improvement taxes. At the time the tax assessments were made for the 2015 to 2019 tax years, the 726 Group as lessor of the 726 Equipment was not liable to pay a tax in Athabasca County. The 726 Group was, therefore, not an “assessed person” or a “taxpayer” within the meaning of section 460(3) of the *MGA* and was not entitled to file complaints in respect of the Subject Property’s tax assessments.
41. Additionally, it is not reasonable to expect a lessor of moveable property to review and, if applicable, file a complaint with respect to an assessment made by a municipality, which included the lessor’s moveable property as an improvement to the land for the purposes of such assessment, or with respect to any tax imposed in respect thereof, when the lessor is under no obligation to pay such tax and on the basis that there is a possibility, however remote, that a special lien may be claimed by the municipality against the lessor’s moveable property at some future date (which could be years later). If this were the case, the lessor would need to incur the cost and expense of contesting the assessment or tax, but would never reap the benefits of such complaint unless the taxpayer defaults in the payment of such tax and a special lien is claimed. At the time the special lien is claimed, the lessor would be statute barred from filing the complaint as the 60 day complaint deadline established in sections 284(4) of the *MGA* and 461(1)(b) of the *MGA* would have long expired.

MGA, ss. 284(4) and 461(1)(b) [**TAB 1**]

42. As the 726 Group were not able to file a complaint with respect to the Municipality’s tax assessments for the Subject Project and could not have been reasonably expected to file such a complaint in any event, an unjust result occurs if section 348(d)(i) of the *MGA*

is then interpreted so as to deprive the 726 Group of its proprietary interest in the 726 Equipment to settle the debts of the Owners to the Municipality.

B. Special Lien Does Not Take Priority Over the 726 Group's Proprietary Rights

i. The Application of the Personal Property Security Act (Alberta)

43. The priority of the competing claims of the Municipality and the 726 Group to the 726 Equipment are not governed by the *PPSA*. The *PPSA* does not apply to "a lien, charge or other interest given by an Act or rule of law in force in Alberta."

PPSA, s. 4(a) [TAB 5]

44. For the purposes of the *PPSA* and determining the priority of parties under the *PPSA*, the *PPSA* expressly provides that it applies to a lease where it secures payment or performance of an obligation and to a lease of goods for a term of more than one year that does not secure payment or performance of an obligation.

PPSA, ss. 3(1)(b) and 3(2)(b) [TAB 5]

45. Section 3 of the *PPSA* does not make the 726 Group a secured creditor and does not give the Owners, as lessee of the 726 Equipment, a proprietary interest in the 726 Equipment as asserted by the Municipality at paragraph 61 of its Brief in the context of the Municipality's claim of a priority lien under the *MGA*. On the contrary, for the purposes of determining interests not governed by the *PPSA*, the traditional concepts of title and ownership still apply (unless addressed in another Act). For the purposes of property assessments under the *MGA*, the Owners were not the "ostensible owners" of the 726 Equipment.
46. Furthermore, a lessee can protect its interest in its leased property with respect to competing secured party claims governed by the *PPSA* by registering its interest at the Personal Property Security Registry. There is not a similar mechanism for protecting one's interest in leased property under the *MGA*.

C. Other Considerations

i. Policy Considerations

47. Third party moveable property should not be included in property assessments. The Subject Property was assessed based on the assessed value of the land and improvements located thereon. A party whose property has increased significantly in value is generally able to sell the property at the fair market value and recover some or all of the costs of any property and local improvement taxes it has incurred over the years. The same cannot be said when the property assessments are based on third party moveable property. The owner of the property does not see a corresponding increase in the market value of its property and the owner would not be able to sell its property at the value shown on the property assessment as the third party movable property would not form part of such sale. This can also lead to a situation where the assessed value of the property changes significantly from year to year making it difficult for an owner to budget for the upcoming year. This potential for a dramatic swing is evident in this case where the tax levy fell from \$146,895.31 for the 2017 tax year to \$17,790.57 for the 2018 tax year.

ii. Other Remedies Available to the Municipality

48. The Municipality is not left without a remedy if its special lien is limited to property owned by the Owners. The Municipality retains a special lien against the Subject Property (excluding the 726 Equipment) and has the ability to obtain judgment for unpaid taxes and to enforce that judgment against the debtor's assets. While the Municipality, as a judgment creditor, would rank as an unsecured creditor, it cannot be said that limiting the special lien to the property owned by the Owners leaves the Municipality with no option to collect the taxes owed. It is only the "superpriority" that is limited. A similar finding was reached in by the Alberta Court of Queen's Bench in *Regent Resources*, albeit in respect of limiting the application of section 348(d)(i) of the *MGA* to within the geographical boundaries of the municipality.

Regent Resources at para 26 [Tab 4]

iii. The 726 Group should not be Responsible for Tax Arrears Assessed in respect of Other Third Party's Property

49. In the event section 348(d)(i) of the *MGA* is found to apply to the 726 Equipment, the Municipality's enforcement of its claim for tax arrears against the lands and improvements should not be on a joint and several basis. The Municipality should only be able to enforce its claim as against the 726 Equipment with respect to those assessments in respect thereof. Otherwise, an unjust result occurs where the 726 Group would be responsible for assessments made against other third party's property, which was located on the Subject Property at the time the assessments were made, but were removed from the Subject Property prior to the *MGA* claiming a special lien in respect of such property. Further, the Municipality contributed to this unjust result by waiting to enforce its special lien against the Subject Property until 2019, when taxes have been in arrears since 2015.
50. Additionally, the requisitions collected with respect to the Alberta School Foundation Fund and the Greater North Seniors Fund shown on the property tax assessments are not taxes to which section 348(d)(i) of the *MGA* apply. The Municipality, therefore, does not have a special lien over the 726 Equipment with respect to these requisitions.

Affidavit of Bryan Pysyk sworn July 24, 2019 at
Exhibit "G" and Exhibit "I"

MGA, s. 348(d)(i) [Tab 1]

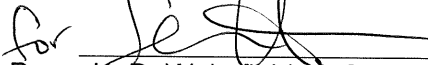
V. RELIEF SOUGHT

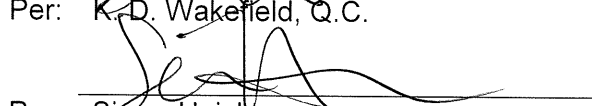
51. The 726 Group is asking this Court to grant:
- (a) An order declaring that the Municipality's special lien under section 348 of the *MGA* does not apply to any of the 726 Equipment.
 - (b) In the alternative:
 - (i) an order confirming that the Municipality is only able to enforce its claim as against the 726 Equipment with respect to those assessments made against the 756 Equipment;

- (ii) an order confirming the amount of the assessments made against the 756 Equipment or, in the alternative, an order directing the Monitor to obtain determine the amount of the assessments made against the 756 Equipment; and
 - (iii) an order confirming that only property taxes and local improvement taxes, and not the requisitions, set out in the property tax assessments are subject to the special lien.
- (c) An order declaring that the 726 Group shall be entitled to recover their legal costs of this application in any event of the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9th DAY OF AUGUST, 2019.

DENTONS CANADA LLP


Per: K. D. Wakefield, Q.C.


Per: Sierra Heisler

Counsel for 726 Remote
Accommodations Ltd., 726 Modular
Finance Ltd. and Reliant Asset
Management, LLC

LIST OF AUTHORITIES

1. *Municipal Government Act*, RSA 2000, c M-26.
2. *Northern Sunrise County v Virginia Hills Oil Corp*, 2019 ABCA 61, 82 Alta LR (6th) 97.
3. *Lloyds Bank Canada v International Warranty Company Limited*, [1990] 60 DLR (4th) 272, 1 WWR 749.
4. *Regent Resources Ltd (Re)*, 2018 ABQB 669.
5. *Personal Property Security Act*, RSA 2000, c P-7.
6. *Alberta Treasury Branches v COGI Limited Partnership*, 2019 ABQB 94.

Tab 1



Province of Alberta

MUNICIPAL GOVERNMENT ACT

Revised Statutes of Alberta 2000
Chapter M-26

Current as of June 28, 2019

Office Consolidation

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Alberta Queen's Printer
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10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

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partnership to co-operatively and collaboratively advance the interests of Albertans generally; and

WHEREAS the Government of Alberta recognizes that Alberta's municipalities have varying interests and capacity levels that require flexible approaches to support local, intermunicipal and regional needs;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (a) "ALSA regional plan" means a regional plan as defined in the *Alberta Land Stewardship Act*;
- (a.1) "business" means
 - (i) a commercial, merchandising or industrial activity or undertaking,
 - (ii) a profession, trade, occupation, calling or employment, or
 - (iii) an activity providing goods or services, whether or not for profit and however organized or formed, including a co-operative or association of persons;
- (b) "by-election" means an election to fill a vacancy on a council other than at a general election;
- (c) "chief administrative officer" means a person appointed to a position under section 205;
- (d) "chief elected official" means the person elected or appointed as chief elected official under section 150;
- (e) "council" means
 - (i) the council of a city, town, village, summer village, municipal district or specialized municipality,
 - (ii) repealed 1995 c24 s2,
 - (iii) the council of a town under the *Parks Towns Act*, or
 - (iv) the council of a municipality incorporated by a special Act;

- (x) residential and commercial street lighting,
and includes the thing that is provided for public consumption, benefit, convenience or use;
- (y.1) “regional services commission” means a regional services commission under Part 15.1;
- (z) “road” means land
 - (i) shown as a road on a plan of survey that has been filed or registered in a land titles office, or
 - (ii) used as a public road,
and includes a bridge forming part of a public road and any structure incidental to a public road;
- (z.1) “summer village residence” means a parcel of land having at least one building the whole or any part of which was designed or intended for, or is used as, a residence by one person or as a shared residence by 2 or more persons, whether on a permanent, seasonal or occasional basis;
- (aa) “tax” means
 - (i) a property tax,
 - (ii) a business tax,
 - (iii) a business improvement area tax,
 - (iii.1) a community revitalization levy,
 - (iv) a special tax,
 - (v) a well drilling equipment tax,
 - (v.1) a clean energy improvement tax,
 - (vi) a local improvement tax, and
 - (vii) a community aggregate payment levy;
- (bb) “taxpayer” means a person liable to pay a tax;
- (cc) “whole council” means
 - (i) all of the councillors that comprise the council under section 143,

financial year in which the financial plan or capital plan is prepared.

(5) Council may elect to include more than 3 financial years in a financial plan or more than 5 financial years in a capital plan.

(6) Council must annually review and update its financial plan and capital plan.

(7) The Minister may make regulations respecting financial plans and capital plans, including, without limitation, regulations

- (a) respecting the form and contents of financial plans and capital plans;
- (b) specifying the first financial year required to be reflected in a financial plan;
- (c) specifying the first financial year required to be reflected in a capital plan.

2015 c8 s40

Part 9

Assessment of Property

Interpretation provisions for Parts 9 to 12

284(1) In this Part and Parts 10, 11 and 12,

- (a) “assessed person” means a person who is named on an assessment roll in accordance with section 304;
- (b) “assessed property” means property in respect of which an assessment has been prepared;
- (c) “assessment” means a value of property determined in accordance with this Part and the regulations;
- (d) “assessor” means
 - (i) the provincial assessor, or
 - (ii) a municipal assessor,and includes any person to whom those duties and responsibilities are delegated by the person referred to in subclause (i) or (ii);
- (e) “council” includes

- (n.2) “modular home” means a home that is constructed from a number of pre-assembled units that are intended for delivery to and assembly at a residential site;
- (n.3) “municipal assessment roll” means the assessment roll prepared by a municipality under section 302(1);
- (n.4) “municipal assessor” means a designated officer appointed under section 284.2 to carry out the functions, duties and powers of a municipal assessor under this Act;
- (o) “municipality” includes
 - (i) a district, as defined in the *School Act*, in which a collecting board is authorized under section 180 of that Act to impose and collect taxes or, where the district is authorized or required to act, the collecting board, and
 - (ii) an improvement district and a special area or, where the improvement district or special area is authorized or required to act, the Minister;
- (o.1) “operational” has the meaning given to it in the regulations;
- (p) “operator” has the meaning given to it in the regulations;
- (q) “owner”, in respect of a designated manufactured home, means the owner of the designated manufactured home and not the person in lawful possession of it;
- (r) “property” means
 - (i) a parcel of land,
 - (ii) an improvement, or
 - (iii) a parcel of land and the improvements to it;
- (r.1) “provincial assessment roll” means the assessment roll prepared by the provincial assessor under section 302(2);
- (r.2) “provincial assessor” means the provincial assessor designated under section 284.1;
- (s), (t) repealed 2016 c24 s21;
- (u) “structure” means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land;

- (u.1) "SuperNet" has the meaning given to it in the regulations;
- (v), (w) repealed 2016 c24 s21;
- (w.1) "travel trailer" means a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road;
- (x) "year" means a 12-month period beginning on January 1 and ending on the next December 31.

(2) In this Part and Parts 10, 11 and 12, a reference to a parcel of land that is held under a lease, licence or permit from the Crown in right of Alberta or Canada includes a part of the parcel.

(2.1) For the purposes of subsection (1)(f.01)(i), a facility regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the National Energy Board includes all components of the facility, including any machinery and equipment, buildings and structures servicing or related to the facility and land on which the facility is located.

(3) For the purposes of this Part and Parts 10, 11 and 12, any document, including an assessment notice and a tax notice, that is required to be sent to a person is deemed to be sent on the day the document is mailed or otherwise delivered to that person.

(4) In this Part and Parts 11 and 12, "complaint deadline" means 60 days after the notice of assessment date set under section 308.1 or 324(2)(a.1).

RSA 2000 cM-26 s284; 2007 cA-37.2 s82(17); 2007 c42 s3;
2009 c29 s2; 2015 c8 s41; 2016 c24 ss21,140; 2017 c13 s1(20)

Provincial assessor

284.1(1) The Minister must designate a person having the qualifications set out in the regulations as the provincial assessor to carry out the functions, duties and powers of the provincial assessor under this Act.

(2) Subject to the regulations, the provincial assessor may delegate to any person any power or duty conferred or imposed on the provincial assessor by this Act.

(3) The provincial assessor is not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of the provincial assessor's functions, duties or powers under this Act or any other enactment.

2016 c24 s22

Recording assessed persons

304(1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

Column 1 Assessed property	Column 2 Assessed person
(a) a parcel of land, unless otherwise dealt with in this subsection;	(a) the owner of the parcel of land;
(b) a parcel of land and the improvements to it, unless otherwise dealt with in this subsection;	(b) the owner of the parcel of land;
(c) a parcel of land, an improvement or a parcel of land and the improvements to it held under a lease, licence or permit from the Crown in right of Alberta or Canada or a municipality;	(c) the holder of the lease, licence or permit or, in the case of a parcel of land or a parcel of land and the improvements to it, the person who occupies the land with the consent of that holder or, if the land that was the subject of a lease, licence or permit has been sold under an agreement for sale, the purchaser under that agreement;

- (3) The penalty must not be imposed sooner than 30 days after the tax notice is sent out.

1994 cM-26.1 s344

Penalty for non-payment in other years

345(1) A council may by bylaw impose penalties in any year following the year in which a tax is imposed if the tax remains unpaid after December 31 of the year in which it is imposed.

- (2) A penalty under this section is imposed at the rate set out in the bylaw.

- (3) The penalty must not be imposed sooner than January 1 of the year following the year in which the tax was imposed or any later date specified in the bylaw.

1994 cM-26.1 s345

Penalties

346 A penalty imposed under section 344 or 345 is part of the tax in respect of which it is imposed.

1994 cM-26.1 s346

Cancellation, reduction, refund or deferral of taxes

347(1) If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

- (a) cancel or reduce tax arrears;
- (b) cancel or refund all or part of a tax;
- (c) defer the collection of a tax.

- (2) A council may phase in a tax increase or decrease resulting from the preparation of any new assessment.

1994 cM-26.1 s347

Tax becomes debt to municipality**348 Taxes due to a municipality**

- (a) are an amount owing to the municipality,
- (b) are recoverable as a debt due to the municipality,
- (c) take priority over the claims of every person except the Crown, and
- (d) are a special lien
 - (i) on land and any improvements to the land, if the tax is a property tax, a community revitalization levy, a

special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy, or

- (ii) on goods, if the tax is a business tax, a community revitalization levy, a well drilling equipment tax, a community aggregate payment levy or a property tax imposed in respect of a designated manufactured home in a manufactured home community.

RSA 2000 cM-26 s348;2005 c14 s12;2018 c6 s5

Fire insurance proceeds

349(1) Taxes that have been imposed in respect of improvements are a first charge on any money payable under a fire insurance policy for loss or damage to those improvements.

(2) Taxes that have been imposed in respect of a business are a first charge on any money payable under a fire insurance policy for loss or damage to any personal property

- (a) that is located on the premises occupied for the purposes of the business, and
- (b) that is used in connection with the business and belongs to the taxpayer.

1994 cM-26.1 s349

Tax certificates

350 On request, a designated officer must issue a tax certificate showing

- (a) the amount of taxes imposed in the year in respect of the property or business specified on the certificate and the amount of taxes owing,
- (b) the total amount of tax arrears, if any, and
- (c) the total amount of tax, if any, in respect of which collection is deferred under this Part.

RSA 2000 cM-26 s350;2016 c24 s51

Non-taxable property

351(1) The following are exempt from taxation under this Part:

- (a) property listed in section 298;
- (b) any property or business in respect of which an exemption from assessment or taxation, or both, was granted before January 1, 1995
 - (i) by a private Act, or

Division 7.1

Community Aggregate Payment Levy

Community aggregate payment levy bylaw

409.1(1) Each council may pass a community aggregate payment levy bylaw.

(2) A community aggregate payment levy bylaw authorizes the council to impose a levy in respect of all sand and gravel businesses operating in the municipality to raise revenue to be used toward the payment of infrastructure and other costs in the municipality.

2005 c14 s15

Person liable to pay levy

409.2 A levy imposed under this Division must be paid by the persons who operate sand and gravel operations in the municipality.

2005 c14 s15

Regulations

409.3(1) The Minister may make regulations

- (a) respecting a levy referred to in section 409.1(2), including, without limitation, regulations respecting the maximum levy that may be imposed and the application of the levy;
- (b) respecting the application of any provision of this Act, with or without modification, to a community aggregate payment levy bylaw or a community aggregate payment levy, or both;
- (c) respecting any other matter necessary or advisable to carry out the intent and purpose of this Division.

(2) A regulation under subsection (1) may be specific to a municipality or general in its application.

2005 c14 s15

Division 8

Recovery of Taxes Related to Land

Definitions

410 In this Division,

- (a) “encumbrance” means an encumbrance as defined in the *Land Titles Act*;
- (b) “encumbrancee” means the owner of an encumbrance;

- (b.1) “parcel of land” means a parcel of land and the improvements on it;
- (c) “Registrar” means the Registrar, as defined in the *Land Titles Act*, of the appropriate Land Titles Office;
- (c.1) “remedial costs” means all expenses incurred by the Government of Alberta to perform work under an environmental protection order or an enforcement order issued under the *Environmental Protection and Enhancement Act*;
- (d) “reserve bid” means the minimum price at which a municipality is willing to sell a parcel of land at a public auction;
- (e) “tax” means a property tax, a community revitalization levy, a special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy;
- (f) “tax recovery notification” means a notice, in writing, that part or all of the taxes imposed in respect of a parcel of land by a municipality are in arrears.

RSA 2000 cM-26 s410;2005 c14 s16;2018 c6 s7

Methods of recovering taxes in arrears

411(1) A municipality may attempt to recover tax arrears in respect of a parcel of land

- (a) in accordance with this Division, and
- (b) subject to subsection (2), in accordance with any other Act or common law right.

(2) A municipality may start an action under subsection (1)(b) at any time before

- (a) the parcel is sold at a public auction under section 418, or
- (b) the parcel is disposed of in accordance with section 425,

whichever occurs first.

1994 cM-26.1 s411

Tax arrears list

412(1) A municipality must annually, not later than March 31,

- (a) prepare a tax arrears list showing the parcels of land in the municipality in respect of which there are tax arrears for more than one year,

- (b) send 2 copies of the tax arrears list to the Registrar,
 - (b.1) send a copy of the tax arrears list to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act*, and
 - (c) post a copy of the tax arrears list in a place that is accessible to the public during regular business hours.
- (2) A tax arrears list must not include a parcel of land in respect of which there is in existence a tax recovery notification from previous years, unless that notification has been removed from the certificate of title for that parcel.
- (3) The municipality must notify the persons who are liable to pay the tax arrears that a tax arrears list has been prepared and sent to the Registrar.

RSA 2000 cM-26 s412;2007 cU-1.5 s73

Tax recovery notification

- 413(1)** The Registrar must endorse on the certificate of title for each parcel of land shown on the tax arrears list a tax recovery notification.
- (2) The Registrar must certify, on a copy of the tax arrears list, that tax recovery notifications have been endorsed in accordance with subsection (1) and return the certified copy of the tax arrears list to the municipality with a statement of the costs payable to the Land Titles Office by the municipality.
- (3) The municipality is responsible for the payment of the costs referred to in subsection (2) but may add the costs to the taxes owing in respect of the parcels of land shown on the tax arrears list.
- (4) The Registrar must not remove a tax recovery notification from a certificate of title until the municipality at whose request it was endorsed on the certificate of title requests its removal.

1994 cM-26.1 s413

Removal of improvements

- 414** When a tax recovery notification has been endorsed on a certificate of title for a parcel of land, the person who is liable to pay the taxes must not remove from the parcel, unless the municipality at whose request the notification was endorsed on the certificate of title consents, any improvements for which that person is also liable to pay the taxes.

1994 cM-26.1 s414

Right to pay tax arrears

415(1) After a tax recovery notification has been endorsed on the certificate of title for a parcel of land, any person may pay the tax arrears in respect of the parcel.

(2) On payment of the tax arrears under subsection (1), the municipality must ask the Registrar to remove the tax recovery notification.

(3) Subject to section 423(3), a person may exercise the right under subsection (1) at any time before the municipality disposes of the parcel in accordance with section 425.

1994 cM-26.1 s415

Right to collect rent to pay tax arrears

416(1) After a tax recovery notification has been endorsed on the certificate of title for a parcel of land, the municipality may send a notice to any person who holds the parcel under a lease from the owner, requiring that person to pay the rent as it becomes due to the municipality until the tax arrears have been paid.

(2) Not less than 14 days before a municipality sends a notice under subsection (1), it must send a notice to the owner of the parcel of land advising the owner of the municipality's intention to proceed under subsection (1).

(2.1) When a parcel of land shown on a tax arrears list is land described in section 304(1)(c) in respect of another municipality, or in section 304(1)(d) or (e), the municipality may send a notice to any person who holds the parcel or a portion of it under a lease, licence or permit from the assessed person to pay the rent, licence fees or permit fees, as the case may be, to the municipality as they become due until the tax arrears have been paid.

(2.2) Not less than 14 days before a municipality sends a notice under subsection (2.1), it must send a notice to the assessed person advising the person of the municipality's intention to proceed under subsection (2.1).

(2.3) Where a parcel of land described in section 304(1)(c) is held under a lease, licence or permit from the Crown in right of Alberta,

- (a) the Crown must, on a quarterly basis, notify the municipality in which the parcel is located of any changes in the status of the lease, licence or permit, as the case may be, and
- (b) the municipality must send to the Crown that portion of the tax arrears list showing the parcels of land described in section 304(1)(c) that are held by the Crown.

- (3) This section does not prevent the municipality from exercising any other right it has to collect the tax arrears.

RSA 2000 cM-26 s416;2015 c8 s52

Warning of sale

417(1) Not later than the August 1 following receipt of a copy of the tax arrears list, the Registrar must, in respect of each parcel of land shown on the tax arrears list, send a notice to

- (a) the owner of the parcel of land,
- (b) any person who has an interest in the parcel that is evidenced by a caveat registered by the Registrar, and
- (c) each encumbrancee shown on the certificate of title for the parcel.

(2) The notice must state

- (a) that if the tax arrears in respect of the parcel of land are not paid before March 31 in the next year, the municipality will offer the parcel for sale at a public auction, and
- (b) that the municipality may become the owner of the parcel after the public auction if the parcel is not sold at the public auction.

(3) The notice must be sent to the address shown on the records of the Land Titles Office for each person referred to in subsection (1).

1994 cM-26.1 s417;1995 c24 s61

Offer of parcel for sale

418(1) Each municipality must offer for sale at a public auction any parcel of land shown on its tax arrears list if the tax arrears are not paid.

(2) Unless subsection (4) applies, the public auction must be held in the period beginning on the date referred to in section 417(2)(a) and ending on March 31 of the year immediately following that date.

(3) Subsection (1) does not apply to a parcel in respect of which the municipality has started an action under section 411(2) to recover the tax arrears before the date of the public auction.

(4) The municipality may enter into an agreement with the owner of a parcel of land shown on its tax arrears list providing for the payment of the tax arrears over a period not exceeding 3 years, and in that event the parcel need not be offered for sale under subsection (1) until

- (a) the agreement has expired, or
 - (b) the owner of the parcel breaches the agreement,
- whichever occurs first.

1994 cM-26.1 s418;1995 c24 s62;1996 c30 s35

Reserve bid and conditions of sale

419 The council must set

- (a) for each parcel of land to be offered for sale at a public auction, a reserve bid that is as close as reasonably possible to the market value of the parcel, and
- (b) any conditions that apply to the sale.

1994 cM-26.1 s419

Right to possession

420(1) From the date on which a parcel of land is offered for sale at a public auction, the municipality is entitled to possession of the parcel.

(2) For the purposes of obtaining possession of a parcel of land, a designated officer may enter the parcel and take possession of it for and in the name of the municipality and, if in so doing resistance is encountered, the municipality may apply to the Court of Queen's Bench for an order for the possession of the parcel.

RSA 2000 cM-26 s420;2009 c53 s119

Advertisement of public auction

421(1) The municipality must advertise the public auction

- (a) in one issue of The Alberta Gazette, not less than 40 days and not more than 90 days before the date on which the public auction is to be held, and
- (b) in one issue of a newspaper having general circulation in the municipality, not less than 10 days and not more than 20 days before the date on which the public auction is to be held.

(2) The advertisement must specify the date, time and location of the public auction, the conditions of sale and a description of each parcel of land to be offered for sale.

(3) The advertisement must state that the municipality may, after the public auction, become the owner of any parcel of land not sold at the public auction.

(4) Not less than 4 weeks before the date of the public auction, the municipality must send a copy of the advertisement referred to in subsection (1)(a) to

- (a) the owner of each parcel of land to be offered for sale,
- (b) each person who has an interest in any parcel to be offered for sale that is evidenced by a caveat registered by the Registrar, and
- (c) each encumbrancee shown on the certificate of title for each parcel to be offered for sale.

1994 cM-26.1 s421;1995 c24 s63

Adjournment of auction

422(1) The municipality may adjourn the holding of a public auction to any date within 2 months after the advertised date.

(2) If a public auction is adjourned, the municipality must post a notice in a place that is accessible to the public during regular business hours, showing the new date on which the public auction is to be held.

(3) If a public auction is cancelled as a result of the tax arrears being paid, the municipality must post a notice in a place that is accessible to the public during regular business hours stating that the auction is cancelled.

1994 cM-26.1 s422

Right to a clear title

423(1) A person who purchases a parcel of land at a public auction acquires the land free of all encumbrances, except

- (a) encumbrances arising from claims of the Crown in right of Canada,
- (b) irrigation or drainage debentures,
- (c) caveats referred to in section 39(12) of the *Condominium Property Act*,
- (d) registered easements and instruments registered pursuant to section 69 of the *Land Titles Act*,
- (e) right of entry orders as defined in the *Surface Rights Act* registered under the *Land Titles Act*,
- (e.1) a caveat that, pursuant to section 3.1(6)(f)(iv) of the *New Home Buyer Protection Act*, remains registered against the certificate of title to the land,

- (f) a notice of lien filed pursuant to section 38 of the *Rural Utilities Act*,
- (g) a notice of lien filed pursuant to section 20 of the *Rural Electrification Loan Act*, and
- (h) liens registered pursuant to section 21 of the *Rural Electrification Long-term Financing Act*.

(2) A parcel of land is sold at a public auction when the person who is acting as the auctioneer declares the parcel sold.

(3) There is no right under section 415 to pay the tax arrears in respect of a parcel after it is declared sold.

RSA 2000 cM-26 s423;2015 c8 s53

Transfer of parcel to municipality

424(1) The municipality at whose request a tax recovery notification was endorsed on the certificate of title for a parcel of land may become the owner of the parcel after the public auction, if the parcel is not sold at the public auction.

(2) If the municipality wishes to become the owner of the parcel of land, it must request the Registrar to cancel the existing certificate of title for the parcel of land and issue a certificate of title in the name of the municipality.

(3) A municipality that becomes the owner of a parcel of land pursuant to subsection (1) acquires the land free of all encumbrances, except

- (a) encumbrances arising from claims of the Crown in right of Canada,
- (b) irrigation or drainage debentures,
- (c) registered easements and instruments registered pursuant to section 69 of the *Land Titles Act*,
- (d) right of entry orders as defined in the *Surface Rights Act* registered under the *Land Titles Act*,
- (e) a notice of lien filed pursuant to section 38 of the *Rural Utilities Act*,
- (f) a notice of lien filed pursuant to section 20 of the *Rural Electrification Loan Act*, and
- (g) liens registered pursuant to section 21 of the *Rural Electrification Long-term Financing Act*.

(4) A certificate of title issued to the municipality under this section must be marked "Tax Forfeiture" by the Registrar.

1994 cM-26.1 s424;1995 c24 s64;1996 c30 s36;1998 c24 s38;
1999 c11 s23

Right to dispose of parcel

425(1) A municipality that becomes the owner of a parcel of land pursuant to section 424 may dispose of the parcel

- (a) by selling it at a price that is as close as reasonably possible to the market value of the parcel, or
- (b) by depositing in the account referred to in section 427(1)(a) an amount of money equal to the price at which the municipality would be willing to sell the parcel under clause (a).

(2) The municipality may grant a lease, licence or permit in respect of the parcel.

(3) Repealed 1995 c24 s65.

(4) If a parcel of land is disposed of under subsection (1), the municipality must request the Registrar to delete the words "Tax Forfeiture" from the certificate of title issued in the name of the municipality for the parcel.

1994 cM-26.1 s425;1995 c24 s65

Minister's authority to transfer parcel

425.1(1) The Minister may administer, transfer to another Minister, transfer to the municipality in which the land is situated or, subject to section 425, dispose of any parcel of land acquired by the Minister under this Part or a predecessor of this Part.

(2) The Minister may cancel the tax arrears on any land referred to in subsection (1) and require the Registrar to remove the tax recovery notification caveat respecting those tax arrears.

1995 c24 s66

Revival of title on payment of arrears

426(1) If the tax arrears in respect of a parcel of land are paid after the municipality becomes the owner of the parcel under section 424 but before the municipality disposes of the parcel under section 425(1), the municipality must notify the Registrar.

(2) The Registrar must cancel the certificate of title issued under section 424(2) and revive the certificate of title that was cancelled under section 424(2).

(3) A certificate of title revived by the Registrar is subject

- (ii) a well drilling equipment tax,
- (ii.1) a community aggregate payment levy, or
- (iii) a property tax or community revitalization levy imposed in respect of property referred to in section 304(1)(c), (f), (g), (h), (i), (j)(i) or (k);
- (d) "tax arrears" means taxes that remain unpaid after the expiry of the period for payment.

RSA 2000 cM-26 s437;2005 c14 s18

Methods of recovering taxes in arrears**438(1)** A municipality may attempt to recover tax arrears

- (a) in accordance with this Division, and
- (b) subject to subsection (2), in accordance with any other Act or common law right.

(2) A municipality may start an action under subsection (1)(b) at any time before the goods are sold at a public auction or the municipality becomes the owner of the goods under section 448, whichever occurs first.

1994 cM-26.1 s438

Right to issue distress warrant**439(1)** A municipality wishing to recover tax arrears pursuant to this Division may issue a distress warrant.

(2) Each municipality may, in writing, authorize a designated officer or appoint a person to the position of designated officer to prepare and issue distress warrants and seize goods pursuant to distress warrants on behalf of the municipality.

1994 cM-26.1 s439

Seizure of goods

440(1) When a distress warrant has been issued, a civil enforcement agency or a person referred to in section 439(2) must place sufficient goods under seizure to satisfy the amount of the claim shown in the warrant.

(2) The person placing goods under seizure may ask the person who owns or has possession of the seized goods to sign a bailee's undertaking agreeing to hold the seized goods for the municipality.

(3) If a person refuses to sign a bailee's undertaking, the person placing goods under seizure may remove the goods from the premises.

(4) When a bailee's undertaking has been signed under subsection (2), the goods specified in it are deemed to have been seized.

(5) A seizure under this section continues until the municipality

- (a) abandons the seizure by written notice, or
- (b) sells the goods.

(6) The municipality is not liable for wrongful or illegal seizure or for loss of or damage to goods held under a seizure under this section if a bailee's undertaking relating to the seized goods has been signed pursuant to subsection (2).

1994 cM-26.1 s440; 1994 cC-10.5 s146; 1997 c19 s3

Goods affected by distress warrant

441(1) A person may seize the following goods pursuant to a distress warrant:

- (a) goods belonging to the person who is liable to pay the tax arrears or in which that person has an interest;
- (b) goods of a business that is liable to pay business tax arrears, even if the goods have been sold to a purchaser of the business;
- (c) goods of a corporation that are in the hands of
 - (i) a receiver appointed for the benefit of creditors,
 - (ii) an authorized trustee in bankruptcy, or
 - (iii) a liquidator appointed under a winding-up order.

(2) If a person who is liable to pay tax arrears is in possession of goods belonging to others for the purpose of storing the goods, those goods must not be seized pursuant to the distress warrant.

1994 cM-26.1 s441

Date for issuing distress warrant

442(1) A distress warrant must not be issued until the period for payment expires, unless subsection (2) applies.

(2) If, before the period for payment expires, a municipality has reason to believe that a person is about to move out of the municipality goods that are to be seized under a distress warrant, the municipality may apply to a justice of the peace for an order authorizing the municipality to issue the distress warrant before the period for payment expires.

1994 cM-26.1 s442

(3) The clerk must not be an assessor or a designated officer having authority to grant or cancel tax exemptions or deferrals under section 364.1.

(4) The council or councils appointing the clerk must prescribe the clerk's remuneration and duties.

2016 c24 s62

Replacement of panel members

457 In circumstances provided for by the regulations, the chair of an assessment review board may replace a member of a panel.

2016 c24 s62

Quorum

458(1) Where a panel of a local assessment review board consists of 3 members, a quorum is 2 members.

(2) Where a panel of a composite assessment review board consists of 3 members, a quorum is 2 members, one of whom must be the provincial member.

2016 c24 s62

Decision

459 A decision of a panel of an assessment review board is the decision of the assessment review board.

2016 c24 s62

Complaints

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

(3) A complaint may be made only by an assessed person or a taxpayer.

(4) A complaint may relate to any assessed property or business.

(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

- (a) the description of a property or business;
- (b) the name and mailing address of an assessed person or taxpayer;
- (c) an assessment;
- (d) an assessment class;

- (e) an assessment sub-class;
 - (f) the type of property;
 - (g) the type of improvement;
 - (h) school support;
 - (i) whether the property is assessable;
 - (j) whether the property or business is exempt from taxation under Part 10;
 - (k) any extent to which the property is exempt from taxation under a bylaw under section 364.1;
 - (l) whether the collection of tax on the property is deferred under a bylaw under section 364.1.
- (6) A complaint may be made about a designated officer's refusal to grant an exemption or deferral under a bylaw under section 364.1.
- (7) Despite subsection (5)(j),
- (a) there is no right to make a complaint about an exemption or deferral given by agreement under section 364.1(11) unless the agreement expressly provides for that right, and
 - (b) there is no right to make a complaint about a decision made under a bylaw under section 364.2 in respect of an exemption or deferral.
- (8) There is no right to make a complaint about any tax rate.
- (9) A complaint under subsection (5) must
- (a) indicate what information shown on an assessment notice or tax notice is incorrect,
 - (b) explain in what respect that information is incorrect,
 - (c) indicate what the correct information is, and
 - (d) identify the requested assessed value, if the complaint relates to an assessment.
- (10) A complaint about a local improvement tax must be made within one year after it is first imposed.
- (11) Despite subsection (10), where a local improvement tax rate has been revised under section 403(3), a complaint may be made

about the revised local improvement tax whether or not a complaint was made about the tax within the year after it was first imposed.

(12) A complaint under subsection (11) must be made within one year after the local improvement tax rate is revised.

(13) A complaint must include the mailing address of the complainant except where, in the case of a complaint under subsection (5), the correct mailing address of the complainant is shown on the assessment notice or tax notice.

(14) An assessment review board has no jurisdiction to deal with a complaint about designated industrial property or an amount prepared by the Minister under Part 9 as the equalized assessment for a municipality.

(15) An assessment review board has no jurisdiction to deal with a complaint about any matter relating to an exemption or deferral under section 364.2, including a refusal to grant an exemption or deferral or a cancellation of an exemption or deferral under that section.

2016 c24 s62;2019 c6 s8

Jurisdiction of assessment review boards

460.1(1) A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on

- (a) an assessment notice for
 - (i) residential property with 3 or fewer dwelling units, or
 - (ii) farm land,
- or
- (b) a tax notice other than a property tax notice, business tax notice or improvement tax notice.

(2) Subject to section 460(14) and (15), a composite assessment review board has jurisdiction to hear complaints about

- (a) any matter referred to in section 460(5) that is shown on
 - (i) an assessment notice for property other than property described in subsection (1)(a), or
 - (ii) a business tax notice or an improvement tax notice,
- or

- (b) a designated officer's decision to refuse to grant an exemption or deferral under section 364.1.

(3) In this section, a reference to "improvement tax" includes a business improvement area tax in Part 10, Division 4 and a local improvement tax in Part 10, Division 7.

2016 c24 s62;2017 c22 s37;2019 c6 s9

Address to which a complaint is sent

461(1) A complaint must be filed with the assessment review board at the address shown on the assessment or tax notice for the property

- (a) in the case of a complaint about a designated officer's decision to refuse to grant an exemption or deferral under section 364.1, not later than the date stated on the written notice of refusal under section 364.1(9), or
- (b) in any other case, not later than the complaint deadline.

(1.1) A complaint filed after the complaint deadline is invalid.

(2) The applicable filing fee must be paid when a complaint is filed.

(3) On receiving a complaint, the clerk must set a date, time and location for a hearing before an assessment review board in accordance with the regulations.

2016 c24 s62;2017 c13 s2(13)

Notice of assessment review board hearing

462(1) If a complaint is to be heard by a local assessment review board, the clerk must

- (a) within 30 days after receiving the complaint, provide the municipality with a copy of the complaint, and
- (b) within the time prescribed by the regulations, notify the municipality, the complainant and any assessed person other than the complainant who is directly affected by the complaint of the date, time and location of the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the clerk must

- (a) within 30 days after receiving the complaint, provide the municipality with a copy of the complaint, and
- (b) within the time prescribed by the regulations, notify the Minister, the municipality, the complainant and any assessed person other than the complainant who is directly

Tab 2

In the Court of Appeal of Alberta

Citation: Northern Sunrise County v Virginia Hills Oil Corp, 2019 ABCA 61

Date: 20190212

Docket: 1701-0221AC

Registry: Calgary

Between:

The Bank of Nova Scotia and Alberta Treasury Branches

**Respondents
(Plaintiffs)**

- and -

Virginia Hills Oil Corp. and Dolomite Energy Inc.

**Respondents
(Defendants)**

- and -

**Alvarez & Marsal Canada Inc. in capacity of Court-appointed Receiver and Manager of the
assets, undertakings and property of Virginia Hills Oil Corp. and Dolomite Energy Inc.**

**Respondent
(Applicant)**

- and -

**Northern Sunrise County and
the Municipal District of Opportunity No. 17 and Lamont County**

**Appellants
(Not Parties at the Trial Court)**

The Court:

**The Honourable Madam Justice Myra Bielby
The Honourable Madam Justice Barbara Lea Veldhuis
The Honourable Madam Justice Jo'Anne Strekaf**

Reasons for Judgment Reserved

Appeal from the Order by
The Honourable Mr. Justice K.D. Yamauchi
Dated the 20th day of June, 2017
Filed on the 20th day of June, 2017
(Docket: 1701-02184)

Reasons for Judgment Reserved

The Court:

I. Introduction

[1] The substantive issue on this appeal is whether the taxation provisions of the *Municipal Government Act*, RSA 2000, c M-26 (*MGA*) grant priority in bankruptcy proceedings to municipalities for tax arrears related to linear property. The appellant municipalities (Northern Sunrise County, Municipal District of Opportunity No 17, and Lamont County; collectively the Municipalities) seek to collect tax arrears on the linear property of two insolvent energy companies, namely a pipeline and related equipment.

[2] The respondents, Alvarez & Marsal Canada Inc (the Receiver) and Bank of Nova Scotia (BNS), say that we should not address that substantive issue. They say, first, that an appeal of a distribution order in a receivership action is moot after funds have been distributed; and, second, that the Municipalities failed to attend the hearing at which the distribution order was made, despite having received notice, and this appeal is therefore an abuse of process.

[3] For the reasons that follow, we have decided to address the substantive issue on appeal. With respect to that issue, we agree with the interpretation of the *MGA* put forward by the Receiver, and dismiss the appeal.

II. Background

[4] Virginia Hills Oil Corp. and Dolomite Energy Inc. (Debtors) are insolvent energy companies that were placed into receivership on February 13, 2017, and subsequently declared bankrupt on May 3, 2017. The respondent Receiver is the court-appointed receiver and manager and trustee in bankruptcy of the Debtors. The Debtors owed linear property tax arrears to the appellant Municipalities.

[5] The appellants are three of the six municipalities through which a pipeline operated by the Debtors passes. Municipal taxes on the pipeline proper remained unpaid by the Debtors as of the dates of their receivership and bankruptcy. The appellants did not advance claims as secured creditors in the receivership or bankruptcy, although served with notice of same, at any time prior to the granting on June 20, 2017 of an Order for Advice and Directions and Distribution of Funds (Order).

[6] After the Order was granted the Receiver distributed all recovered funds to the secured creditors, BNS and Alberta Treasury Branches (ATB), with the result that no funds remained in the Receiver's hands to pay the appellants' claims, even if it were determined that they have claims that rank equal to or ahead of the BNS or ATB secured claims. After the distribution Northern

Sunrise appealed the Order. The remaining Municipalities were added as appellants by order dated November 8, 2017.

[7] The Municipalities appeal part of the Order:

3. It is hereby ordered and declared that the pre-receivership linear tax claims of the Municipalities ... form unsecured claims only as against the Debtors, and do not form secured claims against the Debtors' Property, including for greater certainty the Property sold to the Purchaser .., nor are Permitted Encumbrances ..., and the Municipalities have no further claims or remedies as against the Transaction Properties, the Purchaser or the funds held by the Receiver from the sale of the Debtors' Property.

[8] Although the Municipalities were given notice of the proceeding that led to the Order (including the above paragraph in draft form), they did not appear at the hearing, and made no submissions. They now argue for the first time on appeal that their claims for linear property tax arrears are secured claims pursuant to section 348 of the *MGA* and the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*).

[9] The Receiver and BNS ask that the appeal be dismissed because it is an abuse of process and moot. They point out that the Municipalities did not provide proofs of claim indicating that the linear property tax arrears were secured claims, attend the hearing that led to the Order despite being given notice that the Receiver would be seeking an order declaring their claims to be unsecured, seek a stay of the Order, or notify the Receiver of their intention to appeal until after the distribution was made. In short, the respondents say they should not be prejudiced by the Municipalities' failure to act in a timely manner. The respondents also submit the appeal is moot because the funds originally held back for the linear property tax arrears have been distributed. In the alternative, they argue that the appeal should be dismissed because section 348(d)(i) of the *MGA* does not apply to linear property tax arrears. Further, the tax claims would not have priority by virtue of sections 87 and 73(4) of the *BIA*.

[10] The Municipalities acknowledge that they ought to have, at minimum, attended before the chambers judge on June 20, 2017 and advanced arguments about why their claims for linear property tax arrears are secured claims. However, at the relevant time they had not secured legal counsel and, they contend, the issue is a live controversy and of public importance, and should be heard.

III. Chronology

February 13, 2017	Consent Receivership Order appointed Alvarez & Marsal Canada Inc receiver of the assets and property of the Debtors. BNS and ATB are secured creditors (Secured Lenders) and owed approximately \$108 million. The Debtors' secured and unsecured creditors' total claims were approximately \$115 million.
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March 14, 2017	The Receiver's First Report was filed. It stated that the Debtors owed approximately \$1.1 million in municipal property taxes for the 2016 calendar year and that "the Receiver is uncertain as to the priority of the Property Taxes and is researching that issue".
March 21, 2017	An Approval and Vesting Order permitted the Debtors' property to be sold by the Receiver for \$41 million. It also authorized a distribution to the Secured Lenders of the sale proceeds less amounts for the Receiver's professional and counsel fees, <u>retained to cover potential priority claim against the sales proceeds including municipal claims</u> , and other costs related to the administration of the estate.
April 24, 2017	The Receiver made a first distribution to the Secured Lenders of \$37.5 million to BNS and \$1 million to ATB.
April 27, 2017	The Receiver's Second Report advised that it was in the best interests of the estate to obtain a bankruptcy order.
May 3, 2017	A bankruptcy order was granted against the Debtors and appointed the Receiver as Trustee.
June 14, 2017	The Receiver's Third Report was filed. It stated that: i. the Debtors owed approximately \$1.12 million (plus accrued interest and penalties) in municipal taxes for 2016, of which \$838,339 was for 2016 linear property taxes; ii. the Receiver took the position that pre-receivership municipal linear property tax claims were unsecured claims and explained its rationale for its conclusion; iii. the Trustee had sent each municipality the statutory creditor proof of claim package and contacted them requesting them to file a proof of claim; iv. the Trustee received two unsecured proof of claims from Northern Sunrise County indicating it was owed an <u>unsecured</u> amount of approximately \$1.2 million as at May 3, 2017; v. the Trustee received written communication from the Municipality of Opportunity No 17 that it would not be filing a proof of claim at this time; vi. the Receiver would be applying for an order approving a further distribution to the Secured Lenders and a declaration that the pre-receivership linear property taxes owed to the Municipalities were unsecured claims.
June 20, 2017	The Receiver's application for advice and directions was heard. The Municipalities were served with notice of the application and the draft form

	of order prepared by counsel for the Receiver which indicated that pre-receivership linear tax claims of the Municipalities form unsecured claims only as against the Debtors, and do not form secured claims against the Debtors' Property and the Municipalities have no further claims or remedies as against the Receiver. None of the Municipalities attended or opposed the application. An Order (Advice and Directions, Distribution of Funds) was granted declaring that the pre-receivership <u>linear</u> tax claims owed to the Municipalities were unsecured claims only as against the Debtors and not secured claims against the Debtors' property. It also provided for further interim distributions to BNS and ATB. This is the appealed order (Order).
July 14, 2017	The Receiver distributed \$2 million to BNS and held back funds to cover professional fees and other administration costs. There was no holdback for pre-receivership linear tax claims.
July 19, 2017	Northern Sunrise County appealed the Order.
November 8, 2017	The Municipal District of Opportunity No 17 and Lamont County were added as appellants by order. Lamont County had not filed a proof of claim in the receivership/bankruptcy proceedings.
January 22, 2018	The Receiver's Fourth Report was filed.

IV. Issues and Standards of Review

[11] This appeal raises the following issues:

- A. Should the Receiver be permitted to adduce the Receiver's Fourth Report as new evidence?
- B. Should the appeal be dismissed because it is moot?
- C. Should the appeal be dismissed as an abuse of process?
- D. Does a municipality acquire a special lien on linear property tax arrears pursuant to section 348(d)(i) of the *MGA* and, if so, is it a secured claim for the purposes of the *BIA*?
- E. If the answers to the questions in (D) are "yes", does that special lien lose its status if it is not registered "under a prescribed system of registration before the date of the initial bankruptcy event" pursuant to section 87 of the *BIA*?

F. Is a municipality precluded from enforcing a special lien post-receivership by section 73(4) of the *BIA*?

[12] The first three issues are raised for the first time on appeal and therefore the standard of review does not arise.

[13] The remaining issues concern statutory interpretation and are questions of law, reviewable on a correctness standard: *Balancing Pool v TransAlta Corporation*, 2013 ABCA 409 at para 9, 566 AR 116.

V. Analysis

A. The New Evidence Application

[14] The Receiver wants to adduce the Receiver's Fourth Report dated January 22, 2018 as new evidence in support of its submission that the appeal is moot. The Fourth Report outlines the steps taken by the Receiver in the administration of the Debtors' estate since the Order was granted. The substance of the new evidence is that \$2 million, which had been held back from the first distribution to the Secured Lenders, was distributed to BNS on July 14, 2017 pursuant to the Order. This occurred before the appeal was filed on July 19, 2017, and the Receiver no longer holds any funds for linear property tax arrears.

[15] New evidence may be admitted if it could not have been obtained for use at trial even with the exercise of reasonable diligence and the evidence, if introduced, would be practically conclusive: *Xerex Exploration v Petro-Canada*, 2005 ABCA 224 at paras 116-17, 367 AR 201. The test is flexible and can be "departed from in the appropriate case": *Xerex Exploration* at para 117.

[16] This evidence was not available at the hearing because the final distribution occurred after the hearing was concluded. It provides the factual underpinning necessary to address the respondents' submission that the appeal should be dismissed because it is moot or otherwise an abuse of process.

[17] The application to admit the Receiver's Fourth Report is granted.

B. Is the Appeal Moot?

[18] An appeal is moot if a tangible and concrete dispute has disappeared and the issues it once raised have become hypothetical or academic: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at para 16, 57 DLR (4th) 231. The court considers three factors in determining whether to exercise its discretion to hear an appeal even though it is moot: the presence of an adversarial context, the concern for judicial resources and the awareness of the court's proper law-making function: see *Borowski* at paras 31-42; *Graff v Alberta (Energy and Utilities Board)*, 2007 ABCA 363 at para 4.

[19] The Municipalities submit that the appeal is not moot because it presents a live issue: are linear property tax arrears secured claims. If so, the distributed funds can be traced to BNS and may be recovered. They also contend that even if the appeal is moot, the question of how to treat the linear property tax arrears for the purposes of the *MGA* and the *BIA* is a question of public importance and the ruling would be of precedential value.

[20] The Receiver submits that the issue of whether the Municipalities' claims qualify as secured claims is academic as the funds have already been distributed to the secured lenders. It relies on *Lucid RV Parks Inc v Lucid Capital Fort McMurray Inc*, 2012 ABCA 317. In *Lucid*, which involved bankruptcy proceedings of an RV Park, an order granted on April 12, 2012 directed that all persons (including the appellants) in receipt of rents for May 2012 pay those funds into court. That order was appealed. After the appeal was filed, the case management judge ordered the funds paid into court be released to the Trustee, who was authorized to pay the RV Park's operating expenses. That order was not appealed. The funds in court were released to the Trustee and used to pay expenses. This court held that the appeal of the first order was moot to the extent that the funds had been distributed and noted that the second order, the distribution order, was not appealed. *Lucid* is distinguishable from the present case because here the order under appeal is the distribution order.

[21] BNS submits that a distribution order is a final decision that cannot be undone. The effect of its argument is that such an order cannot be appealed once it has been implemented. It relies on *Ernst & Young Inc v Central Guaranty Trust Co*, 2006 ABCA 337, 397 AR 225. That case is also distinguishable. *Ernst* involved a receivership of a business that sold extended car warranties on vehicles purchased from various automobile importers. The receiver was authorized to bring an action against Central Guaranty Trust, which had been holding some of the warranty monies in trust. On the eve of trial, Central Guaranty Trust amended its defence to allege that the trust was invalid. The receiver submitted that many of the orders granted in the course of the eight-year receivership had been made on the assumption that the trusts were valid and that it was too late for Central Guaranty Trust to raise the invalidity defence. The trial judge found that the validity of the trusts was not settled, and found them invalid. On appeal, this court concluded that Central Guaranty Trust was precluded from attacking the validity of the trusts. The receiver's March 1988 Report made recommendations based upon the explicit assumption that the trust was valid. In July 1988, the court directed Central Guaranty Trust to pay virtually all the trust funds it held to the receiver, and directed the receiver to pay those funds to the automobile importers. The trust funds were distributed pursuant to the July 1988 Order. Central Guaranty Trust appealed the July 1988 Order and later abandoned its appeal. Like *Lucid*, the key distinction between *Ernst* and the present case is that the order under appeal here is the order that directed the distribution, unlike in *Ernst* where the appeal of the distribution order had been abandoned.

[22] The fact that monies were paid to BNS pursuant to the Order (which the Municipalities did not apply to have stayed) does not preclude it from being reviewed on appeal. There may be circumstances when recovery of monies distributed by a receiver pursuant to a court order may not be appropriate or practicable. However, there is nothing on this record that would indicate that is the case here. The British Columbia Court of Appeal recognized in *obiter* that funds paid out by a

receiver to a bank "could, if it became necessary, be traced into the Bank's hands or the Bank could be declared a constructive trustee of the funds, assuming the conditions for such remedies are met": *Bank of Montreal v Peri Formwork Systems Inc*, 2012 BCCA 252 at para 35, 324 BCAC 152.

[23] For the purpose of this appeal, we need not decide whether, and if so how or to what extent, the funds distributed by the Receiver could be recovered. It is enough to conclude that the mere fact that the funds have been distributed by the Receiver does not render moot an appeal of the order authorizing the distribution.

C. Is the Appeal an Abuse of Process?

[24] The doctrine of abuse of process "is a compendious principle that the courts use to control misuses of the judicial system. Abuses of process can arise in many different contexts, and there is no universal test or statement of law that encompasses all of the examples": *Reece v Edmonton (City)*, 2011 ABCA 238 at para 16, 513 AR 199. It engages the "inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute"; *Reece* at para 17, citing *Toronto (City) v CUPE, Local 79*, 2003 SCC 63, [2003] 3 SCR 77 and *Canam Enterprises v Coles* (2000), 51 OR (3d) 481 (ONCA). Rule 14.74(f) of the *Rules of Court* permits an appeal to be struck for abuse of process.

[25] The Municipalities submit that the appeal is not an abuse of process; it does not re-open litigation, but is a continuation of the litigation. They submit that even if the chambers judge had the benefit of their arguments, it is highly likely that the matter would have come before this court given the importance of the legal question and the parties' positions.

[26] We recognize that the Municipalities are litigating the question of whether they are secured creditors for the purposes of the linear property tax arrears for the first time in this court. BNS submits that the appeal should be dismissed because the abuse of process threshold has been crossed. It also submits that the Municipalities took no action and wasted limited court resources by not raising with the Receiver the claim that they are secured creditors and by not participating in the hearing that led to the Order or applying for a stay of the Order. The Municipalities were well aware that the priority of linear property tax arrears was an issue from at least as early as the Receiver's First Report dated March 14, 2017, which identified those concerns.

[27] The Receiver's position that the linear property tax claims were unsecured and the underlying rationale for that position was outlined in detail in the Receiver's Third Report dated June 14, 2017. The statutory 'creditor proof of claim' package was sent to each municipality (six in total) that was owed municipal taxes and the Receiver contacted each of them asking that they file a proof of claim in the bankruptcy. Northern Sunrise County was the only municipality that did so and its proofs of claim characterized its claims as unsecured. The Municipal District of Opportunity No 17 advised the Trustee that it did not intend to file a proof of claim. Lamont County did not file a proof of claim. The affidavits of the Municipal District of Opportunity No 17

and Lamont County in respect of their application to be added as appellants stated that they did not participate previously because they had not yet retained counsel.

[28] Despite having been served with the Receiver's Third Report (which outlined the relief that the Receiver would be seeking at the June 20, 2017 hearing, including a determination that linear property tax arrears were unsecured claims and approval to make a further distribution to the secured lenders), none of the Municipalities attended the hearing or took steps to oppose the Receiver's position or make their position known. No stay of the Order was sought, and the appeal of the Order was not filed until July 19, 2017, after the distribution contemplated in the Order was made on July 14, 2017.

[29] BNS also submits that the appellants are estopped from taking the position on appeal that the linear property tax claims are secured by issue estoppel (*res judicata*) and estoppel by conduct or representation. In our view, neither of these legal principles apply. *Res judicata* applies when a party attempts to re-litigate an issue decided in a prior final judicial decision which involved the same parties, or their privies: *Ernst* at para 30. This doctrine is not applicable here. Although the Order was final, there is a right of appeal and the Order is the subject of this appeal.

[30] Estoppel by conduct is also not available. A party seeking to establish estoppel by conduct must demonstrate a representation, reliance and detriment (*Scotsburn Co-operative Services Ltd v. WT Goodwin Ltd.*, [1985] 1 SCR 54 at para 26), all of which require evidence. No evidence was tendered by the BNS beyond the assertions of counsel.

[31] Taking a position on appeal that is contrary to the proof of claim filed without participating in the hearing can be extremely problematic in the insolvency context where certainty, speed and efficiency are necessary to maximize recovery for everyone. We are concerned with the Municipalities' failure to file proofs of claim in the receivership/bankruptcy proceeding indicating they were taking the position they had a secured claim. We are also troubled by their failure to attend or advance a position at the hearing opposing the Receiver's position, of which they had clear notice. The explanation for their failure to take these steps is unsatisfactory. That said, this court's decision in *Boyd v JBS Foods Canada Inc*, 2015 ABCA 120, provides the Municipalities with some assistance. This court found no support for a rule that a party's quiescence in the court of first instance bars an appeal, although in that case the issues raised on appeal had been advanced below by another party: *Boyd* at paras 3 and 9. Where a party's failure to file documents in a timely fashion or participate in a hearing results in extra costs being incurred by another party, they may also face cost consequences.

[32] Although there is support for the respondents' position that this appeal is an abuse of process, we are persuaded that the questions raised by the appeal are important for municipalities and receivers alike. Accordingly, in these exceptional circumstances we will consider the merits of the Municipalities' appeal.

D. Does section 348(d)(i) of the MGA create a special lien for linear property tax arrears? If so, is that special lien a secured claim for the purposes of the Bankruptcy and Insolvency Act, RSC 1985, c B-3 (BIA)?

[33] The taxes at issue on this appeal are taxes on linear property. The *MGA* defines linear property to mean: electric power systems; street light systems; telecommunication systems; pipelines; railway property; and wells: s 284(k). The linear property involved in this application are pipelines and related equipment.

[34] Historically, municipal taxes were "not recoverable as a debt at common law and ... absent a statutory power to do so, a municipality would be without authority to recover tax arrears from a taxpayer by an action in the courts": *Wallace (Rural Municipality) v Mead Petroleum & Farms Ltd*, 2005 MBCA 3 at para 24, 248 DLR (4th) 224. The *MGA* grants such authority to municipalities in Alberta.

[35] This appeal involves the interpretation of s 348 of the *MGA*, which grants to municipalities the statutory authority to recover municipal taxes, and particularly paragraph 348(d)(i), which creates a special lien "on land and any improvements to the land". Section 348 provides:

348. *Taxes due to a municipality*

- (a) are an amount owing to the municipality,
- (b) are recoverable as a debt due to the municipality,
- (c) take priority over the claims of every person except the Crown, and
- (d) *are a special lien*
 - (i) *on land and any improvements to the land, if the tax is a property tax, a community revitalization levy, a special tax, a local improvement tax or a community aggregate payment levy, or*
 - (ii) *on goods, if the tax is a business tax, a community revitalization levy, a well drilling equipment tax, a community aggregate payment levy or a property tax imposed in respect of a designated manufactured home in a manufactured home community.*

[emphasis added]

[36] The Municipalities argue that "property tax" in s 348(d)(i) includes "linear property tax", and that the provision grants them a special lien on "land and any improvements to the land" with respect to linear property tax arrears. That special lien, they say, gives them priority over all creditors other than the Crown. On this basis they claim priority in the receivership.

[37] The interpretation of s 348(d)(i), like any statutory interpretation exercise, requires that we begin with Driedger's modern principle: "... the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament": E.A. Driedger, *Construction of Statutes*, 2nd ed (Butterworths: Toronto, 1983) at 87; *Balancing Pool v TransAlta Corporation* at para 17.

[38] A provincial legislature can create a statutory lien that takes precedence over the interests of secured creditors. However, to do so "the plain and unambiguous meaning of the section must be that it deprives a properly secured creditor...of all or part of its security without compensation, for the purpose of paying another debt entirely unrelated to the security": *Lloyds Bank Canada v International Warranty Company Limited*, 1989 ABCA 155 at para 10. For example, the special lien on a mobile home created under the *Municipal Taxation Act*, RSA 1980, c. M-31 (which was the predecessor legislation to the taxing provisions now contained in the *MGA*) was found to be a statutory lien against the real property on which the mobile home was located and the mobile home itself, which took precedence over the secured claims of a bank: *Donalda (Village) v Toronto Dominion Bank* (1990), 75 DLR (4th) 178, 111 AR 389 (ABQB).

[39] The Receiver's position (adopted by BNS) is that s 348(d)(i) is too ambiguous to create a statutory lien in respect of linear property taxes because it is unclear whose or what land is caught by the special lien. The Receiver points out that even the Municipalities do not agree what land would be subject to the special lien. Northern Sunrise argues that the lien applies to all of the debtor's land in Alberta, or the assessed land in the alternative. Opportunity and Lamont argue that the wording is broad enough that "land and any improvements to the land" includes, at a minimum, the linear property itself.

[40] In construing the intended reach of s 348(d)(i), it is instructive to consider the context of the *MGA* taxation scheme as a whole, and in particular other provisions of the *MGA* that govern the ability of municipalities to collect arrears of taxes. Particularly relevant are the special remedies set out in Division 8 and Division 9 of Part 10 of the *MGA*. As will be seen, the *MGA* provides different remedies for the collection of different types of property tax.

[41] Division 8 is headed "Recovery of Taxes Related to Land". It sets out a mechanism for municipalities "to recover tax arrears in respect of a parcel of land" (s 411(1)), which is defined as "a parcel of land and the improvements on it" (s 410(b.1)). The tax arrears to which Division 8 applies are defined as "a property tax, a community revitalization levy, a special tax, a local improvement tax or a community aggregate payment levy": s 410(e). It is to be noted that this language essentially mirrors the language of s 348(d)(i). The collection remedy provided by Division 8 permits a tax notification to be endorsed on the certificate of title for a parcel of land. If arrears remain unpaid, the land can be offered for sale at public auction and, if not sold, may be transferred to the municipality: ss 412 – 424.

[42] Division 8 does not apply to linear property tax arrears, which are covered by the collection remedy set out in Division 9 of the *MGA*.

[43] Division 9 is headed "Recovery of Taxes Not Related to Land". For purposes of Division 9, "tax" is defined to include "(i) a business tax; (ii) a well drilling equipment tax; (ii.1) a community aggregate payment levy" (s 437(c)(iii)). The definition also includes certain types of property tax, including "property tax ... imposed in respect of property referred to in section ... 304(1)(i)" – linear property. Section 304(1)(i) identifies the assessed person with respect to linear property as "the operator of the linear property". Accordingly, unlike under Division 8, where tax recovery can

include the sale of the related “parcel of land”, the person responsible for arrears of linear property tax is the “operator”, and the remedy for arrears of linear property tax is a right of distress and seizure of the debtor’s goods: s 439(1).

[44] Importantly for this analysis, linear property taxes are imposed on the operator, not on the owner of the linear property, and not on the owner of the land on which the linear property is situated; likewise, linear property tax arrears are an obligation of the operator. It may be that the operator and the owner of the linear property, or even the owner of the parcel of land on which the linear property is situated, are one and the same, but that is not necessarily the case. In the energy sector, it often is not the case. For these purposes, “operator” is defined to include licensees under the *Pipeline Act* or the *Oil and Gas Conservation Act*. Each of the Debtors here was such a “licensee”, and therefore was an operator responsible for linear property tax arrears under the *MGA*.

[45] That the remedies set out in Division 9, which apply to the taxation of linear property, are categorized as not related to land suggests that the special lien “on land and any improvements to the land” created by s 348(d)(i) does not apply to linear property taxes. Rather, the language of s 348(d)(i) more closely mirrors that of Division 8, which expressly refers to remedies against parcels of land, and which do not apply to linear property tax arrears.

[46] When section 348(d)(i) is read in its grammatical and ordinary sense and in harmony with the scheme of the *MGA*, its reference to “property tax” does not include linear property tax arrears. The provision therefore does not create a special lien “on land and any improvements to the land” with respect to those arrears. When the provision is considered in the context of the entire scheme of the *MGA*, including the specific provisions for remedies regarding linear property taxes set out in Division 9, and the fact that the operator (who is not necessarily connected to the land on which the property is situated) is designated as the person liable for linear property taxes, it is apparent that section 348(d)(i), which applies to land and its improvements, does not encompass linear property.

[47] The Municipalities urge a different interpretation, arguing that Division 8 and Division 9 deal with different subject matter and should not be used to interpret s 348. Opportunity and Lamont submit that Division 9 deals with recovery and enforcement of tax arrears, whereas s 348 concerns security for debts owed and priorities over other debt claims. They submit that, on a plain reading of s 348(d)(i), “property tax” includes linear property tax and the linear property is an “improvement” on the land; they say there is no reason to resort to other parts of the *MGA* to interpret the provision. They say there is no “gap” in the *MGA*, as was found by the chambers judge, and in any event this court should prefer an interpretation that avoids the gap, as noted by Sullivan in her text on construction of statutes:

Although courts normally do not fill gaps in legislative schemes, if there is a choice between two plausible explanations, they ordinarily prefer the interpretation that avoids creating a gap: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, LexisNexis, 2014) at 384-85.

[48] The result of this submission would be that a special lien would attach to the linear property as security. However, when one considers the whole taxation scheme under the MGA, it becomes apparent that result would be manifestly unjust if the owner of the linear property is not also the operator, from whom the arrears are due.

[49] For its part, Northern Sunrise submits there are two remedies available to a municipality to collect tax arrears: the "special remedies" set out in Divisions 8 and 9, and the "special lien" created by s 348. Northern Sunrise argues that Division 8 and s 348 are coextensive, in that both permit the municipality to offer the land for sale to recover tax arrears. The special remedy in Division 9 is the right of distress and, while related to the recovery of tax, the distress available applies to all of the debtors' goods wherever situated (in Alberta). In other words, unless the debtor is also the linear property's owner, there is no right of distress against the linear property.

[50] The difficulty with the interpretation proposed by the Municipalities is that the *MGA* is a comprehensive statute, and s 348 must be read harmoniously with other sections of the Act. As set out above, doing so leads to the conclusion that the mechanisms associated with property tax assessment and collection distinguish between taxes related to land and those not related to land. In general terms, excluding manufactured homes which have a division to themselves, Division 8 (taxes related to land) equates to s 348(d)(i) whereas Division 9 (taxes not related to land) equates to s 348(d)(ii). These two - very different - regimes cannot be ignored and they must inform the interpretation of s 348(d).

[51] We also agree with the Receiver that difficulties would arise if the provision were construed otherwise due to the ambiguity it would create: to what "land and any improvements to the land" would the lien attach? There is no justification for attaching to the parcel of land on which the linear property is situated, and none for attaching to the linear property itself unless the operator and linear property owner happen to be the same person, which is not necessarily the case under the legislative scheme.

[52] We note parenthetically that the interpretation we have adopted is consistent with the relief sought in a resolution filed by the Alberta Association of Municipal Districts and Counties ("AAMDC") in 2016, requesting that the Government of Alberta amend the *MGA* to broaden the tax recovery power of municipalities to collect linear property taxes. This was identified as a pressing issue for rural municipalities because of "significant tax arrears from numerous oil and gas companies". In the same resolution, the AAMDC also requested that the Government of Canada amend the *BIA* to recognize municipal linear property taxes and other municipal non-property taxes as a secured interest in priority to other unsecured interests: AAMDC Resolution 3-16S, "Recovery of Linear Property, Commercial Property, and Education Requisition Tax Arrears" [Resolution]. The background to the Resolution stated in part:

While section 348 of the *MGA* may state that tax arrears have priority over other debt obligations, this priority is limited by the *BIA*. The *BIA* does not affect municipal claims for property tax arrears with respect to land as those arrears give rise to an interest that can be registered pursuant to the *Land Titles Act*.

Contrastingly, linear property tax arrears do not give rise to a similar interest and therefore do not constitute a secured interest pursuant to the BIA.

[53] Although the Alberta legislature has made changes to the *MGA* (most recently in *An Act to Strengthen Municipal Government*, SA 2017, c 13), the changes called for by the Resolution were not made. This history does not enter into our interpretation of s 348(d)(i), but it is consistent with it.

[54] Counsel provided us with the decision in *Re Regent Resources Ltd*, 2018 ABQB 669, released after the appeal was argued. That decision deals with different issues and has not impacted our decision.

[55] Our conclusion on this issue makes it unnecessary to consider the *BIA* implications, and unnecessary to consider the remaining issues on the appeal.

VI. Conclusion

[56] The appeal is dismissed.

Appeal heard on June 12, 2018

Reasons for Judgment Reserved filed at Calgary, Alberta
this 12th day of February, 2019

Authorized to sign for: Bielby J.A.

Veldhuis J.A.

Strekaf J.A.

Appearances:

M.J. McCabe Q.C. / S.N. Finlay
for the Appellant Northern Sunrise County

G.G. Plester
for the Appellants Municipal District of Opportunity No. 17 and Lamont County

P. Saini / C.R. Jones
for the Respondent The Bank of Nova Scotia

D.M. Pontin (No appearance)
for the Respondent Alberta Treasury Branches

G. Bruni / K.D. Kashuba
for the Respondent Alvarez & Marsal Canada Inc

Tab 3

89173 003

IN THE COURT OF APPEAL OF ALBERTA

CIVIL SITTINGS

HEARD IN CALGARY JUNE 2, 1989

APPEAL #8903-0223-AC

IN THE MATTER OF SECTION 31 OF THE
EXECUTION CREDITORS ACT R.S.A. 1980 c.E-14

	<u>COUNSEL</u>	<u>TRIAL JUDGE</u>	<u>COURT</u>
LLOYDS BANK CANADA	M.J. McCABE,	McDONALD, J.	FOISY, J.A.
Claimant	ESQ.		STRATTON, J.A.
Appellant	Ms. M. WHITTAKER		IRVING, J.A.

- and -

INTERNATIONAL
WARRANTY COMPANY
LIMITED

Debtor

AND BETWEEN:

ATTORNEY GENERAL OF CANADA	R.K. MOEN, ESQ.
-------------------------------	-----------------

Claimant
Respondent

- and -

INTERNATIONAL
WARRANTY COMPANY
LIMITED

Debtor

APPEAL #8903-0224-AC

IN THE MATTER OF SECTION 95 OF THE BUSINESS CORPORATIONS ACT
BEING CHAPTER B-15 OF THE REVISED STATUTES OF ALBERTA
AND AMENDMENTS THERETO:

AND IN THE MATTER OF THE APPOINTMENT OF COOPERS & LYBRAND LIMITED AS
RECEIVER AND MANAGER OF C T S WESTERN LTD. PURSUANT TO FIXED
AND FLOATING CHARGE DEBENTURES DATED MAY 14, 1987 AND AUGUST 8, 1988

BETWEEN:

PROVINCE OF ALBERTA
TREASURY BRANCHES AND
COOPERS & LYBRAND
LIMITED

R.T.G. REESON,
ESQ.

Applicants
(Appellants)

- and -

C T S WESTERN LTD.,
HER MAJESTY THE QUEEN
IN RIGHT OF CANADA AS
REPRESENTED BY THE
MINISTER OF REVENUE
CANADA TAXATION AND
ESSO RESOURCES CANADA
LIMITED

R.K. MOEN, ESQ.

Respondents
(Respondents)

MEMORANDUM OF JUDGMENT

STRATTON, J.A.:

The issue in these two appeals involves the determination of entitlement to certain funds wherein Revenue Canada is the competing creditor in the first named action against the Appellant, Lloyds Bank Canada ("Lloyds") and in the second action, against the Appellant, Alberta Treasury Branches ("Treasury Branch"). Lloyds and Treasury Branch hold as security Assignments of Book Debts from their respective debtors. Revenue Canada claims priority in each case under the provisions of the Income Tax Act ("the Act") and the principal basis of its claim is common to both appeals.

The applications to Queen's Bench which launched the proceedings were under the respective statutes noted in the above styles of cause; however it is sufficient for our purposes to simply note that each statute properly authorized an application to Queen's Bench to settle the competing claims.

In chambers and before us the cases were heard together. The learned chambers judge framed his written reasons in terms of the Lloyds appeal but noted that his reasons "would apply mutatis mutandis" to the Treasury Branch appeal. I will follow the same format in that this Memorandum of Judgment will refer mainly to the facts and parties involved in the Lloyds appeal.

Soon after ceasing business operations, International Warranty Company Limited (I.W.) paid salaries to its employees out of an account in its name at the Toronto Dominion Bank. The required withholding sum of \$53,870.68 was not paid to Revenue Canada. At all material times I.W. was indebted to Lloyds in the amount of 1.75 million dollars and had given to Lloyds an Assignment of Book Debts to secure that debt.

It is common ground that the funds of I.W. which are subject to the dispute between Lloyds and Revenue Canada were either held by the Toronto Dominion Bank or, for the purposes of these proceedings, treated as being held by it.

The material parts of section 224 of the Act are:

"224.(1) Where the Minister has knowledge or suspects that a person is or will be, within 90 days, liable to make a payment to another person who is liable to make a payment under this Act (in this section referred to as the "tax debtor"), he may, by registered letter or by a letter served personally, require that person to pay forthwith, where the moneys are immediately payable, and, in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.

(the underlining is mine)

* * * * *

(1.2) Notwithstanding any other provision of this Act, the Bankruptcy Act, any other enactment of Canada, any enactment of a province or any law, where the Minister has knowledge or suspects that a particular person is or will become, within 90 days, liable to make a payment

(a) to another person who is liable to pay an amount assessed under subsection 227 (10.1) or a similar provision, or to a legal representative of that other person (each of whom is in this subsection referred to as the "tax debtor"), or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor, the Minister may, by registered letter or by a letter served personally, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General

on account of the tax debtor's liability under subsection 227(10.1) or a similar provision.

(1.3) in subsection (1.2),

'secured creditor' means a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator, or any other person performing a similar function;

'security interest' means any interest in property that secures payment or performance of an obligation and includes an interest created by or arising out of a debenture mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

(4) Subsections (1) to (3) are applicable to assessments in respect of amounts that are deducted or withheld after the day on which this Act is assented to."

On January 28, 1988 Revenue Canada served upon the Toronto Dominion Bank a written "Requirement to Pay" pursuant to section 224(1.2)(b).

It is not disputed that I.W. was legally responsible for the withholding funds claimed by Revenue Canada.

In finding in favour of Revenue Canada the learned chambers judge considered section 224(1.2) to have a "plain meaning that is unambiguous". Later in his judgment he said:

Section 224(1.2) ". . . empowers the Minister by letter to require a person (here, the Toronto-Dominion Bank) to pay 'moneys otherwise payable to . . . the secured creditor . . . to the Receiver General on account of the tax debtor's liability . . .' If there are moneys that are otherwise payable to a secured creditor, it is clear that those moneys must be paid not to the secured creditor but to the Receiver General, and that the moneys are not to be held for some such purpose as safekeeping while entitlement is decided, but 'on account of the tax debtor's liability'. In other words, the section clearly provides by implication that the moneys so paid become the property of the Crown; there is no other way that the tax debtor's liability could be satisfied."

With the greatest respect we disagree. In particular we do not agree that the section has the "plain meaning that is unambiguous" attributed to it by the learned chambers judge. For Revenue Canada to succeed the plain and unambiguous meaning of the section must be that it deprives a properly secured creditor, in this case Lloyds, of all or part of its security without compensation, for the purpose of paying another debt entirely unrelated to the security. It is surely equivalent to the transfer of proprietary rights without compensation.

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In *Homeplan Realty Ltd. v. Avco Financial Services* (1977) 81 D.L.R. (3d) 289 (affirmed by S.C.C. (1979) 33 C.B.R. (N.S.) 34) the B.C. Court of Appeal had for consideration a claim for priority under a provincial statute, which constituted a claim by an employee for wages, if certified under the act, as being payable "in priority over any other claim or right - including - every mortgage of real or personal property". Robertson, J.A. had this to say at p. 292:

"If the Legislative Assembly intends to produce by statute results that are so brutal and piratical, it has the power to do so, but the Courts will hold that that was its intention only if the language of the statute compels that interpretation.

In *Craies on Statute Law*, 6th ed. (1963), this is said at p. 118:

As Brett M.R. said in *Att.-Gen. v. Horner* (1884) 14 Q.B.D. 245, 257: 'It is a proper rule of construction not to construe an Act of Parliament as interfering with or injuring persons' rights without compensation unless one is obliged to so construe it.' Therefore rights, whether public or private, are not to be taken away, or even hampered, by mere implication from the language used in a statute, unless, as Fry, J. said in *Mayor, etc. of Yarmouth v. Simmons* (1879) 10 Ch.D. 518, 527, 'the legislature clearly and distinctly authorises the doing of something which is physically inconsistent with the continuance of an existing right.'

This same concept was expressed in *Maxwell, Interpretation of Statutes*, 11th ed., 1962, p. 276 as follows:



"Proprietary rights should not be held to be taken away by Parliament without provision for compensation unless the legislature has so provided in clear terms. It is presumed, where the objects of the Act do not obviously imply such an intention, that the legislature does not desire to confiscate the property or to encroach upon the right of persons, and it is therefore expected that, if such be its intention, it will manifest it plainly if not in express words at least by clear implication and beyond reasonable doubt."

(the emphasis is mine)

As noted above, the learned trial judge was of the view that s. 224(1.2) clearly provided by implication that the moneys paid in response to Revenue Canada's "Requirement to Pay" became the property of the Crown. This conclusion is not in accord with prior decisions of this court.

In *Lemarre; University of Calgary v. Morrison and Receiver General of Canada* [1978], 2 W.W.R. 465, the Minister of National Revenue made a demand, similar to the one given in the present case, under the then applicable section of the *Income Tax Act*, namely 224(1). The question there was whether the demand took precedence over an assignment in bankruptcy. Section 224(1) then read as follows:

"224. (1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment under this Act, he may, by registered letter or by a letter served personally, require him to pay the moneys otherwise payable to that person in whole or in part to the Receiver General of

Canada on account of the liability under this Act."

It will be noted that the words I have underlined are, for all practical purposes, identical to the words I have underlined in the section here under review (supra). Thus the difference between these two sections is not of significance for our purposes. In giving judgment of the court in *Lemarre*, Prowse, J.A. pointed out that section 224(1) seemed to neither create a trust nor pass property to the minister. At p. 469 he said:

"The distinction between garnishee proceedings and the remedy afforded the minister is that the demand need not be issued in judicial proceedings and, further, the demand is broader in scope as it attaches payments arising out of a debt or a liability. The property in the debt or liability when due or determined is not impressed with a trust nor is it transferred to the minister."

(the emphasis is mine)

In *Attorney General of Canada v. Royal Bank of Canada* [1979], 1 W.W.R. 479, McGillivray, C.J.A., in writing for the court, expressly followed the decision in *Lemarre*:

"We are all of the view that the decision of this court in *University of Calgary v. Receiver Gen. of Can.*, [1978] 2 W.W.R. 465, 27 C.B.R. (N.S.) 41, 85 D.L.R. (3d) 392, 8 A.R. 533, enunciated two propositions: firstly, a demand made under s. 224 does not convey the indebtedness to the Crown, nor does it impress it with a trust; and, secondly, the minister does not, by virtue of the demand, become a

holder of a security. In short, the Crown does not acquire an equitable interest in the indebtedness."

(pages 479 - 480)

Following the decisions in *Lemarre* and the *Royal Bank* I am of the view that the proceedings under s. 224(1.2) are at the most a form of extra-judicial attachment which could bring the funds in question into the custody of Revenue Canada. The section falls short of effecting the transfer of property in the funds or establishing priority of Revenue Canada's claim. Something further is required to accomplish either purpose.

As pointed out by the learned trial judge a 1986 amendment to the *Income Tax Act*, which was never proclaimed, would have "made the Crown's position impregnable" on this point. This section, if it had been proclaimed, would have established the priority of Revenue Canada which, as I have said, s. 224(1.2) fails to do. The unproclaimed section reads as follows:

"(10.2) Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of a Province or any law where a person has been assessed under subsection (10.1) or a similar provision the amount determined under subsection (10.3) is secured by a charge upon the property referred to in subsection (10.4) and the charge has priority over all other claims and all other security interests."

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In accordance with the understanding above mentioned, my conclusion applies equally to the Treasury Branch appeal.

In the Lloyds appeal, Revenue Canada raised a further argument not applicable to the Treasury Branch appeal: nor was it dealt with in the judgment of the learned chambers judge. The basis of this argument is International Warranty's letters of January 4, 1988 to the Toronto Dominion Bank directing payment of certain of its funds held by that bank to pay to the Receiver General for "employee benefits". The letter also purported to give notice that the "said funds are intended for the Receiver General and are being held in trust" by the bank for that purpose. Revenue Canada argued that a specific trust was established by International Warranty for the purposes of payment of employee benefits and that Lloyds waived its right under its assignment of book debts to give effect to that trust. We reject that contention. We can find from the material before us no evidence of Lloyds' waiver of its rights under its security and, as pointed out by counsel for Lloyds, International Warranty cannot validly create a trust covering moneys earlier secured by it unless that trust be made subject to that prior security.

The reasons for judgment of the learned chambers judge, dated January 19, 1989 (which we have just considered) by its express terms, did not cover funds claimed by Revenue Canada other than those sufficient to cover the penalty imposed by it upon International Warranty for non payment. He subsequently issued supplementary reasons for judgment on

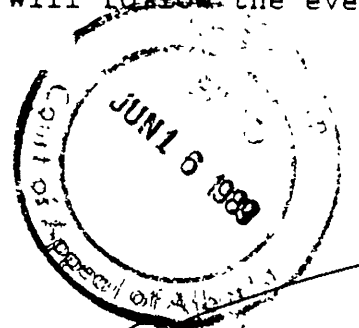
- 11 -

May 11, 1989 following further submissions by counsel. Because of the conclusions we have reached with respect to the January 19, 1989 judgment it is unnecessary to deal separately with the supplementary reasons.

In the result we allow both the Lloyds and Treasury Branch appeals. In the Lloyds appeal, I direct the sheriff of the Judicial District of Edmonton to pay to Lloyds the funds held by him in those proceedings. In the Treasury Branch appeal, Esso Resources is hereby directed to pay to the Treasury Branch the funds held by it in those proceedings.

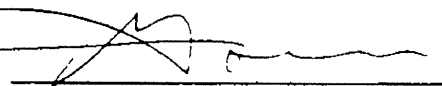
Costs here and in the court below will follow the event.

DATED at EDMONTON, Alberta
this 13th day of June,
A.D. 1989

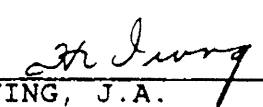



STRATTON, J.A.

I concur:


FOISV, J.A.

I concur:


IRVING, J.A.

Tab 4

Court of Queen's Bench of Alberta

Citation: Regent Resources Ltd (Re), 2018 ABQB 669

Date: 20180917
Docket: 1601 16147
Registry: Calgary

Between:

**Ernst & Young Inc., in its capacity as Court-appointed Receiver of the current
and future assets, undertakings and properties of Regent Resources Ltd.**

Applicant

- and -

Cardston County

Respondent

**Reasons for Judgment
of the
Honourable Madam Justice K.M. Horner**

I. Introduction

- [1] This is a priority dispute that raises the question of how far a municipality can go to collect tax arrears from an insolvent taxpayer with no valuable property in that municipality.
- [2] The Applicant, Ernst & Young Inc. (the "Receiver"), was appointed as Receiver for the insolvent Regent Resources Ltd. ("Regent"). With the exception of the matter at hand here, all claims against Regent have been resolved. However, Regent's largest creditor, Alberta Treasury Branches ("ATB") faces a significant shortfall on its claim.
- [3] Regent owned properties in a number of locations in Alberta, including the Respondent Cardston County ("Cardston"). In 2017, the Receiver disclaimed all of Regent's properties and assets in Cardston, taking the position that they had no value. There were, however, arrears of property tax in respect of those Cardston properties. Together with interest and penalties, those arrears amounted to approximately \$133,000 as at the date of this hearing. Regent also owned a number of properties in other municipalities that were sold within the receivership proceedings. There is no dispute that municipal taxes were paid on all of those properties.
- [4] Cardston claims that it has a "special lien" over all of Regent's property for its municipal tax arrears by virtue of s. 348 of the *Municipal Government Act*, RSA 2000, c M-26 (the

“MGA”). The Receiver takes the position that the special lien contemplated in that provision is narrower in scope. The sole substantive issue before me was the proper interpretation of this provision and the scope of the special lien arising from it.

[5] First, however, Cardston raised a procedural issue. Cardston proposed that my determination of this matter be adjourned pending the anticipated decision of the Court of Appeal in *Northern Sunrise County v Virginia Hills Oil Corp*, which was heard on June 12, 2018. That case deals with the application of the special lien to linear property. Cardston asserted that the Court of Appeal might provide applicable guidance and asked that this matter be adjourned *sine die* to await the decision. Cardston argued that an adjournment was likely to occasion little or no prejudice to the Receiver. The Receiver opposed the adjournment. It argued that it was not appropriate to delay hearing an issue of interpretation, particularly when it is not clear that the Court of Appeal will address the particular issue in question.

[6] I agreed with the Receiver and declined to grant the adjournment. I was not persuaded that the Court of Appeal was likely to provide guidance on an issue not squarely before it. Accordingly, we proceeded with the hearing on the substantive issue.

[7] At the conclusion of the hearing, I granted the Receiver’s application for a declaration that ATB was a first ranking priority creditor and issued an order providing for final distribution of proceeds to ATB. I indicated I would issue my reasons subsequently and these are those reasons.

[8] The “special lien” for its municipal tax arrears is set out in s. 348 of the MGA which provides as follows:

348 Taxes due to a municipality

- (a) are an amount owing to the municipality,
- (b) are recoverable as a debt due to the municipality,
- (c) take priority over the claims of every person except the Crown, and
- (d) are a special lien
 - (i) on land and any improvements to the land, if the tax is a property tax, a community revitalization levy, a special tax, a local improvement tax or a community aggregate payment levy, or
 - (ii) on goods, if the tax is a business tax, a community revitalization levy, a well drilling equipment tax, a community aggregate payment levy or a property tax imposed in respect of a designated manufactured home in a manufactured home community.

[9] The Receiver asserts that the phrase “land and any improvements to the land” in s. 348(d)(i) refers specifically to the land in respect of which the property tax was levied. Alternatively, the Receiver asserts that, at a minimum, the phrase must refer to land within the geographical boundaries of the municipality. Cardston argues for a broader interpretation that

would allow the special lien to attach to any land, regardless of its location or whether the tax is owing on it.

[10] Cardston relies on several statutory interpretation principles in support of its position. It starts by citing the Supreme Court of Canada's statement in *Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21:

Today there is only one principle or approach; namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[11] More specifically, Cardston notes that the Supreme Court of Canada held in *United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19 at paras 6-8 that the MGA is to be interpreted in a "broad and purposive" manner.

[12] In addition, Cardston cites the *Interpretation Act*, RSA 2000, c I-8, s 10, which provides that all legislation in Alberta must be "...construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects."

[13] The Receiver does not dispute these principles, but argues that Cardston has applied them inappropriately.

[14] Cardston submits that a proper interpretation of s. 348(d)(i) must be consistent with the remainder of that section and with the MGA as a whole. It argues that if "land" in s. 348(d)(i) is restricted to land on which tax is owing, then "goods" in s. 348(d)(ii) must be similarly restricted. Cardston points out that, if this is correct, there would be situations in which no special lien would be available. This, in its submission, creates a "gap" that cannot have been intended by the Legislature.

[15] I do not find this argument persuasive. The interpretation of s. 348(d)(ii) is not before me and I do not agree that I am so constrained in interpreting s. 348(d)(i).

[16] Cardston next asserts that, where it is intended to refer to property subject to assessment and taxation, the MGA uses the defined terms "property" and "parcel of land". The term "land" used in s. 348(d)(i), is not defined in the MGA. Cardston argues that this term typically is much broader, including a variety of legally recognized interests in land, some of which are never subject to assessment and taxation. It notes that "land" is defined in the *Land Titles Act*, RSA 2000, c L-4 as follows:

"land" means land, messuages, tenements and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest therein, whether the estate or interest is legal or equitable, together with paths, passages, ways, watercourses, liberties, privileges and easements appertaining thereto and trees and timber thereon, and mines, minerals and quarries thereon or thereunder lying or being, unless any of them are specially excepted.

[17] Cardston argues that the Legislature's use of the term "land" must be presumed to be deliberate and implies that the Legislature intended a broader reach for the special lien than is advocated by the Receiver.

[18] While I agree that the Legislature should be presumed to have chosen the term "land" deliberately, that does not necessarily mean that the drafters intended to sweep in any and all

interests in land. In my view, it is equally plausible that the drafters chose the term to distinguish between it and “goods” in the next subsection.

[19] Cardston also points out that the previous version of the MGA provided for the special lien over “the land in respect of which the taxes are due.” Cardston asserts that the removal of that language from the current version of the MGA indicates that the Legislature intended to broaden the application of the special lien to all land and improvements owned by the debtor.

[20] While I acknowledge the change in wording, it is not sufficient to require an interpretation that I find will produce absurd results.

[21] As noted above, the Receiver argues that the special lien is applicable only to the particular land on which tax is owing or, at a minimum, only to land within the municipality. It asserts that this interpretation is consistent with the MGA, which permits a municipality to levy property tax on land within its boundaries. It notes further that property taxes are levied by municipal bylaw and that s. 12 of the MGA provides that a bylaw normally applies only within the municipality’s boundaries.

[22] Significantly, the Receiver argues that Cardston’s interpretation would lead to absurd results and that it is a principle of statutory interpretation that such results are to be avoided. It points to *R v Canadian Pacific Ltd* [1995] 2 SCR 1031 where Justice Gonthier held at para 66 that “Where a provision is open to two or more interpretations, the absurdity principle may be employed to reject interpretations which lead to negative consequences, as such consequences are presumed to have been unintended by the legislature.”

[23] The Receiver identifies several possible “negative consequences” to Cardston’s interpretation. First, it notes that giving such broad scope to the special lien could lead to competing special lien claims on the same land. There is no provision in the MGA for determining the priority of such competing claims, though counsel for Cardston suggested during the hearing that such claims could simply be paid out *pari passu*.

[24] The Receiver points out that Cardston’s interpretation could lead to a municipality making special lien claims against land anywhere in the world. If the application of the special lien is not limited to the municipality’s borders, the Receiver argues, there is no reason to limit it to Alberta or indeed to Canada. The Receiver submits that this cannot be what the Legislature intended.

[25] Counsel for the Receiver also made the important point that a broad scope special lien would be “an invisible superpriority charge” of which purchasers and lenders would not have notice. A party intending to lend funds secured against land reasonably may be expected, through its due diligence, to discover arrears of tax in the municipality where the land is located. However, I agree with the Receiver that it is not reasonable to expect lenders to ascertain whether there are tax arrears in every municipality in Alberta. This is particularly so where, as here, the debtor has disclaimed its interest in the land. Under Cardston’s interpretation, a lender would have to determine whether the debtor previously had owned land with taxes owing. The Legislature cannot have intended to create a due diligence requirement of that kind.

[26] Finally, I note that a municipality is not left without a remedy if its special lien is limited to its own boundaries. Cardston acknowledges in its brief that a municipality has the ability to obtain a judgment for unpaid taxes and to enforce that judgment against the debtor’s assets. That judgment is not limited to assets within the municipality, but may be enforced against any of the

debtor's assets within Alberta or even outside Alberta, if the judgment is extraprovincially registered. While the municipality, as a judgment creditor, would rank as an unsecured creditor, it cannot be said that limiting the special lien to the municipal boundaries leaves the municipality with no option to collect the taxes owed. It is only the "superpriority" that is limited. This, in my view, is an appropriate interpretation of s. 348(d)(i) of the MGA that is consonant with the objects and scheme of that statute.

[27] Taking all of the foregoing into account, I granted the Receiver's application.

[28] As is customary in proceedings of this nature, no costs are ordered.

Heard on the 22nd day of June, 2018

Dated at Calgary, Alberta this 17th day of September, 2018.

K.M. Horner
J.C.Q.B.A.

Appearances:

Howard A. Gorman, Q.C. and Aditya M. Badami
Norton Rose Fulbright Canada LLP
for the Applicant

Gregory G. Plester
Brownlee LLP
for the Respondent

Tab 5



Province of Alberta

PERSONAL PROPERTY SECURITY ACT

Revised Statutes of Alberta 2000
Chapter P-7

Current as of June 13, 2016

Office Consolidation

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (u.3) “futures customer” means a person for which a futures intermediary carries a futures contract on its books;
- (u.4) “futures exchange” means an association or organization operated to provide the facilities necessary for the trading of standardized futures or options on futures;
- (u.5) “futures intermediary” means a person that
 - (i) is registered as a dealer permitted to trade in futures contracts, whether as principal or agent, under the securities laws or commodity futures laws of a province or territory of Canada, or
 - (ii) is a clearing house recognized or otherwise regulated by the Alberta Securities Commission or by a securities regulatory authority of another province or territory of Canada;
- (v) “goods” means tangible personal property other than chattel paper, a document of title, an instrument, investment property and money, and includes fixtures, growing crops and the unborn young of animals, but does not include trees that are not crops until they are severed or minerals until they are extracted;
- (w) “instrument” means
 - (i) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada),
 - (ii) any other writing that evidences a right to the payment of money and is of a kind that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or
 - (iii) a letter of credit or an advice of credit if the letter or advice states that it must be surrendered on claiming payment under it,

but does not include
 - (iv) chattel paper, a document of title or investment property, or
 - (v) a writing that provides for or creates a mortgage or charge in respect of an interest in land that is specifically identified in the writing;

information relates under circumstances in which a reasonable person would take cognizance of it.

(3) A lease referred to in subsection (1)(z)(ii) does not become a lease for a term of more than one year until the lessee's possession extends for more than one year.

(4) If the debtor and the owner of the collateral are not the same person, "debtor" means

- (a) in a provision of this Act dealing with the collateral, an owner of, or a person with an interest in, the collateral, or
- (b) in a provision of this Act dealing with the obligation, an obligor,

or both where the context permits.

(5) Unless otherwise provided in this Act, goods are "consumer goods", "inventory" or "equipment" if at the time the security interest in the goods attaches they are "consumer goods", "inventory" or "equipment".

(6) Proceeds are traceable whether or not there exists a fiduciary relationship between the person who has a security interest in the proceeds as provided in section 28 and the person who has rights in or has dealt with the proceeds.

RSA 2000 cP-7 s1;2006 cS-4.5 s108(2)

Part 1 General

The Crown is bound

2 The Crown is bound by this Act.

1988 cP-4.05 s2

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.

(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.

1988 cP-4.05 s3; 1991 c21 s29(3)

Non-application of Act

4 Except as otherwise provided under this Act, this Act does not apply to the following:

- (a) a lien, charge or other interest given by an Act or rule of law in force in Alberta;
- (b) a security agreement governed by an Act of the Parliament of Canada that deals with rights of parties to the agreement or the rights of third parties affected by a security interest created by the agreement, and any agreement governed by sections 425 to 436 of the *Bank Act* (Canada);
- (c) the creation or transfer of an interest or claim in or under any policy of insurance, except the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;
- (c.1) a transfer of an interest in or claim in or under a contract of annuity, other than a contract of annuity held by a securities intermediary for another person in a securities account;
- (d) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services, other than fees for professional services;
- (e) the transfer of an interest in an unearned right to payment under a contract to a transferee who is to perform the transferor's obligations under the contract;
- (f) the creation or transfer of an interest in land, including a lease;
- (g) the creation or transfer of an interest in a right to payment that arises in connection with an interest in land, including an interest in rental payments payable under a lease of land, but not including a right to payment evidenced by investment property or an instrument;

- (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.

1988 cP-4.05 s3;1991 c21 s29(3)

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- (a) a lien, charge or other interest given by an Act or rule of law in force in Alberta;
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- (c) the creation or transfer of an interest or claim in or under any policy of insurance, except the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;
- (c.1) a transfer of an interest in or claim in or under a contract of annuity, other than a contract of annuity held by a securities intermediary for another person in a securities account;
- (d) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services, other than fees for professional services;
- (e) the transfer of an interest in an unearned right to payment under a contract to a transferee who is to perform the transferor's obligations under the contract;
- (f) the creation or transfer of an interest in land, including a lease;
- (g) the creation or transfer of an interest in a right to payment that arises in connection with an interest in land, including an interest in rental payments payable under a lease of land, but not including a right to payment evidenced by investment property or an instrument;

Tab 6

Court of Queen's Bench of Alberta

Citation: Alberta Treasury Branches v COGI Limited Partnership, 2019 ABQB 94

Date: 20190212
Docket: 1501 12220
Registry: Calgary

Between:

Alberta Treasury Branches

Plaintiff

- and -

**COGI Limited Partnership, Canadian Oil & Gas International Inc., Conserve Oil Group
Inc. and Conserve Oil 1st Corporation**

Defendants

- and -

**Decision
of the
Honourable Madam Justice B.E. Romaine**

[1] Del Canada GP Ltd purchased property from the Receiver of COGI Limited Partnership, Canadian Oil & Gas International Inc, Conserve Oil Group Inc and Conserve Oil 1st Corporation (collectively, the Debtor). The sale was approved by an Approval and Vesting Order of this Court dated June 6, 2018. Del Canada brought this application to determine the scope of the Municipal Taxes Fund established by paragraph 8 of the Order.

[2] The Fund was established to pay municipal claims that have super-priority by way of "special lien" pursuant to section 348 of the *Municipal Government Act*, RSA 2000, c M-26. It was set at up to \$3 million, an amount considered sufficient to satisfy all proven claims against

the Debtor by municipalities that had responded to the Receiver's letters dated June 6, 2018 asking the municipalities to quantify their claims. The establishment of the Fund was without prejudice to a determination of the validity or priority of the claims asserted by the municipalities.

[3] The issue in this application was whether the special lien under section 348 of the *MGA* is restricted to lands and improvements located within the geographical boundaries of the municipality. I decided that it is, and these are my reasons.

[4] Del Canada relies on *Re Regent Resources Ltd*, 2018 ABQB 669, a decision of Horner, J, which decided the same issue and involved similar material facts. In that application, the Receiver had disclaimed the debtor's property that was located in the respondent municipality and sold the remaining property. It sought to distribute the proceeds of sale to the first-ranking secured creditor. The respondent municipality claimed a special lien over all the debtor's property in Alberta for municipal tax arrears. The Court agreed with the Receiver that the phrase "land and any improvements to the land", in section 318(d)(i) of the *MGA* refers specifically to the land in respect of which the property tax was levied, or alternatively, land within the geographical boundaries of the municipality. The respondent municipality did not appeal the decision.

[5] In this case, the respondent municipalities make the same claim, even though the property sold to Del Canada is located outside their municipal boundaries. The municipalities submit that the decision in *Regent* is incorrect. Although the municipalities in this case are different, it appears from reading that case that many of the arguments made by the municipality in *Regent* have been made again in this application.

[6] I agree with the reasoning of Horner, J in *Regent* and come to the same conclusion: the special lien set out in section 348(d)(i) of the *MGA* is restricted to, at a minimum, land owned by the debtor, or in this case, its assignee, in the municipality that makes the claim. It is not necessary that I decide whether the lien is restricted to the specific taxed land, and I do not do so.

[7] There were certain submissions made by the municipalities in this case that may not have been addressed in *Regent*, and certain criticisms of the *Regent* decision. I respond to these as follows:

- a) The municipalities submit that Horner, J failed to look to the appropriate principles of statutory interpretation when giving her reasons. They support this submission by reference to a comment made by the Court in paragraph 15 of *Regent* in response to the argument that there must be consistency in interpretation between section 348(d)(i) of the *MGA*, which deals with land and particular types of tax, and section 348(d)(ii), which deals with property and a somewhat different set of tax categories. That comment is as follows:

Cardston submits that ... if "land" in s. 348(d)(i) is restricted to land on which tax is owing, then "goods" in s. 348(d)(ii) must be similarly restricted. Cardston points out that, if this is correct, there would be situations in which no special lien would be available. This, in its submission, creates a "gap" that cannot have been intended by the Legislature.

I do not find this argument persuasive. The interpretation of s. 348(d)(ii) is not before me and I do not agree that I am so constrained in interpreting s. 348 (d)(i).

I disagree that this comment, in context, indicates that the Court interpreted section 348 (d)(i) in a vacuum, as alleged by the municipalities. It appears that section 348 (d)(ii) has not been the subject of interpretation by a court, and therefore, whether it is unrestricted or restricted on the same basis as it was argued that section 348(d)(i) is restricted – to the property or goods within the municipality’s boundaries – has not been decided. Thus submissions about inconsistency are speculative to the extent that they assume that section 348(d)(ii) is unrestricted. Horner, J appears to be indicating that she did not find it necessary to interpret section 348(d)(ii) for the purpose of her decision, and therefore found the municipality’s arguments about inconsistency unpersuasive.

- b) There is no indication in the decision that the Court in *Regent* “refused” to look at the “whole statute book” in interpreting section 348 (d)(i). While it is not clear whether the Court was referred to the definitions of “land” in the *Land Titles Act*, the *Civil Enforcement Act* and in common law, as has been done in this application, it is the specific statute in question that is key to interpretation. Horner, J quite properly referred to the *MGA* and the *Interpretation Act*, RSA 2000, c I-8, in *Regent*. While other legislature may sometimes be helpful in interpreting certain words and phrases, the Supreme Court in *Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21 sets out the basic rule of statutory interpretation as follows:

Today there is only one principle or approach; namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

- c) While the municipalities in this application purport to look at the *MGA* as a whole in making submissions with respect to interpretation, there are a number of relevant provisions that they did not refer to in their brief:
- (i) section 12 of the *MGA* states that a bylaw of a municipality applies only inside its boundaries, except in circumstances that do not apply here. The tax debts referenced in section 348 are authorized by by-law, which in accordance with section 12 is only applicable within the boundaries of the municipality;
 - (ii) section 72(i) indicates that a municipality may acquire “an estate or interest in land” outside of its boundaries only in certain limited circumstances that do not apply in this case;
 - (iii) section 90 (i) stipulates that if a parcel of land is located in more than one municipality, a tax assessor must prepare an assessment for the part of the parcel that is located in the municipality as if that parcel was a separate parcel of land; and

- (iv) section 353(I) of the *MGA* authorizes council to impose a tax “in respect of property in the municipality”.

Thus, it is reasonable to assume that section 348(d)(i) does not include the phrase “in the municipality” because it is unnecessary in the context of the statutory powers of the municipality. Counsel for the municipalities submits that the difference is that section 348 creates a debt and an unlimited mechanism to enforce that debt. While it is true that section 348(a) through (c) characterize tax liabilities as debt and gives them priority, the special lien created by section 348(d) is not unlimited but specific as to types of property and types of tax.

- d) The municipalities submit that the Court in *Regent* failed to look to the totality of the *MGA* to determine its scheme and object and that the “object of the [*MGA*] is to empower the municipalities to assess tax and to provide a mechanism to collect that tax”. In *Shell Canada Products Ltd v Vancouver (City)*, [1994] 1 SCR 231, the Court noted as follows:

In most cases, as here, the problem arises with respect to the exercise of a power that is not expressly conferred but is sought to be implied or the loss of a general grant of power. It is in these cases that the purposes of the enabling statute assume great importance. The approach in each circumstance is set out in the following excerpt in Rogers, *The Law of Canadian Municipal Corporations*, [citation eliminated], with which I agree:

In approaching a problem of construing a municipal enactment a court should endeavour firstly to interpret it so that the powers sought to be exercised are in consonance with the purposes of the corporation. The provision at hand should be construed with reference to the object of the municipality...

Any ambiguity or doubt is to be resolved in favour of the citizen especially when the grant of power contended for is out of the “usual range”.

Justice L’Heureux’Dube noted at paras 18-20 of 114957 *Canada Ltee v Hudson (Town)*, 2001 SCC40 that:

In *R v Sharma*, [citation omitted], this Court recognized “the principle that, as statutory bodies, municipalities ‘may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation’”...While the enabling provisions that allow municipalities to regulate for the “general welfare” within their territory authorize the enactment of bylaws genuinely aimed at furthering goals such as public health and safety, it is important to

keep in mind that such open-ended provisions do not confer an unlimited power.

Thus, while the interpretation of section 348(d)(i) should be “in consonance” with the general purpose of the *MGA*, such general purposes do not confer unlimited power, particularly when the interpretation sought is out of the usual range of municipal powers.

- e) The municipalities note that anyone can determine if there is tax owing in a municipality by calling up the municipality and getting information about a particular property, and that secured creditors with knowledge of the debtor’s affairs are in a good position to do so. If I am wrong, and the special lien afforded municipalities has no geographical limit, secured creditors would have to perform that diligence, not just at the time of lending but from time to time during the life of the loan, and at numerous registries in the Province and perhaps elsewhere, as there is no other way to determine whether municipal taxes have a priority. These are the “invisible superpriority charges” that Horner, J referred to in *Regent*, and I agree with her comments on that issue.

Heard on the 21st day of January, 2019.

Dated at the City of Calgary, Alberta this 12th day of February, 2019.

B.E. Romaine
J.C.Q.B.A.

Appearances:

C. Richard Jones
for Del Canada GP Ltd.

Shauna N. Finlay
for the Municipalities of Kneehill County, the M.D. of Bonnyville No. 87, the M.D. of
Taber, the M.D. of Greenview No. 16 and Red Deer County

Gregory Plester
for the County of Stettler

Ryan Algar
for the Receiver