

Court of King's Bench of Alberta

Citation: PTW Structural Solutions Ltd. v. ThreeOSix Industrial Services Inc., 2025 ABKB 248

Date: 20250425
Docket: 2401 12362
Registry: Calgary

Between:

PTW Structural Solutions Ltd.

Plaintiff

- and -

ThreeOSix Industrial Services Inc.

Defendant

- and -

Provida Financial Corporation

Applicant/Claimant

**Memorandum of Decision
of the
Honourable Applications Judge J.R. Farrington**

[1] I heard this matter in morning chambers on March 31, 2025.

[2] An enforcement creditor of ThreeOSix Industrial Services Inc. (the enforcement creditors being PTW Structural Solutions Ltd. and its related party creditor PTW Canada Ltd. Collectively referred to as “PTW” in these reasons) garnisheed funds under the *Civil Enforcement Act*, RSA 2000, c C-15 and monies were paid into Court. At the time of the proposed distribution, it became apparent that there was a competing security interest by virtue of a general security agreement registered against all present and after acquired personal property that was properly registered in favour of the applicant Provida Financial Corporation (“Provida”).

[3] Under normal circumstances, the secured claim would prevail over the claim of the unsecured judgement creditor. The judgement creditor PTW, however, argues that its costs of creating the garnishee fund by garnisheeing at first instance ought to obtain a priority.

[4] I dealt with a similar priority issue as between a general security agreement and an enforcement creditor in *600500 Alberta Limited v Oil Sands One Limited*, 2015 ABQB 772 and concluded that a perfected general security agreement prevails on the main security question. While the judgement creditor quite properly acknowledged through counsel that the security of Provida was properly registered and valid here, the judgement creditor asserted that it was entitled to at least a costs priority based upon the case of *Fast Labour Solutions (Edmonton) Limited v Kramer’s Technical Services Inc.*, 2016 ABCA 266.

[5] I reserved my decision so that I could properly study that case. After reviewing the materials and the cases cited, in my view, the secured creditor must prevail, and costs of the garnisheeing creditor ought not to be charged against the funds in Court.

[6] Section 96(4) the *Civil Enforcement Act*, RSA 2000, c C-15 provides:

...(4) Where a distributing authority receives money in which a person has a security interest or other interest that has priority over the claims of enforcement creditors, the distributing authority must pay to that person the money to which the person is entitled, and **any money paid under this section does not form part of a distributable fund.**

(Emphasis added)

[7] Section 97(c) of the *Civil Enforcement Act* provides:

97 For the purposes of determining what constitutes a distributable fund, the following applies:

...(c) money payable in accordance with [section 96\(4\)](#) or [98](#) **does not constitute or form part of a distributable fund.**

(Emphasis added)

[8] The *Fast Labour Solutions* case presented some unique facts. First, it does not deal with garnishee funds that would normally start as a distributable fund. It dealt with a seizure of property (a crane). The crane was located on lands owned by a third party and the third party sought an order that the crane be removed from the lands. An order to remove was given. In good faith, the enforcement creditor removed the crane in reliance on the order. No matter who had to remove the crane, there were going to be expenses incurred and that required out of pocket costs. That is an important distinguishing factor from this case. The Court of Appeal relied upon a case where a junior creditor’s costs claim was held to prevail over the claim of a

senior creditor when expenses were incurred and fairness dictated that result and the senior creditor benefited from the enforcement. Paragraph 20 of the *Fast Labour Solutions* case reminds of the somewhat unique circumstances created by the removal order and the lack of a present sale proceeds fund in that case.

[9] I would respectfully suggest that the present case is distinguishable because the *Civil Enforcement Act* dictates the formation of the fund and the result, and there is no room for discretion. The enforcement process and the creation of the fund is statutory. The *Act* is clear in both ss. 96 and 97 that the monies that would otherwise constitute a distributable fund do not form part of a distributable fund in the present circumstances. The only avenue for enforcement by an enforcement creditor without special circumstances as in *Fast Labour Solutions* is against a distributable fund. The distribution here is a statutory one and it does not permit an exercise of discretion as would be available in receivership or special circumstances cases.

[10] In a garnishee case such as here, a judgement creditor can determine whether or not there is a risk of priority creditors by a simple Personal Property Registry search before the garnishee summons is issued. The garnishee process is something which it understandably chose to do in the hopes of payment. The garnisheeing creditor can take a chance that a higher ranked creditor will not assert its claim, but when it does assert its claim, it cannot foist its costs claim upon the higher ranked creditor. The claim of the prior secured creditor was not concealed in any way. It was registered at the appropriate public registry. While the secured creditor may have been content for the time being to not call its loans (perhaps they were not in default) and not incur enforcement costs at the present time, it does not give up its priority security interest by not doing so.

[11] After hearing the application, I had concerns that other PPR registered creditors may not have been notified of the application. The primary concern that I had was with whether any of them might elect to challenge the validity of the security interest claimed by Provida. Counsel for Provida then served those creditors with an invitation to make submissions if they wished to do so, and no further submissions were sought to be made by any interested parties. My office was so advised in an email from counsel dated April 14, 2025.

[12] As a result, the application of Provida is allowed and it is entitled to all of the garnisheered funds in Court. Provida is entitled to costs of this application as against the judgment creditors PTW, and if the parties cannot agree on quantum, they can make arrangements to speak to costs at the end of one of my chambers lists. Thank you to the parties for their helpful submissions. The submissions were very much on point and that facilitated the hearing of the matter in morning chambers.

Heard on the 31st day of March, 2025.

Dated at the City of Calgary, Alberta this 25th day of April, 2025.

J.R. Farrington
A.J.C.K.B.A.

Appearances:

Andrew McLeod
PEAK Legal Counsel
for the Plaintiff PTW Structural Solutions Ltd. and
for PTW Canada Ltd.

No appearance
for the Defendant ThreeOSix Industrial Services Inc.

Avinash Kowshik
Fasken
for the Applicant/Claimant Provida Financial Corporation