

Court of King's Bench of Alberta

Citation: 2109062 Alberta Ltd v Strait Pipeline & Integrity Ltd, 2025 ABKB 308

Date: 20250521
Docket: 2001 08236
Registry: Calgary

2025 ABKB 308 (CanLII)

Between:

2109062 Alberta Ltd.

Applicant

- and -

Strait Pipeline & Integrity Ltd.

Respondent

**Endorsement
of the
Honourable Justice J.S. Little**

I. Application

[1] 2109062 Alberta Ltd. (210) applies under s. 50(7) of the *Personal Property Security Act (PPSA)* to maintain its registration of a financing statement.

[2] On March 3, 2025, Strait Pipeline & Integrity Ltd. and Strait Projects Ltd. (Strait) served a notice on 210 under s. 50(3) of the *PPSA*. That subsection allows a debtor to serve notice on a

creditor calling for the discharge of a *PPSA* registration where the obligations under the security agreement have been performed.

II. Facts

[3] Somewhat complicated facts boil down to 210 claiming to be a secured creditor, originally pursuant to a shareholder loan made to Redcore Enterprises Ltd. (which is now Strait) by 1315736 Alberta Ltd. (131) (which is now 210). The general security agreement (GSA) in question was granted by Redcore Enterprises/Strait on September 30, 2015 as part of the loan transaction.

[4] The complications arise because the original debt secured by specific promissory notes has been repaid, but 210 claims additional amounts owing by virtue of certain acts of Strait against 210 as a 30% shareholder in Strait, which 210 claims give rise to indebtedness other than the specific promissory notes indebtedness. Litigation respecting those claims, in what amounts to an oppression action, has been ongoing since the filing of a statement of claim in 2020, largely in relation to what 210 claims was an unfair valuation of its 30% minority interest in a “squeeze out” transaction which 210 closed under protest. Most recently, in a 39 page Third Amended Statement of Claim filed February 12, 2025, 210 claims against Strait and two of its principals judgment or damages of up to \$5.5 million.

[5] Strait argues that the GSA, notice of which was registered in 2015 by way of a financing statement, was always intended to secure only the promissory notes, was never intended to cover these sorts of damages, and is now hamstringing its ability to obtain third party financing from ATB. It argues as well that any decision maintaining registration of the financing statement would lead to the absurd result that the GSA would bind Strait in perpetuity.

[6] As is usually the case with general security agreements, the definition of indebtedness in the GSA is broad. Section 3 reads as follows:

3. INDEBTEDNESS SECURED

The Security Interest granted hereby secures payment and performance of any and all obligations, indebtedness and liability of Debtor to the Creditor (including interest thereon) present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and however incurred and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether Debtor be bound alone or with another or others and whether as principal or surety (hereinafter collectively called the “Indebtedness”).

[7] Also as is common to general security agreements, the GSA includes language binding successors and assigns, confirms that lack of enforcement at any point does not disentitle the creditor from subsequent enforcement, and permits the debtor to deal with its property in the ordinary course of its business.

[8] When in 2022 Strait sought a discharge of the PPR registration on the basis that the specific promissory notes had been repaid, counsel for 210 responded by reciting the above Indebtedness definition to confirm that the registration would remain in the Registry pending resolution of the litigation.

[9] It is worth noting that 210 has postponed its security interest to RBC, Strait's primary lender.

III. Case Law

[10] There is little case law dealing with subsections 50(3) and 50(7) of the *PPSA*.

[11] In *Matco Capital Ltd. v Ramparts Energy Ltd.*, 2008 ABQB 403, Justice Brooker dealt with the test for maintaining a financing statement registration and found that the creditor had to show something more than a *prima facie* case. But *Matco Capital* dealt with whether the documentation under which the claimants made their registration constituted a security agreement. There is no ambiguity in the case before me as to whether the GSA is a security agreement capable of supporting the registration of a financing statement. Even if the issue were just whether the creditor has to show something more than a *prima facie* case, it has done so here: there is a properly executed, explicit, comprehensive general security agreement properly registered and acknowledged by the creditor as validly registered, evidenced by the fact that the creditor required it to be postponed to RBC.

[12] Since 210 claims in the underlying litigation that Strait has been selling assets out from under the umbrella of the GSA, without properly accounting to 210, the case of *Thomas v Input Capital Corp.* 2020 SKCA 67 is of assistance. There, the court dealt with a situation where financing change statements had been registered against transferees of personal property that was the subject of a security agreement. Litigation ensued as to whether the registrations should be maintained *vis a vis* those subsequent purchasers of assets.

[13] The Saskatchewan Court of Appeal at para 66 found that in a s. 50(7) application made by the creditor in the face of litigation:

The determination of whether the registrations should be maintained requires an examination of the evidence, a threshold consideration of the merits of the case and a balancing of the parties' interests...

[14] Here, the issue is not the validity of the security agreements or whether they bind subsequent parties but whether the definition of Indebtedness in the GSA extends to the kinds of claims that 210 makes in its litigation.

IV. Analysis

[15] A threshold consideration of the evidence is sufficient for me to determine that the definition of Indebtedness in the GSA referred to above may be broad enough to capture the kind of “obligations, indebtedness and liability” claims 210 makes even though, arising from and depending upon the result of litigation, they may be “contingent”.

[16] Strait urges me to reject that interpretation and read down the definition of Indebtedness to what was known to the parties at the time. There may be merit in Strait’s argument that based on the parties’ expectations at the time, the definition of Indebtedness should be read narrowly and confined to the promissory notes that were given at the time the GSA was granted. But I hesitate to resort to principles of statutory interpretation that require an examination of the factual matrix when the plain words are unambiguous. Had these sophisticated parties dealing with relatively large amounts intended to limit the security to repayment of a known debt, a far simpler security agreement could have been drafted that referred only to specific promissory notes then being issued.

[17] In any event, the signatory of the GSA, when asked in questioning about what was being secured at that time, responded with essentially “whatever might happen in business”. That being the evidence, the factual matrix is of little assistance to Strait.

[18] As to the balancing of interests, first, the GSA is already postponed to RBC’s secured line of credit which is currently at a zero balance. Thus it is difficult for Strait to argue that its financing is impaired by the GSA.

[19] Second, Strait has offered to set aside in trust a certain amount of cash and has promised to retain a certain amount of assets up to the \$5.5M value of 210’s claim. Understandably, to the extent that the cash in trust is not equal to 210’s full claim, 210 has rejected that offer since it would then be only partially secured and behind large secured amounts payable to third parties.

[20] In addition, as pointed out in its draft Order, 210 is prepared to agree to providing “no interest” letters in circumstances where it can be assured that a sale of an asset is reasonable and that there are strings placed on the proceeds of the sale that require the proceeds to be used to replace the sold equipment.

[21] I accept that under s. 50(7) of the *PPSA* the court may maintain the registration subject to conditions such as those which counsel urge and to which I have referred above. The parties are free to negotiate those conditions. But I am not prepared to include those or similar terms in an Order, because to do so would be expanding on or introducing new terms into the GSA and may require continuous monitoring by the court. What my ruling is intended to do is simply confirm,

pursuant to s. 50(7) of the *PPSA*, that the financing statement respecting the GSA may remain registered.

V. Order

[22] That is my Order, namely that the Alberta PPR registration 15093031184 be maintained and not amended or discharged.

[23] I will state by way of postscript that I reject 210's argument that the mechanism set out in ss. 50(3) and 50(7) is intended to be administrative only and that Strait's use of the notice provisions in s. 50(3) is an abuse of process. Clearly one rationale for the Legislature adopting this mechanism was to permit a debtor to free itself from outdated registrations when a creditor is being unresponsive or in fact is no longer in existence. But that administrative purpose alone should not prevent a party from using this statutory mechanism to seek what amounts to a summary ruling, in a clearer case than this one, that a contested registration ought not to be preserved.

[24] I thank counsel again for their excellent, extensive materials and their oral advocacy.

[25] They may apply to me to rule on costs if necessary.

Heard on the 13th day of May, 2025.

Dated at the City of Calgary, Alberta this 21st day of May, 2025.

J.S. Little
J.C.K.B.A.

Appearances:

Jason M. Holowachuk, K.C.
Cassels Brock & Blackwell LLP
for the Applicant

Laura M. Poppel, Sebastian Pazdan
Borden Ladner Gervais LLP
for the Respondent