In the Court of Appeal of Alberta

Citation: Kleiman v Innes, 2026 ABCA 112

Date: 20260408
Docket: 2501-0015AC
Registry: Calgary

Between:

Jacob (Jack) Kleiman and Kleiman Resources Ltd

Appellants/Cross-Respondents

- and -

Malcolm Colin Innes and Innes Wealth Management Ltd

Respondents/Cross-Appellants

- and -

Shelley Innes, Chelsea Innes and 2265050 Alberta Ltd

Respondents

The Court:

The Honourable Justice Bernette Ho
The Honourable Justice William T. de Wit
The Honourable Justice Jane Fagnan

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice J.R. Ashcroft
Dated the 23rd day of May, 2025
Filed on the 2nd day of July, 2025
(2024 ABKB 745, Docket: 2201-11996)

Memorandum of Judgment

The Court:

Overview

[1] On October 20, 2022, Jack Kleiman and Kleiman Resources Ltd (collectively, Kleiman), obtained an *ex parte*, or without notice, attachment order against all of the exigible property of Malcolm Innes and Innes Wealth Management Ltd (IWM) (collectively, Innes). Mr Kleiman had signed an enduring power of attorney in July 2020 appointing Mr Innes, his long-time financial advisor, as attorney. Kleiman's claim asserts that, over a two-year period, Innes billed and received over $1.7 million from Kleiman in improper transfers that constitute unlawful conversion, misappropriation and fraud.

[2] In December 2024, the chambers justice granted an application to extend the attachment order under s 18 of the *Civil Enforcement Act*, RSA 2000, c C-15, but capped the attachment order at $400,000: *Kleiman et al v Innes et al*, 2024 ABKB 745.

[3] Kleiman appeals the portion of the order that reduced the quantum of the attachment order to $400,000. They argue that the chambers justice admitted improper considerations into the extension analysis in deciding to limit the quantity of assets covered by the attachment order and failed to consider s 17(6) of the *Civil Enforcement Act*.

[4] Innes cross-appeals the extension of the attachment order, arguing it should have been set aside because Kleiman failed to meet their duty of full, fair and candid disclosure at the initial without notice hearing.

[5] For the reasons that follow, both the appeal and cross-appeal are dismissed.

Background

[6] When the without notice attachment order was granted in 2022, Jacob Kleiman was 95 years old. He died in August 2024 at the age of 97 and his estate litigation representative, BMO Trust Company, is continuing the litigation on behalf of his estate. Mr Kleiman's estate is valued at over $22 million.

[7] On July 20, 2020, Mr Kleiman signed an enduring power of attorney appointing Mr Innes as his attorney (the EPA). Clause 19 of the EPA sets out that the attorney "shall be entitled to a reasonable fee or compensation" and provides that the fee "shall be sixty (60%) of the fee that would have been charged by BMO Trust Company" under Mr Kleiman's previous enduring power of attorney.

[8] On July 18, 2020, shortly before signing the EPA, Mr Kleiman signed and acknowledged a letter from IWM, signed by Mr Innes, that refers to "Fee Disclosure and Engagement" (the Fee Agreement). The Fee Agreement states that IWM charges fees for services including "advanced estate planning, business owner planning, advanced tax planning, asset diversification and advanced financial planning", sets out the hourly fees charged for "client planning" and "consultant planning" services provided by Mr Innes and IWM, and notes the potential for additional compensation including bonuses. The Fee Agreement also contemplates the potential for Mr Kleiman to purchase a product through Mr Innes and compensation via sales commission or referral fee. Other than the hourly rates for planning services noted above, no specific transactions or amounts are mentioned in the Fee Agreement.

[9] In August 2020 Mr Kleiman had a fall and suffered a brain injury, at which time Mr Innes says he assumed his duties as attorney pursuant to the EPA. A December 2021 capacity assessment indicated that Mr Kleiman did not have the capacity to decide financial matters.

[10] On August 12, 2022, Mr Kleiman revoked the EPA and appointed BMO as attorney under a new power of attorney. Innes was informed of the revocation on August 15, 2022. Kleiman says that, during the two years between July 2020 and August 2022 while the EPA was in effect, Innes billed and paid to himself approximately $1.7 million from Kleiman accounts. Kleiman alleges that the amount transferred is well above the amount set out in Clause 19 of the EPA, based on affidavit evidence from a vice president and regional director of BMO, and includes approximately $1.5 million in improper transfers.

[11] Mr Innes says fees were charged to Kleiman pursuant to the Fee Agreement, which contemplated higher charges, and that he and Mr Kleiman entered into a number of oral agreements. According to Mr Innes, the parties had an oral agreement that he would be paid $750 an hour for tax and business planning advice as well as personal care tasks. Mr Innes also describes an oral agreement that he would receive a "creation fee" if he could provide a tax plan, characterized as the "Pipeline Tax Strategy", that received the approval of the Canada Revenue Agency. Upon learning of a favourable CRA ruling on the Pipeline Tax Strategy, Mr Innes transferred a $400,000 creation fee from Kleiman's estate to Innes. This transfer occurred shortly after the EPA was revoked and BMO was appointed the new attorney for Kleiman.

[12] Between August 15, 2022 and October 2022, Kleiman's counsel made several requests that Mr Innes provide an accounting and records of his dealings with Kleiman's estate, which were not forthcoming. Kleiman applied for an interim attachment order on *ex parte* basis, meaning without giving notice, which was granted on October 20, 2022 (the attachment order). The attachment order prohibited Mr Innes and IWM from dealing with any of their exigible property pending further order of the court. It was to remain in force until November 10, 2022, unless extended on notice.

[13] When the matter came back before the court on November 8, 2022, it was adjourned to permit questioning and other procedural steps; the attachment order was extended subject to

several variations, including a direction that a full hearing would be scheduled as a half-day special application.

[14] The application to extend the attachment order was ultimately heard on November 7, 2024 by the chambers justice. The chambers justice granted the application in part. She directed that the attachment order be further extended until a final determination of the action or further order of the court, but capped the exigible property to which it applies at $400,000: *Kleiman et al v Innes et al*, 2024 ABKB 745[1] (the chambers decision).

Decision of the chambers justice

[15] As noted by the chambers justice, the fundamental issue before her was whether the attachment order should be continued. Relevant to that issue are sections 17 and 18 of the *Civil Enforcement Act*.

[16] Section 17 sets out the requirements for the granting of an attachment order:

> 17…
>
> > **(2)** On hearing an application for an attachment order, the Court may, subject to subsection (4), grant the order if the Court is satisfied that
> >
> > > (a) there is a reasonable likelihood that the claimant's claim against the defendant will be established, and
> > >
> > > (b) there are reasonable grounds for believing that the defendant is dealing with the defendant's exigible property, or is likely to deal with that property,
> > >
> > > > (i) otherwise than for the purpose of meeting the defendant's reasonable and ordinary business or living expenses, and
> > > >
> > > > (ii) in a manner that would be likely to seriously hinder the claimant in the enforcement of a judgment against the defendant.
>
> …

[1] The Order under appeal was pronounced on May 23, 2025 following additional submissions on costs and the form of Order, and filed on July 2, 2025.

> **(5)** When an attachment order is granted, it should be granted in such a manner that it causes as little inconvenience to the defendant as is consistent with achieving the purposes for which the order is granted.
>
> **(6)** An attachment order shall not attach property that exceeds an amount or a value that appears to the Court to be necessary to meet the claimant's claim, including interest and costs, and any related writs, unless the Court is of the view that such a limitation would make the operation of the order unworkable or ineffective.

[17] Section 18 provides that an application for an attachment order may be made *ex parte*, as the attachment order at issue here was. The applicant may then bring an application on notice to the defendant to continue the attachment order, which application is heard *de novo*. Pursuant to s 18(6), the following criteria apply to the continuation application:

> (a) the onus is on the claimant to establish that the attachment order should be continued;
>
> (b) the Court shall not continue the attachment order unless the circumstances that exist at the time of hearing the application justify the continued existence of the order;
>
> (c) the Court may terminate the order if the Court is satisfied that the claimant failed to make full and fair disclosure of the material information that existed at the time that the claimant made the ex parte application for the attachment order.

[18] Before the chambers justice, Kleiman argued that the attachment order should be continued as there is a reasonable likelihood his claim against Innes will succeed (s 17(2)(a)), and there are reasonable grounds for believing that Innes is or is likely to deal with his exigible property in the manner described in s 17(2)(b). Innes, on the other hand, argued that the attachment order should be terminated pursuant to s 18(6)(c) because Kleiman failed to make full and fair disclosure of the material information at the time of the without notice application. Each of these positions was considered by the chambers justice, who ultimately concluded that the attachment should be continued but capped at $400,000 rather than covering all of Innes's exigible property. Her reasons for that determination are summarized below.

[19] Noting that the onus is on the claimant to establish that the attachment order should be continued (*Civil Enforcement Act*, s 18(6)(a)), the chambers justice first considered whether there is a "reasonable likelihood that the case will be established", citing *Lion's Gate Homes Ltd v Bahramloian*, 2007 ABQB 137; *Civil Enforcement Act*, s 17(2)(a). The chambers justice reviewed in some detail the documents and evidence provided by both parties at the *de novo* continuation hearing. She noted inconsistencies in the fees payable pursuant to the EPA, on which Kleiman relied, and the Fee Agreement, on which Innes relied. The EPA limited the fees payable by Kleiman to 60% of the fees that would be charged by BMO; based on the evidence from BMO's affiant the chambers justice found this would have resulted in payments to Innes of approximately $210,000 over the two-year period in question. In contrast, Kleiman asserted that IWM billed and paid itself from Mr Kleiman's estate over $1.7 million during that period.

[20] Innes submitted that the fees charged were not pursuant to the EPA but to the Fee Agreement, which allowed for higher charges, as well as oral agreements between Mr Innes and Mr Kleiman. The latter included an oral agreement that Mr Innes would receive a significant "creation fee" if the CRA ruled favourably on the Pipeline Tax Strategy, the development of which Mr Innes said required preparatory work and expertise and about three years to implement. When a favourable CRA ruling was received, Mr Innes transferred approximately $400,000 from Mr Kleiman's holdings to IWM. The chambers justice noted that this transfer occurred on August 15, 2022, shortly after the EPA was revoked.

[21] The chambers justice was clearly troubled by Innes's reliance on the Fee Agreement and alleged oral agreements and set out several reasons why she found them to be problematic. These included the failure to discuss the Fee Agreement in the EPA, given that it predates the EPA and contains a different fee structure. She noted that the Fee Agreement does not contemplate personal care, and she would have expected an agreement allowing Innes to charge $750 per hour for personal care to be in writing: chambers decision at para 33. She opined that accepting payment through the Fee Agreement appears to be contrary to the EPA's conflict of interest provision, which precludes the attorney from hiring advisors from the attorney's own company: chambers decision at paras 34-35. The chambers justice also concluded that there was little evidence, at this point, to justify Mr Innes receiving the $400,000 creation fee for "simply doing his job, namely providing tax advice as a financial planner": chambers decision at para 36.

[22] Having considered the above and other evidence, the chambers justice was satisfied that the evidence did not support Innes's contention that the case is one of simple contractual interpretation. Rather, she stated, "it appears to me to involve possible breach of fiduciary duty and misappropriation of funds" and she found that Kleiman had satisfied the first part of the test for an attachment order – "there is a reasonable likelihood that Kleiman's claim against Innes will be established": chambers decision at para 45.

[23] The chambers justice described the second part of the test as whether there was evidence that Innes is or is likely to use monies other than for reasonable and ordinary business and living

expenses and will attempt to hinder enforcement of a judgment. In considering this question, the chambers justice relied primarily on Kleiman's submission that Mr Innes made a "quick transfer" of $400,000 to himself when he became aware that Mr Kleiman had revoked the EPA. The chambers justice acknowledged there was some evidence that Mr Innes had billed the $400,000 creation fee in July 2022 and requested wire transfer of the funds before he was advised that the EPA had been revoked: para 51. She nevertheless found payment of the creation fee on or about August 15, 2022 to be concerning, noting evidence from around that date that indicated Mr Innes's knowledge that his representation of Mr Kleiman was under scrutiny. She also found significant evidence that Mr Innes has declined to answer questions as to the whereabouts of monies that were billed and transferred, and particularly the $400,000. On this point, the chambers justice stated at para 53 of the chambers decision:

> This transfer of a large sum of money by an apparent fiduciary billed by a single purpose corporation controlled by that fiduciary pursuant to an alleged oral agreement for which there is no documentation, around the time of the revocation of the EPA is cause for significant concern. I find that this, combined with Mr. Innes' unwillingness to provide information as to the whereabouts of the $400,000, supports the contention that Mr. Innes is using assets in a manner other than for reasonable and ordinary living expenses.

[24] The chambers justice also found aspects of Mr Innes's reluctance to provide a full accounting until there was a court order to be troubling. She considered it understandable that Mr Innes initially questioned the revocation of the EPA given concerns about Mr Kleiman's capacity after his fall but found that after a second assessment confirmed Mr Kleiman's capacity the disclosure should have been provided. She found the failure to do so "does not show appropriate willingness to cooperate with court proceedings" and concluded there was sufficient evidence to indicate that "Mr Innes would use his exigible property for more than his reasonable living expenses and that he would hinder enforcement of any judgment against him": chambers decision at para 55.

[25] The chambers justice next considered whether, despite the test for continuation of the attachment order having been met, the attachment order should be terminated pursuant to s 18(6)(c) because Kleiman failed to make full and fair disclosure of material information at the time of the without notice hearing. She noted that "it is unusual to make an application to Court without any notice to the other side when a party is represented", and found there was insufficient evidence of prejudice to justify proceeding without notice: chambers decision at para 73. She also noted examples of incomplete disclosure during the without notice hearing, including that counsel did not draw the court's attention to the Fee Agreement or to the text of the capacity assessment, both of which were attached as exhibits to an affidavit filed with the court, and did not advise the court that the BMO affiant was the spouse of Kleiman's hearing counsel.

[26] Taken altogether, the chambers justice found that counsel for Kleiman failed in his duty of full, fair and candid disclosure in the circumstances of the case. However, she declined to exercise her discretion to terminate the attachment order under s 18(6)(c), noting that the tests for the attachment order were met, there is a reasonable likelihood that the claim will be established, and Mr Innes has "refused to answer questions as to the whereabouts of the $400,000, failed to provide fulsome accounting when first ordered by the Court, and failed to complete a statement of debtor as directed by the Court": chambers decision at para 97. After noting other relevant considerations, including that Mr Innes has lived with an attachment order over his exigible property for over two years, the chambers justice found it appropriate to continue the attachment order but cap it at $400,000, "which approximates the amount of the creation fee": chambers decision at para 101.

Issues on appeal and cross-appeal

[27] In its appeal, Kleiman argues that the chambers justice erred in reducing the amount of the attachment order to $400,000. They say that the chambers justice admitted improper considerations into the analysis on whether the attachment order should be continued given that Kleiman had established a reasonable likelihood that their claim would be established for, they say, substantially more (over $1.7 million), and that she failed to consider s 17(6) of the *Civil Enforcement Act*.

[28] On the cross-appeal, Innes argues that the chambers judge erred by continuing the without notice attachment order at all, given that she found Kleiman's counsel failed in their duty of full, fair and candid disclosure on the without notice hearing.

[29] We find it convenient to address the issue on the cross-appeal first, followed by the issue on the main appeal.

Standard of Review

[30] The decision to grant or maintain an attachment order is a discretionary decision afforded considerable appellate deference, unless the judge proceeded arbitrarily, on a wrong principle, or failed to consider or properly apply the applicable test: *Secure 2013 Group Inc v Tiger Calcium Services Inc*, 2017 ABCA 316 at para 34; *Henenghaixin Corp v Deng*, 2022 ABCA 271 at para 26.

Analysis

Innes's cross-appeal: Did the chambers justice err in continuing the without notice attachment order?

[31] Innes submits that, having found that Kleiman's counsel did not provide full, fair and candid disclosure during the without notice hearing, the chambers justice erred in continuing the attachment order. Innes says the breaches found by the chambers justice necessitated the setting

aside of the attachment order; in deciding to continue the attachment order, the chambers justice proceeded arbitrarily, on a wrong principle, or applied the wrong test.

[32] Innes further argues that the attachment order ought not to have been granted on a without notice basis, noting the chambers justice's finding that there was insufficient evidence of prejudice to justify an application without notice, and on this basis the order should be set aside.

[33] An attachment order granted without notice is an extraordinary remedy. As the chambers justice noted, an applicant proceeding without notice to the opposing party is required to make full, fair and candid disclosure of the facts to the court, including facts that would militate against the application: *Tiger Calcium* at paras 41-48. Failure to comply with these obligations may result in the without notice order being set aside: *Tiger Calcium* at para 47; *Civil Enforcement Act*, s 18(6)(c).

[34] However, the court is not obliged to set aside an attachment order because of non-disclosure. The nature of the disclosure obligations and the potential consequences were described by this Court in *Duke Energy Corporation v Duke//Louis Dreyfus Canada Corp*, 1998 ABCA 196 at para 4, and cited more recently in *Tiger Calcium* at para 47:

> It is trite law that a party applying to the court *ex parte* has a duty of disclosure; it is sometimes said to be a duty of the utmost good faith. He or she must disclose to the court all facts material to the motion in question. It is also settled law in Alberta (and elsewhere) that the court is not always compelled to set aside an order for breach of that duty, but that the court will sometimes set it aside on that ground alone. We will not attempt to define the precise circumstances in which the order will or will not be set aside for non-disclosure. But obviously a very relevant factor is how important was the evidence not disclosed to the court on the *ex parte* application. …

[35] Ultimately, the effect of non-disclosure is in the discretion of the chambers justice hearing the continuation application. Attachment orders granted without notice that were obtained without full candor will not necessarily be set aside on review; whether that is the appropriate remedy must be determined based on the "overall circumstances": *Tiger Calcium* at para 164.

[36] Section 18(6)(c) of the *Civil Enforcement Act* makes the court's discretion in this regard clear. On a continuation application, the court "*may* terminate the order if the Court is satisfied that the claimant failed to make full and fair disclosure of the material information" that existed at the time of the *ex parte* application [emphasis added]. The court is also to consider the circumstances that exist at the time of the continuation application to determine if the continuation of the order is justified: *Civil Enforcement Act*, s 18(6)(b).

[37] As noted in *Duke Energy*, one of the relevant circumstances is the importance of the undisclosed evidence or information. An applicant who fails to disclose significant evidence at the

without notice hearing may be unable to satisfy the test for an attachment order when the court revisits it with a more complete evidentiary record.

[38] In this case, the chambers justice reviewed the evidence and information that should have been disclosed or emphasized during the without notice hearing. She found, at para 91:

> Counsel should have brought the Capacity Assessment and Mr. Innes' reliance thereon to the Court's attention. Counsel also should have taken more care in his characterization of the $85,000 that Mr. Kleiman paid to Mr. Innes and should have apprised the Court that Mr. Kleiman's Will contemplated gifts to other beneficiaries that were similar to the one to Mr. Innes' wife. These issues, even considered together, would not have been sufficient for me to find that counsel had failed in his duty. However, when coupled with the Lawyer's failure to advise the Court that the Affiant was his wife, and his failure to mention the Fee Agreement to balance his oral submissions that Mr. Innes was billing in an amount much higher than that permitted under the EPO, the aggregate effect is sufficient for me to arrive at this conclusion.

[39] However, the chambers justice was aware of the ultimate question: whether counsel's failure to meet the heightened duty of full, fair and candid disclosure warranted refusal to continue the attachment order, having regard to the "overall circumstances": *Tiger Calcium* at para 164. She considered the circumstances in *Tiger Calcium* and *Bank of Nova Scotia v Five Star Motor Group Ltd*, 2020 ABCA 244, concluding that both involved "more serious breaches of the duty of full and fair disclosure" than the instant case. Moreover, the nature of the information that was undisclosed or under-emphasized at the without notice hearing did not alter her assessment that the tests for an attachment order were satisfied. She noted in particular the evidentiary support for Mr Innes's fiduciary role toward the elderly and vulnerable Mr Kleiman, and his refusal to answer questions regarding the whereabouts of the $400,000 creation fee that had been transferred shortly after Mr Innes's EPA was revoked.

[40] The chambers justice properly considered the relevant factors and evidence in exercising her discretion to extend the attachment order. She made no error in principle and considered and applied the appropriate test.

[41] The cross-appeal is dismissed.

Kleiman's Appeal: Did the chambers justice err in capping the attachment order at $400,000?

[42] Kleiman notes that attachment orders are proprietary in nature; their purpose is to preserve property in the possession of the defendant that the applicant claims to be theirs, so that the property will be available to be returned to the plaintiff if successful at trial: *Gemba Fund One LLC v Tolosa Development Corp*, 2016 ABCA 241 at paras 20-21, per O'Ferrall JA, concurring. Kleiman says that the amount of an attachment order should therefore be governed by the value of

the proprietary claim, and not some lesser amount. Kleiman's position is that the chambers justice, having decided there was a reasonable likelihood that Kleiman's claim will be established and that the test to continue the attachment order was satisfied, did not have the discretion to reduce the amount of property covered by the attachment order to something less than the total amount of the claim. Kleiman says the approach taken by the chambers justice is inconsistent with s 17(6) of the *Civil Enforcement Act* and is an error of law.

[43] Sections 17(5) and 17(6) provide:

> 17(5) When an attachment order is granted, it should be granted in such a manner that it causes as little inconvenience to the defendant as is consistent with achieving the purposes for which the order is granted.
>
> 17(6) An attachment order shall not attach property *that exceeds an amount or a value that appears to the Court to be necessary to meet the claimant's claim*, including interest and costs, and any related writs, unless the Court is of the view that such a limitation would make the operation of the order unworkable or ineffective. [emphasis added]

[44] The limitation on the scope of the attachment order imposed by s 17(6) is consistent with the principle that the pre-judgment attachment order is an extraordinary remedy with a strict test and should not be granted lightly: *Lyons v Creason*, 2008 ABQB 550 at para 51. An attachment order can only be granted when the claimant has satisfied the statutory criteria and established that the order is an appropriate exercise of the court's discretion, having regard to all the circumstances: *Qualex-Landmark Investments Inc v Soroya*, 2009 ABQB 689 at para 10, citing Veit J in *Edmonton Region Community Board for Persons with Developmental Disabilities v Pearl Villa Homes Ltd*, 2003 ABQB 1026 at paras 27-28.

[45] In *Lyons*, the scope of the attachment order was reduced where the value of the assets frozen by the unlimited initial order greatly exceeded the value of the plaintiffs' claim. Having reviewed the circumstances, the court concluded that "an order which attaches assets to value of the Plaintiffs' claim, but does not exceed the value of the claim, is not unworkable", and reduced the order to equate to the value of the claim: *Lyons* at para 58. Kleiman says that the order here, which initially covered all of Innes's exigible property, should likewise have been reduced to an amount necessary to cover the entirety of Kleiman's $1.7 million claim and that it was a failure to apply and consider s 17(6) to do otherwise.

[46] We do not agree that the decision whether to continue an attachment order is always an all or nothing proposition, as Kleiman argues, or that the amount of property covered by an attachment order must cover the entirety of the applicant's claim and no less. While the purpose of the attachment order is to protect the plaintiff's ability to realize on its claim if successful, the *Civil*

Enforcement Act "is not concerned only with protecting the rights of creditors. The interests of the debtor must also be considered": *Five Star Motor Group* at para 32.

[47] Section 17(6) provides that an attachment order shall not attach property that exceeds an amount necessary to meet the claimant's claim; it does not mandate that the court impose an attachment order in that amount if the circumstances do not warrant it. The amount of the attachment order, as with the granting of the order and the decision to continue it, is in the discretion of the chambers justice, having regard to all the circumstances. That discretionary decision is afforded deference on appeal.

[48] In determining that the attachment order in this case should be continued in an amount less than the total claimed, the chambers justice had regard to several circumstances. She considered delay, noting that, at the time of the continuation hearing, Mr Innes had lived with an attachment order over all his exigible property for over two years and that the onus was on Kleiman to move the matter expeditiously to trial. She found there was a reasonable likelihood that Kleiman's claim will be established, but noted several outstanding factual disputes with respect to specific parts of the claim and declined to rely on the information relating to those allegations as support for the attachment order.

[49] As to the specific amount of the attachment order, although we may not have lowered the amount to the same degree, we do not agree that the choice of $400,000 was arbitrary, as Kleiman suggests. A focus of the chambers justice's reasoning in deciding to continue the attachment order rather than set it aside was the $400,000 creation fee and the transfer of those funds to Innes in suspicious circumstances. At paragraph 97 of her decision, after concluding that there is a reasonable likelihood that the claim will be established, the chambers justice went on to note that "Mr Innes has refused to answer questions as to the whereabouts of the $400,000, failed to provide fulsome accounting when first ordered by the Court, and failed to complete a statement of debtor as directed by the Court." The circumstances of the $400,000 payment was an important consideration in her reasoning.

[50] The chambers justice concluded, at para 101:

> When weighing these interests and considering the overall circumstances, I find that it is appropriate to continue the Attachment Order but to cap it at $400,000, which approximates the amount of the creation fee. I have found that the evidence surrounding the quick distribution of this amount and Mr. Innes' refusal to answer questions as to where this money is supports dissipation. However, taking into account the foundational principles of our Justice system and balancing various factors, including counsel's duties, delay, and the reality that a trial is still some years away, I find that the Attachment Order should not be continued in the same amount.

[51] Kleiman also argues that the chambers justice seems to have relied on the non-disclosure by counsel at the without notice hearing as a basis to reduce the attached amount, although they acknowledge the reasons are not clear on this point. The chambers justice's review of the non-disclosure issue was focused on the question of whether the attachment order should be set aside. We do not read her reasons as relying on that factor to any significant degree, if at all, in the decision to continue the order at a reduced amount. In any event, this background formed part of the overall circumstances that the chambers justice was entitled to take into account when assessing whether to continue the attachment order.

[52] Kleiman's appeal is dismissed.

Conclusion

[53] The appeal and cross-appeal are dismissed.

Appeal heard on October 14, 2025

Memorandum filed at Calgary, Alberta
this 8th day of April, 2026

Ho J.A.

de Wit J.A.

Fagnan J.A.

Appearances:

C. Sutter (no appearance)
D.J. Marshall
M. Albert
for the Appellants/Cross-Respondents

J.J. Bourchier
C. Webster
B. Catalano (no appearance)
for the Respondents/Cross-Appellants