

# Court of King's Bench of Alberta

Citation: 1157386 Alberta Ltd v 2121892 Alberta Ltd 2026 ABKB 251

Date: 20260407  
Docket: 2401 06133  
Registry: Calgary

2026 ABKB 251 (CanLII)

Between:

**1157386 Alberta Ltd**

Applicant

- and -

**2121892 Alberta Ltd, Rody Moldenhauer, Registrar of Titles,  
Mouamar (Marc) Abdallah, 1317958 Alberta Ltd, 17<sup>th</sup> Avenue Condos Ltd,  
M & M Real Estate Holdings Ltd, Bankview Townhomes Ltd, 2511752 Alberta Ltd,  
Crystal Melody Joy Burns and David Aaron Joseph Burns**

Respondents

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**Reasons for Judgment  
of the  
Honourable Justice E.J. Funk**

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## **I. Introduction**

[1] The Applicant, 1157386 Alberta Ltd (“115”) owned bare land in Calgary. In 2023, 115 transferred that land to the Respondent 2121892 Alberta Ltd (“212”) for \$1. In 2024, 212 sold the land to a *bona fide* purchaser for value for \$300,000; 212 then quickly disbursed those sale proceeds to several non-arm’s-length recipients.

[2] In this application, 115 alleges the transfer from 115 to 212 was unauthorized and invalid. It further alleges that 212, and the other recipients, were not *bona fide* recipients for value, as they received the proceeds knowing they were derived from a questionable land transfer.

[3] 115 brings this application, by Amended Originating Application, in which it seeks judgment against 212, and the other recipients. It also seeks an order holding the recipients jointly and severally liable for the full judgment amount. Finally, 115 seeks an order requiring the recipients to pay those amounts into court pending determination of who lawfully controls 115.

[4] This application raises issues concerning whether a constructive trust arose from the alleged unauthorized transfer of 115's land to 212; whether 212 owed an equitable obligation in relation to that land; whether 212 breached that obligation when it sold the land and disbursed the proceeds; and whether 212 and the other recipients are liable as constructive trustees for knowing receipt of these proceeds.

[5] The primary issues are:

- a. Whether the Respondent Mr. Moldenhauer had authority to deal with 115's property when he authorized the transfer of land to 212;
- b. Whether the transfer of land from 115 to 212 was a nullity;
- c. Whether 212 owed an equitable obligation in relation to the land upon receiving it;
- d. Whether 212 breached that obligation when it sold the land and disbursed the proceeds;
- e. Whether the recipients knew of the unauthorized transfer when they received them; and,
- f. Whether the recipients should be held jointly and severally liable for the full amount.

## II. Preliminary matters

[6] Mr. Moldenhauer and 212 are two of the Respondents in this application. In May 2024, J Reed granted an Attachment Order, later extended several times, directing Mr. Moldenhauer and 212 to pay \$292,500 into court. In December 2024, J Carruthers found both in contempt for their non-compliance with that Order. She directed that neither may take any steps in this action until they purge their contempt.

[7] Neither Mr. Moldenhauer nor 212 have purged their contempt. Accordingly, they filed no materials in relation to this application. Mr. Moldenhauer was present in court for this application. Because he has not purged his contempt, I did not permit him to make submissions, pursuant to the terms of J Carruther's Contempt Order.

[8] The Respondents 17<sup>th</sup> Avenue Condos Ltd, M & M Real Estate Holdings Ltd, and Bankview Townhomes Ltd – corporations that Mr. Moldenhauer controlled - filed no evidence and did not participate in this application.

[9] 2511752 Alberta Ltd ("251") is also a Respondent. Mr. Vissee is 251's directing mind; he filed no materials in relation to this application. Mr. Vissee had notice of this hearing date and has been in receipt of the Applicant's materials since October 2025. He appeared on the hearing date with an unfiled affidavit, requesting an adjournment. He said that he only recently came to appreciate the complexity of this matter and due to unspecified health issues, had not been able to retain counsel.

[10] Although this was Mr. Vissee's first adjournment request, he had known of this application for approximately six months. His affidavit was silent as to when he first appreciated its complexity, what steps, if any, he took to retain counsel, or the nature of his health issues that

he claimed to have prevented him from dealing with this matter earlier. I denied the adjournment request.

[11] David Burns is a Respondent. He filed no materials and did not participate in this application.

[12] Mr. Toor appeared as counsel for the Respondent Crystal Burns. He filed no materials in advance and made submissions, primarily regarding 115's request that Ms. Burns be held jointly liable for any judgment amount.

[13] The claims involving the Respondents Registrar of Title, Mouamar (Marc) Abdallah, and 1317958 Alberta Ltd have previously been resolved.

[14] Final relief may be granted on an Originating Application where the material facts are undisputed or capable of being resolved on affidavit evidence, and where the dispute turns primarily on questions of law, statutory interpretation, or the application of equitable principles rather than credibility-based factual contests.

[15] The issues here deal with corporate authority, statutory compliance, and the equitable consequences of unauthorized conveyance and knowing receipt. In resolving these issues, the evidence turns on documentary evidence and settled legal principles, rather than credibility-based findings. I am satisfied the evidentiary record here permits determination of these issues.

### **III. Background**

[16] There is a lengthy and convoluted background to this application, summarized below.

#### **A. The Burns Family and the Burns Family Trust**

[17] The Respondents David and Crystal Burns were previously married and are engaged in a drawn-out divorce action. Gregory Burns is David's uncle. Cheryl Burns is David's sister. She is not a party to this application.

[18] In 2009, the Burns Family Trust was settled, transferring David's assets into the Trust. The trustees were David, Gregory and an individual named Ari Taud. Its beneficiaries included David, Crystal, and a long list of David's relations.

[19] Under the Trust, David had authority to appoint trustees. His authority was conditional upon him being "capable" (as defined by the terms of the Trust) and solvent. In the event of becoming "incapable" or insolvent, the authority to appoint trustees would pass to Gregory.

[20] The Trust incorporated 1451866 Alberta Ltd ("145"), which in turn incorporated the Applicant 115. David was initially the sole director of both corporations.

[21] In 2013, David resigned as trustee and director. Gregory and Cheryl became the Trust's trustees. David appointed Gregory and Cheryl as directors of 145; and Gregory as sole director of 115.

[22] In December 2024, J Devlin found David "incapable" as defined by the Trust.

#### **B. Transfers of properties owned by 115 Alberta Ltd.**

[23] At the relevant times, 115 owned three properties: a residential property that was David and Crystal's former matrimonial home; bare land; and a property that 115 used as its office. The bare land is at issue here.

[24] In February 2023, a court order in the divorce action authorized Crystal Burns to sell the office. Shortly after, she changed the locks and removed 115's records, including its corporate seal – she did so without 115's knowledge or consent. As a result, 115 lost access to its records and corporate seal.

[25] In April 2023, Mr. Moldenhauer used 115's corporate seal to execute transfers of the matrimonial home and bare land from 115 to 212. The consideration for the bare land was \$1. 115 was unaware of either transfer.

[26] In March 2024, the Registrar registered the transfer of the bare land and 115 learned of the attempts to transfer the matrimonial home.

[27] In an urgent chambers application on April 3, 2024, J Silver ordered the matrimonial home returned to 115, in so doing, she expressed serious concerns regarding the legitimacy of this transfer. Mr. Moldenhauer and Crystal Burns were both present in court on this date.

[28] That same day, Mr. Moldenhauer and 212 entered into a purchase agreement to sell the bare land to 1317958 Alberta Ltd. ("131"). At Mr. Moldenhauer's direction, Crystal Burns removed the Certificate of *Lis Pendens* that she had earlier filed against the bare land, as part of the divorce proceedings. 115 had no knowledge of this agreement.

[29] Three days later, 131 entered into a purchase agreement to sell the bare land to Mr. Abdallah for \$300,000. This sale closed on April 30, 2024. Mr. Abdallah was later found to be a *bona fide* purchaser for value.

#### **C. Mr. Moldenhauer's dealings with 115's property**

[30] Throughout the relevant period, Gregory Burns was 115's sole director. David Burns was neither a trustee nor a director.

[31] In an unfiled affidavit, sworn on April 3, 2024, David purported to remove Gregory and Cheryl as trustees and directors and to appoint Mr. Moldenhauer in their place. He also purported to authorize Mr. Moldenhauer to transfer the bare land using 115's corporate seal. The validity of these actions is central to this application.

#### **D. The Attachment Order and Mr. Moldenhauer's disbursements of the proceeds**

[32] On May 3<sup>rd</sup>, 2024, J Reed issued an Attachment Order, later extended several times, requiring Mr. Moldenhauer and 212 to pay \$292,500 into court. Before and after the issuance of this order, Mr. Moldenhauer directed 212 to disburse the sale proceeds to various recipients, primarily entities that he controlled.

[33] The recipients and their connections to Mr. Moldenhauer and 212 are:

- a. 212 Alberta Ltd – Mr. Moldenhauer is not an officer or director of this corporation but has acted as its representative. He directed the transfer of land from 115 to 212 and the subsequent distribution of the sale proceeds. Mr. Moldenhauer controlled 212's bank accounts.
- b. 17<sup>th</sup> Avenue Condos Ltd – Mr. Moldenhauer is a director and shareholder of this corporation. It was struck from the corporate records in 2023. Mr. Moldenhauer was the sole decision-maker for this corporation and controlled its bank accounts. 212 transferred \$110,000 to this corporation on April 30, 2024. Mr. Moldenhauer said these funds were

in relation to real estate ventures between 212 and 17<sup>th</sup> Ave. He provided no details regarding these ventures.

- c. M & M Real Estate Holdings Ltd – Mr. Moldenhauer is a director and shareholder of this corporation. It was struck from the corporate records in 2019. Mr. Moldenhauer was the primary decision-maker of M & M and controlled its bank accounts. 212 transferred \$100,000 to M & M on May 1, 2024. Mr. Moldenhauer said these funds were also in relation to real estate ventures. He provided no details regarding these ventures.
- d. Bankview Townhomes Ltd – Mr. Moldenhauer is the sole director and shareholder of this corporation. He is the sole decision-maker for Bankview and controls its bank accounts. Between May 1 and June 4, 2024, 212 transferred \$23,400 to Bankview. Mr. Moldenhauer provided no explanation for these payments, other than they were for renovation work.
- e. 251 Alberta Ltd – Mr. Moldenhauer is neither a director nor shareholder of this corporation. He asserted 212 and 251 were engaged in some type of joint venture arrangement – he was unable to provide any details of this arrangement. Between May 1-23, 2024, 212 paid \$48,000 for the benefit of 251 by paying its debts. Mr. Moldenhauer characterized these debts as arising from a joint venture between 212 and 251. He provided no specifics regarding this venture.
- f. David Burns – on May 15 and 21, 2024, M & M made transfers to David Burns of \$3,500 and \$2,000, respectively. Mr. Moldenhauer has provided no explanation for this payment or evidence of Mr. Burns’ involvement with M & M.
- g. Crystal Burns – on May 21, 2024, M & M paid Crystal Burns \$10,000. Mr. Moldenhauer has provided no explanation for this payment or evidence of Ms. Burns’ involvement with M & M.

[34] In this application, 115 seeks judgment against Mr. Moldenhauer, 212, and these downstream recipients.

**E. David’s subsequent attempts to remove Gregory and Cheryl as directors**

[35] Later in April 2024, *after* the transfer of bare land from 115 to 212, David Burns again attempted to remove Gregory and Cheryl as trustees and directors and to appoint Mr. Moldenhauer in their place.

[36] On April 30, 2024, J Devlin issued an Order directing, among other things, Gregory remain as director of 115 and the Corporate Registry to return the directors and officers of 115 to their roles as they stood as of April 3, 2024.

[37] The validity of these transactions and the determination of who lawfully controls 115 is not at issue in this application.

**IV. Analysis**

[38] 115 seeks judgment against Mr. Moldenhauer, 212, and the other downstream recipients on the equitable doctrine of knowing receipt.

**A. Legal Principles governing liability for knowing receipt**

[39] Liability for knowing receipt arises where a stranger to a trust receives trust property for their own benefit with actual or constructive knowledge of a breach of trust: *Cantak Corporation v Haderer*, [2026 ABKB 93](#) at para [142](#), citing *Citadel General Assurance Co v Lloyds Bank Canada*, [1997 CanLII 334 \(SCC\)](#) at para [25](#).

[40] A constructive trust may be imposed where there is enrichment, corresponding deprivation, and absence of juristic reason: *Soulos v Korkontizilas*, [1997 CanLII 346 \(SCC\)](#) at paras [20](#), [43](#).

**B. Mr. Moldenhauer’s authority to deal with 115’s property and the validity of the transfer of bare land to 212**

[41] By way of Notice of Termination, in January 2023, David Burns purported to remove Gregory and Cheryl Burns as directors of 115 and 145, and to appoint Mr. Moldenhauer in their place. It was under these transactions that Mr. Moldenhauer purported to have authority to deal with 115’s property.

[42] The *Business Corporation Act*, [RSA 2000, c B-9](#) governs the removal and addition of corporate directors. David Burns did not comply with these statutory provisions. Specifically,

- a. A director of a corporation ceases to hold office when the director is removed in accordance with s [109](#). Shareholders of a corporation may remove any director by “ordinary resolution at a special meeting”: *ABCA*, ss [108](#), [109](#).

David Burns was not a shareholder of 115 when he purported to remove Gregory as its director. Even if David were a shareholder, he did not purport to remove Gregory as its director through a “ordinary resolution at a special meeting”, as required by the *ABCA*.

- b. Shareholders must receive notice prior to any meeting of shareholders. Such notice, of the time and place of the meeting, must be sent at least 21 days prior to and not more than 50 days before the meeting. The notice must be sent to each shareholder entitled to vote, each director, and to the auditor of the corporation: *ABCA*, s [134](#).

David Burns gave no notice to Gregory, Cheryl, or the auditor of any shareholders’ meeting.

- c. No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a corporation by reason of only that the document has been filed by the Registrar or is available for inspection at an office of the corporation: *ABCA*, s [18](#).

David did not file with the corporate registry the Notice of Termination that purports to remove Gregory as 115’s director. At all times, the corporate registry recorded Gregory Burns as 115’s director.

- d. A person who is elected or appointed as a director is not a director unless the person was present at the meeting when the person was elected or appointed or, if not present, the person consented to act as director in writing before the person’s election or appointment or within 10 days after it: *ABCA*, s [105\(5\)](#).

David Burns did not hold any meeting at which he appointed Mr. Moldenhauer as director; Mr. Moldenhauer was not present at any such meeting; there is no evidence Mr.

Moldenhauer consented in writing to acting as director either before or after any such meeting.

- e. The shareholders of a corporation may amend the articles to increase or decrease the number of directors. If the shareholders adopt an amendment to the articles to increase the number of directors, the shareholders may, at a meeting at which they adopt the amendment, elect an additional number of directors authorized by the amendment: *ABCA*, s 112.

David Burns was not a shareholder of 115 or 145. He had no statutory authority to amend any articles of incorporation nor to change the number of directors of the corporation.

[43] In sum, David Burns lacked statutory authority to remove Gregory Burns or appoint Mr. Moldenhauer as 115's director. Even if he had such authority, David's failure to comply with the mandatory requirements of the *Business Corporation Act* rendered those attempts invalid: *Lee v Kassam*, [2020 ABQB 608](#) at paras [10-11](#). As a result, Mr. Moldenhauer was not a director or officer of 115 and had no authority to execute the land transfer.

[44] Using 115's corporate seal, Mr. Moldenhauer countersigned the corporate instrument that purported to authorize the transfer of bare land from 115 to 212. Under the *Land Titles Act*, [RSA 2000, c L-4](#), s [161](#), corporate instruments must be executed by an officer or director. Mr. Moldenhauer was neither. The subsequent registration of this unauthorized transfer does not validate an instrument executed without corporate authority where the transferee is implicated in the wrongdoing. The land transfer from 115 to 212 was invalid and a nullity.

### **C. 212's equitable obligation over the land and breach of that obligation**

[45] The Supreme Court in *Soulos* confirmed that where property is transferred without authority and then converted into proceeds, a constructive trust may be imposed to permit proprietary relief and tracing, providing the elements of unjust enrichment and wrongful conduct are met: *Soulos*, at paras [20](#), [43](#), [45](#).

[46] 212 received the land through Mr. Moldenhauer's unauthorized acts and therefore owed an equitable obligation to 115 in relation to the land. It breached that obligation by selling the land and disbursing the proceeds, despite knowing the legitimacy of the transfer was at issue.

### **D. The downstream recipients' knowing receipt of sale proceeds**

[47] The knowing receipt test includes the two elements of: receiving property from the trust or fiduciary in a personal capacity and having actual or constructive knowledge that the property was transferred in breach of that fiduciary duty: *Edmunds v Royal Bank of Canada*, [2025 ABKB 754](#) at para [54](#).

[48] The recipient's knowledge may be established through actual knowledge, shutting one's eyes to the obvious, wilfully and recklessly failing to make the inquiries an honest and reasonable person would make, knowledge of circumstances that would indicate the facts to an honest and reasonable person or would put that person on inquiry: *Cantak* at para [142](#); citing *Paul First Nation v K & R 2014 Inc*, [2021 ABQB 32](#) at para [76](#); citing *Gold v Rosenberg*, [1997 CanLII 333 \(SCC\)](#) at para [74](#).

[49] Here, the recipients, the amounts they received from the proceeds, and the circumstances surrounding their receipt are set out in paragraph 33, above.

[50] In all instances, the downstream recipients received the proceeds shortly after the sale, without commercial justification or documentation, and in circumstances that would put an honest and reasonable person on inquiry. Their failure to make inquiries fixes them with constructive knowledge.

[51] Mr. Moldenhauer and 212 disbursed these funds knowing the legitimacy of the transfer of 115's property to 212 was at issue. They disbursed some of the funds *after* J Reed's Attachment Order that directed them to pay these proceeds into court. Both Mr. Moldenhauer and 212 had actual knowledge they were misapplying the sale proceeds.

**E. Should the recipients be held jointly liable for the full amount of the proceeds?**

[52] All persons who are involved in the commission of a joint tort are jointly and severally liable for the damages caused by that tort. Several liability means that each person is liable for their own part of the loss, and joint liability means that a person is liable for the loss caused by all: *Associated Investors of Canada Ltd, Re*, 1996 CarswellAlta 944, [1997] AWLD at para 72.

[53] The Supreme Court has held that knowing receipt is "recipient-based" or "restitution-based". Liability in knowing receipt cases is not based on joint wrongdoing; rather on individual receipt of property with actual or constructive knowledge the property derives from a breach of trust or fiduciary obligation. Liability flows from receipt and application of the property for one's own benefit, not from participation in a common wrong: *Citadel*, at para 30; citing *Lac Minerals Ltd v International Corona Resources Ltd*, [1989 CanLII 34 \(SCC\)](#) at p 669. "The measure of restitutionary recovery is the gain the [defendant] made at the [plaintiff's] expense": *Citadel*, at para 30; citing *Air Canada v British Columbia*, [1989 CanLII 95 \(SCC\)](#) at pp 1202-1203.

[54] This restriction on the measure of liability makes sense when one considers that knowing receipt carries a lower knowledge threshold than knowing assistance cases. This lower threshold is because the recipient is enriched – the corollary is that liability is individualized and receipt-specific, not collective.

[55] It follows that, in knowing receipt cases, each defendant is liable only for what they received or applied for their own benefit. The mere fact that multiple defendants received funds originating from the same source does not, without more, convert several restitutionary liabilities into joint liability.

[56] Joint and several liability will arise only where the evidence establishes a common design or coordinated wrongdoing, which is not inherent in the doctrine of knowing receipt. In the absence of such findings, each recipient is liable only to disgorge the amount it received or applied for its own benefit.

**1. Should Mr. Moldenhauer and 212 be held jointly liable?**

[57] Mr. Moldenhauer and 212 acted jointly, in a single, indivisible, unauthorized land transfer, sale, and misappropriation of the proceeds from that sale. Mr. Moldenhauer (as the directing mind) and 212 (as the corporate recipient) were functionally the same in their receipt and application of these funds. They are accordingly jointly and severally liable for the full proceeds.

**2. Should the corporate entities that Mr. Moldenhauer controlled be held jointly liable?**

[58] While joint and several liability is justified as between Mr. Moldenhauer and 212, the same rationale does not extend to the other corporate recipients that he controlled. The evidence does not establish their participation in any common design or coordinated wrongdoing. Instead, each received discrete portions of the proceeds after the sale, through separate transfers. Their liability arises solely from their knowing receipt and application of the funds they individually received. Their liability is limited to the amounts they each received.

**3. Should 251 be held jointly liable?**

[59] 251's involvement is limited to being a downstream recipient of a discrete portion of the proceeds. The evidence does not reveal that it was involved with Mr. Moldenhauer or 212 in carrying out a common design or coordinated wrongdoing. Its liability arises from its knowing receipt and application of the funds it received after 212 sold the land. Its liability is limited to this amount.

**4. Should David and Crystal Burns be held jointly liable?**

[60] While David Burns attempted to authorize Mr. Moldenhauer's transfer of the bare land in 2023, those acts were legally ineffective. Even if effective, David's actions do not establish that he participated in a common design or coordinated wrongdoing to sell the land and misappropriate the proceeds. As with the other downstream recipients, David was enriched only after the sale when he received \$5,500 from a corporation that Mr. Moldenhauer controlled. His liability is limited to this amount.

[61] Crystal Burns facilitated the sale of the land by removing, at Mr. Moldenhauer's direction, the *CLP* she had earlier registered against the land. Her involvement, while facilitative, does not establish her participation in a common design or coordinated wrongdoing to sell the land and misappropriate the proceeds. As with the other downstream recipients, Crystal's enrichment arose only after the sale when she received \$10,000 from a corporate entity that Mr. Moldenhauer controlled. Her liability is limited to this amount.

**V. Conclusion**

[62] For these reasons, a constructive trust was formed from 212's receipt of the unauthorized transfer of 115's bare land. 212 breached its equitable obligations by selling the land and disbursing the proceeds. Those proceeds are traceable to the downstream recipients - each of whom had actual or constructive knowledge of the breach - who are liable under the doctrine of knowing receipt.

[63] Judgment is accordingly granted against Mr. Moldenhauer, 2121892 Alberta Ltd., 17<sup>th</sup> Avenue Condos Ltd, M & M Real Estate Holdings Ltd, Bankview Townhomes Ltd, 2511752 Alberta Ltd., David Burns, and Crystal Burns.

[64] The total amount of the trust property is \$300,000.

[65] Mr. Moldenhauer and 212 are jointly and severally liable for \$300,000.

[66] The remaining respondents are severally liable only for the amounts they each received.

[67] All amounts shall be paid into Court pending determination of who lawfully controls 115.

[68] Judgment interest is awarded on the amounts for which each respondent is liable, calculated in accordance with the *Judgment Interest Act*, [RSA 2000, c J-1](#), from April 30, 2024.

[69] 115 is presumptively entitled to costs. If the parties are unable to agree on costs, they may make written submissions to me, within 45 days of receipt of these Reasons. Such submissions shall not exceed 5 typed pages, excluding authorities or attachments, and shall include a Bill of Costs.

**Dated** at the City of Calgary, Alberta this 7<sup>th</sup> day of April, 2026.

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**E.J. Funk**  
**J.C.K.B.A.**

**Appearances:**

Joshua Sadovnick and Bronwyn Evans  
for the Applicant

Harman Toor  
for the Respondent, Crystal Burns

Rody Moldenhauer  
for himself and Respondent 2121892 Alberta Ltd

Jeffrey Visee  
for the Respondent 2511752 Alberta Ltd