In the Court of Appeal of Alberta

Citation: Midland Resources Holding Limited v Shtaif, 2024 ABCA 144

Date: 20240502
Docket: 2101-0144AC
Registry: Calgary

Between:

Midland Resources Holding Limited

Respondent

- and -

Michael Shtaif

Appellant

The Court:

The Honourable Justice Bernette Ho
The Honourable Justice Anne Kirker
The Honourable Justice April Grosse

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice B. Romaine
Dated the 11th day of May, 2021
Filed the 26th of May, 2021
(Docket: 1901-16490)

Memorandum of Judgment

The Court:

[1] This appeal concerns the question of when a party is a "judgment creditor" for the purposes the *Reciprocal Enforcement of Judgments Act*, RSA 2000, c R-6 (***REJA***) and the defences available to a debtor resisting registration. An applications judge registered an Ontario judgment under the *REJA.* That registration was upheld on appeal to a chambers judge.

[2] For the reasons that follow, the appeal is dismissed.

Background

Ontario Judgment

[3] In 2014, after a 53-day trial, Midland Resources Holding Limited was awarded judgment against Michael Shtaif for US$46,105,879.43: *Midland Resources Holding Limited v Shtaif*, 2014 ONSC 997. Midland Resources Holding Limited was incorporated on the Island of Guernsey in 1994 (**Midland Guernsey**) and at the time of trial had business interests throughout the world. Michael Shtaif is an accountant and resident of Calgary, Alberta.

[4] In 2017, the Ontario Court of Appeal allowed the appellant's appeal in part and reduced the amount of the judgment against him to US$8,370,482.02 (the **Judgment**): *Midland Resources Holding Limited v Shtaif*, 2017 ONCA 320. In 2018, two motions for reconsideration were dismissed by the Ontario Court of Appeal: *Midland Resources Holding Limited v Shtaif*, 2018 ONCA 33; *Midland Resources Holding Limited v Shtaif*, 2018 ONCA 743, leave to appeal to SCC refused, 38507 (2 May 2019). By May 2019, when the Supreme Court of Canada denied leave to appeal the second motion for reconsideration, there were no further appeals of the Judgment pending.

Applications Judge's Decision to Register the Judgment

[5] In October 2019, the Ontario Superior Court of Justice issued a certificate of judgment (the **First Certificate**). Approximately a month later, in November 2019, a corporation also called Midland Resources Holding Limited, but registered in the British Virgin Islands (**Midland BVI**), successfully applied *ex parte* to register the Judgment in Alberta under the *REJA* on the basis of the First Certificate. In January 2020, the appellant successfully brought an application under section 6(1)(b) of the *REJA* to set aside the *ex parte* registration on the basis that Midland Guernsey had dissolved before the date of the *ex parte* application and the applications judge who granted

the registration had not been told about an assignment of the Judgment from Midland Guernsey to Midland BVI.

[6] On February 5, 2020, Midland BVI applied again for registration of the Judgment in Alberta under the *REJA* based on a new certificate issued that same day by the Ontario Superior Court of Justice (the **Second Certificate**). The Second Certificate included an additional paragraph not included in the First Certificate referencing an August 2019 assignment of the Judgment from Midland Guernsey to Midland BVI:

> On August 13, 2019, pursuant to an Instrument of Transfer (a copy of which is attached hereto as Schedule "A"), the plaintiff, Midland Resources Holding Limited, a corporation duly registered in the jurisdiction of Guernsey, transferred and assigned its interest in the judgment to Midland Resources Holding Limited, a corporation duly registered in the jurisdiction of the British Virgin Islands (attached hereto as Schedule "B" is a copy of the Certificate of Good Standing).

[7] The referenced Instrument of Transfer described the asset being assigned from Midland Guernsey to Midland BVI as:

> Any and all rights to the benefit of the following court judgments in the Province of Ontario, Canada, all rights of collection and enforcement in respect of such court judgments and all payments and proceeds of such court judgments:
>
> a. *Midland Resources Holding Limited v Shtaif*, 2017 ONCA 320 (20 April 2017) (Dockets: C58536 and C58544)
>
> b. *Midland Resources Holding Limited v Shtaif*, 2014 ONSC 997 (19 February 2014) (Court file: 08-CL-7446)
>
> (hereinafter the **Instrument of Transfer**).

[8] On February 7, 2020, after hearing submissions from both the appellant and counsel to Midland BVI, an applications judge registered the Judgment relying on the Second Certificate. The applications judge found that the statutory requirements for registration had been met and held that the appellant had failed to establish the defence of fraud under section 2(6)(d) of the *REJA*. On the fraud defence, the applications judge provided the following rationale:

> …you're expecting me to conclude that the Ontario judgment is bad based on suspicion [sic] evidence that was in front of the Courts that's apparently been dealt with, maybe not dealt with to your satisfaction, but I'm sure not going to deal with it here, and I'm certainly not going to direct a trial in Alberta which the substance of which is whether the Ontario Courts dealt with a trial in front of them properly, that just doesn't make any sense at all.

The applications judge commented that the appellant's allegations of fraud were more appropriately the subject of an application to set aside the Judgment in Ontario.

Chambers Judge's Decision on Appeal

[9] The appellant appealed the registration. On appeal, he filed additional evidence that was not before the applications judge that related to allegations of fraud under section 2(6)(d) of the *REJA*. After some delay due to the pandemic, the appeal was heard and dismissed by a chambers judge in May 2021.

[10] The chambers judge held that the applications judge had applied the law correctly and exercised his discretion reasonably. She determined that Midland BVI had standing to register the Judgment. She found no persuasive evidence that Midland BVI had not complied with the statutory conditions for registration of the Judgment in Alberta. She found no merit to allegations regarding lack of procedural fairness in the proceedings before the applications judge, finding that the appellant had every opportunity to explain his objections.

[11] The additional evidence filed by the appellant did not persuade her to arrive at a different conclusion regarding fraud as a ground to resist registration of the judgment under section 2(6)(d) of the *REJA*, as outlined in *Beals v Saldanha*, 2003 SCC 72 [*Beals*].

[12] The additional evidence included an affidavit sworn by the appellant attaching statements of opinion prepared by a lawyer from Guernsey, Gareth Bell, for the purposes of Ontario proceedings. In Bell's view, the assignment from Midland Guernsey to Midland BVI was not effective under Guernsey law until Midland Guernsey was revived in February 2021 and the appellant was served with written notice of the assignment in March 2021.

[13] Apart from concerns about the nature of the evidence itself, the chambers judge held that this additional evidence had already been considered by the courts in Ontario and dismissed as irrelevant to the Judgment. This was a reference to a decision of Justice Morgan in *Midland Resources Holdings Ltd v Bokserman*, 2021 ONSC 3077, aff'd 2022 ONCA 73, in which the appellant was an intervenor. In that case, Midland BVI claimed that one of the appellant's co-defendants at trial (Eugene Bokserman) fraudulently conveyed his interest in a jointly-held property to his wife's name alone upon learning of the Judgment. In defending against Midland BVI's fraudulent conveyance claim, Mr. Bokserman filed the affidavit of Gareth Bell to support his argument that Midland BVI had no standing to enforce the Judgment and lacked standing to bring the fraudulent conveyance action itself. The appellant, as intervenor, fully supported Mr. Bokserman's challenge to Midland BVI's standing. Justice Morgan found Bell's opinion irrelevant because the assignment of rights to Midland BVI was authorized by an order of the Royal Court of Guernsey that was never appealed or set aside and Justice Morgan saw no basis upon which an Ontario court could rule on the validity of an assignment authorized by a Guernsey court. Guernsey was the proper forum to hear the appellant's argument that the assignment of rights to Midland BVI was not legally valid under Guernsey law.

Grounds of Appeal

[14] The appellant advances several grounds of appeal. His primary argument remains premised on the Bell statements of opinion about Guernsey law that the assignment only became legally effective after Midland Guernsey was revived in February 2021 and written notice of the assignment was given to him in March 2021. Since Midland BVI was not an assignee under Guernsey law in February 2020, the appellant argues Midland BVI had no legal authority to request the Second Certificate and was not a "judgment creditor" for the purposes of the *REJA* when it applied to have the Judgment registered in Alberta on the basis of the Second Certificate. The appellant says that when notice of the assignment was provided to him in March 2021, the six-year time limit under section 2(1) of the *REJA* to apply for registration had expired. For these reasons, he says the chambers judge erred and the registration of the Judgment must be set aside.

[15] The appellant also argues that the chambers judge erred in failing to set aside the registration on the basis he had established the defences to registration set out in sections 2(6)(d) and (g) of the *REJA*.[1] In support of this argument the appellant has filed an application to admit fresh evidence that was not before the chambers judge. The fresh evidence is over 1,400 pages of materials and includes submissions and filings the appellant previously sought to have admitted in Ontario proceedings dealing with his motion to set aside the Judgment. The appellant contends that the fresh evidence establishes that the Judgment should not be registered in Alberta because he has established the defences in sections 2(6)(d) and (g) of the *REJA*.

[16] The grounds of appeal can be framed as whether the chambers judge erred in finding that:

1. Midland BVI had standing as a "judgment creditor" under the *REJA*; and

2. the appellant had not established the defences under s 2(6)(d) and (g) of the *REJA*.

Standard of Review

[17] Whether Midland BVI has standing as a "judgment creditor" under the *REJA* is a question of mixed fact and law and, absent an extricable error in law, is reviewed for palpable and overriding error: *Housen v Nikolaisen*, 2002 SCC 33 at para 37. The same deferential standard applies to the question of whether any of the defences to registration under section 2(6) of the *REJA* are

---

[1] The relevant provisions of the *REJA* state:

(6) No order for registration shall be made if it is shown by the judgment debtor to the Court that

…

(d) the judgment was obtained by fraud,

…

(g) the judgment debtor would have a good defence if an action were brought on the original judgment.

established as this involves the application of the law to a set of facts: *SHN Grundstuecksverwaltungsgesellschaft MBH & Co v Hanne*, 2014 ABCA 168 at para 34.

Analysis

Midland BVI's Standing as a "Judgment Creditor" under the REJA

[18] Section 1(1)(c) of the *REJA* defines a "judgment creditor" as "the person by whom the judgment was obtained, and includes that person's executors, administrators, successor and assigns".

[19] The appellant asserts that Midland BVI did not have standing to obtain the Second Certificate, nor did it have standing to bring an application as a "judgment creditor" to register the Judgment under the *REJA* on February 5, 2020.

[20] We see no merit to either assertion.

[21] First, the Ontario Court of Appeal has already dismissed the argument being advanced before us that Midland BVI did not have standing to obtain the Second Certificate: *Midland Resources Holding Limited v Bokserman*, 2022 ONCA 73. The Ontario Court of Appeal stated at paragraph 38 that: "Anyone may obtain a certified copy of a court document without standing or explanation". The Ontario Court of Appeal wrote further at paragraphs 39 and 40:

> A nosy neighbour, a business competitor, a journalist, or an ex-spouse can all get certified copies of court documents without explanation or standing. There is no basis to set aside the certified copies of the judgments issued here.
>
> The issue of a certificate of judgment is an administrative act which simply attests that judgment was in fact granted in Ontario. There can be no doubt here that the certificates reflect that judgment.

[22] Ultimately the Ontario Court of Appeal declined to set aside the Second Certificate. The Ontario Superior Court similarly held there was no basis to set aside the Second Certificate because it was "no more than an administrative confirmation": *Midland Resources Holding Limited v* Shtaif, 2022 ONSC 3161 at paras 52 and 62. Thus the issue of Midland BVI's standing to obtain the Second Certificate has been fully adjudicated by the Ontario courts and there is no reason for this Court to arrive at a different conclusion. Moreover, sections 2(3) and (4) of the *REJA* require only that a certificate be in the form prescribed by the regulation and be "issued from the original court and under its seal and signed by a judge of that court or the clerk of that court." There is nothing in the *REJA* that authorizes an Alberta court to, in effect, look behind a certificate from a reciprocating jurisdiction and adjudicate its validity.

[23] Second, recognizing that the reference to the assignment in the Second Certificate is not part of the prescribed form and has been described by the Ontario Superior Court as "administrative" only, the chambers judge did not err in finding that Midland BVI had standing on February 5, 2020 to bring an application as a "judgment creditor" to register the Judgment under the *REJA*. The appellant's argument turns on the question of whether he was given valid notice of the assignment of the Judgment from Midland Guernsey to Midland BVI prior to the Judgment being registered under the *REJA*. We dismiss this argument as the appellant relies on inadmissible evidence and, in any event, Guernsey law is irrelevant.

[24] Dealing first with the evidentiary issue. The appellant relies on Bell's statements of opinion that the assignment of the Judgment from Midland Guernsey to Midland BVI was not legally effective either at the time of Midland BVI's application (February 5, 2020) or on the date of registration (February 7, 2020) because notice of the assignment had not been given to the appellant, as required by Guernsey law. The appellant characterizes Bell's statements of opinion as "expert reports" that have gone unchallenged.

[25] Gareth Bell did not himself swear an affidavit or otherwise make himself available for cross-examination in Alberta. The chambers judge instead was presented with affidavits sworn by the appellant attaching as exhibits the Bell statements of opinion that were prepared for proceedings in Ontario. The respondent has challenged this form of introducing expert evidence and argues that it was inadmissible hearsay and not introduced in compliance with the rules governing the introduction of expert evidence. As this Court recently explained in *McKay v Olsen*, 2024 ABCA 90, in the form presented—as an exhibit to the appellant's affidavit—Bell's statements of opinion were merely unsworn hearsay and therefore inadmissible evidence. "Expert evidence can be relied on in a chambers application, but it must be properly introduced.": *McKay v Olsen* at para 9. We therefore see no error in the chambers judge's decision not to rely on the Bell statements of opinion.

[26] We also dismiss the argument that Guernsey law is determinative of the issue. The question of the proper parties to proceedings in Alberta is a question of procedure governed by Alberta law: *Regas Ltd v Plotkins*, [1961] SCR 566, 29 DLR (2d) 282; *International Association of Science and Technology for Development v Hamza*, 1995 ABCA 9 at para 9. Like in *Regas*, it is not a question of the validity of the assignment but the proper parties to the proceedings in Alberta. According to Alberta law, the appellant was required to be given notice in accordance with section 20(1) of the *Judicature Act*, RSA 2000, c J-2 in order for Midland BVI to have standing as a "judgment creditor" for the purposes of the *REJA*: *Gaumont v Luz* (1980), 24 AR 609, 111 DLR (3d) 609 (CA) at para 24.

[27] Section 20(1) of the *Judicature Act* states:

> When a debt or other legal chose in action is assigned by an absolute assignment made in writing under the hand of the assignor and not purporting to be by way of

> charge only, if express notice in writing of the assignment has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim the debt or chose in action, the absolute assignment is effectual in law to pass and transfer
>
> > (a) the legal right to the debt or chose in action from the date of the notice of the assignment,
> >
> > (b) all legal and other remedies for the debt or chose in action, and
> >
> > (c) power to give a good discharge for the debt or chose in action without concurrence of the assignor,
>
> and is subject to all equities that would have been entitled to priority over the right of the assignee if this section had not been enacted.

[28] The issue is whether the appellant received "express notice in writing of the assignment". There is no requirement that it is the assignor who must give notice to the debtor. Whether valid notice has been given to the debtor requires consideration of all the circumstances of the case, as was stated in *General Motors Acceptance Corporation v Johnson*, [1930] 4 DLR 291, 24 Alta LR 475 (SC (AD)):

> It seems clear from these authorities that no special form of notice is necessary, it being sufficient if the effect upon the debtor is to convey to him with sufficient certainty the fact that the obligation is transferred to a third person as assignee.

[29] Turning to the facts in this case, in the transcript from a January 15, 2020 proceeding before an applications judge the appellant stated that he had "learned of the assignment" of the Judgment from Midland Guernsey to Midland BVI. Nothing turns on this as the respondent's position is that the appellant received notice in writing of the assignment on February 5, 2020, the day the respondent filed its application to register the Judgment.

[30] The appellant argues that service of the February 5, 2020 application and supporting affidavit (which exhibited the Second Certificate and the Instrument of Transfer) did not amount to notice of the assignment because, he contends, written notice of an assignment cannot be given through litigation proceedings. He relies on *Buhecha v Impact Imaging Ltd*, 2019 BCSC 663 for this proposition. In *Buhecha*, the issue was whether notice of an assignment under the British Columbia equivalent to section 20 of the *Judicature Act* could be given by way of statement of claim. The issue in this case is different because the appellant was given notice of the assignment prior to service of the application and supporting affidavit. There were two separate emails sent by counsel to Midland BVI to the appellant on February 5, 2020. The first email, sent to the appellant the morning of February 5, 2020, attached the Second Certificate, which included the Instrument of Transfer attached as a schedule [EKEA403]. The body of the first email explained that counsel

for Midland BVI intended to appear in chambers to seek registration of the Judgment and would provide the application and affidavit in due course. The second email, sent to the appellant the afternoon of February 5, 2020, attached the application and supporting affidavit, as described above [EKER47]. Here, the appellant was given notice of the assignment in the first email when he was provided with the Instrument of Transfer, being the written assignment itself. Notice was not given through court documents like in *Buhecha*. Further, the totality of the circumstances in this case support a finding that the appellant received valid notice, including the fact that the assignor had ceased to exist, there is no evidence of competing assignments, there is no evidence of any dispute or uncertainty as between the assignor and the assignee, and no evidence of prejudice to the appellant.

[31] We conclude that the appellant received "express notice in writing of the assignment" as required by section 20(1) of the *Judicature Act* no later than February 5, 2020. Therefore, Midland BVI, as assignee of the Judgment from Midland Guernsey, had standing as a "judgment creditor" under Alberta law to bring an application to register the Judgment under the *REJA*. Furthermore, taking the timeline that is most generous to the appellant and assuming that the six-year time period in section 2(1) of the *REJA* started to run on February 19, 2014 (being the date of the trial judgment), Midland BVI's application on February 5, 2020 was brought in time. In the circumstances of this case, we need not address whether the six-year time period set out in section 2(1) of the *REJA* can start to run while an appeal is pending or while the time within which to file an appeal has not expired.

Defences to Registration Under The REJA

[32] Section 2(6) of the *REJA* provides an enumerated list of statutory defences that, if established by the judgment debtor, preclude registration of a judgment from a reciprocating jurisdiction. For the purposes of this appeal, the defences in section 2(6)(d) and (g) are relevant:

> (6) No order for registration shall be made if it is shown by the judgment debtor to the Court that
>
> …
>
> (d) the judgment was obtained by fraud,
>
> …
>
> (g) the judgment debtor would have a good defence if an action were brought on the original judgment.

[33] Section 2(6)(d) does not define the meaning of "obtained by fraud", but there is a common law definition of the phrase "obtained by fraud" when dealing with enforcement of foreign judgments. As a matter of statutory interpretation, common law terms and concepts are presumed

to retain their common law meaning when used in legislation: *HMB Holdings Ltd v Antigua and Barbuda*, 2021 SCC 44 at para 30.

[34] As explained in *Beals*, the defence of fraud at common law applies narrowly. It applies in two circumstances: i) fraud going to the jurisdiction of the court in the reciprocating jurisdiction, and ii) fraud on the merits of the judgment. But the latter can only be raised where the allegations of fraud are "new and not the subject of prior adjudication": *Beals* at para 51. To establish fraud on the merits, the debtor has the burden of demonstrating that the facts sought to be raised could not, through the exercise of reasonable diligence, have been brought to the attention of the original court: *Beals* at para 52. The narrow scope of this defence provides a fair balance between the countervailing goals of comity and fairness to the defendant (*Beals* at para 52) while also achieving the goals of finality and avoiding endless relitigation, as explained in *Beals* at para 44:

> Inherent to the defence of fraud is the concern that defendants may try to use this defence as a means of relitigating an action previously decided and so thwart the finality sought in litigation. The desire to avoid the relitigation of issues previously tried and decided has led the courts to treat the defence of fraud narrowly. It limits the type of evidence of fraud which can be pleaded in response to a judgment. If this Court were to widen the scope of the fraud defence, domestic courts would be increasingly drawn into a re-examination of the merits of foreign judgments. That result would obviously be contrary to the quest for finality.

A wide defence of fraud is also contrary to the principle of comity.

[35] The scope of section 2(6)(g) is similarly narrow and does not refer to a good defence to the original action on its merits, rather it refers to a "good defence if an action were brought on the original judgment": *Guildhall Insurance Company v Jackson* (1968), 69 DLR (2d) 137, 64 WWR (ns) 373 (Alta KB). Section 2(6)(g) thus incorporates the defences to enforcement of a foreign judgment at common law, to which there are three recognized defences: fraud, public policy, and lack of natural justice: *Beals* at para 40.

[36] In interpreting these defences, we are mindful of the Supreme Court of Canada's direction in *Morguard Investments Ltd v De Savoye*, [1990] 3 SCR 1077, 76 DLR (4th) 256 that we are to give "full faith and credit" to judgments given by a court in another province or territory, so long as that court properly exercised jurisdiction in the action. We are also mindful that all Canadian judgments are subject to final review by the Supreme Court of Canada, and the Supreme Court has already declined to hear an appeal of the Judgment on the merits.

[37] The appellant filed an application to admit fresh evidence with this Court in support of his argument that the statutory defences to registration apply and the Judgment should not be registered in Alberta. He argues that if this fresh evidence had been known at the time of the hearings before the applications judge and the chambers judge, he could have relied on section 2(6)(d) and (g) of the *REJA* to defeat the registration.

[38] The fresh evidence sought to be adduced consists of submissions and filings entered in Ontario proceedings that were initiated in 2022 to set aside the Judgment. The fresh evidence includes statements from individuals who were witnesses in the original trial that led to the Judgment and who now purport to recant their testimony. The appellant relies specifically on statements and records obtained from Valentin Vinogradov first obtained in February 2022 suggesting that Vinogradov and others gave false evidence at trial. The appellant asserts that the fresh evidence establishes a fraud was perpetrated against the trial judge hearing the matter in 2013 and, further, that the Judgment was satisfied in full before the trial even started.

[39] The appellant argues that this fresh evidence should be admitted on appeal as it meets the test from *Palmer v The Queen* (1979), [1980] 1 SCR 759, 106 DLR (3d) 212. He submits that the Vinogradov statements were not available in May 2021 when the chambers judge heard his appeal. He argues that the fresh evidence is relevant because it would have been decisive at trial and would have affected the result. He further submits the statements are credible, in part because they are supported by other documents.

[40] We are not prepared to admit any of the fresh evidence submitted by the appellant. Though not available at the time the parties appeared before the chambers judge, we are not persuaded the evidence would have been decisive or potentially decisive of the matter, nor could it be expected to have affected the result in the court below. This is particularly the case given the narrow scope of the section 2(6)(d) and (g) defences to registration. Rather, the fresh evidence contains bald assertions and conclusory remarks seeking to challenge the trial judge's reasons provided in support of the Judgment. In essence, the appellant is seeking a "do-over", suggesting that the trial judge would have reached different conclusions regarding credibility and findings of fact.

[41] We note that the Vinogradov evidence was recently addressed by Justice Koehnen in *Midland Resources Holding Limited et al v Shtaif et al*, 2023 ONSC 5032 (reasons issued September 6, 2023) [*Midland 2023*]. Koehnen J considered substantially the same materials that were submitted as fresh evidence in this proceeding but in the context of deciding whether the evidence had "a sufficient air of reality and credibility to provide a defence to the motion to have the Judgment Debtors [including the appellant] declared to be frivolous and vexatious litigants": *Midland 2023* at para 30. Notably, Koehnen J concluded that it did not, and also wrote the following at paragraphs 31-42:

> [31] To set aside a judgment based on new evidence, the moving party must be able to state precisely what the new evidence is, explain why that new evidence could not have been introduced at trial and explain how the new evidence could be expected to affect the result at trial. When reopening a judgment for fraud, as the Judgment Debtors seek to do here, the new evidence must go to the foundation of the case.
>
> [32] The Judgment Debtors have failed in that regard.

> …
>
> [35] …the affidavits and the Judgment Debtors' factum contain a lengthy description of complex facts. Many of those facts are ones that were introduced at trial and are facts in respect of which [the trial judge] made specific findings.
>
> …
>
> [37] … Although the Judgment Debtors state baldly that they believe the new evidence would have affected [the trial judge's] decision, they do not explain how it would have done so.
>
> …
>
> [42] … The new evidence has not been precisely segregated nor do I have any explanation about how the new evidence would have affected the result at trial. The closest the Judgment Debtors came to this was to note that [the trial judge] preferred the evidence of the plaintiffs at trial over that of the Judgment Debtors, thereby implying that if [the trial judge] had been aware of all the collateral bad acts of the plaintiffs, she would not have preferred their evidence. That is not the sort of information that warrants setting aside a trial judgment.

[42] The foregoing supports our view that the fresh evidence would not bear on a decisive or potentially decisive issue before the chambers judge, nor could it be expected to have affected the result before the chambers judge. Accordingly, the application to admit the fresh evidence is dismissed.

[43] As stated earlier, the defence of fraud to the registration of a judgment from a reciprocal jurisdiction is to be construed narrowly. The chambers judge did not err when she concluded that the appellant had failed to discharge his onus of establishing that the Judgment had been obtained by fraud. Nor do we see any merit to the argument that the defence in section 2(6)(g) is established. Having dismissed the application to admit fresh evidence, we see no basis in this record to conclude that the appellant can avail himself of this defence.

Alternative arguments

[44] In the alternative, the appellant submits the appeal should be allowed because Midland BVI earlier misled the applications judge by representing that a typographical error caused the applicant's name to appear as Midland Resources Holding**s** Limited rather than Midland Resources Holding Limited. The appellant suggests that the insertion of a different corporate name (Holdings as opposed to Holding) supports his position that Midland BVI lacked standing to register the Judgment in Alberta. We see no merit to this argument. Transcripts from appearances before the applications judge and chambers judge do not support the appellant's contention that Midland

BVI's counsel made misrepresentations regarding the proper legal name of the entity seeking to register the Judgment under the *REJA*.

[45] We similarly see no merit to the arguments advanced by the appellant pertaining to section 3(1) of the *Limitations Act*, RSA 2000, c L-12, and in any event, this argument has little relevance to the order under appeal.

Stay of Enforcement

[46] In his factum, the appellant applies in the alternative for a continuation of the stay of enforcement previously granted by a single judge in chambers of this Court pending determination of the motion to set aside the Judgment in Ontario.

[47] The test for a stay is well-known. The tripartite test for granting a stay is set out in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, 111 DLR (4th) 385 and may be issued if the party seeking the stay is able to establish: (a) there is a serious question to be determined; (b) irreparable harm would be suffered absent the stay; and (c) the balance of convenience favours granting the stay. Both parties rely on the well-known tripartite test for granting a stay.

[48] We are not prepared to grant a stay as requested because we are not satisfied there is a serious question to be determined. Although this is a low threshold, the appellant's evidence filed in support of the set aside motion was reviewed by Koehnen J, as discussed above. While Koehnen J was not considering the appellant's evidence in the context of the set aside motion itself, his comments and observations regarding the evidence are nevertheless significant.

[49] Nor are we satisfied that the balance of convenience favours granting the stay. The appellant and his co-applicants in Ontario learned in September 2023 that in order to have the Ontario court hear their motion to set aside the Judgment, they have to pay all outstanding cost awards, post security for costs, and "demonstrate that the motion to set aside has enough merit to warrant the court scheduling time for it": *Midland 2023* at para 5. During the oral hearing, the appellant confirmed that he and his co-applicants in Ontario have not taken steps to advance the set aside motion because they have not yet met the financial requirements ordered by Koehnen J. Against this, we weigh the fact that the respondents are in possession of a legally enforceable Judgment and have been for several years. Further, granting a stay of enforcement in Alberta could delay enforcement of the Judgment indefinitely: since the appellant and his co-applicants have not taken any meaningful steps to advance the set aside motion in Ontario, there is no assurance that the set aside motion in Ontario will be resolved in a timely manner or at all. In our view, the respondents should not have to experience any more delay before taking further enforcement action.

Conclusion

[50] In summary, we see no basis for appellate intervention. The appeal is dismissed.

[51] The default rule on costs (rule 14.88(3) of the *Alberta Rules of Court*, Alta Reg 124/2010) provides that unless otherwise ordered, the scale of costs in an appeal shall be the same scale that applies to the order or judgment appealed from. The chambers judge awarded a lump sum for costs, disbursements and GST: *Shtaif* v *Midland Resources Holding Limited*, 2021 ABQB 937. However, it is clear from her reasons that the chambers judge considered that costs in accordance with Schedule C, column 5 were appropriate and we see no reason to depart from that scale of costs for the purposes of this appeal.

Appeal heard on March 15, 2024

Memorandum filed at Calgary, Alberta
this 2nd day of May, 2024

Ho J.A.

Kirker J.A.

Authorized to sign for: Grosse J.A.

Appearances:

S. Zucker
E. Carrasco
for the Respondent

G.W. Roberts
for the Appellant