

Richardson Pioneer Limited v Tyler Smith et al

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| James P. Kroczyński | for Richardson Pioneer Limited |
| David G. Gerecke, Q.C., | for Bank of Montreal |
| Paul D. Olfert | for Deloitte Restructuring, Receiver of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. |
| Peter V. Abrametz | for Tyler and Pamela Smith |
| Janine Lavoie-Harding | for Farm Credit Corporation |

FIAT - March 22, 2021 - MESCHISHNICK J.

[1] Pursuant to a Receivership Order of this court made December 1, 2020, Richardson Pioneer Limited [Pioneer] applied for leave to commence an action against Tyler Smith, 101197829 Saskatchewan Ltd. and Smith Northern Ranching for the recovery of an outstanding debt and for a preservation order under *The Enforcement of Money Judgments Act*, SS 2010, C E-9.22 restraining the respondents, Tyler and Pamela Smith [Smith's], from disposing of the proceeds of the sale of certain farmland held in their names. or alternatively for an interim order preserving those assets and leave to apply for the preservation order.

[2] The application was brought on short notice and no reply material was filed.

[3] On the material I did have before me and with the acknowledgement of some additional information from counsel for Farm Credit Pioneer and the Smith's, Pioneer made out the evidentiary foundation for a case that funds from the sale of certain farm land were going to be used to pay out a mortgage that was secured by land that might otherwise be an exempt asset and did not include the land being sold as security.

[4] It also appeared on the evidence before me that the remaining sale proceeds were going to be paid to the Smith's who were in receivership.

[5] The Receivership Order did not include the land being sold as property that was subject to it. It was not clear, according to the Receiver, if the proceeds of the sale after the payment of all proper incumbrances, was property captured by the Receivership Order.

[6] The only material opposition to the orders requested came from the Smith's. Counsel on their behalf argued that Pioneer had not made out the grounds for a preservation order, it had not shown material prejudice which was necessary in order

to grant leave to commence the action and the application, that there was an existing deal with Farm Credit to pay the proceeds of the sale to discharge the Farm Credit mortgage which did not hold the sold land as security and that the preservation order would frustrate that deal. He also put forward the argument that the proceeds of the sale in question were in any event exempt in the hands of the Smiths.

[7] It was obvious that there was insufficient material before me to address the issues that were raised. But it was also obvious that there was the potential for Pioneer to be prejudiced if the sale proceeds were disposed of pursuant to the agreement with Farm Credit and with respect to any further balance remaining by payment to the Smiths.

[8] In order to maintain the *status quo* until all issues identified could be considered by the parties and then properly brought before me with the evidence supporting them, I ordered:

1. That the net sale proceeds of the land owned by Tyler and Pamela Smith would be preserved until March 31, 2021 with the provision that the net sale proceeds would be determined after the payment of the Farm Credit mortgages registered against those lands, and that order would expire on March 31 unless further extended;
2. That Pioneer had leave to commence the action it requested and to apply for a preservation order before me at 9:00 a.m. on March 31, 2021.

[9] I asked Mr. Kroczyński to prepare a draft order and circulate it to the parties for their review and comment. He has now done so and in response he had revised paragraph 3 of the draft order to reflect that the interim order will expire March 31 unless extended by the court.

[10] In reviewing the responses, it appears that there are two other matters to be settled. The first is with respect to the inclusion of paragraph 4 of the draft order. I appreciate that as the hearing unfolded and additional matters were raised at the March 17 hearing it may not have been clear what I had in mind. I will clarify now.

[11] Indeed, I did order that Mr. Abrametz was to circulate to all parties a statement of adjustments setting out the proceeds of sale and the payment made or to be made to Farm Credit Corporation to retire the mortgages registered against the property sold along with any other payments that the vendors intended to make after the payment of that amount such as realtors fees or any other fees associated with the transaction. But, to be clear, I only directed that payment of the amount necessary to discharge the mortgages was permitted. If any of the parties wish to see a payout statement from Farm

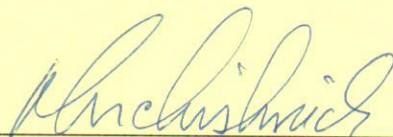
Credit confirming that the amount paid was all that was required, they can raise that on March 31.

[12] The draft order filed by Mr. Kroczyński may issue with paragraph 4 included.

[13] The second matter that needs to be settled is related to the first. Mr. Abrametz sought to have the order authorize other payments from the proceeds. The list of payments he asked be made is found in his letter dated March 18, 2021. Had it occurred to me at the March 17 hearing I would have suggested that payment of the reasonable legal fees and disbursements of the vendors lawyers and any other reasonable closing cost be paid and then I would have had the benefit of input on the idea from counsel. But I did not and in fairness to all parties those payments must be left to further order which the Smiths may seek on March 31 upon satisfying me that they are reasonable and necessary closing costs.

[14] If there are any payments that if not made before March 31 will prevent the transaction from closing, Mr. Abrametz may apply to me for authorization by way of letter explaining the reason for the urgency and enclosing all documents necessary to establish that the payment is a legitimate amount. The letter and enclosures shall be circulated to all parties. Every party shall advise Mr. Abrametz and the court immediately as to whether they consent or object to the payment. If a hearing is necessary to determine an objection it will be scheduled.

[15] Any party can put before me on March 31 any issue with supporting evidence, if it is needed, that they wish to raise in opposition to the application for the preservation order including those raised at the March 17 hearing.



J.
G.A. MESCHISHNICK