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**** HIGHLIGHTS ****

- * A Justice of the Saskatchewan Court of Queen's Bench held that an auctioneer who sells livestock is not liable in conversion to a creditor who holds a security interest in the livestock of which the auctioneer had no notice. The Court relied on old English cases which held auctioneers are only a "conduit-pipe" for the owner, and are not be liable for conversion, and on the fact that the secured creditor had not served a demand for payment under its security or any statutory notices and was therefore not in a legal position to take possession. The Court also relied on a 2005 decision of the Saskatchewan Court of Appeal which held that a livestock auctioneer has no duty to search for potential security holders. (*Lloydminster Credit Union Ltd. v. 324007 Alberta Ltd.*, [CALN/2009-004](#), [\[2009\] S.J. No. 673](#), Saskatchewan Court of Queen's Bench)
- * The Supreme Court of Canada has granted leave to appeal a decision of the Ontario Court of Appeal in *Ontario (Attorney General) v. Michael Fraser et al*, in which the Ontario Court of Appeal declared the Agricultural Employees Protection Act constitutionally invalid because it substantially impaired the incapacity of agricultural workers to meaningfully exercise their right to bargain collectively in violation of section 2(d) of the Canadian Charter of Rights, and that this violation was not saved by section 1 of the Charter. (*Ontario (Attorney General) v. Fraser*, [CALN/2009-005](#), [\[2009\] S.C.C.A. No. 9](#), Supreme Court of Canada)

**** NEW CASE LAW ****

Lloydminster Credit Union Ltd. v. 324007 Alberta Ltd.; [CALN/2009-004](#), Full text: [\[2009\] S.J. No. 673](#); Saskatchewan Court of Queen's Bench, J.L. Pritchard J., November 19, 2009.

Auctions -- conversion claims -- secured creditors.

Conversion -- auctioneers -- secured creditors.

Summary of Facts: Lloydminster Credit Union Ltd. (the "Credit Union") brought an action for damages for conversion against 324007 Alberta Ltd. carrying on business as a livestock auction market under the name Heartland Livestock Services ("Heartland").

The facts were not in dispute. The Credit Union made a loan to Robert Burroughs ("Burroughs"). The loan was secured by a registered General Security Agreement against Burroughs' cattle.

The General Security Agreement contained the following covenant:

7. The Debtor covenants and agrees:
 - (n) Except as herein provided, to not sell, lease or dispose of any Collateral or any interest therein, without the prior written consent of the Credit Union
 - (w) To market such Cattle and Livestock as the Credit Union shall authorize or direct.

In the summer of 2002, Burroughs sold 14 cattle through Heartland's auction market.

The net proceeds were paid by Burroughs to Heartland.

Burroughs failed to remit the proceeds to the Credit Union, and in failing to do so, breached the General Security Agreement.

The Credit Union took the position that the sale of the cattle without its consent constituted a default under the General Security Agreement, that it therefore had an immediate right to the possession of the cattle, and that Heartland's sale of the cattle constituted a conversion even if it was not aware of the Credit Union's interest [para. 6 and 7].

The case was treated as a test case to settle a significant legal issue [para. 16].

Decision: J.L. Pritchard, J. dismissed the Credit Union's claim with costs [para. 16].

Pritchard, J. considered the 1992 decision of the Alberta Court of Appeal in Nilsson Bros. Inc. v. McNamara Estate, [\[1992\] A.J. No. 146](#), [\[1992\] 3 W.W.R. 761](#), in which the Court found an auctioneer liable in conversion for unknowingly selling stolen cattle that belonged to the McNamara Estate, based on the following principles set forth in Hollins v. Fowler (1875), 44 L.J. Q.B. 169 [at para. 8]:

Any person who, however innocently, obtains the possession of the goods of a person who has been fraudulently deprived of them, and disposes of

them, whether for his own benefit or that of any other person, is guilty of a conversion, unless the possession was obtained by him as finder or as bailee, or by purchaser in market overt or from an agent, so as to be protected by the Factors Acts.

Pritchard, J. distinguished the Nilsson Bros. decision on the basis that the cattle in that case were stolen, stating [at para. 9]:

...It seems to me that there is a significant difference between an auctioneer being liable in conversion for selling stolen cattle and being liable in conversion for selling on instructions from the owner of cattle and where the auctioneer has no notice of a security interest held by a third party. This is particularly so when, at the time of sale, the secured party has, at best, only an unexercised contractual right of possession to the goods with no intention at the time of sale of exercising such right.

Pritchard, J. also held that the decisions of *Portage Credit Union Ltd. v. D.E.R. Auctions Ltd.*, [1994] A.J. No. 16, [1994] 4 W.W.R. 59 (C.A.) and *Paragon Properties (Finance) Ltd. v. Del Swan Trucking Inc.* [1998] A.J. No. 1042, [1999] 7 W.W.R. 224 (Q.B.), were distinguishable. He observed that no Canadian authority had been provided that "...explicitly finds an auctioneer liable in conversion for selling cattle and delivering the proceeds to the owner of the cattle rather than a secured party in circumstances where it has no knowledge of the secured party's interest in the cattle or in the proceeds" [at para. 10].

Pritchard, J. relied upon the decision of *Turner v. Hockey*, (1887) 56 L.J. Q.B. 301 which, in turn, relied upon *Cochrane v. Rymill* 40 L.T. 744; 27 W.R. 776 in which Bramwell, L.J. stated:

What if a man were to come into an auctioneer's yard holding a horse by the bridle and saying, 'I want to sell this horse; will you find me a purchaser?' Then if the auctioneer says to the bystanders, 'Here is a man who wants to sell a horse; will any one buy him?' and some one bought the horse, then there would be no act of conversion on the part of the auctioneer; he would be merely a conduit-pipe.

Pritchard, J. also observed that this decision was consistent with the principle enunciated by the Saskatchewan Court of Appeal in *Lloydminster Credit Union Ltd. v. 324007 Alberta Ltd.*, [2005] S.J. No. 339, 2005 SKCA 70 which the Saskatchewan Court of Appeal found that an auctioneer was an agent of the seller, and that an auctioneer had no duty of care to anyone acting as a seller, or the agent of a seller, to search for potential security holders. Pritchard, J. felt it would be inconsistent to hold that an auctioneer owed a legal duty to search for security interests, but despite having no such duty, to find the same auctioneer liable in conversion [para. 12 and 13].

Pritchard, J. also held, in the alternative, that the Credit Union had failed to establish a right of possession at the time of sale because it had given no notice of default and had

not made any demand for payment to Burroughs which indicated it would be realizing on its security, and because it had not served any statutory notices [at para. 14 and 15].

[Editor's note: The question of whether or not an auctioneer can be liable to secured creditors for conversion is an important issue to the livestock industry. In Alberta and Saskatchewan, livestock auctioneers (unlike other auctioneers) have no statutory duty to search for or pay secured creditors prior to a sale. The Livestock Identification and Commerce Act, Statutes of Alberta, 2006, c. L-16.2, s. 18, bars conversion claims against both purchasers and agents of the seller and purchaser, if there is no collusion, if the livestock were brand inspected and if the seller completes a manifest or bill of sale which discloses security interests in the livestock. This Queen's Bench decision is authority for the proposition that a conversion claim could not be advanced in any event.]

Ontario (Attorney General) v. Fraser; [CALN/2009-005](#), Full text: [\[2009\] S.C.C.A. No. 9](#); Supreme Court of Canada, LeBel, Deschamps and Cromwell, JJ, November 17, 2009.

Constitutional law -- freedom to organize -- agricultural workers.

Employment law -- agricultural workers -- right to organize.

Decision: In granting leave to appeal, the Court directed that the constitutional question be stated as follows:

1. Does the Agricultural Employees Protection Act, 2002, [S.O. 2002, c. 16](#), infringe s. 2(d) of the Canadian Charter of Rights and Freedoms?
2. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the Canadian Charter of Rights and Freedoms?
3. Does s. 3(b.1) of the Labour Relations Act, 1995, [S.O. 1995, c. 1, Sched. A](#), infringe s. 2(d) of the Canadian Charter of Rights and Freedoms?
4. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the Canadian Charter of Rights and Freedoms?
5. Does the Agricultural Employees Protection Act, 2002, [S.O. 2002, c. 16](#), infringe s. 15 of the Canadian Charter of Rights and Freedoms?
6. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the Canadian Charter of Rights and Freedoms?
7. Does s. 3(b.1) of the Labour Relations Act, 1995, [S.O. 1995, c. 1, Sched. A](#), infringe s. 15 of the Canadian Charter of Rights and Freedoms?

Freedoms?

8. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the Canadian Charter of Rights and Freedoms?

**** CREDITS ****

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