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Thursday, March 7, 2019 - Issue 414

HIGHLIGHTS

- * Saskatchewan Court of Appeal has dismissed an appeal from the decision of a Chambers justice who refused to grant the application of farmers for relief from forfeiture by postponing a Lessor's right to seize farm equipment so that they could use the farm equipment to plant and harvest their 2018 crops. The Court observed that the automatic stay of an appeal under the Saskatchewan Farm Security Act had rendered the Appeal moot. The appeal could not be heard until after the farmer's 2018 farming operations had been substantially completed. The court directed the farmers to deliver the leased equipment to the Lessor "without further delay" and rejected the farmers' arguments that the Chambers judge had erred in fixing the amount owing under the leases. (Naber v. Calidon Financial Services Inc., [CALN/2019-005](#), [\[2018\] S.J. No. 506](#), Saskatchewan Court of Appeal)

NEW CASE LAW

Naber v. Calidon Financial Services Inc.;

Saskatchewan Court of Appeal,

G.R. Jackson, N.W. Caldwell and R. Leurer JJ.A.,

December 28, 2018.

[CALN/2019-005](#)

Full Text: [\[2018\] S.J. No. 506](#) | [2018 SKCA 103](#)

Seizure of farm equipment — Saskatchewan Farm Security Act — Application for Relief against forfeiture.

Todd Naber, Colleen Naber, and Naber Specialty Grains Ltd. ("the Nabers") appealed to the Saskatchewan Court of Appeal from the decision of a chambers justice.

In January 2018, the Nabers brought an application pursuant to section 50 of The

Saskatchewan Farm Security Act, SS 1988-89 (the "Act") seeking relief from forfeiture with respect to farm equipment they had leased from Calidon Financial Services Inc. ("Calidon") so as to permit them to plant and harvest a crop in 2018 and thereby earn the funds to pay Calidon. The chambers judge dismissed their application and ordered them to deliver the leased equipment to Calidon without further delay (Naber v. Calidon Equipment Leasing, [2018 SKQB 84](#), CALN12018-009). The chambers judge held that the Nabers had failed to establish either their inability to pay arose from temporary circumstances or that postponing forfeiture for a period of eight months (which is the time they had requested) was reasonably temporary in nature.

Chambers judge's order which gave effect to the judgement was taken out on March 14, 2018. Before Calidon could act on the order by seizing the leased equipment, the Nabers filed a Notice of Appeal.

The effect of filing the Notice of Appeal was to stay the Order.

After the Order was stayed, the Nabers planted their crops. They had almost completed harvesting by the time the Appeal was heard.

Although this issue was moot, Nabers argued that there was another issue, that being the amount of arrears payable under the leases.

The Nabers submitted that the chambers judge erred in fixing the amount they should have to pay at \$458,073.52, and that the chambers judge should have fixed the amount at \$375,000.00, which the Nabers alleged was the amount owing without interest at 24% per annum. The Nabers argued their January of 2018 application should have "stopped the clock" including their obligation to pay interest at 24% per month. The Nabers also argued that they chambers judge should not have fixed the amount owing and that in doing so, the chambers judge had prejudiced their future negotiations with Calidon, in particular if they were obliged to pay interest calculated at 24%.

Decision

Jackson, J.A., (Caldwell and Leurer JJ.A. concurring) dismissed the Appeal [at para 16] and concluded:

"As the appeal is dismissed, the Order of the Chambers judge is now in force. The Nabers are directed to deliver the leased equipment to Calidon without further delay."

Jackson, J.A. observed that the Nabers relied on section 60 of the Act in relation to their argument but their January 2018 application should have "stopped the clock". This section provides:

"60(1) During the period that:

- (a) the operation of an order for delivery of an implement is postponed pursuant to section 53 or 58; or
- (b) the matter is adjourned for mediation pursuant to this Act or the Farm Debt Mediation Act (Canada);

no further sum shall be or become payable by the farmer on account of the unpaid balance under the agreement except in accordance with the terms of an order made pursuant to section 53 or 58."

Jackson, J.A rejected this argument, stating [at para 9]:

"While this argument is appropriately before us, being a question of law within the meaning of s. 106 of the Act, it is, however, completely misplaced. It is not the filing of the application for a hearing that triggers the operation of s. 60(1), rather it is the postponing of an order under s. 53. The Chambers judge did not make any such postponement order. He ordered the immediate delivery of the leased equipment. Further, all charges alleged to constitute penalty interest accrued before the hearing under s. 53 actually took place."

Jackson, J.A. also rejected the argument that the Chambers judge's order fixed the amount owing, stating [at para 11]:

The Order does not fix the amount owing, but simply directs the Nabers to deliver the equipment to Calidon. In further responding to this argument, I also do not read the Chambers judge's reasons as fixing the amount payable. He used the amount of \$458,073.42 for comparison purposes only. If he erred in calculating this amount, the error goes to the issue of whether the Chambers judge should have ordered the postponement of the delivery of the leased equipment. If he had ordered the postponement, and if the parties had requested that he fix the amount owing, another set of issues would arise, including whether the Chambers judge would have the authority on an application under s. 53 to resolve the contractual dispute, if any, between the parties. (In that regard, see Donald H. Layh, *A Legacy of Protection* (Langenburg, Sask: Twin Valley Books, 2009) at 413-426).

In relation to the issue for the costs should be awarded on the Appeal, the Court referred to section 61 of the Act, which provides that no costs shall be awarded to either party for any proceedings under the part unless "in the opinion of the court, an application made to it is an abuse of the applicant's right to make the application, the court may order payment of costs by the applicant".

Jackson, J.A. declined to award costs because Calidon had not applied to lift the stay of proceedings and because of the passage of time had rendered the appeal "essentially moot" [at para 15].

CREDITS

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