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### HIGHLIGHTS

- \* A Saskatchewan Queen's Bench Justice has refused to make a decision with respect to a farmers' claim for an exemption from seizure for farm machinery, because the affidavits of two of the farmers was in conflict and did not provide a reasonably detailed plan setting out what machinery was required for their farming operations and why it was required for the next 12 months. The claim was directed to proceed to trial. The decision contains a summary of some guiding principals regarding seizure exceptions claimed under the Saskatchewan Farm Security Act. (Dolter v. Input Capital Corp., [CALN/2019-011](#), [\[2019\] S.J. No. 175](#), Saskatchewan Court of Queen's Bench)

### NEW CASE LAW

#### Dolter v. Input Capital Corp.;

Saskatchewan Court of Queen's Bench,

M.D. Tochor J.,

May 2, 2019.

[CALN/2019-011](#)  
[\[2019\] S.J. No. 175](#) | [2019 SKQB 118](#)

#### **Exemption from Seizure — Saskatchewan Farm Security Act — Evidence Required to Prove the Exemption.**

Allan Dolter, Brenda Dolter, Darren Dolter, Stacy Dolter, and Dolter Farms Ltd (collectively "Dolter") brought an application under s.69 of The Saskatchewan Farm Security Act, SS 1988-89, c S-17 (the "Act") for an order directing that certain pieces of farm equipment which had been seized by Input Capital Corp. ("Input") were exempt from seizure.

In March of 2014 Input entered into an agreement to provide Dolter advance payments on canola, the repayment of which was secured by a security agreement. In the spring of 2017,

Input granted Dolter a \$900,000.00 loan on the security of a number of pieces of farm equipment.

In the spring of 2017, Allan Dolter and Dolter Farms executed Waivers pursuant to s. 68 (3) of the Act.

Dolter defaulted under both agreements and in 2018 Input commenced proceedings to recover the sum of \$1,454,212.00 million.

In January of 2019, Input filed notices to take position of the farm equipment. The notices were directed to all 5 Applicants, each of whom brought an application under s. 50 of the Act.

In March of 2019 the Dolters consented to Orders allowing Input to take possession of 72 of approximately 79 pieces of farm equipment.

Whether the remaining equipment was exempt for seizure remained in issue.

Although the decision does not expressly say so, it appears the Dolters took the position that the Waivers (which would have permitted seizure of implements which were otherwise exempt) could not be relied on because they had only been signed by 2 of the 5 Applicants.

Section 66 of the Act provides that, among other things, the following equipment is exempt from seizure:

(d) all...farm machinery and equipment, including one automobile or one farm truck, that are reasonably necessary for the proper and efficient conduct of the farmer's agricultural operations over the next 12 months;

(e) one motor vehicle, where it is necessary for the proper and efficient conduct of the farmer's business, trade, calling or profession, but only if that motor vehicle is not in addition to the one mentioned in clause (d)...

At the court application it was admitted that a Massey double disc and a Case IH tractor were exempt.

Disputed items include a 2015 Buick LesSabre, a combine, a grain cart, a grain truck, a 4x4 tractor, and a sprayer (the "Disputed Equipment")

Decision: Tochar, J directed a pre-trial conference and a trial with respect to the Disputed Equipment [at para 66].

Trochar, J reviewed certain "guiding principals" regarding exemptions at para 14 to 19:

- statutory exemptions must be strictly construed: Canada v Smith [\[1983\] S.J. No. 753](#), SSS;
- the farmer seeking the exemption must provide a reasonably detailed plan of "what implements he requires to continue farming operations over the next 12 months and why he requires them." A "bald claim" that the equipment is reasonably necessary is not sufficient: Kovalske, *supra* at para 30.

Tochar, J observed that the Affidavit of Allan Tochar referred to a 15 pieces equipment which he proposed would be used by a neighbour who would buy this equipment and custom farm the land, and that the affidavit of Brenda Dolter conflicted with Allan Dolter's Affidavit -claiming only 3 pieces were needed [at para 37 and 38]

Given the uncertainty in the affidavit evidence Trohar, J held that he was "...unable to determine if some or all of the disputed implements were required for farming." [at para 41].

## CREDITS

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