



Clerk's stamp:

COURT FILE NUMBER: 1603 04928

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

PLAINTIFF: PRESTIGIOUS PROPERTIES INC.

DEFENDANTS: COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTHYS MULLER, ROGER RICHARD and TRI-CITY CAPITAL CORP.

DOCUMENT: BRIEF OF THE RESPONDENT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT: Field LLP
Barristers and Solicitors
2500, 10175 - 101 Street
Edmonton, AB T5J 0H3
Ph: (780) 423-3003 Fax: (780) 428-9329
File No. 59575-2

BRIEF OF THE RESPONDENT, PRESTIGIOUS PROPERTIES INC., TO AN APPLICATION TO SET ASIDE EX PARTE PRE JUDGMENT ATTACHMENT ORDER SCHEDULED TO BE HEARD AT A CASE MANAGEMENT HEARING JUNE 20/22, 2017

Field LLP
2500, 10175 - 101 Street
Edmonton, AB T5J 0H3
Attn: Sandeep K. Dhir, Q.C.,
Lindsey E. Miller, Sharon A. Roberts
Solicitors for the Applicant
Phone: (780) 423-3003
Fax: (780) 428-9329
File: 59575-2

Wheatley Sadownik
2000 Sun Life Place, 10123 99 Street
Edmonton, AB T5J 3H1
Attn: Nestor Makuch
Solicitors for the Respondents
Phone: (780) 702-0440
Fax: (780) 420-6327
File: 78,736/7

Clerk's stamp:

COURT FILE NUMBER: 1603 04928

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

PLAINTIFF: PRESTIGIOUS PROPERTIES INC.

DEFENDANTS: COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTHYS MULLER, ROGER RICHARD and TRI-CITY CAPITAL CORP.

DOCUMENT: BRIEF OF THE RESPONDENT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT: Field LLP
Barristers and Solicitors
2500, 10175 - 101 Street
Edmonton, AB T5J 0H3
Ph: (780) 423-3003 Fax: (780) 428-9329
File No. 59575-2

BRIEF OF THE RESPONDENT, PRESTIGIOUS PROPERTIES INC., TO AN APPLICATION TO SET ASIDE EX PARTE PRE JUDGMENT ATTACHMENT ORDER SCHEDULED TO BE HEARD AT A CASE MANAGEMENT HEARING JUNE 20/22, 2017

Field LLP
2500, 10175 - 101 Street
Edmonton, AB T5J 0H3
Attn: Sandeep K. Dhir, Q.C.,
Lindsey E. Miller, Sharon A. Roberts
Solicitors for the Applicant
Phone: (780) 423-3003
Fax: (780) 428-9329
File: 59575-2

Wheatley Sadownik
2000 Sun Life Place, 10123 99 Street
Edmonton, AB T5J 3H1
Attn: Nestor Makuch
Solicitors for the Respondents
Phone: (780) 702-0440
Fax: (780) 420-6327
File: 78,736/7

Table of Contents

I. INTRODUCTION2

II. FACTS..... 3

 A. Repetition and reliance on facts in Briefs filed June 2, 20173

 B. Incomplete Vendor Disclosure4

 C. Ryan’s Shifting Evidence on Disclosure of Concealed Information.....4

 D. Communications With the MD and the City7

 E. Evidence before the Court on April 18, 2016.....9

 F. New evidence since the PJA Order was granted.....10

 i. Mrs. Ryan has sold all but one of the Transferred Lands to pay the Servus Loans.....10

 ii. The transfer of the Crane Lake Lands and re-registration of the PJA Order.....10

 iii. Related fraudulent conveyance proceedings.....11

 iv. Prestigious defeated CLE’s summary dismissal application.....12

III. ISSUES.....12

IV. LAW12

 A. Rules of Court12

 B. Civil Enforcement Act.....13

 C. Setting aside attachment orders.....14

V. ANALYSIS15

 A. Prestigious has a reasonable likelihood of establishing its claim.....15

 i. There are ample “badges of fraud” in the evidence15

 ii. Prestigious’ evidence about having more than one servicing option is unequivocal16

 iii. The Best Evidence Assumption does not relieve the Applicants of their onus of proof.....17

 B. Ryan and CLE have dissipated and are likely to continue to dissipate their exigible assets.....18

 C. Ryan and CLE are likely to seriously hinder judgment enforcement22

 D. It is just and equitable to maintain and expand the PJA Order23

 E. Fortification of the Undertaking as to Damages is unnecessary.....23

 F. Ryan and the Ryan Companies advance a collateral attack on the March 8, 2017 Order.....25

VI. RELIEF SOUGHT26

I. INTRODUCTION

1. This litigation arises from a land purchase transaction that closed in May 2011 and includes, *inter alia*, allegations of fraudulent misrepresentation and concealment against the Defendants.
2. On December 1, 2015, the Plaintiff (Respondent), Prestigious Properties Inc. ("Prestigious") had filed and served on counsel for Charles Ryan ("Ryan"), and three companies owned and controlled by Ryan: Cold Lake Estates ("CLE"), Northern Alberta Estates ("NAE") and Muller Ryan Richard Development Group ("MRR"), an application to compel Ryan and CLE, NAE and MRR (collectively the "Ryan Companies") to post security for costs (the "Prestigious SFC Application").
3. On December 23, 2015 Ryan and CLE transferred to Ryan's wife, Barbara Ryan ("Mrs. Ryan"), title to five parcels of land (collectively, the "Transferred Lands").
4. On January 18, 2016, Ryan swore an Affidavit in opposition to the Prestigious SFC Application (the "Ryan January 2016 Affidavit") in which he failed to disclose the transfer of ownership and while claiming there was equity in the Transferred Lands to satisfy any costs award Prestigious may obtain at trial.
5. After becoming aware of the transfer of title to the Transferred Lands, Prestigious brought an application in morning Chambers on a without notice basis and obtained a pre judgment attachment order on April 18, 2016, the Order was amended by application of Ryan and CLE in morning Chambers on May 5 (collectively the "PJA Order").
6. On April 28, 2016 Ryan and CLE filed this application to set aside the April 18, 2016 Order (the "Set Aside Application").
7. Since the PJA Order was entered and amended, Mrs. Ryan has sold four of the five Transferred Lands. Currently the PJA Order only remains attached to two of the Transferred

Lands: property sold to Neil Young (the "Crane Lake Property") and the Ryan's personal residence (the "Ryan Home Property").

8. On Monday, June 5, 2017 Counsel for Ryan and the Ryan Companies served Prestigious with a Brief in support of the Set Aside Application that had been due for filing on June 2, 2017 (the "Ryan Brief"). In addition to the relief contemplated in the Set Aside Application, the Ryan Brief seeks relief pursuant to a further application Ryan and CLE brought to compel Prestigious to post security for its Undertakings as to Damages filed in support of the PJA Order (the "Fortification Application").
9. The Ryan Brief also seeks novel relief that appears to be a collateral attack on the prior directions of Master Schlosser directing Prestigious to post an initial stage of security for costs (the "Schlosser SFC Order"). At best, it represents an attempt to appeal or vary the Schlosser SFC Order without proper application or evidence.
10. Prestigious seeks the dismissal of the Set Aside Application, an Order maintaining registration of the PJA Order on title to the Ryan Home Property and the Crane Lake Property and dismissal of the collateral attack on the Schlosser SFC Order. Finally, Prestigious seeks costs of defending the Set Aside and Fortification Applications as well as the collateral attack on the Schlosser SFC Order.

II. FACTS

A. Repetition and reliance on facts in Briefs filed June 2, 2017

11. As supplemented by the additional facts set out below, Prestigious repeats and relies upon the facts and defined terms set out in the Briefs it filed on June 2, 2017 in support of its application for security for costs (the "Prestigious SFC Application") and its application for thrown away costs (the "Thrown Away Costs Application").

B. Incomplete Vendor Disclosure

12. Prior to the Contract closing on May 11, 2011 (the "Completion Date"), CLE provided Prestigious with certain documents pertaining to the Property and its subdivision (collectively, the "Vendor Disclosure"), which were represented to be complete disclosure.

Affidavit of Thomas Beyer sworn June 5, 2015 and filed June 9, 2015 ("Beyer Affidavit") at para 18.
Excerpts from Questioning Transcript of Charles Ryan held July 11, 12 and 14, 2016 ("Ryan July 2016 Transcript"), 105:1-22, 159:1-26. [TAB 1]

13. On April 11, 2011, CLE provided Prestigious, through legal counsel, with a CD containing the Vendor Disclosure. Ryan reviewed the contents before the CD was disclosed.

Ryan July 2016 Transcript, 114:23 – 115:26, 117:117:25 – 118:4. [TAB 1]
Exhibit D-2 to Questioning of Charles Ryan held July 11, 12 and 14, 2016. [TAB 2]

14. On April 13, 2011, a further request was made by Prestigious' then Counsel, noting that documents appeared to be missing, particularly various forms of communication.

Exhibit D-3 to Questioning of Charles Ryan held July 11, 12 and 14, 2016. [TAB 3]

15. On April 15, 2011, Ryan instructed Counsel for CLE to advise Prestigious' Counsel that all records pertaining to the lands or its subdivision had been disclosed to Prestigious.

Ryan July 2016 Transcript, 139:9 -140:24. [TAB 1]
Exhibit D-4 to Questioning of Charles Ryan held July 11, 12 and 14, 2016. [TAB 4]

16. The Concealed Information did not form part of the Vendor Disclosure.

Ryan July 2016 Transcript, 253:6-17, 254:25 – 255:20, 256:3-23, 257:2-27, 261:7-11, 261:23 – 262:8, 262:27 – 263:17, 268:19-269:1, 270:1-7, 272:22 – 273:12, 273:17-27. [TAB 1]

C. Ryan's Shifting Evidence on Disclosure of Concealed Information

17. Ryan originally provided sworn affidavit evidence on behalf of the Ryan Companies that CLE had provided "all documents pertaining to the lands and its subdivision" to Prestigious.

Affidavit of Charles Ryan sworn March 20, 2015 ("March 2015 Ryan Affidavit"), paras. 6-8.

18. On cross-examination, when confronted with some of the Concealed Information, Ryan obfuscated at length and refused to answer whether the particular documents were ever provided to Prestigious as part of the Vendor Disclosure or otherwise.

Excerpts from Questioning on Affidavit Transcript of Charles Ryan held June 2, 2015 (“Ryan June 2015 Transcript”), 107:1 – 115:9. [TAB 5]

19. Ultimately, Ryan granted an undertaking to provide copies of all written communication sent by Ryan or the Ryan Companies to Beyer advising him about the situation as related to servicing of the Property (the “Servicing Information Undertaking”).

Ryan June 2015 Transcript, 113:20 – 115:9. [TAB 5]

20. In July 2016, Ryan finally conceded during Questioning that numerous documents detailing servicing (including but not limited to the Concealed Information) were not included in the answer to the Servicing Information Undertaking.

Ryan July 2016 Transcript, 159:16-26, 159:27 – 160:6, 160:19 – 162:23, 163:6-12, 169:25 – 170:13, 170:23 – 172:21, 241:15 – 242:11, 253:6-17, 254:25 – 255:20, 256:3-23, 257:2-27, 261:7-11, 261:23 – 262:8, 262:27 – 263:17, 268:19-269:1, 270:1-7, 272:22 – 273:12, 273:17-27. [TAB 1]

Answer to Undertaking 10, being Exhibit D-9 to Questioning of Charles Ryan held July 11, 12 and 14, 2016. [TAB 6]

Exhibits D-7, D-8, D-10, D-11, D-12, Exhibit C for Identification marked at Questioning of Charles Ryan held July 11, 12 and 14, 2016. [TAB 7]

Exhibits marked F through M for Identification marked at Questioning of Charles Ryan held July 11, 12 and 14, 2016 (“Exhibits for Identification F-M”). [TAB 8]

21. Further, Ryan testified that any documents to which he was “privy” from NAE or MRR were among the Vendor Disclosure. Muller’s evidence clearly suggests otherwise; he testified that he provided many records identifying servicing issues to the “Edmonton office” operated by Ryan that were not among the Vendor Disclosure.

Ryan July 2016 Transcript, 120:4-12. [TAB 1]

Excerpts from Questioning Transcript of Matthys Muller held March 2 and 3, 2016 (“Muller 2016 Transcript”), 31:21 – 32:14, 33:16 – 34:3, 34:10-13, 62:17 – 63:17, 67:19 -69:26, 80:4 – 81:17, 91:20-26, 90:26 – 92:3, 107:3 – 113:21, 121:12 – 122:17, 127:3 – 128:14, 137:1 – 138:1, 260:6-18, 266:7 – 267:25, 269:2 – 270:26, 271:21 – 272:8. [TAB 9]

22. Despite this, and after committing that CLE would review its records to see if there were any other documents, and, if so, would provide copies of them before the closing of the sale to Prestigious:

- a. Ryan did not make any inquiries with NAE, MRR, Muller or Richard as to whether there were any other records that were relevant or pertained to the Property;

Ryan July 2016 Transcript, 127:7-14, 128:11-27, 130:10 – 131:16, 140:18 – 142: 4. [TAB 1]

- b. Ryan now maintains that the only documents that CLE was required to produce under article 6.1(h) of the Contract as the Vendor Disclosure were land titles certificates and the subdivision application for the Property;

Ryan July 2016 Transcript, 134:10-15, 135:24 – 136:11. [TAB 1]

- c. The Ryan Companies have, through Ryan, contended that the only Vendor Disclosure required of CLE were records specifically requested by Prestigious or Beyer, even though CLE never sought or obtained a waiver from Prestigious of CLE's obligations to comply strictly with article 6.1(h) of the Contract; and

Ryan July 2016 Transcript, 106:13 – 107:3, 109:23 – 110:1. [TAB 1]

- d. On or before the Completion Date, Ryan and the Ryan Companies possessed information pertaining to the Property and its subdivision, including but not limited to the Concealed Information, but did not disclose them to Prestigious.

Beyer Affidavit at paras. 20-22.

Exhibits for Identification F through M. [TAB 8]

Exhibits D-7, D-8, D-10, D-11, D-12 and Exhibit C for Identification. [TAB 7]

- e. In fact, Muller testified that he flagged concerns arising from information found in the Concealed Information (the "Muller Concerns") for Ryan and Richard, and left it to them to communicate those concerns to Prestigious. The Muller Concerns, were never disclosed to Prestigious, notwithstanding Richard and Ryan worked in the Edmonton

office for the Ryan Companies, which handled administrative duties such as incoming communications.

Muller 2016 Transcript, 31:21 – 32:14, 33:16 – 34:3, 34:10-13, 62:17 – 63:17, 67:19 -69:26, 80:4 – 81:17, 91:20-26, 90:26 – 92:3, 107:3 – 113:21, 121:12 – 122:17, 127:3 – 128:14, 137:1 – 138:1, 260:6-18, 266:7 – 267:25, 269:2 – 270:26, 271:21 – 272:8. [TAB 9]

Excerpts from Questioning of Roger Richard Transcript held March 1 and 2, 2017 (“Richard Transcript”)t, 60:1-17, 78:1-27. [TAB 11]

D. Communications With the MD and the City

23. Prior to entering into the Contract, Prestigious and its principals had very limited experience with the kind of development required on the Property. Prestigious relied heavily on the representations in the Vendor Disclosure, including the servicing representations set out in the ASP, Muller’s expertise as an engineer and the representation that there was an arrangement for servicing between the MD and the City regarding water and sewer servicing of the Property.

Excerpts from Questioning Transcript of Thomas Beyer held January 24 – 26, 2017 (“Beyer January 2017 Transcript”), 12:24-26; 14:11-16; 49:21-25; 51:27 – 52:3; 80:15-20. [TAB 12]

Excerpts from Questioning on Affidavit Transcript of Thomas Beyer held July 21, 2015 (“Beyer July 2015 Transcript”), 82:10-83:19, 85:6 – 87:1, 88:11-18, 89:13 – 90:6, 91:9 – 92:3. [TAB 13]

24. Prestigious relied on the servicing options set out in the ASP and the other servicing representations in the Vendor Disclosure.

Beyer July 2015 Transcript, 11:4-21, 93:14-25. [TAB 13]

25. In or around April 2011, after it appeared likely that the Contract would close, Prestigious took steps to move forward with development of the Property. Beyer had a brief meeting with two officials from the City to introduce Prestigious as the imminent owner of the Property. During that initial meeting there was no specific discussion of water and sewer servicing. Nor was the Concealed Information mentioned or disclosed by the City.

Beyer July 2015 Transcript, 17:19 – 18:2. [TAB 13]

Excerpts from Questioning on Undertakings Transcript of Thomas Beyer held June 2016 (“Beyer June 2016 Transcript”), 122:29 – 124:7, 126:13 – 127:23, 128:14 – 130:23. [TAB 14]

26. Prestigious hired Spur Construction, headed by Chad Willox, and an engineering firm, Scheffer Andrew, in 2011 through 2013 to investigate options for servicing the Property from among the water and sewer servicing options outlined in the ASP, which was included in the Vendor Disclosure.

Beyer July 2015 Transcript, 12:7-22. [TAB 13]

Beyer June 2016 Transcript, 129:18-25, 135:25 – 136:4. [TAB 14]

27. After the Completion Date, Prestigious spent close to two years pursuing the 200 Unserviced Lot Option outlined in the ASP and awaiting the outcome of a low density development application brought on nearby property.

Beyer January 2017 Transcript, 64:2 – 65:15. [TAB 12]

Beyer June 2016 Transcript, 140:7-9, 143:9-21, 150:10-27. [TAB 14]

28. By June 2013, Prestigious became aware that the 200 Unserviced Lot Option in the ASP would not be accepted by the City, and so High Pressure Servicing would be required at far greater expense than originally contemplated based on the Vendor Disclosure. On this basis, Prestigious retained Canadian Wetlands Inc. (“Canadian Wetlands”).

Beyer June 2016 Transcript, 143:14-21, 147:3-17. [TAB 14]

Beyer July 2015 Transcript, 13:19-24. [TAB 13]

29. Although Prestigious became aware through its consultants after the Completion Date that there were uncertainties with respect to servicing the Property with water and sewer, at no time prior to retaining Canadian Wetlands in 2013 was Prestigious advised by the City or the MD of the Concealed Information or that the City had previously communicated to Muller and Richard directly that there was only one servicing option, that associated with the high density development alternative in the ASP (the “True Servicing Requirement”).

Beyer Affidavit at para 20.

Beyer July 2015 Transcript, 93:14-25, 96:18-27, 97:6-10. [TAB 13]

30. As part of responding to his undertakings, Beyer, on behalf of Prestigious, has disclosed all communications and other records in the files of the City and the MD from the Completion Date to late 2015 (the "City and MD Records").

Thomas Beyer 2016 Answers to Undertaking ("Beyer 2016 Undertakings"), Undertakings 7 and 8. [TAB 15]

31. Nowhere in the City and MD Records are there any communications from the MD or the City in 2011 or 2012 advising Prestigious of the True Servicing Requirement or that the True Servicing Requirement had been expressly communicated in writing to the Ryan Companies and/or their agents, Muller, Richard and/or Ryan, in early 2011. Beyer has similarly testified under oath that Prestigious did not learn about the True Servicing Requirement until after it hired Canadian Wetlands in late 2013.

Beyer Undertakings, Undertakings 7 and 8. [TAB 15]

Beyer Affidavit at paras 20 and 25.

Beyer July 2015 Transcript, 63:23-27, 84:14-19, 93:14-25, 97:6-10. [TAB 13]

E. Evidence before the Court on April 18, 2016

32. In support of Prestigious' application on April 18, 2016, Master Breitkreuz reviewed or was advised of, *inter alia*:

- a. The general nature of the allegations made by Prestigious and CLE in their respective actions filed up to that time;
- b. The Ryan January 2016 Affidavit; and
- c. The affidavit evidence of Trina Jackson, a paralegal with Field LLP, sworn April 18, 2016 (the "Jackson April 2016 Affidavit").

Transcript of Prestigious' Set Aside Application heard on April 18, 2016 ("Transcript of April 18, 2016 Proceedings"). [TAB 16]

F. New evidence since the PJA Order was granted

i. Mrs. Ryan has sold all but one of the Transferred Lands to pay the Servus Loans

33. All of the Transferred Lands save the Ryan Home Property have been sold since the PJA Order was granted. Proceeds were used to pay down the Servus Loans, which are the subject of a foreclosure action Servus commenced on September 21, 2016.

Affidavit of Charles Ryan sworn October 17, 2016 ("Ryan October 2016 Affidavit"), paras 4, 5 and Exhibit "3".

34. Ryan and the Ryan Companies have refused to enter into a forbearance agreement in relation to the Servus Loans on terms acceptable to Servus.

Excerpts from Questioning on Affidavit Transcript of Charles Ryan held on February 21 and 23, 2017 ("Ryan February 2017 Transcript"), 171:14 – 173:17. [TAB 17]

ii. The transfer of the Crane Lake Lands and re-registration of the PJA Order

35. Ryan testified that Mrs. Ryan's sale of the Crane Lake Lands to Neil Young was at arm's length. However, the parties to that sale ostensibly entered into an undocumented form of agreement whereby Mrs. Ryan would apply for and pay the costs to subdivide three lots from the current lands and regain ownership of those lots once subdivision was complete.

Ryan October 2016 Affidavit, Exhibit "8".

Ryan February 2017 Transcript, 175:5-8; 177:6 – 178:18; 198:9-17. [TAB 17]

36. In light of this unusual circumstance Master Breitkreuz directed that when title the Crane Lake Lands transferred from Mrs. Ryan to the purchaser(s) upon closing, the PJA Order was to be removed and replaced with an Order he granted on October 20, 2016 (the "October 2016 Breitkreuz Order").

Order of Master Breitkreuz granted on October 20, 2016 ("October 2016 Breitkreuz Order"). [TAB 18]

37. Counsel for Ryan, the Ryan Companies and Mrs. Ryan did not provide a copy of the October 2016 Breitkreuz Order to Counsel for the purchaser, Neil Young.

Ryan Exhibit 17: Undertaking 18 from Ryan February 2017 Questioning on Affidavit. [TAB 19]

38. In an error it has since reversed, the Land Titles Office inadvertently removed the PJA Order when it registered the transfer documents effecting the transfer of title of the Crane Lake Lands from Mrs. Ryan to Neil Young. In March 2017 the Land Titles Office, to correct its error, reinstated the PJA Order on title in priority to all other encumbrances (the "Reinstatement").

Hemmaway Affidavit, para 4, Exhibits "C", "D".

39. Since becoming aware of the reregistration of the PJA Order on title to the Crane Lake Lands, Counsel for Mrs. Ryan, Ryan and the Ryan Companies has failed or refused to answer an undertaking as to whether any steps have been taken with respect to the Reinstatement.

Excerpts from Questioning on Undertakings of Charles Ryan held May 15, 2017 ("Ryan May 2017 Transcript"), 346:21 – 347. [TAB 20]

40. To Prestigious' knowledge, the alleged arm's length purchaser has also not taken any steps to address the Reinstatement.

Hemmaway Affidavit, Exhibit "D".

iii. Related fraudulent conveyance proceedings

41. On September 7, 2016, Prestigious filed a Statement of Claim against CLE, Ryan and Mrs. Ryan pursuant to the *Fraudulent Conveyance Act* in relation to the conveyance of the Transferred Lands by CLE and Ryan to Mrs. Ryan, commencing Court of Queen's Bench File 1603 15766 (the "Ryan Fraudulent Conveyance Action").

Statement of Claim filed September 7, 2016. [TAB 21]

42. On March 21, 2016, 1536466 Alberta Ltd. ("153") filed a Statement of Claim against Prestigious and commenced Court of Queen's Bench File 1603 05096 (the "153 Action") in relation to the outstanding balance on the VTB that Prestigious signed in favour of CLE as part of the Closing. On February 8, 2017 Prestigious filed its Statement of Defence and a Counterclaim in the 153 Action, alleging fraudulent conveyance, *inter alia*, against Ryan and CLE.

Statement of Claim filed March 21, 2016. [TAB 22]
Statement of Defence filed February 8, 2017. [TAB 23]
Counterclaim filed February 8, 2017. [TAB 24]

43. On June 8, 2017 an Order was filed directing the consecutive trials of the Consolidated Action, the Ryan Fraudulent Conveyance Action and the 153 Action.

Order filed June 8, 2017. [TAB 25]
January 2016 Ryan Affidavit at paras 7 and 8.

iv. Prestigious defeated CLE's summary dismissal application

44. Subsequent to the PJA Order being granted, CLE's application to summarily dismiss Prestigious' claim was heard on August 24, 2016 (the "Summary Judgment Application"), primarily on a limitation issue. .

45. On November 10, 2016, the Court dismissed the Summary Judgement Application.

Reasons for Judgment filed November 10, 2016. [TAB 26]

III. ISSUES

46. The issues before this Honourable Court are whether:

- a. The record presently before the Court supports the PJA Order being maintained;
- b. The Kings LP & PRISM A Undertaking for Damages is sufficient security for the PJA Order; and
- c. The request for further security to be posted by Prestigious is a collateral attack, premature or otherwise not properly before the Court.

IV. LAW

A. Rules of Court

47. Rule 6.4(b) provides that notice of an application is not required if the Court is satisfied that serving notice of the application might cause undue prejudice to the applicant.

Alberta Rules of Court, AR 124/2010 ("Rules"), R 6.4(b). [TAB 27]

B. Civil Enforcement Act

48. The test for pre judgment attachment relief arises from section 17 of the *Civil Enforcement Act* ("CEA"). Section 17(2) of the CEA provides:

On hearing an application for an attachment order, the Court may, subject to subsection (4), grant the order if the Court is satisfied that

(a) there is a reasonable likelihood that the claimant's claim against the respondent will be established, and

(b) there are reasonable grounds for believing that the respondent is dealing with the respondent's exigible property, or is likely to deal with that property,

(i) otherwise than for the purpose of meeting the respondent's reasonable and ordinary business or living expenses, and

(ii) in a manner that would be likely to seriously hinder the claimant in the enforcement of a judgment against the respondent.

Civil Enforcement Act, RSA 2000, c C-15, s. 17(2). [TAB 28]

49. The purpose of a pre judgment attachment order is to preserve assets so that there is a possibility of execution after judgment. Put another way, the purpose is "to make property available to the creditor when judgment is finally obtained".

Mintage Financial v Altenhofen, 2013 ABQB 486 ("Mintage") at para 32. [TAB 29]

50. Pre judgment attachment orders are not injunctions and applicants need not meet the tripartite test for injunctive relief. Such orders are limited by design to preserve property until the matter goes to trial. They cannot restrain any underlying wrongful conduct or compel conduct unrelated to the preservation of property.

Proprietary Industries Inc v Workum, 2006 ABCA 225 at para 22. [TAB 30]

51. A party must have commenced to be about to commence proceedings before it may apply for an attachment order. Under the *CEA*, such applications may be made without notice or on an *ex parte* basis.

CEA, ss. 18. [TAB 28]

52. Attachment orders are always discretionary. The Court is not bound to grant such relief even where all of the statutory requirements are met.

White Bear Construction Ltd v Casavant, 1999 ABQB 1013 at para 18. [TAB 31]

53. Rather, pre judgment attachment orders are an extraordinary and powerful remedy that “should not be granted lightly.”

Royal Bank v Levy, 2009 ABQB 564 (“*RBC v Levy*”) at para 5. [TAB 32]

54. Where there is a reasonable likelihood that an applicant’s claim of fraud, conversion or breach of trust will be established at trial, the dissipation of assets is presumed (the “Ruggieri Presumption”). In all other cases, to be successful an applicant for pre judgment attachment must demonstrate that the respondent is both dealing with property:

- a. Outside the ordinary course of business or to meet normal living expenses; and
- b. In a manner likely to hinder the applicant’s enforcement of a judgment against the respondent.

1007374 Alberta Ltd v Ruggieri, 2013 ABQB 420 (“*Ruggieri*”) at para 28. [TAB 33]

C. Setting aside attachment orders

55. On an application to extend an Attachment Order, the application is *de novo* and the Applicant bears the onus of justifying the Attachment Order.

RBC v Levy, supra at para 3. [TAB 32]

V. ANALYSIS

A. Prestigious has a reasonable likelihood of establishing its claim

56. Given the considerable indicia of fraud in the evidence, Prestigious has a reasonable likelihood of making out these allegations. As a result, it falls both within the Ruggieri requirement of reasonable likelihood of establishing a claim set out in section 17(2)(a) of the CEA.

i. There are ample “badges of fraud” in the evidence

57. Courts have referred to circumstantial or indirect evidence that raises strong inferences of fraudulent intent as “badges of fraud”, particularly with respect to allegedly fraudulent conveyances. Badges of fraud include:

- a. Secrecy respecting transactions;
- b. Grossly inadequate consideration;
- c. Transfers amounting to a trust of the property;
- d. Identifying the property after transfer as an asset of the grantor;
- e. The transfer substantially reduces the property of the grantor that, but for the transfer, would be available to the grantor’s creditors; and
- f. The effect (but not necessarily the admitted intent) of the transfer is to delay and defeat creditors.

Ruggieri, supra at para 33. [TAB 33]

58. There are ample “badges of fraud” apparent in the transfers of the Transferred Lands.

59. The transfer of the Crane Lake Property also raises suspicion in the circumstances. It strains credulity to suggest that an arm’s length, third party purchaser for value would accept without objection the re-registration of an attachment order, the removal of which was held out as a condition precedent to the sale.

60. There is considerable evidence that Ryan, CLE and the other Defendants deliberately withheld the Concealed Information from Prestigious and fraudulently misrepresented the True Servicing Requirement in the Vendor Disclosure and other communications with Prestigious.

61. The decision to keep the Concealed Information from Prestigious was a breach of the Contract and an unconscionable act of fraud.

Frydman v Pelletier, 2015 ABQB 289 at para 202. [TAB 34]

ii. Prestigious' evidence about having more than one servicing option is unequivocal

62. Testifying on behalf of Prestigious, Thomas Beyer has maintained that at no time prior to June 2013 or thereafter was Prestigious informed about the True Servicing Requirement and only in 2014 did it begin to receive copies of some the Concealed Information.

Beyer January 2017 Transcript, 152:23 – 153:3. [TAB 12]

Beyer June 2016 Transcript, 127:9-14. [TAB 14]

63. The majority of the Concealed Information was not disclosed until Muller provided his producible records in the litigation that Prestigious commenced in November 2014.

64. Knowledge cannot be presumed in summary judgment; nor should that be the standard for an attachment order.

Infante v Dzagov, 2016 ABQB 41 ("*Infante*") at para 38. [TAB 35]

65. A limitations defence may be overcome where, as here, defendants engage in fraudulent conduct that conceals one or more material facts giving rise to the Plaintiff's cause of action. To show that a defendant has concealed a cause of action, it is sufficient that the wrong committed is secretly done and kept secret through lack of communication or comment, as Ryan, CLE and the other Defendants did with the Concealed Information.

Huet v Lynch, 2000 ABCA 97 at para 28. [TAB 36]

Frydman, supra at para 202. [TAB 34]

iii. The Best Evidence Assumption does not relieve the Applicants of their onus of proof

66. In deciding the Summary Judgment Application, Master Schlosser assumed that Prestigious had put its best evidence before the Court. The learned Master's finding in this regard is consistent with recent case law which directs that a court should assume that a respondent has put its best foot forward (the "Best Evidence Assumption.")

Reasons for Decision, para 3. [TAB 26]

67. Ryan and CLE argue that as the learned Master found that success for CLE and Ryan in the summary judgment application was a "near miss", Prestigious cannot meet the "reasonable likelihood of establishing a claim" portion of the test under S. 17 of the CEA. .

68. While the learned Master did not err in making the Best Evidence Assumption, it is respectfully submitted that by imposing the one-size-fits-all Best Evidence Assumption on all civil litigants, the court has overlooked the economic realities of complex commercial litigation.

69. In this case, for Prestigious to have satisfied the Best Evidence Assumption, it would have had to tender affidavit evidence from Spur Construction, Scheffer Andrew, Canadian Wetlands and potentially one or more independent experts.

70. Assuming that these individual affiants would have faced lengthy cross-examination on such affidavits, asked and answered multiple undertakings and potentially crossed on such answers again, Prestigious would have incurred significant additional legal costs to complete these additional steps (the "Additional Steps") for no additional value – "value" in this scenario being the dismissal of the Summary Dismissal Application, which Prestigious achieved without incurring such additional costs.

71. Similarly, the Additional Steps would likely have increased the hearing time necessary to adjudicate the Summary Dismissal Application and the amount of material the learned Master had to review at a time when the paucity of the court's resources are acute (the "Strained Judicial Resources.")

72. It is submitted that expecting the Additional Steps with resulting Strained Judicial Resources is contrary to the Foundational Rules which exhort the principles of speedy resolutions and the minimization of legal cost expenditure by party litigants.

73. Consequently, the Best Evidence Assumption can, in certain complex litigation matters such as the present matter, run afoul of the Foundational Rules.

74. In any event, the strength of Prestigious' case for trial should not be assessed based on the Best Evidence Assumption. Rather, given the totality of evidence before this Honourable Court about the conduct of Ryan during the material times giving rise to this litigation and throughout the litigation itself, it is just and reasonable to find that Prestigious "did what it needed to do" to defeat the Summary Dismissal Application.

75. Ryan and CLE should not get the benefit of any assumptions arising from Master Schlosser's decision and should have to establish on the merits that the PJA Order should be lifted.

B. Ryan and CLE have dissipated and are likely to continue to dissipate their exigible assets

76. The second part of the test in section 17(2) only requires that there be grounds for a reasonable belief. Insofar as Prestigious has shown a reasonable likelihood that its allegations of fraudulent misrepresentation and concealment will be established, the court may conclude, on the basis of the Ruggieri Presumption, that there are reasonable grounds for finding that Ryan and the Ryan Companies are likely to deal with their exigible property to seriously hinder enforcement by Prestigious.

Osman Auction v Belland, 1998 ABQB 1095 at paras 28 – 30. [TAB 37]

GEMBLA LLC v Nixious Investments, 2014 ABQB 197 ("*GEMBLA*") at paras 48-49. [TAB 38]

77. This Honourable Court has further found support for this approach in cases such as this where allegations of fraud are directed at interrelated defendants.

GEMBLA, supra at para 51. [TAB 38]

78. On the evidence it is reasonably likely Prestigious will establish, *inter alia*, that Defendants and in particular Ryan and the Ryan Companies made fraudulent misrepresentations and engaged in acts of concealment. As such, Prestigious has met the second part of the section 17(2) test.

79. Alternatively, if circumstances of alleged fraud may give rise to an inference that there are reasonable grounds for believing a defendant is likely to deal with its exigible property other than to meet its reasonable and ordinary business or living expenses, and in a manner likely to seriously hinder the claimant's enforcement of a judgment it may obtain.

1773907 Alberta Ltd v Davidson ("1773907"), 2016 ABQB 2 at para 83. [TAB 39]

80. As noted above, Ryan has no remaining land registered in his name and any lands of CLE or Alberta Estates lack substantial equity and/or are in the process of being dissipated under Ryan's direction.

81. The other Ryan Companies, CLE and NAE, have no assets that are sufficiently liquid or realizable to be exigible.

Commercial Construction Supply Ltd v Ghost Rider Farms Inc, 2016 ABQB 166 at para 28. [TAB 40]

82. Prestigious has met its burden of furnishing evidence of risk that property has been and is likely to be dealt with improperly and to hinder judgment enforcement. The evidence gives rise to a real and substantial risk that Ryan and the Ryan Companies will otherwise dissipate any remaining assets to avoid recovery of judgment and will cause prejudice to Prestigious.

GEMBLA, supra at para 44. [TAB 38]

83. For example, by effecting the transfer of the Transferred Lands to Mrs. Ryan, Ryan and CLE demonstrated their propensity to dissipate a majority of their exigible assets for other than ordinary business or living expenses.

84. The sale of all but one of the Transferred Lands since their transfer to Mrs. Ryan represents a further dissipation of the exigible assets of Ryan and CLE. It also supports a finding of real

risk that Ryan and CLE dealing with any remaining assets other than for ordinary business or living expenses and in a manner that is likely to hinder Prestigious.

85. Such risk is further exemplified by Ryan's own evidence:

- a. The Transferred Lands that have been sold, for considerably less than the market value, assuming the "values" to which Ryan deposed based on appraisals (the "Ryan Values") were truly indicative of market value.

Ryan April 2016 Affidavit, paras 7, 8, Exhibit "20".

Ryan October 2016 Affidavit, para 9, Exhibit "8".

- b. One of the Remaining CLE Lands has a pending offer for sale for \$120,000;

Ryan May 2017 Transcript, 376:13 – 377:5. [TAB 20]

- c. Based on the respective tax assessment values of the Remaining CLE Lands and the recently obtained payout balances for registered encumbrances, there is little to no equity in the Remaining CLE Lands;

Ryan Exhibit 17: UT 26 from Ryan May 2017 Questioning on Undertakings. [TAB 19]

Ryan Exhibit 17: Undertaking 35 from Ryan February 2017 Questioning on Affidavit. [TAB 19]

Affidavit of Charles Ryan sworn August 11, 2016 Affidavit, para 9.

- d. The Alberta Estates Lands are similarly heavily encumbered with mortgage debt and, from a review of their tax assessment values, have little to no equity and, as such, can be similarly expected to sell far below the "values" to which Ryan has deposed;

Ryan Exhibit 17: UT 26 from Ryan May 2017 Questioning on Undertakings. [TAB 19]

Ryan February 2017 Transcript, 141:14 – 142:22. [TAB 17]

- e. Neither Ryan nor Mrs. Ryan has filed personal income tax returns since the 2011 tax year;

Ryan May 2017 Transcript, 387:17 – 388:13. [TAB 20]

- f. None of the Ryan Companies have filed corporate tax returns since the 2013 tax year; and

Exhibit 17: UT 24 from Ryan February 2017 Questioning on Affidavit. [TAB 19]

- g. Ryan refuses to disclose whether he has a source of personal income and admits he is not presently employed.

Ryan February 2017 Transcript, 243:5 – 26. [TAB 17]

Ryan May 2017 Transcript, 388:20 – 389:9. [TAB 20]

86. Further, Ryan and Mrs. Ryan and companies Ryan owns and controls have a current practice of not paying creditors:

- a. There are outstanding property taxes, arrears and penalties on the Ryan Home Property and Sturgeon County has registered a corresponding Tax Notification on title;
- b. Her Majesty the Queen in Right of Alberta has registered a writ in the amount of \$527,213 plus costs on title to the Alberta Estates Lands; and
- c. The MD of Bonnyville has registered a Tax Notification on title to each of the Alberta Estates Lands.

Hemmaway Affidavit, paras 2, 3, 5 and Exhibits "A", "B", "E" – "I", "K".

87. In all of the circumstances, there are reasonable grounds to believe that CLE and Ryan, and/or Mrs. Ryan in the case of the Ryan Home Property, will continue to dissipate any remaining exigible assets and either are dealing or are likely to deal with their remaining exigible assets other than for the purpose of meeting their reasonable and ordinary business and living expenses.

C. Ryan and CLE are likely to seriously hinder judgment enforcement

88. Where fraud is alleged and there are further allegations of attempts to conceal fraudulent activity the balancing exercise required when reviewing pre judgment attachment orders *de novo* tips the scales toward maintaining the attachment.

1773907, *supra* at para 85. [TAB 39]

89. Such is the case here, where Prestigious has a reasonable likelihood of establishing its claim for fraudulent misrepresentation and concealment and, within the litigation, Ryan and CLE attempted to mislead the Court and Prestigious with respect to the Transferred Lands.

90. Moreover, there is real evidence before the Court, not mere suspicions, of efforts to dissipate assets that would have the effect of seriously hindering Prestigious' ability to enforce judgment after trial. Where the court can draw a reasonable inference that if a respondent to an attachment order application will undoubtedly disburse any monies it receives from its remaining assets, it may do so.

Gastra v 973632 Alberta Ltd, 2012 ABCA 394 at paras, 5, 7. [TAB 41]

91. Ryan admits he has moved assets into his wife's name in this case, without any credible explanation for doing so, in the face of the Prestigious SFC Application. He also admits that he had direct communications with each of the buyers of the Transferred Lands that have, since being transferred to Mrs. Ryan, been sold to non-parties to this and the related civil proceedings, including to promote the lands before an offer was submitted.

92. Further, and in any event, the intentionally misleading nature of the Ryan January 2016 Affidavit are grounds enough to sustain the PJA Order.

Ryan Exhibit 4: Item 12(c) from Answers to Objected-to Questions and Undertakings. [TAB 42]

Ryan May 2017 Transcript, 332:22-27; 334:11-15 346:7-20. [TAB 20]

93. In summary, there are reasonable grounds for believing that Ryan and the Ryan Companies have limited exigible assets bearing any equity and are dealing or are likely to deal with

those remaining assets in a manner likely to seriously hinder Prestigious in enforcing judgment against any one or more of them.

CEA, s. 17(2)(b)(ii). [TAB 28]

D. It is just and equitable to maintain and expand the PJA Order

94. By reason of the foregoing and in all of the circumstances and on the preponderance of evidence before the Court it is just and equitable not only to maintain the PJA Order but to expand its scope to include the two Remaining CLE Lands.

95. While there is a reasonable likelihood of Prestigious making out its claims for breach of contract, fraudulent misrepresentation and concealment, *inter alia*, there are also reasonable grounds to believe and the Court is in a position to draw the inference that Ryan and the Ryan Companies will dissipate any remaining assets and have the effect of seriously hindering judgment enforcement.

Gastra, supra at para 7. [TAB 41]

96. Further the court may reasonably infer that these Defendants would be “bereft of funds” should Prestigious obtain judgment against them.

Gastra, supra at para 7. [TAB 41]

E. Fortification of the Undertaking as to Damages is unnecessary

97. Ryan and the Ryan Companies seek to have Prestigious provide “security for its undertaking to pay damages” (the “Security for Damages Application”) arising from the PJA Order (the “Undertaking”).

98. Ryan and the Ryan Companies have neglected to disclose that Prestigious tendered a fortification of the initial Undertaking on June 8, 2016 by providing a further undertaking as to damages from two co-Defendants by Counterclaim, King’s Castle Limited Partnership (“Kings”) and Prestigious Investment and Management (PRISM) A Limited Partnership (“PRISM”) (the “Fortification”).

99. Ryan and the Ryan Companies previously sought similar relief before Master S. Schulz, Q.C., on June 15, 2016 and the learned Master adjourned the application in part because of the Fortification (the "Schulz Hearing").

100. Prestigious reiterates its submissions from the Schulz Hearing that:

- a. The Fortification sufficiently buttresses the Undertaking; and,
- b. Ryan and the Ryan Companies have not tendered any evidence of damages suffered or that they will likely suffer as a result of the PJA Order.

101. Ryan and the Ryan Companies bear the onus to establish:

- a. A likelihood of significant loss arising as a result of the PJA Order; and,
- b. A sound basis for the belief that the Undertaking will be insufficient.

McCaffrey Group Inc. v. Bradlee, 1997 CarswellAlta 433 at para. 21
[TAB 44]

Pendosi Holdings Ltd. v. the Forzani Group Ltd., 2011 ABCA 171 at
para. 25 ("*Pendosi*") [TAB 45]

102. In this case, Ryan and the Ryan Companies have tendered no such evidence.

103. Even if such evidence is tendered, the sufficiency of the Undertaking remains in the discretion of this Honourable Court.

Pendosi, supra, at paras. 24-25 [TAB 45]

104. In this case, given the Fortification, and the paucity of any evidence as to a need for further security for the Undertaking, it is respectfully submitted that this Honourable Court should exercise its discretion to dismiss the Security for Damages Application.

F. Ryan and the Ryan Companies advance a collateral attack on the March 8, 2017 Order

105. On March 8, 2017 the parties appeared before Master Schlosser to set the quantum of the security for costs that the Master granted of his own motion when he dismissed the Summary Judgment Application.

106. The form of Order arising from the March 8, 2017 direction of Master Schlosser has not been agreed upon as between Counsel and the version appended to the Set Aside Brief filed on behalf of Ryan and the Ryan Companies on June 5, 2017 is not finalized and has not been entered.

107. At the March 8, 2017 appearance Master Schlosser clearly directed that security would be subject to staging and that the first stage would include all Questioning and interlocutory applications pending as at that time and since November 10, 2016 (the "Stage One Steps"). To ask the Court for different relief when the first stage directed by Master Schlosser has not yet concluded is at best an improper attempt to vary or appeal the March 8, 2017 Order of Master Schlosser.

Transcript of hearing held March 8, 2017. [TAB 46]

108. This Honourable Court has found that the doctrine of collateral attack applies within a proceeding where a party seeks to challenge a prior Order through other than the proper channels.

Schitthelm v Keleman, 2013 ABQB 42 at para 44. [TAB 47]

109. The Applicants' conduct represents a collateral attack on the learned Master's decision to direct only security for the Stage One Steps be posted. Ryan and the Ryan Companies are estopped from challenging such direction by way of a further application to obtain what they argued and did not receive from the Court below. To allow otherwise is to sanction an abuse of the court's process.

110. Alternatively, insofar as Ryan and the Ryan Companies have known about the Order granted for more than 20 days and have not brought this request before Master Schlosser, they are attempting to have this Court vary the Order despite not having complied with the requirements of Rule 9.15.

Rules, supra, R 9.15. [TAB 30]

111. At best, the application is premature insofar as the Stage One Steps as directed by Master Schlosser have not yet been completed.

112. For the foregoing reasons, the request for further security to be posted before the steps to which the Stage One Steps have been completed ought to be dismissed, with costs.

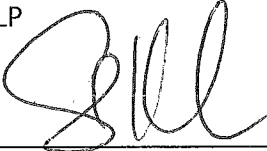
VI. RELIEF SOUGHT

113. By reason of the foregoing, Prestigious respectfully seek an Order:

- a. Dismissing the Set Aside Application;
- b. Maintaining the PJA Order;
- c. Expanding the PJA Order to direct its attachment to the Remaining CLE Lands;
- d. Dismissing the collateral attack on the March 8, 2017 Order of Master Schlosser;
- e. Compelling Ryan and the Ryan Defendants to post security for costs pursuant to the Prestigious SFC Application;
- f. Awarding costs of this Application to Prestigious on an elevated basis or on such other scale as the Court deems appropriate, payable forthwith and in any event of the cause; and
- g. Granting such other relief as the Court deems appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12th DAY OF JUNE 2017

FIELD LLP

Per:  _____

SANDEEP K. DHIR, Q.C.
LINDSEY E. MILLER
SHARON A. ROBERTS
Solicitors for the Respondent, Prestigious Properties Inc.

List of Appendices and Authorities

Tab Description

1. Excerpts from Questioning Transcript of Charles Ryan held July 11, 12 and 14, 2016
2. Exhibit D-2 to Questioning of Charles Ryan held July 11, 12 and 14, 2016
3. Exhibit D-3 to Questioning of Charles Ryan held July 11, 12 and 14, 2016
4. Exhibit D-4 to Questioning of Charles Ryan held July 11, 12 and 14, 2016
5. Excerpts from Questioning on Affidavit Transcript of Charles Ryan held June 2, 2015
6. Answer to Undertaking 10, being Exhibit D-9 to Questioning of Charles Ryan held July 11, 12 and 14, 2016
7. Exhibits D-7, D-8, D-10, D-11, D-12, Exhibit C for Identification marked at Questioning of Charles Ryan held July 11, 12 and 14, 2016
8. Exhibits marked F through M for Identification marked at Questioning of Charles Ryan held July 11, 12 and 14, 2016
9. Excerpts from Questioning Transcript of Matthys Muller held March 2 and 3, 2016
10. Excerpts from Questioning Transcript of Matthys Muller held May 25, 2017
11. Excerpts from Questioning of Roger Richard Transcript held March 1 and 2, 2016
12. Excerpts from Questioning Transcript of Thomas Beyer held January 24 – 26, 2017
13. Excerpts from Questioning on Affidavit Transcript of Thomas Beyer held July 21, 2015
14. Excerpts from Questioning on Undertakings Transcript of Thomas Beyer held June 2016
15. Thomas Beyer 2016 Answers to Undertaking, Undertakings 7 and 8
16. Transcript of Prestigious' Set Aside Application heard on April 18, 2016
17. Excerpts from Questioning on Affidavit Transcript of Charles Ryan held on February 21 and 23, 2017
18. Order of Master Breitzkreuz granted on October 20, 2016
19. Ryan Exhibit 17: Undertaking 18 from Ryan February 2017 Questioning on Affidavit
20. Excerpts from Questioning on Undertakings of Charles Ryan held May 15, 2017
21. Statement of Claim filed September 7, 2016
22. Statement of Claim filed March 21, 2016
23. Statement of Defence filed February 8, 2017
24. Counterclaim filed February 8, 2017
25. Order for Consolidation of Actions filed June 8, 2017

26. Decision of Master Schlosser on Summary Dismissal Application, filed November 10, 2016
27. *Alberta Rules of Court*, AR 124/2010
28. *Civil Enforcement Act, RSA 2000, c C-15*
29. *Mintage Financial v Altenhofen*, 2013 ABQB 486
30. *Proprietary Industries Inc v Workum*, 2006 ABCA 225
31. *White Bear Construction Ltd v Casavant*, 1999 ABQB 1013
32. *Royal Bank v Levy*, 2009 ABQB 564
33. *1007374 Alberta Ltd v Ruggieri*, 2013 ABQB 420
34. *Frydman v Pelletier*, 2015 ABQB 289
35. *Infante v Dzagov*, 2016 ABQB 41
36. *Huet v Lynch*, 2000 ABCA 97
37. *Osman Auction v Belland*, 1998 ABQB 1095
38. *GEMBLA LLC v Nixious Investments*, 2014 ABQB 197
39. *1773907 Alberta Ltd v Davidson*, 2016 ABQB 2
40. *Commercial Construction Supply Ltd v Ghost Rider Farms Inc*, 2016 ABQB 166
41. *Gaastra v 973632 Alberta Ltd*, 2012 ABCA 394
42. Ryan Exhibit 4: Item 12(c) from Answers to Objected-to Questions and Undertakings
43. Undertaking for Damages, filed June 8, 2016
44. *McCaffrey Group Inc. v. Bradlee*, 1997 CarswellAlta 433
45. *Pendosi Holdings Ltd. v. the Forzani Group Ltd.*, 2011 ABCA 171
46. Transcript of hearing held March 8, 2017
47. *Schitthelm v Keleman*, 2013 ABQB 42

Clerk's stamp:



COURT FILE NUMBER:

1603 04928

COURT:

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

EDMONTON

PLAINTIFF:

PRESTIGIOUS PROPERTIES INC.

DEFENDANTS:

COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTHYS MULLER, ROGER RICHARD and TRI-CITY CAPITAL CORP.

DOCUMENT:

BOOK OF AUTHORITIES 10f2

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PERSON FILING
THIS DOCUMENT:

Field LLP
Barristers and Solicitors
2500, 10175 - 101 Street
Edmonton, AB. T5J 0H3
Ph: (780) 423-3003 Fax: (780) 428-9329
File No. 59575-2

BRIEF OF THE RESPONDENT, PRESTIGIOUS PROPERTIES INC., TO AN
APPLICATION TO SET ASIDE EX PARTE PRE JUDGMENT ATTACHMENT ORDER
SCHEDULED TO BE HEARD AT A CASE MANAGEMENT HEARING JUNE 20/22, 2017

Field LLP
2500, 10175 - 101 Street
Edmonton, AB T5J 0H3
Attn: Sandeep K. Dhir, Q.C.,
Lindsey E. Miller, Sharon A. Roberts
Solicitors for the Applicant
Phone: (780) 423-3003
Fax: (780) 428-9329
File: 59575-2

Wheatley Sadownik
2000 Sun Life Place, 10123 99 Street
Edmonton, AB T5J 3H1
Attn: Nestor Makuch
Solicitors for the Respondents
Phone: (780) 702-0440
Fax: (780) 420-6327
File: 78,736/7

Clerk's stamp:



COURT FILE NUMBER: 1603 04928

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

PLAINTIFF: PRESTIGIOUS PROPERTIES INC.

DEFENDANTS: COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTHYS MULLER, ROGER RICHARD and TRI-CITY CAPITAL CORP.

DOCUMENT: BOOK OF AUTHORITIES 2 of 2

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT: Field LLP
Barristers and Solicitors
2500, 10175 - 101 Street
Edmonton, AB. T5J 0H3
Ph: (780) 423-3003 Fax: (780) 428-9329
File No. 59575-2

BRIEF OF THE RESPONDENT, PRESTIGIOUS PROPERTIES INC., TO AN APPLICATION TO SET ASIDE EX PARTE PRE JUDGMENT ATTACHMENT ORDER SCHEDULED TO BE HEARD AT A CASE MANAGEMENT HEARING JUNE 20/22, 2017

Field LLP
2500, 10175 - 101 Street
Edmonton, AB T5J 0H3
Attn: Sandeep K. Dhir, Q.C.,
Lindsey E. Miller, Sharon A. Roberts
Solicitors for the Applicant
Phone: (780) 423-3003
Fax: (780) 428-9329
File: 59575-2

Wheatley Sadownik
2000 Sun Life Place, 10123 99 Street
Edmonton, AB T5J 3H1
Attn: Nestor Makuch
Solicitors for the Respondents
Phone: (780) 702-0440
Fax: (780) 420-6327
File: 78,736/7