

Court File Number: CV-14-10678-CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Adshade et al. Plaintiff(s)
AND
TDCI Bracebridge Inc. Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows): _____

On this discharge motion, the Registrar rules the directions ^{of the Court} for a number of issues pertaining to the distribution of the remaining auction proceeds. Several issues appear to be factual issues that the parties must address between themselves. It is possible that they will resolve them without further order of the Court.

The principal issue is ownership of

March 15 / 16
Date

W. Don - Int J.
Judge's Signature

Additional Pages 5

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certain assets claimed by the Trustee in Bankruptcy of Chre Figueira and Carol Tarback. It is understood that these assets comprise broadly tools and equipment and furniture and other household items.

The Receiver states in the Third Report at paragraph 27 that it has not received any information that would validate the claims of ^{Mr.} Figueira and ^{Mr.} Tarback to these assets prior to their sale at auction. Accordingly, it concludes that ownership ^{of the proceeds of sale} must be with the Debtor. It is supported by the applicants.

The Trustee has provided an affidavit of Mr. Figueira in which he claims that the assets were previously owned by Woods Property Development Corporation Inc. ("~~Woods~~" ^{Woods}) in the case of the tools and equipment and transported to the Debtor. He also says that the furniture and household items were owned by he and Ms. Tarback and used at

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These two homes or a Muskoka cottage and moved to the Debtor's property after these properties were sold.

There is a serious issue of Mr. Figueira's credibility, as evidenced among other things, in the Reasons of Patillo J. dated February 27, 2015. There is also no documentary or other evidence of Mr. Figueira or Ms. Tarback with respect to any of the properties which they now say they retained ownership.

With respect to the tools, it is not clear whether Mr. Figueira, as opposed to Woods, owned the tools and equipment. Further, there is every possibility that he may have contributed the assets to the Debtor. The affidavits say that, in fact, the tools and equipment were purchased from Dura Manufacturing in 2009 and there is some support in the evidence for this as well.

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With respect to the furniture and household effects, the strongest argument pertains to the household furniture that ^{was} ~~was~~ apparently in lockers allocated to Mr. Figueroa and Ms. Tarback although there is no evidence of any rental agreement pursuant to which they were paying rent on those lockers.

Apart from the fact that they were in lockers allocated to Mr. Figueroa and Ms. Tarback, they could these chattels ^{have} ~~could~~ belong to anybody. The fact that they were in lockers allocated to Mr.

Figueroa and Ms. Tarback is not enough in my view to tip the balance of probabilities of ownership in their favour. Given ~~that~~ Mr. Figueroa's credibility issues, it is necessary for them to demonstrate some evidence of ownership with respect to at least some of the items in question. They have failed to provide any such

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evidence. To the contrary, it appears that the Debtor purchased office furniture as well as a substantial amount of other furniture including personal furniture allocated to Mr. Figueroa: see the email of May 25, 2015 of the Receiver upon which the Trustee relies. In that email, Mr. Figueroa was advised to contact Empire Auctions to obtain a listing of the items purchased by the Debtor to support his claim for the remaining furniture. He has failed to do so.

In addition, there is no evidence of the transportation of any of these items to the Debtor's property. In particular, although Mr. Figueroa says that Murray Plouffe assisted him in transporting the tools and equipment to the Debtor's property, there is no evidence from Mr. Plouffe to rebut the applicant's position that this

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did not happen.

In short, the onus of establishing ownership of the chattels prior to their sale at the auction rests with the Trustee. It is insufficient to argue as the Trustee does that nobody can ~~establish~~ produce any better evidence. The Trustee cannot establish, on a balance of probabilities, that ~~Mr.~~ Mr. Figueira or Ms. Tarbuck owned the chattels prior to their sale. It is at least as likely that ~~all~~ the chattels were owned by the Debtor ~~or~~ a third party who has abandoned the assets. ~~Accordingly~~ ^{In these} circumstances, I find that the estate of the Debtor had ownership of the chattels prior to the auction and is therefore entitled to the proceeds of sale thereof.

Unofficial Transcription of Reasons

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Adshade et al.

AND

TDCI Bracebridge Inc.

Transcribed from the handwritten endorsement of Wilton-Siegel J. on March 16, 2017

On the discharge motion, the Receiver seeks the direction of the Court on a number of issues pertaining to the distribution of the remaining auction proceeds. Several issues appear to be factual issues that the parties must address between themselves. It is possible that they will resolve them without further order of the Court.

The principal issue is ownership of certain assets claimed by the Trustee in Bankruptcy of Clive Figueira and Carol Tarback. It is understood that these assets comprise broadly tools and equipment and furniture and other household items.

The Receiver states in the Third Report at paragraph 27 that it has not received any information that would validate the claims of Mr. Figueira and/or Ms. Tarback to these assets prior to their sale at auction. Accordingly it concludes that ownership of the proceeds of sale must be with the Debtor. It is supported by the applicants.

The Trustee has provided an affidavit of Mr. Figueira in which he claims that the assets were previously owned by Woods Property Development Inc. ("Woods") in the case of the tools and equipment and transported to the Debtor. He also says that the furniture and household items were owned by he and Ms. Tarback and used at their two homes or a Muskoka cottage and moved to the Debtor's property after these properties were sold.

There is a serious issue of Mr. Figueira's credibility, as evidenced by other things, in the Reasons of Patillo J. dated February 27, 2015. There is also no documentary or other evidence of Mr. Figueira or Ms. Tarback with respect to any of the property of which they now say they retained ownership.

With respect to the tools, it is not clear whether Mr. Figueira, as opposed to Woods, owned the tools and equipment. Further, there is every possibility that he may have contributed the assets to the Debtor. The applicants say that, in fact, the tools and equipment were purchased from Dura Manufacturing in 2009 and there is some support in the evidence for this as well.

With respect to the furniture and household effects, the strongest argument pertains to the household furniture that was apparently in lockers allocated to Mr. Figueira and Ms. Tarback although there is no evidence of any rental agreement pursuant to which they were paying rent on those lockers.

Apart from the fact that they were in lockers allocated to Mr. Figueira and Ms. Tarback, these chattels could have belonged to anybody. The fact that they were in lockers

allocated to Mr Figueira and Ms. Tarback is not enough in my view to tip the balance of probabilities of ownership in their favour. Given Mr. Figueira's credibility issues, it is necessary for them to demonstrate some evidence of ownership with respect to at least some of the items in question. They have failed to provide any such evidence. To the contrary, it appears that the Debtor purchased office furniture as well as a substantial amount of other furniture including personal furniture allocated to Mr. Figueira; see the email of May 25, 2015 of the Receiver upon which the Trustee relies. In that email, Mr. Figueira was advised to contact Empire Auctions to obtain a listing of the items purchased by the Debtor to support his claim for the remaining furniture. He has failed to do so.

In addition there is no evidence of the transportation of any of these items to the Debtor's property. In particular, although Mr. Figueira says that Murray Plouffe assisted him in transporting the tools and equipment to the Debtor's property, there is no evidence from Mr. Plouffe to rebut the applicant's position that this did not happen.

In short, the onus of establishing ownership of the chattels prior to their sale at the auction rests with the Trustee. It is insufficient to argue as the Trustee does that nobody can produce any better evidence. The Trustee cannot establish, on a balance of probabilities, that Mr. Figueira or Ms. Tarback owned the chattels prior to their sale. It is at least as likely that the chattels were owned by the Debtor or a third party who has abandoned the assets. In these circumstances, I find that the estate of the Debtor had ownership of the chattels prior to the auction and is therefore entitled to the proceeds of sale thereof.

Wilton-Siegel J.