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DEBT LITIGATION Michael G. Tweedie Release No. 5, June 2022
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Publisher's Special Release Note 2021

The pages in this work were reissued in June 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Debt Litigation is a comprehensive work dealing with default and summary judgments relating to debtor-creditor law and practice. It includes annotations and commentary on topics such as the fiduciary duties of solicitors, including negligence and conflict of interest, spoliation of evidence and e-discovery and conventional mortgages and guarantees.

What's New in This Update

The author has added new commentary and case law regarding enforcement, fraudulent conveyances and bankruptcy. Notable cases are summarized below.

Highlights

- Where three properties are subject to the same execution, they may be ordered to be sold in a certain sequence to avoid unnecessary eviction of the defendants from their personal (principal) residence, if sale of the first two properties produced proceeds sufficient to satisfy the judgment debt: *Zemka Dobrochna Litwin c. Hyde* (2021), 334 A.C.W.S. (3d) 844, 2021 QCCA 827 (C.A. Que.). [Enforcement 10:40]
- The necessary fraudulent intent is to put one's assets out of the reach of one's creditors and no further dishonest or morally blameworthy intent is required and it is the effect of a transfer which is a key factor when determining fraudulent intention: *Kootenay Savings Credit Union v. Brar*, 2021 BCSC 2027 (B.C. S.C.). [Fraudulent Conveyances 11:5]
- The *Anton Piller* order is obtained *ex parte*; accordingly full and fair disclosure is of critical importance and excessive speculation will justify setting the order aside: *Secure Resources Inc v. Wilson*, 2021 ABQB 744 (Alta. Q.B.), additional reasons 2022 ABQB 22 (Alta. Q.B.). [Fraudulent Conveyances 11:22]
- The equivalent of dissolution of the freezing order arises when the frozen defendant enters bankruptcy and those assets which would be available to satisfy a judgment are vested in the licensed insolvency trustee by operation of legislation. At this point, the plaintiff who has obtained the freezing order may not pursue the bankrupt for contempt of the order and the order itself may no longer be enforced: *Pharmagona Ltd. v. Taheri & Anor*, [2021] EWHC 2537 (Ch). [Fraudulent Conveyances 11:32]
- A freezing order made where the court lacks jurisdiction will, naturally, be discharged. Should a private international law analysis not confirm that the court has properly assumed jurisdiction over the claim (despite contractual stipulation as

to the governing law) and that another jurisdiction is a more convenient forum, the freezing injunction will be dissolved: *VTB Capital plc v. Nutritek International Corp.*, [2013] UKSC 5 (U.K. S.C.). [Fraudulent Conveyances 11:32]

- When a court makes a finding of contempt, the first step toward compelling compliance with the *Mareva* order commences; this submission is referred to as the purging of the contempt, which may be done by simply paying the debt: *Lonneberg v. Onca*, 2021 ONSC 6196 (Ont. S.C.J.). [Fraudulent Conveyances 11:34]
- A plaintiff may be awarded a safeguard order to prevent a defendant from demolishing a structure or building on a particular site (“*une station-service*”) where fraud is alleged in depriving the plaintiff of his rights, as the plaintiff would otherwise be irremediably prejudiced should he later prevail on merits of the action but the property had been demolished or constructed: *Vaudreuil c. 9266-2220 Québec inc.* (2021), 334 A.C.W.S. (3d) 392, 2021 QCCS 1333 (C.S. Que.). [Fraudulent Conveyances 11:37]

ProView Developments

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