Court File No. CV-25-00736577-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

MIZUE FUKIAGE, AKIKO KOBAYASHI, YOSHIKI FUKIAGE, KOBAYASHI KYOHODO CO., LTD., TORU FUKIAGE and KWANG-CHENG (TONY) WEI, IN HIS PERSONAL CAPACITY AS A TAIWANESE INVESTOR AND IN HIS CAPACITY AS AGENT FOR THE OTHER TAIWANESE INVESTORS

Applicants

\- and -

CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC., FORT ERIE HILLS CAPITAL MANAGEMENT INC., HALTON PARK INC., NIAGARA FALLS PARK INC., TSI-HP INTERNATIONAL CANADA INC., and TSI INTERNATIONAL- GRANDTAG A2A NIAGARA IV INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED AND RULES 14.05(2) AND (3) OF THE *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, REG. 194, AS AMENDED

BRIEF OF AUTHORITIES

Date: June 5, 2026

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TO: SERVICE LIST

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INDEX

TAB 1

Boudreau v. Marler, [2002] O.J. No. 5699

Ontario Judgments

Ontario Superior Court of Justice

Nadeau J.

Heard: January 21, 2002.

Judgment: March 18, 2002.

Docket: 11316/01

[2002] O.J. No. 5699 | *48 C.B.R. (4th) 178* | *18 R.P.R. (4th) 165* | *2002 CarswellOnt 5844*

Between Andre Boudreau, plaintiff, and Jonathan Marler, Murrayfield Corp. and John Wiebe, defendants

(31 paras.)

Case Summary

Civil evidence — Witnesses — Credibility — Civil procedure — Judgments and orders — Enforcement — Estoppel — Estoppel by record (res judicata) — Issue estoppel — Creditors & debtors law — Seizure or attachment of property — Legislation — Insolvency law — Legislation — Fraudulent transactions — Tort law — Fraud and misrepresentation — Fraudulent conveyances and preferences.

Application by the plaintiff for a declaration that a transfer of charge between the defendants was void as a fraudulent conveyance and/or an unlawful preference, and for ancillary relief. The plaintiff obtained two judgments against the defendant company. In an attempt to satisfy the judgments, the plaintiff instructed the Sheriff to seize a mortgage owned by the company. The Sheriff was unable to effect seizure, because it discovered that a Transfer of Charge was registered on the previous day from the company, executed by its principal, the defendant Wiebe, to the benefit of its solicitor, the defendant Marler. The defendants argued that the transfer was to secure future legal fees. The registered consideration was the sum of two dollars.
HELD: Application allowed.

The transfer constituted a fraudulent conveyance and an unlawful preference. At the time of the assignment, the company was insolvent. The transfer was voluntary and for inadequate consideration. Marler was not a creditor of the company at the time of the transfer because no legal fees had been assessed at that point. Having regard to the chronology of events, including the circumstances of the assignment of the mortgage to various parties over the years, it was established that Wiebe, and therefore the company, clearly had the intent to defeat, hinder, delay or defraud the plaintiff by the Transfer of Charge to Marler. In addition, Marler participated fully in the plan to defeat the plaintiff. This was evidenced by Marler's billing practices, which included double and triple billing. The submission that the transfer was to secure future legal services was not a legitimate purpose under the circumstances. All three defendants acted in concert, in bad faith, with the intent to prejudice the plaintiff. The issues of res judicata and issue estoppel were not properly pleaded by the defendant. The transfer was declared void and was set aside.

Statutes, Regulations and Rules Cited:

Assignments and Preferences Act, ss. 4, 4(1), 4(2), 5, 5(1).

Fraudulent Conveyances Act, ss. 2, 3, 4.

Counsel

Guy A. Wainwright for plaintiff.

James W. Andrew for defendants.

NADEAU J.

Introduction and Factual Background:

1 On October 7, 1996 Andre Boudreau recovered a judgment against the Defendant Murrayfield Corp. for $29,092.43 plus costs and interest. On September 25, 1997, Boudreau also recovered an order for costs against the same Defendant in the amount of $2,500.00 plus disbursements. In an attempt to satisfy these, Boudreau instructed the Sheriff to seize a mortgage owned by Murrayfield in the district of Cochrane. As the Sheriff attempted to seize the mortgage, it was discovered that a Transfer of Charge had been registered on the previous day from Murrayfield (which had been executed by its principal, the Defendant John Wiebe) to the benefit of the Defendant Jonathan Marler. The Sheriff was therefore unable to seize the mortgage. By this action against all three Defendants, Boudreau seeks a declaration that the Transfer of Charge to Marler is void as either a fraudulent conveyance and/or an unlawful preference. Boudreau also seeks an order setting aside the Transfer of Charge and directing the Registrar for Land Titles at Cochrane to rectify the register accordingly.

2 Much of the factual context is agreed upon as follows (from the submissions of both Counsel). The uncontested facts are that the Plaintiff recovered a judgment against the Defendant Murrayfield Corp. on October 7th, 1996 for approximately $29,000.00, and an additional $2,500.00 on September 25th, 1997. Originally the judgment was against 964433 Ontario Inc. which changed its name to Murrayfield Corp.

3 Murrayfield Corp. owned Charge #427579 registered January 27th, 1993 in which Robert Platt charged real property for a consideration of $80,000.00. Mr.Wiebe advised that actually only $45,000.00 was advanced. The mortgage is in arrears and Murrayfield Corp. had proceedings instituted in an attempt to enforce the mortgage.

4 When Murrayfield Corp. retained the Defendant Marler to act for it, an assignment or transfer of the Charge was given by Murrayfield Corp. to Jonathan Marler dated March 26th, 1999. This document was not registered in the Land Registry office at Cochrane until November 06th, 2000. The consideration for the Transfer of Charge as shown on the documentation was $2.00, but there was a reference to the Transfer of Charge being for the purpose of securing future legal fees and disbursements which would be incurred on behalf of Murrayfield Corp.

5 At the time the assignment of mortgage was given, there was also an agreement made for a $4,000.00 cash retainer which was paid to Marler by Murrayfield Corp.

6 At the time the assignment of mortgage was given, Murrayfield Corp. was insolvent to the extent of having approximately $500,000.00 in debt with the only asset being the mortgage from Platt.

7 In an attempt to collect on the judgment, Boudreau instructed the Sheriff to seize the mortgage and have it sold under a Writ of Seizure and Sale. When the Sheriff attempted to seize the mortgage, he found that the assignment of the transfer of the mortgage had been registered the previous day and, therefore, he was unable to seize the mortgage. Boudreau had attended at the premises and described the mortgaged property as being approximately ten acres with a cottage on it. Accordingly, he was confident that the seizure of the mortgage would be sufficient to satisfy his debt.

8 Marler testified that the reason he requested the assignment of the mortgage was because Murrayfield Corp. "did not have much in the way of liquid assets".

9 With respect to the contested facts, the evidence presented at this trial included the testimony of Andre Boudreau, Jonathan Marler and John Wiebe.

10 Counsel for the parties have each submitted extensive written submissions on the issues of fact and law raised in this matter.

Fraudulent Conveyance:

11 One of the accepted academic works for this subject as submitted by the parties, Creditor-Debtor Law In Canada (2nd edition, C.R.B. Dunlop), discusses the general application of this law as follows:

> The purpose of the Statute of Elizabeth and of the Canadian Acts based on it, as interpreted by the Courts, is to strike down all conveyances of property made with the intention of delaying, hindering or defrauding creditors and others except for conveyances made for good consideration and bona fide to persons not having notice of such fraud. The legislation is couched in very general terms and should be interpreted liberally. Lord Mansfield concluded that the common law had always been strongly against fraud in every shape and that the Statute of Elizabeth "cannot receive too liberal a construction, or be too much extended in suppression of fraud". Relying on this policy, the Courts have interpreted the statute to include any kind of alienation of property made with the requisite intent, the form of the transaction being immaterial... Fraudulent conveyance legislation has been held to invalidate a conveyance of any kind of exigible or attachable property of the debtor, so long as it is of some real value.

12 The operative Ontario legislation for this matter is found at sections 2, 3, and 4 of the Fraudulent Conveyances Act, which is reproduced as follows:

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.
3. Section 2 does not apply to an estate of interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.
4. Section 2 applies to every conveyance executed with the intent set forth in that section despite the fact that it was executed upon a valuable consideration and with the intention, as between the parties to it, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless it is protected under section 3 by reason of good faith and want of notice or knowledge on the part of the purchaser.

13 My review of the statute, and the authorities presented, confirms that this legislation has been worded in an attempt to catch virtually any transaction made with the intent to delay or defeat creditors. I note the very broad definition of "conveyance" in the Ontario statute. In ascertaining whether any transaction is caught by this legislation as fraudulent, its substantial effect must be looked at. All the circumstances at the time the instrument was made must be considered; but not subsequent events, except those which must be taken to have been in contemplation at the time of transferring the property and from which a fraudulent intention at that time may be gathered. In this matter, the absolute insolvency of Murrayfield is not a necessary determination having regard to the fact that this Court has absolutely no difficulty on this evidence in finding that Murrayfield was unable to pay its debts in the ordinary course at the time of the Transfer of Charge.

14 The two questions which however should be determined with regard to intent are whether the conveyance in question was made by the debtor (Murrayfield) with the intent "to defeat, hinder, delay or defraud" the creditors (including Boudreau); and, if there was such intent, whether the party receiving the property participated (in this case Marler). A distinction is made by the authorities in this regard between a conveyance for valuable consideration, and where the conveyance is voluntary in the sense of inadequate or for no valuable consideration.

15 Although the fact that there was good consideration for a conveyance is not necessarily conclusive, as a matter of common sense and of law, this fact would throw a much heavier onus on anyone asserting that the conveyance was made with intent to delay or defraud. Valuable consideration may show that there is purpose in the transaction other than the defeating or delaying of creditors. It is clearly not sufficient to merely show that the result of the conveyance has been to delay or exclude creditors. As well, proof of the transferee's knowledge that the transferor was insolvent is not in itself sufficient cause to set a conveyance aside. Canadian authorities suggest that knowledge on the part of the transferee of the motive or design of the transferor either is not conclusive of bad faith, or will not preclude the transferee from obtaining the benefit of a conveyance. Knowledge or notice is simply not enough, and the authorities suggest that the transferee must be privy to the fraud in the sense that it is a party to carrying out the fraudulent intention and purpose. If on the other hand a debtor conveys property without any valuable consideration or for inadequate consideration, then a fraudulent intent is established as a presumption of law when a necessary effect of the conveyance is to prejudice or delay the creditors of the debtor. However, this presumption is rebuttable and must yield to cogent and affirmative evidence establishing an honest purpose in the making of the conveyance. The existence of indebtedness to the creditor at the time of the conveyance, and the amount of that indebtedness considered with reference to the debtor's means of payment, are material considerations. However, fraudulent intent is not necessarily to be inferred from the insufficiency of assets to pay a debt existing when the voluntary conveyance was made.

16 In considering the evidence as to whether a conveyance has been made with fraudulent intent, the decision will obviously depend upon the facts of each case, but there are certain features of a conveyance which have generally been considered to be so-called "badges of fraud". In this matter, it is submitted by Counsel for the Plaintiff that such badges of fraud exist with this Transfer of Charge. The significance of this submission is described by Professor Dunlop in Creditor-Debtor Law In Canada as follows:

> While the legal or persuasive burden to prove the case remains on the Plaintiff throughout the trial, the Plaintiff may raise an inference of fraud sufficient to shift the evidentiary burden to the Defendant if the Plaintiff can establish that the transaction has characteristics which are typically associated with fraudulent intent. No doubt proof of one or several badges of fraud will not compel a finding for the Plaintiff, but it does raise a prima facie case which it would be prudent for the Defendant to attempt to rebut...
>
> The judges are very careful to avoid the impression that the badges of fraud doctrine can be used mechanically. The Plaintiff is still required to prove fraud on all the facts of the case, and a Court might still dismiss a fraudulent conveyance action because the Plaintiff's evidence is explained away by the surrounding circumstances taken as a whole.

17 In this matter, the Transfer of Charge from Murrayfield to Marler states that the consideration is for $2.00, although there is also a reference to "security for the payment of legal fees and disbursements" to be assessed. The testimony of Marler was that he had also received a $4,000.00 retainer from Murrayfield on or about March 26, 1999, although he could not produce a statement of account for this retainer. It is clear on this evidence that there were no legal fees and disbursements by Marler to be assessed at that time. This Court therefore concludes that Jonathan Marler was not "a creditor" of Murrayfield at the time of apparent execution on March 26, 1999 of the Transfer of Charge to Marler.

18 As will be further discussed in greater detail, the unsatisfactory testimony of both Marler and Wiebe with respect to subsequent billings by Marler for questionable legal services apparently rendered, which billings were the subject of a very calculated and suspect Consent to the Assessment of Bills of Costs by Wiebe (as principal of Murrayfield), certainly cannot make this conveyance one of adequate valuable consideration. In these circumstances on the evidence presented, this Court finds that the Transfer of Charge from Murrayfield to Marler is a voluntary conveyance for inadequate or no valuable consideration.

Unlawful Preference:

19 The applicable Ontario legislation is the Assignments and Preferences Act and in this matter the operative sections are 4 and 5, which is reproduced as follows:

> 4(l) Subject to Section 5, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person when insolvent or unable to pay the person) debts in full or when the person knows that he, she or it is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice creditors, or any one or more of them, is void as against the creditor or creditors injured, delayed or prejudiced.
>
> (2) Subject to section 5, every such gift, conveyance, assignment or transfer, delivery over or payment made by a person being at the time in insolvent circumstances, or unable to pay his, her or its' debts in full, or knowing himself, herself or itself to be on the eve of insolvency, to or for a creditor with the intent to give such creditor an unjust preference over other creditors or over any one or more of them is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

> ...
>
> 5(1) Nothing in section 44 applies to an assignment made to the sheriff for the area in which the debtor resides or carries on business or, with the consent of a majority of the creditors having claims of $100 and upwards computed according to section 24, to another assignee resident in Ontario, for the purpose of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts, nor to any sale or payment made in good faith in the ordinary course of trade or calling to an innocent purchaser or person, nor to any payment of money to a creditor, nor to any conveyance, assignment, transfer or delivery over of any goods or property of any kind, that is made in good faith in consideration of a present actual payment in money, or by way of security for a present actual advance of money, or that is made in consideration of a present actual sale or delivery of goods or other property where the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

20 Firstly, consistent with the submissions made by both Counsel and my finding in this regard as previously indicated, the fact that Jonathan Marler was not "a creditor" of Murrayfield at the time of the Transfer of Charge eliminates the applicability of section 4(2) of the Assignments and Preferences Act. However, this Court must also consider the applicability of section 4(l), and section 5 in particular.

21 This legislation only operates to invalidate transactions made when the person making the conveyance is in insolvent circumstances, is unable to pay its debts in full, or knows that it is on the eve of insolvency. As indicated previously, there is no difficulty in this matter making such a finding regarding Murrayfield.

22 This Court must also determine from the particular facts of this case whether Murrayfield made the conveyance with the intent to defeat, hinder, delay or prejudice Boudreau. If otherwise there is good consideration and bona fides in the Murrayfield conveyance to Marler, the mere fact that the execution of the conveyance may have the effect of defeating Boudreau is not enough. If Marler has no fraudulent intent, he cannot be affected by the fact that there was such an intent, unknown to him, in the mind of Murrayfield. Furthermore, a transaction entered into by Murrayfield in insolvent circumstances is not impeachable as being given with intent to give a preference if Marler had no knowledge of the insolvency and was not a party to such intent. Knowledge by Marler of the insolvency of Murrayfield is not sufficient in itself to cause the Transfer of Charge to be set aside as an unlawful preference. There is nothing improper in Marler obtaining security to protect himself in the event of a possible insolvency. It is quite another thing however for Marler, knowing that Murrayfield has many unpaid creditors, to remain silent or make no reasonable inquiry and then take the only remaining security from Murrayfield; particularly when the effect is to leave creditors such as Boudreau with no recourse.

23 This Court is clearly not at liberty to set aside this Transfer of Charge upon the mere suspicion that it is an unlawful preference. There must be either direct affirmative evidence of fraudulent intent or controlling circumstantial evidence leading to that conclusion. However as exists here, where the natural consequence of the conveyance is to delay, hinider or defraud the creditor (Boudreau) and where the circumstances of the conveyance demonstrate badges of fraud, the question of upholding this conveyance made by the Defendants as legitimate becomes extremely strained.

24 In reviewing all of the evidence in this trial, it is clear that the provisions of Section 4(1) of the Assignments and Preferences Act are satisfied. In determining whether the saving section 5(1) rescues the Defendants in these circumstances, this Court must consider whether the Transfer of Charge was made in good faith in consideration "of a present actual payment in money, or by way of security for present actual advance of money".

Conclusions and Summary:

25 At the outset, I must address the argument with respect to issue estoppel. Immediately prior to this trial commencing, Counsel for the Defendants presented a motion requesting the amendment of the Statement of Defence to include pleas of res judicata and issue estoppel. Counsel for the Plaintiff requested an adjournment. Without a determination by this Court on any amendment of the pleadings, Counsel for the Defendants withdrew their motion citing the reason that they did not want an adjournment of the trial. The Defendants now submit that endorsements made in another matter by The Honourable Mr. Justice Farley are matters of public record and may be of value to this Court at least for the purpose of explaining the submissions on the demeanor of a witness in this trial. Counsel for the Defendants fairly indicates however that the findings of Justice Farley "may not be relevant to the determination of the case at bar", but that this Court should review and consider these endorsements in that light. Upon my review of the endorsements as requested, I acknowledge the argument of Counsel for the Plaintiff that these issues of res judicata and issue estoppel have not been properly pleaded as required. In any event, factual findings made by Justice Farley are not properly evidence relevant to these proceedings. It is clear from reviewing the endorsements that the judicial decisions therein do not involve a determination of the same questions as required by this matter, nor are all the parties strictly speaking the same parties as here, nor can it be said that the findings made by Justice Farley are conclusive of the issues which this Court must decide.

26 In addition to the submission that the Plaintiff has not satisfied the onus and burden of proof placed upon it in this action, the Defendants argue that Boudreau has not proved that both Murrayfield (through its principal Wiebe) and Marler intended to defraud the Plaintiff. In this determination, I must comment on the testimony of John Wiebe and Jonathan Marler. In assessing the credibility of every witness in this trial, I have considered the reasonableness of their evidence, contradictions in the evidence, whether or not their character has been impugned, the personality and demeanor of the witness, corroboration with other testimony or with the Exhibits filed, any self interest their powers of ob-servation and recollection as well as their capacity of expression. John Wiebe, as principal for Murrayfield Corp., testified as to the circumstances of insolvency of that corporation as well as ths knowledge of the judgment and order obtained by Boudreau. It was clear from his evidence that there was substantial resentment toward Boudreau for his efforts to enforce payment of the judgment and order. His frustration was central in replacing his former solicitor with Jonathan Marler. Mr. Wiebe agreed to the retainer agreement in addition to a $4,000.00 cash retainer for Marler, and he also executed the Transfer of Charge and the Consent to the Assessment of the Bills of Costs dated January 22, 2001 behalf of Murrayfield. Having regard to the chronology of events in this matter including the circumstances of the assignment of this mortgage to various parties over the years, this Court finds that John Wiebe (and therefore Murrayfield) clearly had the intent to defeat, hinder, delay or defraud (or prejudice) Andre Boudreau by the Transfer of Charge to Marler.

27 With respect to the credibility of Jonathan Marler, especially when I consider his intelligence and obvious experience in dealing with matters of this nature, I am not at all satisfied with the credibility of his testimony presented to this Court. In reviewing the internal and external consistency of his testimony, his rationalization of the outrageous billing practices, his obvious self interest by many of his statements, as well as his controlling and argumentative nature demonstrated to this Court, I find that Jonathan Marler was a direct participation and a party to the intent of John Wiebe to defeat and prejudice the judgment and order of Andre Boudreau. In fact, this Court is convinced that Jonathan Marler was a central figure in the very calculated plan to defeat the enforcement by

Boudreau. For example, the evidence of double and triple billing by Marler and his obtaining the Consent of Wiebe and Murrayfield to the Assessment of Bill of Costs demonstrate his complicity. Simply put, the position presented by Jonathan Marler is subject to very serious problems of credibility Court. The totality of this evidence leads this Court to the conclusion that Jonathan Marler participated fully in the plan to defeat Boudreau.

28 The Defendants further submit that the distinction between payments for past services and a retainer for future legal services is particularly relevant to the issues in this matter. In essence, the argument is that a man (Murrayfield) should have legal advice and assistance, and if a solicitor (Marler) must refund the money paid for such a purpose then the man would be left defenseless since no solicitor would act for him. However, on the basis of the evidence presented and considered in this trial, it is clear to this Court that the Transfer of Charge given to secure future legal services did not have a legitimate purpose in these circumstances. This Court finds that all of the Defendants were depicting the only asset of Murrayfield to pursue legal proceedings without reasonable basis nor benefit to Murrayfield in its circumstances. This Court agrees that the Transfer of Charge is surrounded by "badges of fraud". There was an element of secrecy to this conveyance, compounded by the late registration of the Instrument one day prior to attempted seizure of the mortgage by Boudreau through the Sheriff. The fact that John Wiebe was not advised by Marler to obtain independent legal advice adds a further element to this secrecy. The Court is also concerned that the mortgage was the only asset of the corporation in insolvent circumstances. Add to this that the judgement and order in favor of Boudreau had existed for some time prior to the conveyance, and the inadequate valuable consideration for the Transfer of Charge. All these factors assist the Court in concluding on all of the evidence that the three Defendants were acting in concert, and not in good faith, with the intent and effect to prejudice Boudreau.

29 For the purposes of clarity, this Court summarizes its findings as follows:

a) Was the Transfer of Charge made by Murrayfield "with intent to defeat, hinder, delay or defraud (or prejudice)" Boudreau? Yes.

b) Was the Transfer of Charge to Marler made "upon good consideration and in good faith"? No.

c) Was the Transfer of Charge by Murrayfield to Marler made "in good faith in consideration of a present actual payment in money, or by way of security for a present actual advance of money"? No.

d) Was Marler a party and a participant to the "intent to defeat, hinder, delay or defraud (or prejudice)" Boudreau? Yes.

Order:

30 For the above reasons, this Court declares that the Transfer of Charge #427579 by Murrayfield Corp. to Jonathan Marler (registered as Instrument #0506506) constitutes a fraudulent conveyance within the meaning of the Fraudulent Conveyances Act. This Court further declares that the same Transfer of Charge by Murrayfield Corp. to Johnathan Marler also constitutes an unlawful preference within the meaning of the Assignments and Preferences Act. Therefore, this Court orders that Instrument #0506506 dated March 26, 1999 and registered November 6, 2000 is void; and further that the said Transfer of Charge is set aside. Furthermore, this Court orders that the Registrar for Land Titles at Cochrane is hereby directed to rectify the register for Parcels 11766, 17673 and 17674 South East Cochrane accordingly,

31 With respect to the issue of costs of this trial, Counsel for the parties are requested to provide any written submissions to this Court on or before March 2002.

End of Document

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- and -

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ONTARIO
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(COMMERCIAL LIST)

Proceedings commenced at Toronto

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