In the Court of Appeal of Alberta

Citation: Wiebe v Weinrich Contracting Ltd, 2020 ABCA 396

Date: 20201109
Docket: 1903-0139-AC
Registry: Edmonton

Between:

Roy Wiebe and Parkland Aerospace Corp

Appellants
(Defendants)

- and -

Weinrich Contracting Ltd

Respondent
(Plaintiff)

- and -

Parkland Airport Development Corporation, Deloitte Restructuring Inc, and 2155734 Alberta Ltd

Not Parties to the Appeal

The Court:

The Honourable Mr. Justice Peter Martin
The Honourable Madam Justice Ritu Khullar
The Honourable Madam Justice Dawn Pentelechuk

Memorandum of Judgment

Appeal from the Order by
The Honourable Mr. Justice S.D. Hillier
Dated the 17th day of April, 2019
Filed the 14th day of June, 2019

(Docket: 1603-20319; 1603-12839)

Memorandum of Judgment

The Court:

[1] This appeal explores the tension between the principles of procedural fairness and the broad jurisdiction afforded a supervising judge in a reorganization under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (*CCAA*).

[2] The appellants challenge provisions of a vesting and sale order granted by the supervising judge that arguably result in the retroactive expansion of either (or both) of (1) an order staying Weinrich Contracting Ltd's action against the *CCAA* debtor Parkland Airport Development Corp. and (2) an order tolling the limitation periods applicable to the commencement of certain creditors' actions against Parkland Airport Development Corp.

[3] For the reasons that follow, we find that the impugned provisions were granted in circumstances that denied procedural fairness to the appellants and appellate intervention is warranted.

Background

[4] Weinrich Contracting Ltd (Weinrich) was retained to construct a runway at the Parkland Airport. This appeal concerns Weinrich's action, commenced in July 2014, in relation to that contract. The action named Parkland Airport Development Corp (Parkland Airport), CPL6 Holdings Ltd, the appellant Roy Wiebe (Wiebe) and two other directors of Parkland Airport. The action alleged negligent and fraudulent misrepresentations leading up to the contract.

[5] Wiebe is the sole director of the appellant Parkland Aerospace Corp (Parkland Aerospace) which holds 50% of the voting shares in Parkland Airport.

[6] In March 2015, Wiebe and Parkland Aerospace filed a statement of claim against Weinrich, directors and employees of Weinrich and other directors of Parkland Airport alleging misconduct in the prosecution of Weinrich's action, unauthorized settlement discussions, and a conspiracy preventing Wiebe from engaging a third-party construction company to fund and complete the runway. The action also challenged an equitable mortgage granted to Weinrich and the caveat it filed against land owned by Parkland Airport.

[7] In April 2015, Weinrich filed an amended statement of claim to name additional defendants, including Parkland Aerospace. The amended claim alleged two undervalued transfers of Parkland Airport lands in July 2014, allegedly orchestrated by Parkland Airport directors: one to Roseiko Enterprises Inc; and the second, to 1748632 Alberta Ltd (174). Wiebe is a director of 174 and a 40 % shareholder in that company.

[8] In November 2016, Parkland Airport successfully applied for protection under the *CCAA*. Deloitte Restructuring Inc was appointed as Monitor.

[9] The Initial Order granted November 29, 2016 by the first chambers judge contained a template provision prohibiting proceedings against Parkland Airport or the Monitor, which for ease of reference, will be called "the Initial Stay":

> 11 Until and including December 28, 2016, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.
>
> 12 During the Stay Period, all rights and remedies of any individual, firm, corporation . . . are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, . . .
>
> 13 Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

[10] The Initial Order defines "Business" as carrying on business in a manner consistent with preserving its business and "Property" to mean current and future assets, undertakings, and properties of every nature and kind whatsoever (including proceeds).

[11] It is not disputed that the Initial Stay suspended Weinrich's action against Parkland Airport although there is disagreement about whether it stayed Weinrich's action against Wiebe and Parkland Aerospace. The Initial Stay was extended by a series of orders to April 30, 2019.

[12] The propriety of numerous transfers, encumbrances, and liens involving the assets of Parkland Airport, effected before the *CCAA* proceedings, became an issue. At some point, the Monitor recognized that there was no realistic hope that Parkland Airport could successfully restructure or that a claims process would be implemented. With the apparent approval of the creditors, the Monitor refrained from taking steps to sort out the legitimacy of various encumbrances affecting the assets of Parkland Airport, or the priority of various creditors, and instead moved to wrap up the *CCAA* proceedings.

[13] On May 2, 2017, the supervising judge granted an order (the "tolling order"), suspending and tolling limitation periods to commence actions in relation to "Questioned Transactions", defined in the order's recitals as follows:

> …AND UPON noting that prior to the commencement of these proceedings, real property of the Debtor was transferred, charged or otherwise dealt with in circumstances which may give rise to transactions that could be challenged by the Monitor or creditors of the Debtor (the "Questioned Transactions"),which transactions and lands are more particularly set forth in the schedules attached hereto as Schedules "A" and "B"; AND UPON noting that the legitimacy of the Questioned Transactions has not yet been determined; AND UPON noting that at this stage in these proceedings it is not possible to determine whether it is economically beneficial to proceed to investigate and challenge any of the Questioned Transactions; AND UPON noting that the Monitor's authority to challenge any of the Questioned Transactions is pursuant to s 36.1 of the *Companies' Creditors Arrangement Act* ("CCAA") and the provisions of the *Bankruptcy and Insolvency Act* ("BIA") referred to therein and that creditors of the Debtor may have additional ability to challenge the Questioned Transactions under provincial or other legislation; AND UPON noting that limitation periods for commencing actions to challenge the Questioned Transactions continue to operate; AND UPON noting that it would be desirable to suspend the operation of all limitation periods until the economic benefit of challenging any of the Questioned Transactions can be determined; AND UPON hearing counsel for the Monitor, counsel for the Debtor, and counsel for certain creditors of the Debtor; AND UPON reading the Affidavit of Service of notice of this Application and the Monitor's Third and Fourth Reports; IT IS HEREBY ORDERED AND ADJUDGED THAT:
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> 2 All limitation periods applicable against the Monitor and the creditors of the Debtor to commence actions pursuant to the provisions of the CCAA, BIA or any provincial or other statutes to challenge any of the Questioned Transactions be and is hereby suspended and tolled until November 1, 2017, except as extended by further Order of this Honourable Court.
>
> 3 The suspension and tolling of limitation periods as provided for in this Order is without prejudice to the rights of any party claiming an interest in any of the lands which are subject to this Order [emphasis added].

[14] The tolling order was extended by later orders to July 14, 2019.

[15] Whether the tolling order preserves Weinrich's Amended Statement of Claim is in dispute. However, it is arguable that at least some of Weinrich's claims fall within the scope of "Questioned Transactions". Schedule "A" includes the transfer of Lot 33 to 1791961 Alberta Ltd and the

transfer of Lot 69 to Roseiko Enterprises Inc. Schedule "B" includes an agreement charging lands filed by Weinrich affecting most or all of the lots within Plan 142 1472 and Plan 142 2007.

[16] On February 26, 2018, the supervising judge issued an order lifting the Initial Stay against Parkland Airport to allow a foreclosure action to proceed. The Initial Stay was otherwise extended to October 19, 2018. A redemption order declared valid the first mortgage registered against Parkland Airport lands. This mortgage was later assumed by 2155734 Alberta Ltd (215), the entity that ultimately purchased the assets of Parkland Airport.

[17] In February and March of 2019, Wiebe and Parkland Aerospace discontinued their action against all defendants (including Weinrich) in response to a threat of r 4.33 applications to strike the claim for long delay. Their statement of claim, the discontinuances of the action and the procedure card from the Weinrich action are the subject of an application to admit new evidence on appeal.

Application for Vesting and Sale Order

[18] On April 17, 2019, the supervising judge heard an application for a vesting and sale order authorizing the sale of Parkland Airport's lands and assets to the first mortgagee 215, which involved assumption of the second mortgage in favour of Parkland Aerospace. Weinrich asked for an adjournment to allow it to put forth an alternate offer to purchase. Both the Initial Stay and the tolling order were extended to July 14, 2019.

[19] The application was adjourned and heard by the supervising judge on May 8, 2019. In the interim, a second offer to purchase was made by Alsaloussi Holdings Ltd (a company apparently unrelated to Weinrich). There is limited information regarding Alsaloussi Holdings or the circumstances surrounding its offer, which involved assumption of the equitable mortgages granted in favor of Weinrich. Alsaloussi Holdings attended neither the April 17th nor the May 8th applications. Both offers had the effect of paying charges in priority to credit bid amounts and then barring all subordinate creditors from recovering against Parkland Airport. Weinrich opposed the sale to 215, arguing that the offer from Alsaloussi Holdings provided for a large cash payment that could be held to allow the various challenged transactions and creditor priorities to be determined. Acceptance of 215's offer would eliminate Weinrich's equitable mortgages and charges it had filed against Parkland Airport lands.

[20] In response to Weinrich's objection, counsel for 215 suggested that keeping the *CCAA* proceedings going for the purpose of dealing with Weinrich's claims would not benefit anyone as "the cost detriment is not worth the end result". 215 also suggested that Weinrich would not be prejudiced, because its claims against various third parties would not be eliminated by any vesting order granted and Weinrich could continue its lawsuit outside the auspices of the *CCAA*.

[21] The supervising judge found that 215's offer was in the best interest of the parties overall and consistent with the objective of winding up the *CCAA* process. In doing so, he noted that 215 had been paying operational shortfall costs and municipal taxes. The sale to 215 has since closed.

[22] The vesting and sale order includes the following paragraphs preserving the claims of creditors against parties other than Parkland Airport:

> 16. Notwithstanding the terms of this Order respecting the free and clear transfer and vesting of interest in the Purchased Assets free and clear of Claims, all claims of creditors against [Parkland Airport] or claims against others are specifically preserved and nothing herein contained shall be considered prejudicial to the interests of those creditors or those claims or as affecting or prejudicing any claims affecting any creditors ability to claim priority to payment against any other creditor.
>
> 17. No legal claims that have been postponed or are reasonably affected by these CCAA proceedings shall be detrimentally affected by the failure to take timely steps in any proceedings unless a Court of competent jurisdiction determines that the alleged prejudice was both foreseeable and avoidable having regard to all of the circumstances [emphasis added].

[23] Wiebe and Parkland Aerospace seek to have these paragraphs struck and were granted permission to appeal whether it was a reviewable error for the supervising judge to include these paragraphs in the order: ***Wiebe v Weinrich Contracting Ltd***, 2019 ABCA 323.

[24] Wiebe and Parkland Aerospace argue that the supervising judge (1) exceeded his jurisdiction by retroactively expanding the scope of the Initial Stay and/or the tolling order and (2) decided the impugned parts of the order on his own motion, without reasonable notice to affected parties. They submit that Weinrich's action against them would have been vulnerable to dismissal for long delay under r 4.33 but that paragraphs 16 and 17 of the vesting and stay order now thwart any application under that rule.

[25] In response, Weinrich suggests the supervising judge merely clarified the existing stay and tolling order, but in any event, had jurisdiction to make the order under the *CCAA*, the court's inherent jurisdiction or the *Rules of Court*.

Analysis

1. Authority to grant stays under the *CCAA*

[26] The paramount purpose of the *CCAA* "is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets": ***Century Services v Canada (Attorney General)***, 2010 SCC 60, [2010] 3 SCR 379 at para 15

[***Century Services***]. Farley J in ***Lehndorff General Partner Ltd, Re***, 17 CBR (3d) 24, 1993 CarswellOnt 183 at para 5 (Ont Gen Div [Commercial List]), expressed a similar view:

> It seems to me that the purpose of the statute is to enable insolvent companies to carry on business in the ordinary course or otherwise deal with their assets so as to enable plan of compromise or arrangement to be prepared, filed and considered by their creditors and the court. In the interim, a judge has great discretion under the CCAA to make order so as to effectively maintain the status quo in respect of an insolvent company while it attempts to gain the approval of its creditors for the proposed compromise or arrangement which will be to the benefit of both the company and its creditors.

[27] In furtherance of these remedial objectives, the *CCAA* provides "broad and flexible authority" permitting a court to make a wide range of orders necessary to support a company's reorganization. All insolvency proceedings in Canada are based on the single proceeding model, described by Professor Wood in *Bankruptcy and Insolvency Law*, 2nd ed (Toronto: Irwin Law, 2009):

> They all provide a collective proceeding that supersedes the usual civil process available to creditors to enforce their claims. The creditors' remedies are collectivized in order to prevent the free-for-all that would otherwise prevail if creditors were permitted to exercise their remedies. In the absence of a collective process, each creditor is armed with the knowledge that if they do not strike hard and swift to seize the debtor's assets, they will be beat out by other creditors. [pp. 2-3]

[28] To achieve this, the *CCAA* expressly provided, as at the relevant time, that a court may issue and extend a stay of proceedings against the debtor company while a compromise is sought:

> **11.02(1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,
>
> > (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
> >
> > (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[29] Stays of proceedings against the debtor company are common and are included in the initial commercial template order in *CCAA* proceedings in Alberta.[1]

[30] The *CCAA* has been described as "skeletal in nature"; that is, legislation not "contain[ing] a comprehensive code that lays out all that is permitted or barred": ***Metcalfe & Mansfield Alternative Investments II Corp (Re)***, 2008 ONCA 587, 92 OR (3d) 513, at para 44, *per* Blair JA). Thus, decisions of the court are frequently based on discretionary grants of jurisdiction grounded in the broad language of s 11 of the *CCAA*:

> Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances [emphasis added].

[31] This broad and flexible authority means a high degree of deference is afforded to a supervising judge making a discretionary decision in the *CCAA* context. An appellate court may intervene if there was an error in principle or the discretion was exercised unreasonably: ***9354-9186 Québec inc v Callidus Capital Corp***, 2020 SCC 10 at para 53 [***Callidus***]. It may also intervene if there was a breach of procedural fairness, if the breach had a negative impact on affected parties' rights: ***Sun Indalex Finance, LLC v United Steelworkers***, 2013 SCC 6, [2013] 1 SCR 271 at paras 73-74 (*per* Deschamps J) and paras 275-276 (*per* LeBel J, dissenting, but not on whether the duty of procedural fairness applies to *CCAA* proceedings).

[32] While the *CCAA* provides no express authority to grant a stay of proceedings against third parties other than the debtor company, such orders are quite common. Orders have also been granted *releasing* claims against third parties as part of approving a plan of arrangement. In short, "[c]ases support the view that third-party rights may be affected by a stay order": ***Luscar Ltd v Smoky River Coal Limited***, 1999 ABCA 179, 237 AR 326 at para 60. If it is just and convenient

[1] Available here: https://albertacourts.ca/qb/areas-of-law/commercial/templates-and-forms. See appellants' factum at paras 62, 65.

to do so, the court has jurisdiction to stay proceedings against non-corporate third parties: ***Re Calpine Canada Energy Ltd (2006)***, 2006 ABQB 153, 19 CBR (5^{th}) 187.

[33] It much less clear whether s 11 of the *CCAA*, or any other enactments, confer authority to grant stays that have retroactive effect – i.e., to grant orders which treat an action that was not stayed before the court's order as having been stayed at some time before the court's order.

2. Issues on appeal and problems with the record

[34] Weinrich argues that the Initial Stay applied to stay its action against Wiebe and Parkland Aerospace, as well as Parkland Airport. In its view, the whole action was stayed.

[35] It is not clear whether the Initial Stay is as broad as Weinrich suggests; indeed, we cannot discern from the limited record before us whether the Weinrich action was contemplated at the initial hearing in November 2016. While stays of proceedings against parties other than the debtor company are quite common, there are concerns about the possible unintended consequences if the template wording is interpreted so broadly as to automatically stay proceedings against the debtor company and third parties. Nor did the parties here conduct themselves with this understanding. The various actors in these proceedings differentiated between the Initial Stay for the benefit of Parkland Airport and the Monitor, and the May 2017 tolling order relating to questioned transactions. Each of these provisions was expressly extended multiple times in the course of the *CCAA* proceedings.

[36] Similarly, it is unclear whether the May 2, 2017 tolling order is broad enough to capture Weinrich's actions against Wiebe and Parkland Aerospace. The breadth of the order, and the extent to which it captured Weinrich's action, is open to interpretation. The parties to this appeal could not confirm whether or not they attended court when the tolling order was granted. On its face, the order suggests they did not.

[37] Whether the impugned provisions granted in April 2019 retroactively expanded the Initial Stay or the tolling order to preserve the entirety of Weinrich's action, or whether the supervising judge merely *clarified* the Initial Stay or the tolling order is the central issue; one that potentially affects the substantive rights of the appellants.

[38] It is certainly arguable that the April 2019 order had the effect of retroactively expanding the scope of the Initial Stay or the tolling order resulting in the preservation of claims otherwise vulnerable to striking for long delay. But this question cannot be answered based on the limited record before us.

[39] The Monitor declined to participate in this appeal; we have neither the benefit of his submissions nor the Monitor's report filed in conjunction with the May 2017 applications. At the application below, there was relatively little oral argument about the preservation of Weinrich's claims against Wiebe and Parkland Aerospace and no written argument. Wiebe and Parkland

Aerospace argued that the Initial Stay and the tolling order only applied to actions against the debtor, Parkland Airport, and not to them, because those orders do not specifically say that they apply to actions against third parties. However, they made no arguments about the supervising judge's authority to grant a stay with retroactive effect, nor the considerations that should guide the exercise if that authority exists. The Monitor offered no insight on the proper interpretation or scope of the Initial Stay or the tolling order.

[40] Further, the supervising judge made comments that appear to be incompatible as to whether his order was a clarification of the effect of the tolling order, or a new order with retroactive effect (compare transcript, p 31/lines 35-38 with transcript p 33/lines 1-31). That was quite understandable. The issue was sprung on him at the May 8, 2019 hearing without warning and with no written material or citation of relevant law. The transcript of the proceedings indicates that the tolling order was not placed before him and there is no indication that he recalled the particulars of that order.

[41] Given the record, it is impossible to discern whether the supervising judge intended to merely clarify the Initial Stay and/or the tolling order (believing they already encompassed Weinrich's entire action) or whether he intended to retroactively expand the terms of those orders to preserve the entirety of Weinrich's action.

[42] Whether a supervising judge in *CCAA* proceedings has the jurisdiction to grant a retroactive stay of proceedings regarding third party claims is a novel issue yet to be considered by a Canadian commercial court. Given the broad wording of s 11 and applying a purposive and liberal interpretation to the legislative scheme, we do not foreclose the possibility that such an order might be granted in appropriate circumstances. The exercise of that discretion would be guided by the principles articulated in ***Callidus***: that the jurisdiction granted by s 11 is constrained only by restrictions set out in the *CCAA* itself, the discretion must be exercised in furtherance of the remedial objectives of the *CCAA*, and the order made must be appropriate in the circumstances, the applicant has been acting in good faith and the applicant has been acting with due diligence: at paras 49, 67.

[43] However, it is not necessary for us to determine this issue to resolve this appeal.

3. Procedural unfairness in the proceeding below

[44] Despite the pressures of "real-time litigation" that mark insolvency proceedings, the principles of procedural fairness cannot be ignored. In *Rescue! The Companies' Creditors Arrangement Act*, 2nd Ed, Toronto: Carswell, 2013 [*Rescue!*], Professor Sarra quoted with approval an article by Madam Justice Romaine (at page 139):

> It is, however, important to remember that, while there may be greater flexibility in the Canadian system [of restructuring], there are rules and over-arching principles, binding and persuasive Canadian case law, good practices, and model orders that

> the Canadian court and stakeholders expect to be observed. While efficiency and speed are important considerations, so are due process, respect for the interests of stakeholders on either side of the border and the very important consideration that justice must be seen to be done through the observance of fair and familiar principles and processes.

[45] A fundamental principle of an adversarial system is that a party is entitled to know the case that must be met. Absent an application and notice, the party is unable to make full argument. The only application before the supervising judge was 215's application to approve the sale of Parkland Airport's assets, and it only requested an extension of the Initial Stay against Parkland Airport pending closing. There was no application to expand the Initial Stay or the May 2, 2017 tolling order.

[46] In oral argument, it was 215's counsel, not Weinrich, who introduced the idea of the supervising judge including a provision in the vesting and sale order to ensure Weinrich could pursue its claims relating to various transactions it challenged, including against Wiebe and Parkland Aerospace. This was done to assuage Weinrich's expressed concerns with the court accepting 215's offer:

> And if the Court is inclined I would say, we can specifically include a provision in the order which preserves rights against other parties, certainly not against the assets because 215 wants these assets free and clear except for the -- except for the claims that we have. But that issue can be addressed in another forum outside of this process and I want to be crystal clear on that because there's nothing in what we are asking the Court to do which precludes that from happening and if the Court needs to specifically ensure that that is the case, then a provision can be inserted in the order which says just that. If these parties wish to (INDISCERNIBLE) on and deal with these other claims and seek damages for what they perceive to be wrongs done, then have at it, but this process will not bring that to an end and we're not purporting to obtain or seek a release for that, 'cause there is no plan.
>
> (Transcript, p 16/lines 28-37)

[47] What was to be an application to determine whether 215's offer to purchase would be approved, quickly evolved to include a discussion about preserving Weinrich's action against "other parties", including Wiebe and Parkland Aerospace. Unfortunately, counsel for the appellants had a matter of minutes' notice before being called on to respond. Predictably, under that time pressure, counsel was unable to marshal arguments about whether the supervising judge had the authority to grant a stay with retroactive effect or whether it was appropriate in the circumstances. Indeed, that issue was not mentioned, much less argued. Counsel simply argued that the Initial Stay and the tolling order did not apply to the actions against his clients.

[48] In the circumstances, Wiebe and Parkland were not afforded a reasonable opportunity to respond to the issue raised by 215, nor did the supervising judge have the benefit of bench briefs and full argument.

[49] It is well known that the content of the duty of procedural fairness is sensitive to context: see ***Baker v Canada (Minister of Citizenship and Immigration)***, [1999] 2 SCR 817 at paras 21-22, 174 DLR (4th) 193 on this point in relation to administrative bodies. The context and purpose of *CCAA* proceedings can affect the specifics of the duty. Sometimes, emergent matters arise and quick decisions on complex matters are needed, and the content of the duty of procedural fairness necessarily reflects that. Indeed, s 11(1) of the *CCAA* recognizes that applications within *CCAA* proceedings may have to be made *ex parte* in appropriate circumstances, or on the supervising judge's own motion, without application or notice to some or all affected parties.

[50] Those circumstances did not exist in the proceeding before the supervising judge. The purpose was to finalize the sale of Parkland Airport's land and assets, to liquidate the corporation and to bring the *CCAA* proceedings to an end. There was no particular time urgency to deciding whether Weinrich's actions against Wiebe and Parkland Aerospace and others were preserved by previous orders or should be preserved by a new one, nor was it inextricably linked to the sale of Parkland Airport's assets to 215.

[51] To conclude: Wiebe and Parkland Aerospace did not receive sufficient notice that the supervising judge might grant an order preserving Weinrich's action against them and, as a result, were unable to effectively respond to that issue. The issue should have been adjudicated on notice to Wiebe, Parkland Aerospace and other affected parties, and with the benefit of full argument.

Result

[52] The appeal is allowed. Paragraphs 16 and 17 of the order dated April 17, 2019 are struck. In the result, it is not necessary to decide the appellants' application to adduce fresh evidence on appeal. The matter is remitted back to the supervising judge for reconsideration of:

1. Whether the Initial Stay or the tolling order apply to Weinrich's action against Wiebe and Parkland Aerospace or other named defendants.

2. If not, whether Weinrich's action against Wiebe and Parkland or other named defendants should be stayed with retroactive effect to the date of Initial Stay, the original tolling order or some other date.

[53] It may take some time to return this matter before the supervising judge, therefore, paragraphs 16 and 17 are preserved on an interim basis for a period of one month. If extenuating circumstances prevent the timely reconsideration by the supervising judge, the parties may schedule this matter before another commercial duty judge.

Appeal heard on October 6, 2020

Memorandum filed at Edmonton, Alberta
this 9th day of November, 2020

Authorized to sign for: Martin J.A.

Khullar J.A.

Pentelechuk J.A.

Appearances:

R.B. Hajduk
for the Appellants

K.P. Chapotelle/R.L. Graham
for the Respondents