
CANADA / JUDGMENT

Bankruptcy of Zolnasr

2010 BCSC 1805

COURT

Supreme Court of British Columbia

DECIDED

16 December 2010

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2010 BCSC 1805 Bankruptcy of Zolnasr

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bankruptcy of Zolnasr,

2010 BCSC 1805

Date: 20101216

Docket: No B060865

Registry: Vancouver

In Bankruptcy

In the Matter of the Bankruptcy of

Alireza Zolnasr

Before: Master Taylor

Reasons for Judgment

Counsel for the Appellant, First on First Auto Sales Ltd.:

O.J. Kowarsky

Counsel for the Trustee:

G.J. Gehlen

Place and Date of Hearing:

Vancouver, B.C.

November 5 & December 1, 2010

Place and Date of Judgment:

Vancouver, B.C.

December 16, 2010

[1] This is an appeal from a disallowance of a claim by the Trustee pursuant to s.135(4) of the Bankruptcy and Insolvency Act (B.I.A.).

[2] The relevant legislation is as follows under s. 135 of the B.I.A.:

135(1) The trustee shall examine every proof of claim or proof of security and the grounds therefore and may require further evidence in support of the claim or security.

(2) The trustee may disallow, in whole or in part,

(a) any claim;

(b) any right to a priority under the applicable order of priority set out in this Act; or

(c) any security.

(3) Where the trustee makes a determination ...or, pursuant to subsection (2), disallows, in whole or in part, any claim, ... the trustee shall forthwith provide, in the prescribed manner, to the person whose claim was subject to a determination ... or whose claim, ...was disallowed under subsection (2), a notice in the prescribed form setting out the reasons for the determination or disallowance.

(4) A determination...or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.

Facts

[3] On September 26, 2005 First on First made out a cheque to Alireza Toaj Zolnasr for \$34,775 as the purchase price for a 2002 BMW X5. In or about March 2006 First on First sold the same 2002 BMW X5 to Pacific Honda for a price of \$37,985.00. The vehicle was transferred to Pacific Honda which then subsequently sold the BMW to a third party. First on First alleges Pacific Honda never paid to First on First the agreed-to purchase price for the BMW.

[4] In or about May of 2006 Alireza Zolnasr made an assignment into bankruptcy.

[5] On or about June 13, 2006 the Dick Irwin Group carrying on business as Pacific Honda commenced a lawsuit against First on First Auto Sales, Hamid Mahani and his wife as principals of First on First Auto Sales and Alireza Zolnasr alleging a fraudulent scheme between Zolnasr and First on First in relation to the alleged sale of three 2006 Honda Odysseys to First on First. By their statement of defence, the First on First defendants

alleged that the 2002 BMW was transferred to Pacific Honda and Pacific Honda subsequently sold the BMW to a third party. Also alleged is that Pacific Honda never paid to First on First the purchase price of the BMW or any amount thereafter.

- [6] First on First also commenced a counterclaim against Pacific Honda for the price of the BMW X5.
- [7] In January, 2010 parties to the lawsuit and counterclaim reached an agreement whereby each would release the other and each of their officers, directors, employees, agents, successors and assigns from any and all claims arising from the litigation. As well a consent dismissal order was entered and filed on January 26, 2010.
- [8] The settlement, as reflected in correspondence between counsel represented a compromise of all claims and counterclaims advanced in the action. It included the counterclaim brought by First on First Auto Sales Ltd. against the Dick Irwin Group Ltd. carrying on business under the name and style Pacific Honda regarding the 2002 BMW X5. As deposed by Joe Hutton, the Vice President of Finance of the Dick Irwin Group it was impossible to say what portion of the settlement represented a compromise of First on First or of the claim by First on First Auto Sales concerning the 2002 BMW X5. However, Mr. Hutton deposes the Dick Irwin Group carrying on business as Pacific Honda would not have agreed to the settlement reached if it did not include the resolution of the claim of First on First Auto Sales relating to the 2002 BMW X5.
- [9] Thereafter on June 3rd, 2010 Philip McCourt the trustee in respect of the estate of Alireza Zolnasr filed notice of disallowance of claim, right to priority or security pursuant to s.135(3) of the Bankruptcy and Insolvency Act as follows:

Take notice that as trustee acting in the matter of the bankruptcy of Alireza Zolnasr, we have disallowed your claim in whole pursuant to subsection 135(2) of the Act, for the following reasons:

You received full value for the \$34,775 advanced by you, in the form of title to a 2002 BMW X5 Serial No. 5XUFB33572LH32013 (the "BMW") and no amounts are owing to you.

You took ownership of the BMW on September 26th, 2005 and sold it to Pacific Honda by invoice dated January 13th, 2006. Pacific Honda did not pay you for the BMW. You asserted a claim against Pacific Honda for payment of the amount due pursuant to your January 13th, 2006 invoice. That claim was settled in full in an agreement between you and Pacific Honda.

And further take notice that if you are dissatisfied with our decision in disallowing your claim in whole and a right to rank, you may appeal to the court within the 30-day period after the day on which this notice is served, or within such other period as the court may on application made within the same 30-day period allow.

- [10] It is this disallowance from which First on First Auto Sales Ltd. appeals.

Discussion and Decision

- [11] No issue arose between the parties as to whether this was to be a trial de novo or whether it was to be a real appeal. Both agreed the issue was whether an unjust result would occur and that it was in the interests of justice to provide further evidence to the court.
- [12] For the brief reasons set out below, I dismiss the appeal.
- [13] All of the facts arise from the dealings in used automobile brokerage transactions.
- [14] In my view, in order for the appellant to succeed there has to be evidence upon which I could find that Zolnasr did not give good title of the BMW to First on First. To my mind, such does not exist in these proceedings.
- [15] The plaintiff in the action, the Dick Irwin Group Ltd, carrying on business as Pacific Honda, commenced its action against the First on First defendants on June 13, 2006, and subsequently filed its amended statement of claim on July 31, 2008.
- [16] In its amended statement of claim, the plaintiff alleges that its former sales manager, Zolnasr, in or about May 2, 2006 fraudulently transferred ownership of 3 2006 Honda Odysseys to First on First.
- [17] In its amended statement of defence, the First on First defendants allege even if Zolnasr did not have express authority from the plaintiff to contract with First on First, he had apparent or ostensible authority from the plaintiff.
- [18] As well, the First on First defendants allege the sale of the 2005 BMW X5 to the plaintiff, but were never paid. They go on to allege that in exchange for non-payment of the BMW and other outstanding matters owing to them, Zolnasr offered on behalf of the plaintiff to instead transfer to First on First full ownership of three new vehicles in lieu of paying \$97,000.00 owing to First on First, namely the 3 Honda Odysseys.
- [19] Ultimately, the suit between Pacific Honda and First on First was settled. A Consent Dismissal Order was filed and the parties executed a Settlement Agreement and Mutual Releases.
- [20] Paragraphs 1 and 2 of the Settlement Agreement read:
1. Pacific Honda hereby releases and forever discharges the First on First Defendants and each of their officers, directors, employees, agents, successors and assigns, of and from any and all claims, actions, causes of action, suits, debts, duties, accounts, contracts and demands presently existing, whether known or unknown, in relation to any dealings between Pacific Honda and the First on first Defendants involving Alireza Zolnasr, and without limiting the generality of the forgoing, in relation to issues raised in Supreme Court of British Columbia, Action No. S063847.

2. The First on First Defendants, and each of them, hereby release and forever discharge Pacific Honda and its officers, directors, employees, agents, successors and assigns, of and from any and all claims, actions, causes of action, suits, debts, duties, accounts, contracts and demands presently existing, whether known or unknown, in relation to any dealings between the First on First Defendants and Pacific Honda involving Alireza Zolnasr, and without limiting the generality of the forgoing, in relation to issues raised in Supreme Court of British Columbia, Action No. S063847.

[21] In my view the Settlement Agreement and Mutual Release executed by the parties to the litigation effectively resolves the issues between them and includes Alireza Zolnasr as an involved individual as well as an agent of Pacific Honda. Zolnasr was an employee of Pacific Honda at the critical time of the sale of all the vehicles to First on First, and therefore would be captured by the word, "agent" in the release. Accordingly, First on First has no claim against Zolnasr or his estate.

[22] The trustee shall have its costs of the appeal.

"Master Taylor"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/10/18/2010BCSC1805.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bankruptcy-of-zolnasr-2010>

Prepared on 29 October 2026 · Esheria