

CANADA / JUDGMENT

Western Delta Lands Partnership v. 3557537 Canada Inc.

2003 BCCA 290

COURT

British Columbia Court of Appeal

DECIDED

15 May 2003

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

2003BCCA0290 COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Western Delta Lands Partnership v. 3557537 Canada Inc., 2003 BCCA 290 Date: 20030515 Docket: CA027564 Between: Western Delta Lands Partnership (a British Columbia Partnership of 723896 Ontario Limited and 572281 British Columbia Limited) Respondent (Plaintiff) And 3557537 Canada Inc. and Byron Seaman Appellants (Defendants) And Peel Financial Holdings Ltd. Respondent (Defendant by Counterclaim) Before: The Honourable Madam Justice Saunders (In Chambers) M Theroux Counsel for the Appellant, 3557537 Canada Inc. K. McEwen and L. Herbst Counsel for the Respondent, Western Delta Lands Partnership D.W. Roberts, Q.C. and W. Baker Counsel for Peel Financial Holdings Ltd. Place and Date of Hearing: Vancouver, British Columbia April 23, 2003 Place and Date of Judgment: Vancouver, British Columbia May 15, 2003 Reasons for Judgment of the Honourable Madam Justice Saunders:

- [1] These two applications to draw down a letter of credit posted by 3557537 Canada Inc. ("3557537") and Byron Seaman as a condition of an order of Mr. Justice Hollinrake for a stay of execution, are but one piece of what has been described by this court on an earlier application for the same relief as labyrinthine proceedings (Reasons for Judgment of Mr. Justice Smith, 2003 BCCA 97). One application is brought by Peel Financial Holdings Ltd. ("Peel"), the other by Western Delta Lands Partnership ("WDLP").
- [2] A short description of the complex business dealings and ensuing litigation will suffice for the purposes of disposing of this application.
- [3] WDLP and 3557537 are partners in Delta Fraser Properties Partnership, formed to develop Burns Bog. Peel previously owned the land and transferred it to WDLP for consideration. WDLP contributed the lands to Delta Fraser Properties and 3557537, a company controlled by Mr. Seaman, was to supply the working capital. The partnership created another company to hold title to the lands in trust and granted a mortgage back to WDLP for \$11 million, with Mr. Seaman and 3557537 providing guarantees.

- [4] Back to Peel. As part of the consideration for Peel transferring the land to WDLP, which facilitated creation of the partnership, WDLP issued a promissory note to Peel for \$10 million, payable by WDLP to Peel subject to a term that Peel's recourse against WDLP for payment of those sums would be limited to payments made to WDLP under the mortgage, and that the mortgage was to be held in trust for Peel.
- [5] When contributions to the partnership were not made as WDLP had anticipated, WDLP sued Mr. Seaman and 3557537 for \$11 million plus accrued interest, \$9 million for uncontributed working capital and rectification of the partnership agreement. Peel was joined as a defendant by counterclaim.
- [6] After a summary trial of the issues between WDLP and Mr. Seaman and 3557537 only, Madam Justice Allan declared, amongst other orders, that the action was properly for damages and not debt, and gave judgment to WDLP against Mr. Seaman and 3557537 for \$11 million plus accrued interest of \$1,646,986.55. The issues involving Peel directly were not dealt with.
- [7] Mr. Seaman and 3557537 appealed the order of Madam Justice Allan and sought a stay of execution. The stay application was granted on the condition that they post the letter of credit in issue here, for roughly \$9.6 million, and that they pay WDLP \$4.1 million. As of the date of that order, then, Seaman and 3557537 owed WDLP under the judgment.
- [8] According to Peel, those monies were required to be paid to it as being the funds referred to in the promissory note.
- [9] After some negotiations, WDLP, on the one part, and Mr. Seaman and 3557537 on the other, settled their litigation on terms that released Mr. Seaman and 3557537 from the claims that were tried by Madam Justice Allan and they, in turn, would discontinue their appeal, and provided that Seaman and 3557537 would loan \$16 million to WDLP, to be secured by a mortgage against the Burns Bog lands. \$9.6 million of the \$16 million is to be made by a draw down of the letter of credit lodged with the Registrar of this Court. A notice of abandonment was filed in the appeal.
- [10] Peel takes the position that the monies represented by the letter of credit should flow to it, not WDLP.
- [11] To further this contention it brought an application, which was not decided in this Court. It then brought an application in the Supreme Court, in an action it had commenced, for an order that the letter of credit be drawn down and the proceeds held in the Registry of the Supreme Court. In Reasons for Judgment referred to as 2002 BCSC 490, Mr. Justice Bauman allowed the application and ordered that Mr. Seaman, WDLP and 3557537 consent to an order that the Registrar of this Court be directed to draw down the letter of credit in its entirety and pay it to the Registrar of the Supreme Court of British Columbia to the credit of that action. That decision was successfully appealed; see 2003 BCCA 180, on the basis of lack of jurisdiction of the Supreme Court of British Columbia to make an order governing or

affecting proceedings in this Court, or to order a party to consent to an order. Peel then advanced this application, countered by WDLP's cross application.

- [12] In my view, Peel's application to this Court for an order that the letters of credit be drawn down, with the funds to be paid to it or even held pending the outcome in the Supreme Court of its claim, cannot succeed. These features stand in its way. First, the order of Madam Justice Allan, which triggered the stay of execution on the basis that \$9.6 million was secured by a letter of credit, was an order in favour of WDLP. Second, the letter of credit itself refers to the amount being drawn "in connection with the Court of Appeal Action No. CA027564 under litigation between Western Delta Lands Partnership (Plaintiff/Respondent) and 3557537 Canada Inc. and Byron J. Seaman (Defendants/Appellants)". Third, the order requiring the letter of credit made clear that the letter of credit was to secure the judgment, which we know did not speak to Peel's rights. Finally, the appeal proceedings engaged only the rights of WDLP against Mr. Seaman and 3557537. It follows that I do not consider that Peel is a party entitled to call on the letter of credit in this appeal proceeding. An anticipatory remedy in the nature of attachment proceedings or Mareva injunction directed to the funds derived from the letter, in my view, should be pursued through the usual process in the Supreme Court of British Columbia, which is, as between the courts, assigned the task of initial determination of such questions.
- [13] On the other hand, WDLP, Mr. Seaman and 3557537 all agree the letter of credit should be drawn down and the funds dispersed as they agree. In circumstances where, in this Court, they are the only persons with a claim to those funds, such an order is appropriate.
- [14] Considering the circumstances that brought this application to this Court, it would be appropriate that any order for a draw down on the letter of credit be delayed to allow Peel to bring the appropriate application, in the event it elects to do so, in the Supreme Court of British Columbia.
- [15] Accordingly, I order that the Registrar of the Court of Appeal for British Columbia take all steps necessary, but not before May 29, 2003, to draw down the full amount of \$9,612,725.63 Canadian Imperial Bank of Commerce Standby Letter of Credit No. SBGC706918 dated December 22, 2000, deposited with the Registrar by the appellants on December 27, 2000 pursuant to the Order of Hollinrake J.A. pronounced on December 5, 2000, and upon receipt of those funds, pay them by way of cheque or money order to Western Delta Lands Partnership.
- [16] As there is a notice of abandonment filed in this matter, and considering the reasons for judgment of this Court in the Appeal 2003 BCCA 180 earlier referred to, I would reinstate the appeal for the limited purpose of filing the within order and giving effect to it. "The Honourable Madam Justice Saunders"

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/ca/03/02/2003bccca0290.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/western-delta-lands-partnership-v-3557537-canada-inc-2003>

Prepared on 27 October 2026 · Esheria