

LexisNexis® Agricultural Law *NetLetter*

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Issue 341

Issues added on the 7th and 21st of every month.

HIGHLIGHTS

- * A Justice of the Ontario Superior Court of Justice has rejected the argument of an Ontario farmer, who maintained that a crop input supplier must first establish a debt was owing before it could apply to appoint a receiver to sell property pursuant to a General Security Agreement. The Court concluded that the farmer was insolvent; that the evidence of an independent investigator disclosed a substantial debt by the farmer to the input supplier and other creditors, and that s. 243(1) of the Bankruptcy and Insolvency Act authorized the appointment of a receiver. If the farmer wished to contest the amount payable to the input supplier, he could do so when the sale proceeds of his assets were distributed. The farmer's case was exacerbated by the fact that he had transferred most of his assets to his wife through an arrangement the Court described as a "sham" and that he had ignored the provisions of two Court orders which had directed him to report any harvesting activities and to pay the proceeds from harvested crops into trust. (Vale v. St. Lawrence Grains & Farm Supply Ltd., [CALN/2016-003](#), [\[2016\] O.J. No. 178](#), Ontario Superior Court of Justice)

NEW CASE LAW

Vale v. St. Lawrence Grains & Farm Supply Ltd.;

[CALN/2016-003](#),

Full text:[\[2016\] O.J. No. 178](#);

[2016 ONSC 320](#),

Ontario Superior Court of Justice,

S.T. Bale J.,

January 13,2016.

Security Agreements -- Appointment of Receivers -- Insolvent Farmers -- No Necessity to First Establish Amount of Debt.

An Ontario elevator, St. Lawrence Grains ("Grains"), applied to the Ontario Superior Court of Justice for an order authorizing MNP Ltd. ("MNP") in its capacity as the Court appointed receiver to sell assets that an Ontario farmer, Harry Vale ("Vale"), had transferred to his wife.

Vale opposed the application and applied for an order discharging MNP as receiver, and for damages against Grains for the wrongful appointment of a receiver.

Grains had supplied crop inputs (seed, fertilizer and pesticide) to Vale on credit, through a system of debits and credits maintained by Grains.

In April of 2010, as a condition of extending further credit, Grains required Vale to provide security for his existing indebtedness as well as future indebtedness. Vale signed a promissory note confirming the balance owing and gave Grains security over all of his present and after-acquired property as well as a second mortgage over the home in which he and his wife lived.

In January of 2012, Vale and Grains entered into a new business arrangement under which Vale continued to farm the lands, but Grains covered all farming costs including rent for leased lands, and custom farming fees to be paid to Vale. Grains was entitled to all revenue from the sale of crops up to an amount required to cover its costs, with any profits thereafter being applied to Vale's outstanding indebtedness.

This arrangement ended in February of 2014, when Vale advised Grains that he was in dire financial straits and required additional financing in excess of \$500,000.00 in order to maintain his farming operation. Grains was not prepared to provide the additional financing, and the parties terminated their business relationship at the end of February, 2014.

In April of 2014, Vale brought an application requesting an accounting and a forensic audit of Grains' accounts, as well as the repayment of overpayments alleged to have been made to Grains estimated in the sum of \$589,473.77. In response, Grains claimed it was owed \$781,929.34 by Vale.

On July 15, 2014, Grains served notices of intention to enforce its security under the Bankruptcy and Insolvency Act and the Farm Debt Mediation Act.

In August of 2014, an order was granted to Grains, appointing MNP to act as an interim receiver to provide the Court with an independent assessment of the state of accounts between the parties and to investigate Grains' concern that Vale's farming operation had been transferred to his wife. Vale and Grains were both directed to provide information to MNP.

The information obtained by MNP appeared to confirm Grains' concerns. On October 17, 2014, Grains applied to amend the appointment order to allow MNP to take possession of Vale's assets. The application was adjourned, but on the condition that the gross proceeds received from the sale of the 2014 crops be held in trust by MNP pending further order of the Court.

On May 18, 2015, an order was made directing that MNP be permitted to take possession of the Vale's assets, based upon evidence that the crop proceeds had been deposited in Mrs. Vale's bank account, and not remitted to MNP as required by the earlier Court order.

In June of 2015, an application was made before Bale, J. for an order granting MNP authority to sell the Vales' assets. Bale, J. granted the order and dismissed Vale's application that MNP be discharged for reasons to follow. Reasons were given on January 13, 2016.

Decision: Bale, J. granted the order allowing MNP to sell Vale's assets and dismissed Vale's application [at para. 38].

Bale, J. relied upon the following information obtained by MNP:

- On March 13, 2014, less than 2 weeks after Grains and Vale had terminated their relationship, Vale incorporated "Harry Vale Farms 1984 Ltd." Vale was the sole director. Vale and his wife were the sole officers.
- Vale had previously relied upon loans from Agricultural Credit Corporation ("ACC"). On May 1, 2014, Mrs. Vale obtained a loan from ACC in her own name which was guaranteed by Mr. Vale.
- Vale subleased 3,000 acres of farmland to Mrs. Vale in 2014 for nominal consideration.
- Mrs. Vale signed an agreement on May 1, 2014 with Vale whereby Vale custom farmed the land that he had sublet to Mrs. Vale.
- Vale's crop insurance was transferred to Mrs. Vale.
- A winter wheat crop belonging to Grains, which was to be harvested in the spring of 2014, was harvested and sold without payment being made to Grains.
- In 2015, a number of large pieces of equipment were sold. \$50,000.00 in equity was paid to Vale or third parties at his direction.
- Vale failed to notify MNP of the fact that he had harvested the 2014 crops in violation of an order granted by Ferguson, J.
- Vale failed to direct payment of the gross proceeds of sales of all crops to MNP in trust, as required by the October 17, 2014 order. Instead, the proceeds were deposited into Mrs. Vale's account.

Bale, J. rejected Vale's argument that Grains must first commence separate proceedings and obtain a judgment establishing a debt to Grains before a receiver could be appointed with the authority to sell Vale's property.

Bale, J. agreed the purpose of an interim receivership order should be to preserve and protect a debtor's assets pending final judgment, and that if a receiver is authorized to sell those assets prior to judgment, the Court may be prejudging the issues in the proceeding [at para. 28]. In this case, however, the Court held that the judgment requested by Grains included a final receivership order pursuant to the General Security Agreement and s. 243(1) of the Bankruptcy and Insolvency Act, which authorized the appointment of a receiver where a debtor is insolvent, and the secured creditor is in a position to enforce its rights against all or substantially all of the debtor's property [at para. 29].

Bale, J. concluded that in this case, Vale was insolvent by February of 2014 and that since July of 2014, when notices under the Bankruptcy and Insolvency Act and the Farm Debt Mediation Act were served, Grains was in a position to enforce its rights against Vale's property [at para. 30]. Bale, J. concluded that he was satisfied, based on MNP's forensic report, that Vale was substantially indebted to Grains and other creditors and that if Vale wished to dispute the amount claimed by Grains, he could do so at the hearing of MNP's motion for an order approving its proposed distribution.

Bale, J. observed that MNP's forensic report responded to discrepancies in an earlier forensic report obtained by Vale, which concluded that Grains owed Vale money.

Bale, J. concluded [at para. 35 to 37]:

[35] In my view, Mr. Vale's purported transfer of the farming operation to Mrs. Vale was a sham, intended to allow him to continue the operation, without dealing with his creditors, including SLG.

[36] The court appointment of a receiver is an equitable remedy, and the conduct of the parties is therefore relevant. The failure of Mr. and Mrs. Vale to comply with the orders of Ferguson and Lack JJ. does nothing to enhance their position, or their creditability.

[37] The parties spent some time arguing the law in relation to the test for the appointment of interim receivers. However, in light of the results of MNP's investigations, the fact that SLG is contractually entitled to the appointment of a receiver, and in the absence of any new evidence following the appointment orders of Ferguson and Lack JJ. which would support Mr. Vale's position, I see no basis upon which to order termination of the receivership.

CREDITS

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