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FRAUDS ON CREDITORS: FRAUDULENT CONVEYANCES AND PREFERENCES

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This work provides practitioners and academics with comprehensive narrative coverage of the law to effectively pursue assets that a debtor has attempted to shield from his or her creditors. This service contains in-depth commentary on the federal and provincial legislation and the case law thereunder, including new material on: the position of an advising and participating lawyer in the context of fraudulent conveyances and preferences; conflict of laws; the oppression remedy and the derivative action; creditors as beneficiaries of the directors' duty of care; injunctions; and certificates of pending litigation.

What's New in this Update:

This release features valuable updates to the commentary and case law in Chapter 13 (Persons Having Standing, or No Standing, to Impeach A Fraudulent Conveyance), Chapter 14 (Proving the Fraudulent Intent of the Debtor and the Prejudicial Effect of the Conveyance), Chapter 15 (Protected Conveyances Under the Fraudulent Conveyances Act Model) and Chapter 36 (Injunctions, Certificates of Pending Litigation (Lis Pendens), Preservation of Property Orders, Anton Piller Orders and Receivership).

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Highlights:

- **Fraudulent Conveyances—Persons Having Standing, or No Standing, to Impeach A Fraudulent Conveyance—Non-Judgment “Creditors or Others”—Further Commentary**—The general principle that the various voidable conveyances statutes “must be given as broad an interpretation as its language will reasonably bear” and should be “interpreted liberally” (including, but beyond, the related issues respecting the meaning of “other” and the matter of standing) has been articulated in a great majority of cases. See generally Index, main heading “Legislation”, then serially “Interpretation”, “voidable transactions statutes”, “as remedial and therefore to be given a fair, large and liberal interpretation”. In terms of this principle in the context of the scope of “others” in the legislation.
- **Fraudulent Conveyances—Persons Having Standing, or No Standing, to Impeach A Fraudulent Conveyance—Other Categories of Persons: A Short Miscellany—In a Receivership Context: Where the Plaintiff is Not the Receiver But is a Creditor in the Receivership**—With respect to standing to bring a fraudulent conveyances action in a receivership context where the plaintiff is not the receiver (even though he or she is a creditor in the receivership). In this case, there were two sets of creditors: the respondents on the appeal, who were judgment creditors of the fraudsters; and the appellant (a U.S. law firm). The appellant appealed the order of the motions judge declaring that mortgages over six Ontario properties granted to the law firm by its clients to secure the payment of legal fees were void under the *Fraudulent Conveyances Act* and the *Assignments and Preferences Act*. Earlier an interim receiver was appointed over the fraudsters’ property, including the mortgagor corporations controlled by Tanya Hutchens, one of the fraudsters: *Stevens v. Hutchens*, 2022 ONCA 771, 2022 CarswellOnt 16182 (C.A.) at paras. 16-21, affirming 2022 ONSC 1508, 2022 CarswellOnt 3266 (S.C.J. [Commercial List]).

ProView Developments

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