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FRAUDS ON CREDITORS: FRAUDULENT CONVEYANCES AND PREFERENCES

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Release No. 3, March 2024

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 Chapters 2 (The Position of an Advising and Participating Lawyer in the Context of Fraudulent Conveyances, Fraudulent Preferences and Other Judgment-Proofing Activities), Chapter 7 (Judgment: Entitlement, Effect, and Relief Granted), 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), Chapter 18 (Persons Having Standing to Impeach An Unjust Preference), Chapter 19 (The Elements of An Impeachable Preference Under Provincial Legislation), Chapter 24 (Preferences Under the Bankruptcy and Insolvency Act) and Chapter 38 Transactions Induced by Fraud: Ponzi Schemes).

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Highlights:

- **Judgment: Entitlement, Effect, and Relief Granted—A Miscellany of Remedies, Including Tracing Proceeds, Pecuniary Relief (Damages), Tort of Conspiracy, Stay of Enforcement, Charge on Property, Sale of Property—Whether the Transferee of a Fraudulent Conveyance May Be Liable in Tort for the Intentional Interference with the Economic Expectations of the Aggrieved Judgment Creditor**—Given this definition, the knowing transferee of the asset would be liable for unlawful interference, but he or she would not be liable for knowing receipt or knowing assistance where the transfer does not involve trust funds. An intentional interference claim might prove useful where the asset was transferred once more; the original transferee might become liable for damages should the asset itself be beyond reach through the intervention of a good faith purchaser for value. Proving intention to harm the creditor would be essential. It has been held that, for example, personal self-enrichment satisfies the intent requirement. However, if the interference results from a legally justifiable act, there is no tort. Interference is wrongful only where the act complained of is illegal. In this connection, it has been said that wrongful dispositions are made illegal by fraudulent conveyances legislation thereby ensuring that the interference is unlawful. Finally, unlawful means are essential and, again, if an act is legally justified it cannot form the basis for a claim.
- **Proving the Fraudulent Intent of the Debtor and the Prejudicial Effect of the Conveyance—Discharging the Burden: Whether the Impeaching Creditor Must Suffer Harm Before a Conveyance May be Set Aside (Even Where the Debtor is Shown to be Fraudulent)—The Role of Prejudicial Effect: An Introduction—The Statute of Elizabeth and a Sampling of Canadian Statutes**—With respect to the role of prejudicial effect in a traditional voidable transactions statute (that is, with an express intent-based focus), we would start with some commentary by Dunlop and Buckwold in their 2012 text on the law in Alberta. Their views on point, particularly with respect to the ambit of the *Statute of Elizabeth*, deserve some consideration. The whole of the authors' relatively short section on 'Effect as a Separate Requirement', in the context of fraudulent conveyances law.

ProView Developments

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