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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.

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What's New in this Update:
This release features updates to the Words and Phrases.

Highlights:

- **WORDS AND PHRASES—"TRANSFER AT UNDERVALUE"—SUPREME COURT OF CANADA—**"A 'transfer at undervalue' is a transaction in which a debtor transfers property or provides services to another person for no consideration or conspicuously less than fair market value . . . . Section 96(1)(b)(ii)(B) of the *Bankruptcy and Insolvency Act* (BIA) provides that a trustee in bankruptcy may apply to a court to impugn and recover from a non-arm's length party to a transaction some or all of the amount of the transfer at undervalue, if the trustee can show that the debtor intended to 'defraud, defeat or delay a creditor'. . . . A 'transfer at undervalue' is defined under s. 2 of the BIA as 'a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor'." (*Aquino v. Bondfield Construction Co.*, 2024 CarswellOnt 15329 (S.C.C.)).
- **WORDS AND PHRASES—"EQUITABLE MORTGAGE"—**"An equitable mortgage is a contract which creates in equity a charge on the property, but does not pass the legal estate to the mortgagee. An equitable mortgage can be created in several ways, including by the fact that the mortgagor has not executed an instrument sufficient to transfer the legal estate. Where an equitable mortgage derives from an agreement, determining whether there is an equitable mortgage is a matter of contractual interpretation. The normal principles of contractual interpretation apply. The court is to determine the intent of the parties, based on the words in the contract used in their ordinary and grammatical meaning, consistent with the surrounding circumstances reasonably known to the parties at the time the contract was formed." (*Grillo v. Spadafora*, 2024 CarswellOnt 4281 (Ont. S.C.J.)).