In the Court of Appeal of Alberta

Citation: Secure Energy Services Inc v Lone Star Pipe & Supply LLC, 2026 ABCA 358

Date: 20261109
Docket: 2401-0307AC
Registry: Calgary

Between:

Secure Energy Services Inc.

Respondent
(Plaintiff)

- and -

Lone Star Pipe & Supply, LLC

Appellant
(Defendant)

- and -

1331616 Alberta Ltd. also known as Zerocor Tubulars, Petrosmith LLC, Petrosmith Coating LP, Petrosmith Equipment LP, and ABC Corp.

Respondents
(Defendants)

The Court:

The Honourable Justice Kevin Feehan
The Honourable Justice Bernette Ho
The Honourable Justice Joshua B. Hawkes

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice J.C. Kubik
Dated the 11th day of October, 2024
Filed on the 6th day of November, 2024
(2024 ABKB 604, Docket: 2101 04944)

Memorandum of Judgment

The Court:

Introduction

[1] The appellant, Lone Star Pipe and Supply LLC (Lone Star), was noted in default. The noting in default was set aside by an Applications Judge but restored on appeal to a Chambers Justice. Lone Star appeals, seeking to set aside the noting in default in order to defend in the underlying action.

[2] For the reasons that follow, the appeal is dismissed.

[3] The decision of the Chambers Justice was given prior to the release of the decision of this Court in *Liberty Mortgage Services Ltd v River Valley Development Corp* [*Liberty Mortgage*].[1] The implications of that decision were a focal point at the oral hearing of this appeal. After a careful consideration of the history and development of the *Rules of Court* and the case law regarding setting aside a noting in default and a default judgment we conclude that it is ultimately in the discretion of the court to determine whether it is fair and just to set aside a noting in default. In exercising that discretion, it is not an error for a court to consider the test to set aside a default judgment when deciding whether to set aside a noting in default. However, the weight assigned to the factors within that test depend on the circumstances of the application before the court. Context plays an important role in the application of the test.

Background

[4] This action was commenced by Statement of Claim filed on April 15, 2021. The respondent, Secure Energy Services Inc (Secure Energy), claimed against several companies, including 1331616 Alberta Ltd, also known as Zerocor Tubulars, with respect to certain tubing alleged to be defective. The appellant was added as a defendant to these proceedings by way of an amendment to the Statement of Claim granted on November 4, 2022, in which the appellant is alleged to have negligently designed, manufactured, or supplied the tubing.

[5] The appellant is a company incorporated in Texas. It did not file a defence in the within action prior to being noted in default. The appellant says that on September 4, 2019, it entered into an asset purchase agreement with Petrosmith Equipment LP (Petrosmith), also a party to this action, whereby Petrosmith acquired all or substantially all of its assets and liabilities, and the

[1] *Liberty Mortgage Services Ltd v River Valley Development Corp,* 2025 ABCA 346 [*Liberty Mortgage*].

appellant ceased operations after that sale. Lone Star was dissolved on March 10, 2023, after a tax forfeiture.[2]

[6] Between the amendment to the Statement of Claim and the appellant's dissolution, the respondent obtained an order for service *ex juris* allowing service of the Amended Statement of Claim on the appellant by registered mail to the address of its registered agent at the address listed in the applicable corporate registry in Texas. The respondent duly served the appellant as ordered and also delivered the Amended Statement of Claim to other persons involved in ownership and operation of Lone Star. The appellant did not file a response to the Amended Statement of Claim, and on January 30, 2023, was noted in default.

[7] On May 30, 2023, the appellant filed an application to set aside the noting in default. The appellant contends it did not receive notice of the claim until May 3, 2023, approximately 4 months after it was noted in default. The appellant provided an affidavit from Mr Charles Zhang, who was questioned on his affidavit and deposed:

a. The asset sale with Petrosmith concluded in September 2019.

b. Mr Zhang was solely responsible for the appellant's management and control at that time;

c. Mr Zhang did not receive notice of the Amended Statement of Claim from any of the persons and companies that received the Statement of Claim until May 3, 2023, when the Amended Statement of Claim was served on Lone Star's present counsel. Counsel learned of the noting in default only after they asked the respondent for an extension of time to file Lone Star's Statement of Defence;

d. The registered address for Lone Star is PO Box 7941, Midland, Texas, and this was the registered office for Lone Star in 2022 (which was, in a separate Affidavit of Service, confirmed to be the address upon which the Amended Statement of Claim was served); and

e. Mr Mark Threadgill, a lawyer, was the agent for Lone Star in 2022 and 2023. Mr Retief Van Schalkwyck was a member (the Texas equivalent of a shareholder or owner) of Lone Star in 2022 and 2023. In late 2022 or early 2023, Mr Van Schalkwyck advised Mr Zhang that Lone Star had been sued. Mr Zhang did not remember "what's being sued". He told Mr Van Schalkwyck to deal with Mr Threadgill. Later, he denied saying that, and claimed that his comment was to deal with Mr Threadgill in relation to any

[2] Section 227(2)(a) of the *Business Corporations Act*, RSA 2000, B-9, permits the action to continue notwithstanding the dissolution of Lone Star in Texas.

business, and that he did not know of the Secure Energy suit until after Lone Star had been noted in default.

[8] After a hearing on November 29, 2023, the Applications Judge set aside the noting in default. The respondent appealed. On October 11, 2024, the Chambers Justice granted the appeal (the "Chambers Decision") and reinstated the noting in default. Lone Star appeals that decision to this Court.

Grounds of Appeal

[9] The Appellant advances four grounds of appeal, asserting that the Chambers Justice:

(a) made a palpable and overriding error in finding that there is no evidence on the record that Lonestar LLC failed to monitor the address of the Texas registered office;

(b) erred in law, or in the alternative made a palpable and overriding error, relying on *Wilson v Bobbie*, 2006 ABQB 22 as decisive;

(c) erred in law, or in the alternative made a palpable and overriding error, in assessing Mr Zhang's credibility vis-à-vis Mr Van Schalkwyck's; and

(d) erred in law when she considered the fairness assessment in deciding whether to set aside the noting in default.

[10] The decision of the Chambers Justice was issued prior to the decision of this Court in *Liberty Mortgage*. The parties were invited to make submissions on that case and the appellant then advanced an additional argument that the Chambers Justice erred in law by using the wrong test, effectively treating this matter as opening up a default judgment as opposed to a noting in default.

Standard of Review

[11] Whether the Chambers Justice identified the correct test for setting aside a noting in default is a question of law reviewed on a correctness standard.[3] Whether the Chambers Justice erred in applying the correct test is a question of mixed fact and law reviewed on a standard of palpable and overriding error.[4] The ultimate decision as to whether a noting in default should be set aside

---

[3] *Housen v Nikolaisen*, 2002 SCC 33 at para 8; *HRC Tool & Die Mfg Ltd v Naderi*, 2016 ABCA 334 at para 11.

[4] *David M Gottlieb Professional Corporation v Nahal*, 2012 ABCA 88 at para 9.

involves an element of discretion. Discretionary decisions are reviewed on a deferential standard absent identifiable error.[5]

Analysis

Introduction

[12] The first three grounds of appeal advanced by the appellant are resolved by reading the reasons of the Chambers Justice in the context of the record. The fourth provides an opportunity to comment and clarify developments in the case law regarding the overarching role of fairness in the application of rule 9.15(3)(b) of the *Rules of Court.*

The Grounds of Appeal

[13] The appellant first contends that the Chambers Justice erred in finding that there was no evidence that it failed to monitor its registered address. The argument advanced before the Chambers Justice was that it had a valid excuse arising out of the fact that the office listed as the registered office was sold to Petrosmith on September 4, 2019. Further, it contended that service on others including its registered agent and corporate directors did not come to the attention of Mr Zhang.

[14] The affidavit and related questioning of Mr Zhang indicate the registered office for Lone Star was a post office box in Midland Texas. Although the appellant has at various times taken the position that it sold this address in 2019, we are satisfied that is not the case. In the questioning on his affidavit Mr Zhang stated this was the registered office for Lone Star after the Petrosmith transaction. At the hearing before the Chambers Justice, counsel for Secure Energy confirmed that the address transferred in the asset sale was not the address of the registered agent where service was made according to the order for service *ex juris*, and counsel for the appellant conceded that he was mistaken in that regard.

[15] At the hearing of the appeal the appellant argued that service was ineffective as a matter of fact because Mr Van Schalkwyck received the documents rather than Mr Threadgill who was the registered agent. This argument is not supported by the affidavit evidence, which establishes the following.

[16] The order for service *ex juris* provided that Lone Star may be served on the registered agent of Lone Star at the address specified in the order. Service was effected at that address, and the package of documents was signed for by a receptionist at that office on November 28, 2022. The documents were addressed “Lone Star Pipe and Supply LLC, C/O Mark D. Threadgill”. A separate

---

[5] *Smith v Tuchscherer*, 2024 ABCA 186 at para 7; *Envacon Inc v 829693 Alberta Ltd*, 2018 ABCA 313 at para 60.

package was also sent to Mr Threadgill's law office by registered mail. The package was signed for by an individual identified as a receptionist at the firm.

[17] Mr Van Schalkwyck received a "service e-mail" on November 21, 2022, from the law firm representing Secure Energy with the same package of documents described above. He stated that he forwarded that e-mail to Mr Zhang at an email address he believed was used by Mr Zhang. This was also the same e-mail address provided for Mr Zhang in the asset purchase agreement with Petrosmith. Mr Van Schalkwyck also stated that he received the "service package" sent to the registered agent's address on November 29, 2022. He sent that package to Mr Zhang at the Elgin Avenue address in Calgary and received confirmation of delivery to that address.

[18] There is evidence that the documents for service were received at the appellant's registered address and signed for as indicated on November 28, 2022. Mr Van Schalkwyck received it the next day.

[19] Counsel for Lone Star now contends for the first time on appeal that Mr Threadgill never received the Amended Statement of Claim at the registered office address; instead, it was somehow served on or intercepted by Mr Van Schalkwyck, now an employee of Petrosmith, who the appellant suggests had a motive to ensure that Lone Star did not receive timely service. This argument fails to address the balance of the evidence of Mr Van Schalkwyck and the other uncontradicted evidence regarding service reviewed above. That evidence is a complete answer to the unsupported assertion by counsel for Lone Star.

[20] The second ground of appeal contends that the Chambers Justice erred in placing undue reliance on the decision of *Wilson v Bobbie*, in which the court declined to set aside a default judgment where the defendant had failed to explain his non-appearance. We do not find support for that contention in the Chambers Justice's reasons. Rather, the Chambers Justice cited the case as part of a review of authorities addressing a range of conduct from simply failing to pick up mail at a registered address or other advertent neglect as opposed to failure arising from accident or mistake. She noted that a bare denial of notice, without more, would not satisfy those authorities. She also appropriately distinguished the circumstances in this case from those in *BCI Bulkhaul Carriers Inc v Aujla Trucking Inc.*[6] This ground of appeal is dismissed.

[21] The appellant next contends that the Chambers Justice erred either in law or in fact in making credibility findings as between the conflicting affidavit evidence of Mr Van Schalkwyck and Mr Zhang in deciding this matter. The reasons of the Chambers Justice reveal that the comments she made regarding credibility were "in addition" to her primary finding – that there

[6] 2015 BCCA 411.

was effectively no evidence from Mr Zhang explaining why he did not receive notice.[7] She had previously described his evidence in that regard:

> Lone Star relies on the evidence of Zhang, who denies having personal knowledge of the Amended Claim. His Affidavit and the evidence given in his subsequent Questioning on that Affidavit provide no other excuse, whether by way of accident, mistake or inadvertence for Lone Star's failure to defend.[8]

[22] Further, she did not determine any disputed matter based on an assessment of credibility arising from the affidavits and the questioning of Mr Zhang. While she noted there were material inconsistencies in aspects of his evidence, she simply stated that in contrast to the affidavit of Mr Van Schalkwyck this "gave rise to questions of credibility" regarding Mr Zhang's evidence. She did not resolve any of those questions on the record before her. No reviewable error arises from these comments. The assertions of the appellant to the effect that disputed matters cannot be resolved based on conflicting affidavits are overbroad, and not reflective of the law in this area.[9]

[23] Finally, the appellant contends that the Chambers Justice erred in her consideration of what fairness between the parties required in this case. Both parties made submissions on the issue of what the overarching consideration of fairness required. Secure Energy emphasized that parties need to be able to rely on the deadlines and structure of the *Rules* to give order and predictability to the litigation process. Lone Star initially advanced three arguments in relation to fairness: 1) that the role of Mr Van Schalkwyck as an employee of Petrosmith after the sale of Lone Star placed him in an adversarial position with Mr Zhang and his former company with an incentive to frustrate or delay providing actual notice to Mr Zhang; 2) that Lone Star had sold the registered address in the sale to Petrosmith and this provided both a reasonable excuse for the failure to defend as well as a reason why it would be unfair to not allow them to defend in these circumstances; and 3) even where there is no reasonable excuse for the failure to defend, fairness requires that the default be opened up in the context of a large claim with what was contended to be a very strong defence. Subsequently, counsel for Lone Star conceded he was in error regarding the sale of the registered address to Petrosmith, and that his arguments regarding the adverse motivation of Mr Van Schalkwyck were "speculation".

[24] On appeal, Lone Star reiterates the overarching fairness considerations it maintained before the Chambers Justice. It contends that she failed to meaningfully consider or address these factors. We do not agree. As noted by the Chambers Justice, there were competing fairness interests here. She decided that in the circumstances of this case, those interests favoured Secure Energy rather

---

[7] *Secure Energy Services Inc v 1331616 Alberta Ltd*, 2024 ABKB 604 at para 16.

[8] *Ibid* at para 11.

[9] See e.g. *Richardson v Curve Industries Inc*, 2018 ABCA 192 at para 16.

than Lone Star. That decision was within her discretion, and in the absence of error is not subject to appellate intervention.

Discussion of Liberty Mortgage

[25] As we explain below, we conclude the Chambers Justice did not apply the wrong test in determining whether to set aside the noting in default. Fundamentally, rule 9.15 requires a chambers judge to exercise their discretion in relation to the circumstances before them to arrive at a fair and just result. In deciding whether to set aside a noting in default, it is not an error to consider the test to set aside a default judgment provided the chambers judge considers the facts and context of the situation before them which may impact the weight to be ascribed to one factor or another.

The Historical Context

[26] A review of the history of the *Rules of Court* and associated case law assists in understanding the development of the legal tests for setting aside noting in default and default judgments.

[27] The *Rules of Court* have been consistent, both regarding the option to note in default or seek a default judgment, and in the language used regarding applications to set them aside. Rule 148 of the 1914 *Rules of Court* provided that where a defendant failed to file or serve a statement of defence or demand of notice, the plaintiff could either request the clerk of the court to enter a default note, or upon appropriate proof by affidavit, seek a default judgment. Rule 156 stipulated that on *praecipe* a plaintiff could have the clerk note a defendant in default. Rule 163 provided that any judgment on default or other order obtained *ex parte* could be set aside or varied by a judge "upon such terms as may be just".

[28] Subsequent iterations of the *Rules* in 1923, 1944, 1954, and 1962 retained that structure. Separate subsections were introduced in 1969 to differentiate between noting in default, default judgment, and other orders. The ability to obtain a noting in default on *praecipe* remained unchanged. Similarly, the authority to set aside any of these orders upon application continued to be expressed in broad terms: "the court may, upon terms as it thinks just...". Permitting a defence to be filed by a party previously noted in default was listed as an express condition in these revisions. Those elements remained unchanged until the comprehensive revision of the *Rules* in 2010.

[29] At present, the applicable sections provide:

> **Judgment in default of defence and noting in default**
>
> > **3.36(1)** Subject to subrule (2) and Part 11, Division 8, if a defendant does not file a statement of defence or demand for notice, or if the defendant's statement of defence is struck out, the plaintiff may, on filing an affidavit of service of the statement of claim,

(a) enter judgment against the defendant under *rule* 3.38 [recovery of property] or 3.39 [debt or liquidated amount], or

(b) require the court clerk to enter in the court file of the action, in Form 14, a note to the effect that the defendant has not filed a statement of defence or demand for notice and consequently is noted in default.

Setting aside, varying and discharging judgments and orders

9.15(1) On application, the Court may set aside, vary or discharge a judgment or an order, whether final or interlocutory, that was made

(a) without notice to one or more affected persons, or

(b) following a trial or hearing at which an affected person did not appear because of an accident or mistake or because of insufficient notice of the trial or hearing.

(2) Unless the Court otherwise orders, the application must be made within 20 days after the earlier of

(a) the service of the judgment or order on the applicant, and

(b) the date the judgment or order first came to the applicant's attention.

(3) The Court may, on any terms the Court considers just,

(a) permit a defence to be filed by a party who has been noted in default,

(b) set aside, vary or discharge a judgment granted upon application against a defendant who was noted in default, or whose statement of defence was struck out under *rule* 3.37, or

(c) set aside, vary or discharge a judgment entered in default of defence by the plaintiff for the recovery of property under *rule* 3.38, or for a debt or liquidated demand under *rule* 3.39.

Evolution of the Case Law

[30] The contours of the modern approach regarding setting aside a noting in default or a default judgment have a long history. Beginning in 1918, cases recognized the importance of a good or arguable defence and the absence of prejudice to the plaintiff in each type of application. However, there was a reluctance to set "hard and fast rules."[10] Other cases identified the presence of a "good defence" and the absence of estoppel by conduct as required elements in setting aside a default judgment.[11]

[31] The first explicit treatment of the relationship between the tests for setting aside a noting in default and a default judgment is found in *Wilson Arches Ltd v Sayers*, 1973 ALTASCAD 117 (CanLII) at para 11 [*Wilson Arches*]:

> It will be noted that an application to set aside a noting in default falls under the same rule as an application to set aside a judgment entered upon default of defence. The long standing practice in our Courts has been to apply the same principles to either application. If no evidence is before the Court accounting for the delay, then the Court cannot determine if the delay is wilful, or due to negligence or oversight. If no evidence is before the Court disclosing a meritorious defence, that is, a triable issue of fact or law, then to permit a defendant to file a defence may compound delay with further delay.

[32] It should be noted that *Wilson Arches* dealt with a case in which the defendant had been noted in default and the plaintiff had proceeded to obtain default judgment. That case was subsequently followed for the proposition that the test was the same for setting aside both a noting in default and a default judgment.[12]

[33] A separate line of authority to the same effect derives from another case dealing with a default judgment. In *Palin v Duxbury*, 2010 ABQB 833 [*Palin*], the Court enunciated the familiar three-part test for setting aside a default judgment. "[T]he Defendants must show that: (a) they have an arguable defence; and (b) they did not deliberately let judgment go by default and have some excuse for the default, such as illness or a solicitor's inadvertence; and (c) after learning of the default judgment, they moved promptly to open it up." *Palin* was subsequently cited with

---

[10] *Fieldhouse v Buxton*, 1918 CanLII 625 at 356-357 (ABSCAD).

[11] *Royal Trust Company v Spillers Canadian Milling Company*, 1931 CanLII 330 at 545 (ABSCAD).

[12] See e.g. *Hubert v Outlaws Group Inc,* 2007 ABCA 352 at para 9; *Hanlon v Ursuliak*, 2024 ABKB 739 at para 18; *1280055 Alberta Ltd v Zaghloul,* 2012 ABQB 10 at para 22; *David M Gottlieb Professional Corporation v Nahal*, 2011 ABQB 355 at para 68 (upheld without reference to this point, *David M Gottlieb Professional Corporation v Nahal*, 2012 ABCA 88).

approval in *Kraushar v Kraushar*, 2019 ABCA 186 [*Kraushar*], another matter involving a noting in default that had proceeded to default judgment, and its summary of the three-part test applied.

[34] *Liberty Mortgage* properly identified that *Kraushar*, like *Wilson Arches*, involved both a noting in default and a subsequent default judgment:

> However, *Kraushar* was a case where the defendant had been noted in default *before* the plaintiff proceeded to a default judgment. The test, therefore, reflected the test for setting aside a default judgment, not the test for setting aside only a noting in default that had not yet progressed to default judgment.[13]

[35] *Liberty Mortgage* also emphasises the differences between a noting in default and default judgment. A noting in default is a procedural step that officially documents a defendant's failure to respond. [14] A party noted in default remains a party to the action but can no longer contest liability and is deemed to admit the allegations in the Statement of Claim.[15] They may continue to contest damages in an unliquidated claim.[16]

[36] Reconciling *Liberty Mortgage* and *Wilson Arches* is achieved in the following manner:

(a) Rule 9.15 gives a broad discretion to the Court in relation to setting aside both a noting in default and a default judgment – "The Court may, on any terms the Court considers just …"

(b) Two important considerations remain. First, as noted in *Don Reid Upholstery Ltd v Patrie*, 1995 CanLII 9147 (ABQB), citing from the British Court of Appeal, the elements of the test under this rule serve as a guide to the judicial exercise of discretion. The court always retains discretion to grant relief where fairness requires it.[17] While *Don Reid* involved an application to set aside a default judgment, the same principle has been applied in applications involving noting in default.[18]

---

[13] *Liberty Mortgage*, *supra* note 1 at para 29.

[14] *Liberty Mortgage*, *supra* note 1 at paras 14, 20.

[15] *Liberty Mortgage*, *supra* note 1 at para 15; *Yaremchuk v Haight,* 2001 ABCA 7, at para 5.

[16] *Liberty Mortgage*, *supra* note 1 at para 15; *Fort McKay Métis Community Association v Morin,* 2020 ABCA 311 at para 18.

[17] *Don Reid Upholstery Ltd v Patrie,* 1995 CanLII 9147 (ABQB), citing *Alpine Bulk Transport Co v Saudi Eagle Shipping Co; "Saudi Eagle" (The)*, [1986] 2 Lloyd's Rep 221 (CA). This passage has been cited with approval in *Kraushar* at para 6, referencing an earlier approval in *Paloma Investments v Yuen*, 2016 ABCA 93 at para 4.

[18] *Diao v Bank of Montreal,* 2024 ABCA 402 at para 12; *Kraushar* at para 6; *Al-Ghamdi v Her Majesty the Queen,* 2017 ABQB 169 at paras 99, 115-117.

(c) The second consideration comes from *Liberty Mortgage*. The context in which the test applies is critical. Noting in default and default judgment are different. What fairness requires, and the impact of failure to meet the traditional elements of the test, will be fact specific and context sensitive. In general, there is greater scope for flexibility and fairness considerations in setting aside a noting in default which reflects a difference in context, whereas default judgment may have a degree of formality and finality to be respected and reflected in the approach to set it aside.

[37] For example, failure to show an arguable defence may be a key consideration in defeating an application to set aside either a default judgment or noting in default. There is no purpose in prolonging a contest of liability in the face of a meritless defence.[19] Conversely, if the only contested issue is mere delay absent any prejudice, then the application to set aside may lead to a different conclusion.[20] That factor may apply differently where the application is to set aside a default judgment and the issue of finality of judgments is engaged.[21]

[38] In *Liberty Mortgage,* it was noted that *Kraushar* involved a noting in default before default judgment was granted, but *Wilson Arches* was not cited by counsel or the Court. That is not to suggest that either *Liberty Mortgage* or *Kraushar* incorrectly decided the issues in those appeals. Both involved appeals from decisions involving multiple simultaneous applications. As *Liberty Mortgage* teaches, there is a correct sequence or "order of operations" which, when followed, ensures that the correct considerations are taken into account in relation to each application:

> [31] ... [W]here applications for setting aside a noting in default and for summary judgment are both pending, the court should first determine whether the noting in default should be set aside and if so, whether a statement of defence should be entered and any other steps in the litigation completed before the summary judgment application proceeds. Defences and evidence responsive to the summary judgment application can then be adequately canvassed.[22]

Doing so avoids the risk that the summary judgment test may be applied to setting aside the noting in default, to the potential prejudice of the defendant.

[39] While the Chambers Justice did not have the benefit of the decision of this Court in *Liberty Mortgage*, she appropriately noted the overarching duty of fairness required in consideration of the application to set aside the noting in default. What that duty will require in a particular case is fact and context sensitive and will be reviewed on a deferential standard. Absent an error in

---

[19] *Fort McKay, supra* note 16 at paras 14-16; *Diao, supra* note 18 at paras 2-5.

[20] *Pino Bros Commercial Inc v Silver Gold Bull Inc*, 2014 ABQB 227 at para 49; *Wilson Arches* at para 12; *Swain v McLachlan,* 2016 ABQB 8 at paras 4-10; *Kim v Choi,* 2020 ABQB 51 at paras 34-39.

[21] *Talbott v Talbott*, 2021 ABQB 291 at para 38.

[22] *Liberty Mortgage, supra* note 1 at paras 30-33.

principle or palpable and overriding error this Court will not intervene.[23] No such error has been demonstrated here.

Conclusion

[40] The appeal is dismissed.

Appeal heard on March 12, 2026

Memorandum filed at Calgary, Alberta
this 9th day of November, 2026

Feehan J.A.

Ho J.A.

Hawkes J.A.

[23] *Barendregt v Grebliunas,* 2022 SCC 22 at para 188; *Kachur Estate v Kachur,* 2021 ABCA 343, at para 10.

Appearances:

D.V. Tupper, KC
R.R. Trombley
M. Folk
for the Respondent Secure Energy Services Inc.

B.M. Miller, KC
for the Appellant

D.J. Corrigan, KC (no appearance)
for the Respondent 1331616 Alberta Ltd also known as Zerocor Tubulars

C.R. Jones, KC (no appearance)
D. Pick, KC (no appearance)
for the Respondents Petrosmith, LLC, Petrosmith Coating LP, and Petrosmith Equipment LP