DEALS AND SUITS

Citti et al v. Klein et al

On April 23rd, 2020, BLG (lead by Bevan Brooksbank and Sara McGregor) were successful in obtaining an Order of contempt of several Court Orders granted in 2018, including a Mareva Order and various other relief on behalf of our clients, the Plaintiffs, on a motion for contempt (*Citti et al v. Klein*, 2020 ONSC 2228). The motion was conducted entirely over video conference before Justice McEwen of the Commercial List.

In October 2018, the Plaintiffs obtained an ex parte Mareva injunction against the Defendants. The Plaintiffs had brought an action and sought a Mareva injunction after discovering numerous alleged misrepresentations regarding various real estate investment projects for which the Defendants had elicited investment funds from the Plaintiffs. Amongst other things, the Mareva Order prevented the Defendants from dissipating, assigning, encumbering, or otherwise dealing with any assets captured by the Mareva Order. In December 2018, the parties continued the Mareva Order on consent pending trial or a further Order of the Court (the Continuation Order). The Continuation Order expressly referenced a property located in Quebec (the Property), which the Defendants admitted to purchasing using the Plaintiffs' funds, and required that the Defendants collect and hold all rental income derived from the Property in trust.

In November 2019, it was discovered that the Defendants had mortgaged the Property in February 2019, and that the Defendants had defaulted on the mortgage and voluntarily surrendered the Property to the mortgage company, which then sold it to third parties. With the exception of one month's rent remitted to counsel, the rental income had also not been held in trust.

BLG served the Defendants with the Plaintiffs' motion for contempt and the Defendants' counsel went off the record. Cross-examinations took place virtually, materials were exchanged and sent to the Court via email, and the motion was argued wholly via video conference.

Justice McEwen accepted all of the Plaintiffs' submissions and declared that the Defendants were in contempt of the Mareva and Continuation Orders. Civil contempt is quasi-criminal and His Honour made significant factual and credibility findings on the criminal standard of proof beyond a reasonable doubt. The Court also ordered an accounting and tracing of funds, and compelled the Defendants to answer outstanding undertakings.

This decision is a significant step forward for the Plaintiffs in their fraud action, and is notable for meeting the high threshold for civil contempt on an entirely virtual hearing and against self-represented litigants.

BLG Team : Bevan Brooksbank