Alberta Court of Appeal Confirms Superpriority for Receivers Fees and Costs

March 29, 2019

In the recent decision of *Edmonton (City) v Alvarez & Marsal Canada Inc*., 2019 ABCA 109, the Alberta Court of Appeal has concluded that fees and costs incurred by a court-appointed receiver should have priority over all claims by secured creditors, including special liens in favour of municipalities for unpaid property taxes. This is an important decision for the insolvency bar and provides some much needed comfort to receivers that their fees and costs will be protected by the court-ordered charge.

The Decision

The Court of Appeal's decision in *Edmonton (City) v Alvarez & Marsal Canada Inc*. concerned the receivership of Reid-Built Homes Ltd., a residential home builder that was placed into receivership in November 2017, under the *Bankruptcy and Insolvency Act* ("BIA").

Shortly after the receivership began, a chambers judge heard an application by the Receiver, for an order to give the Receiver the authority to repair, maintain and complete the debtor's properties, with a corresponding first priority charge against each property for any such fees, expenses and costs incurred.

At the same time, the chambers judge heard applications from two secured creditors (a mortgagee and a builders' lien claimant), and from the City of Edmonton, who sought to be exempt from the Receiver's charges provided for in the receivership order. The chambers judge dismissed the applications by the two secured creditors, but allowed the application by the City of Edmonton and excluded it from the charge in favour of the Receiver. The chambers judge concluded that special lien claims by the City of Edmonton for unpaid property taxes were different from other secured claims and should not be subordinated to the Receiver's fees or approved borrowings. The Receiver appealed this latter determination.

The Court of Appeal disagreed with the chambers judge and overturned the decision as it related to the City of Edmonton. The Court of Appeal held that the exercise of discretion by the chambers judge, under s 243(6) of the *Bankruptcy and Insolvency Act*, to prioritize the city's claim, was not done on a principled basis. In particular, the Court of Appeal explained that:

- The Alberta template receivership order grants a super-priority to receivers' charges. While not binding, the template order provides important guidance to the judiciary.
- The commercial reality is that without a super-priority for fees and disbursements, receivers will be reluctant to accept future engagements which has adverse consequences.
- Where a receiver is appointed for the benefit of all creditors, creditors should not receive a "free ride" and should pay their fair share of the receivership process.

The Court of Appeal found that these were compelling justifications for the chambers judge to dismiss the applications by the mortgagee and builders' lien claimant, but that these justifications were "equally apposite" to the city's application. By drawing distinctions between the secured creditors and the city, the chambers judge failed to exercise the statutory discretion in a principled way. The Court of Appeal further noted that there was no evidence that the city would not benefit from realizations by the Receiver, like other secured creditors.

Conclusion

Simply stated, *Edmonton (City) v Alvarez & Marsal Canada Inc*. is an important decision for insolvency practitioners in Alberta and provides comfort to receivers that their fees and costs, incurred for the benefit of creditors, will have "super-priority" and be paid.

The Court of Appeal rightly noted that the "*policy behind receiverships is that collective action is preferable to unilateral action*." By affirming the super-priority for receiver's fees and costs, the Court of Appeal has made a decision that aligns with commercial realities and protects the collective insolvency process. A different result would have had a chilling effect on future receiverships to the detriment of all stakeholders.

By

Robyn Gurofsky, Jack Maslen, Myles Fish

Expertise

Appellate Advocacy, Insolvency & Restructuring, Financial Services

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.