

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the Seizures  
Ordinance, R.O.N.W.T. Ch. S-7,  
as amended;

AND IN THE MATTER OF that certain  
seizure made the 30th day of June,  
A.D. 1977.

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE,

APPLICANT

AND:

ROGER MOORE, in his capacity as  
Sheriff of the Northwest Territories .

RESPONDENT

Application heard February 28th, 1978.  
Application for direction re seizure.  
Judgment filed May 29th, 1978.

Reasons for Judgment by:

The Honourable Mr. Justice C.F. Tallis

Counsel on the hearing:

W. Stefura, for the Applicant  
A. Brien, for Sheriff Roger Moore  
C. Dalton for Shine-On Enterprises Ltd.  
No one appearing for Fred Norris, William Walmsley,  
or any other interest person.

THE NORTHWEST  
LIMITED and  
NORTHWEST  
sented by the  
Northwest  
(Plaintiffs)  
TECTS LIMITED  
TED; THE UPON  
ORATION; after  
COMPANY INCOR  
ACTURING COMP  
UPJOHN COMPAN  
T COATINGS LTD  
(Defendants)  
ONS FOR JUDGE  
URABLE MR. JUST



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BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE,

Applicant

- and -

ROGER MOORE, in his capacity as  
Sheriff of the Northwest Territories

Respondent

Counsel: W. Stefura, for the Applicant

A. Brien, for Sheriff Roger Moore

C. Dalton for Shine-On Enterprises Ltd.

No one appearing for Fred Norris, William Walmsley,  
or any other interested person

REASONS FOR JUDGMENT OF THE HONOURABLE  
MR. JUSTICE C. F. TALLIS

This application by way of Notice of Motion initially came on before me at Yellowknife in the Northwest Territories on the 28th day of February, A.D. 1978. The Notice of Motion asks for the directions of the Court on the following questions:

"1. Should the Sheriff for the Northwest Territories exercise his duties and powers as instructed by the Applicant to wit: to deliver up to the Applicant the following seized goods:

- (a) One 1968 12'x64' Safeway Mobile Home,  
Serial No. SW02836, Bailee- Fred Norris

- (b) One 1966 10'x45' Glendale Mobile Home, Serial No. 80853, Bailee - Fred Norris
- (c) One 1967 10'x56' Parkwood Mobile Home, Serial No. 2467, Bailee - Canadian Imperial Bank of Commerce
- (d) One 1972 10'x38' Tisstington, Serial No. 11674, Bailee - Canadian Imperial Bank of Commerce

for sale by the Applicant by private sale or otherwise, in accordance with Section 26(b) of the Seizures Ordinance?

- 2. Should the Sheriff disregard the Notice of Objection filed by Fred Norris dated the 6th day of August, 1977 as being a nullity;
- 3. Should the Sheriff for the Northwest Territories disregard the seizures effected by Shine-On Enterprises Ltd. effected the 30th day of September, 1977 as being a nullity?"

The Notice of Motion also asks for such further directions not inconsistent with the Seizures Ordinance as this Honourable Court may deem proper and convenient including terms as to such notice to such parties as it deems proper.

When the matter initially came on before me at Yellowknife I made an order in the following terms:

"IT IS HEREBY ORDERED:

- 1. That the within application be and hereby is adjourned to Tuesday, the 4th day of April, 1978 at the hour of 2:00 o'clock in the afternoon at the Court House in the Town of Inuvik, Northwest Territories;
- 2. That notice of the within application shall be given at least seven (7) days prior to hearing of the application to Shine-On Enterprises Ltd. and Fred Norris, of the Town of Inuvik, Northwest Territories, by service of the Notice of Motion and Affidavit of Garry Cecil Donaghy filed herein, along with a copy of this Order upon such parties;

3. That the Notice of Motion and Affidavit of Garry Cecil Donaghy filed herein, along with a copy of this Order, be posted at a conspicuous place upon the trailers referred to in the Notice of Motion filed herein, and be sent by ordinary mail addressed to William Walmsley, Town of Inuvik, Northwest Territories, at least seven (7) days prior to the hearing of the within application;
4. That either party be and is hereby given leave to make applications to this Honourable Court for such further directions from time to time."

The matter was accordingly heard before me at Inuvik in the Northwest Territories on April 4th, 1978.

At the hearing before me in Inuvik in the Northwest Territories no further evidence was adduced so that the only evidence before me at that time was the Affidavit of Garry Cecil Donaghy which reads as follows:

" I, GARRY CECIL DONAGHY, of the Town of Inuvik in the Northwest Territories, Manager, MAKE OATH AND SAY:

1. That I am the Inuvik Branch Manager of the Applicant herein and as such have personal knowledge of the matters hereinafter deposed to save where stated to be based on information and belief.
2. That on or about the 2nd day of March, 1977, William Walmsley entered into a chattel mortgage, a true copy of which chattel mortgage is attached hereto and marked Exhibit "A" to this my Affidavit.
3. That it was a term of the said chattel mortgage that should the mortgagor William Walmsley fail to make payments when due, the entire balance secured thereunder was to become due and payable forthwith.
4. That William Walmsley has defaulted in making payments on the said chattel mortgage and in fact has made no payments and that there is owing as at the 20th day of February, A.D. 1978 the sum of \$65,028.09, particulars of which are as follows:

Principal: \$55,000.00  
Interest : \$ 9,611.99  
Expenses of Recovery: \$416.10

5. That pursuant to a warrant delivered to the Sheriff of the Northwest Territories the following goods were seized by the Sheriff in the Town of Inuvik, Northwest Territories, on June 30th, 1977 and are now on Bailee's Undertakings with the following parties, so I have been informed by the Sheriff of the Northwest Territories and do verily believe:

- (a) One 1968 12'x64' Safeway Mobile Home, Serial No. SW02836, Bailee - Fred Norris (hereinafter referred to as 'the Number 2 Unit');
- (b) One 1966 10'x45' Glendale Mobile Home, Serial #80853, Bailee - Fred Norris (hereinafter referred to as 'the Number 3 Unit');
- (c) One 1967 10'x56' Parkwood Mobile Home, Serial #2467, Bailee - Canadian Imperial Bank of Commerce (hereinafter referred to as 'the Number 4 Unit');
- (d) One 1972 10'x38' Tisstington, Serial #11674, Bailee - Canadian Imperial Bank of Commerce, (hereinafter referred to as 'the Number 5 Unit').

6. That I have been informed by the Sheriff of the Northwest Territories and do verily believe that the whereabouts of the 12'x71' Glendale Mobile Home, Serial #M5025 (hereinafter referred to as 'the Number 1 Unit') as referred to in the chattel mortgage attached as Exhibit "A" hereto, are unknown.

7. That I have been advised by the Sheriff of the Northwest Territories and do verily believe that a Notice of Objection to Removal of Goods signed by Fred Norris with respect to Unit #2, giving the address of Box 1265, Inuvik, Northwest Territories, was received by the Sheriff on the 11th day of August, 1977. Attached and marked as Exhibit "B" to this my Affidavit is a copy of the said Objection.

8. That I have further been advised by the Sheriff of the Northwest Territories and do verily believe that on the 30th day of September, 1977, Shine-On Enterprises Ltd. effected seizure against Units #4 and #5 under a Distress Warrant for unpaid rent. Attached hereto is a copy of Notice of such seizure marked as Exhibit "C" and Bailee's Undertaking marked as Exhibit "D".
9. That Units #2 and #3 are presently located on property owned by Fred Norris.
10. That Unit #2 is presently occupied by Donald Huntley.
11. That Units #4 and #5 are located on property owned by Shine-On Enterprises Ltd.
12. That Unit #4 is presently occupied by one Mr. Elias.
13. That it is unknown to myself to whom Mr. Elias and Donald Huntley are paying rent, if anyone.
14. That I have been informed by Douglas Shinon, president of Shine-On Enterprises Ltd., that he is claiming rent payable for the trailers located on the property owned by Shine-On Enterprises Ltd., but that I have not been informed as to the amount of such rental claimed.
15. That I have been informed by Fred Norris that he is claiming rent payable on the trailers located on the property owned by the said Fred Norris, but that I have not been advised as to the amount of rent claimed.
16. That the whereabouts of William Walmsley are unknown to myself and enquiries made through the Royal Canadian Mounted Police and elsewhere have failed to disclose the present whereabouts of the said William Walmsley.
17. That through the Applicant's solicitors, I have instructed the Sheriff of the Northwest Territories to deliver up to the Applicant the seized Units #2, #3, #4 and #5 for sale by the Applicant by private sale or otherwise, in accordance with Section 26(b) of the Seizures Ordinance.

18. That I am advised through the Applicant's solicitor, William A. Stefura and do verily believe that the Sheriff is unwilling to follow such instructions without the direction of this Honourable Court due to the existence of competing claims of other parties.

19. That I am unaware of any claims by any persons other than deposed to herein.

20. That I make this Affidavit in support of an application to this Honourable Court for directions for such service on such parties as is deemed appropriate and for directions to the Sheriff with respect to disposition and sale of Units #2, #3, #4 and #5, in accordance with the provisions of the Seizures Ordinance.

SWORN BEFORE ME at the Town )  
of Inuvik in the Northwest )  
Territories this 22 day of ) "Garry Cecil Donaghy"  
February, A.D. 1978. )

A COMMISSIONER FOR OATHS in  
and for the Northwest Territories.  
My Commission expires: 26 March 1978.

At the close of the argument in Inuvik leave was granted to Counsel for Shine-On Enterprises Ltd. to file additional affidavit evidence and I accordingly reserved judgment on that aspect of the application. However, in view of the fact that Fred Norris did not appear I turn to a consideration of his Notice of Objection to Seizure of Goods. The Notice of Objection to Seizure of Goods filed by Fred Norris is as follows:

" UNIT 2

NOTICE OF OBJECTION TO SEIZURE OF GOODS

To The Sheriff  
Court House, Box 550,  
Yellowknife, N.W.T.  
XOE 1HO

I, Fred Norris, hereby object to the seizure and disposal of the goods mentioned in the Notice of

of Seizure of Goods by the Canadian Imperial Bank of Commerce, Inuvik, N.W.T. as William Walmsley is in debt to me in the amount of \$1,960.00.

My Post Office address is Box 1265,  
Inuvik, N.W.T.

DATED this 6 day of August, 1977.

"Fred Norris"

N.B. If there is no real reason for objecting to the seizure and disposal of the goods, the sending of this notice may result in increased costs to the debtor."

At the hearing of this motion in Inuvik in the Northwest Territories, Fred Norris did not appear and no attempt was made to substantiate the allegations of fact contained in the Notice of Objection.

In the light of the evidence before me I am satisfied that the seizure of the following units described in paragraph 1(a) and 1(b) of the Notice of Motion is valid:

- 1(a) One 1968 12'x64' Safeway Mobile Home,  
Serial No. SW02836, Bailee - Fred Norris
- (b) One 1966 10'x45' Glendale Mobile Home,  
Serial No. 80853, Bailee - Fred Norris.

I accordingly turn to a consideration of the application for an order for private sale. In view of the fact that Fred Norris has not appeared to support the allegations of fact contained in his Notice of Objection I hold that this Notice of Objection should now be disregarded and I find that this is an appropriate case for an order giving the applicant leave to remove the following goods which are presently under seizure and I direct that the applicant may sell the same by private sale:




One 1968 12'x64' Safeway Mobile Home,  
Serial No. SW02836, Bailee - Fred Norris

One 1966 10'x45' Glendale Mobile Home,  
Serial No. 80853, Bailee - Fred Norris

In making this order I would point out that the applicant is not relieved of its responsibility to obtain the highest possible price when effecting a private sale.

As mentioned earlier in this judgment, the application with respect to the other units which are the subject of an order seizure by Shine-On Enterprises Ltd., judgment is reserved until additional affidavit evidence is filed.

DATED at the City of Yellowknife, in the Northwest Territories,  
this 29th day of May, A.D. 1978.

  
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C. F. Tallis, J.S.C.

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REASONS FOR JUDGMENT OF THE  
HONOURABLE MR. JUSTICE C.F. TAL

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