

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.

B E T W E E N :

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 WITH RESPECT TO THE ISSUE
INVOLVING SHINE-ON ENTERPRISES LTD.

I have already delivered reasons for judgment under
date of May 29th, 1978 in connection with two mobile home units
more particularly described as:

- (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.

An affidavit dated May 2nd, 1978 has now been filed on behalf of Shine-On Enterprises Ltd. The affidavit sworn by Douglas Shinnan states as follows:

"I, DOUGLAS SHINNAN of the Town of Inuvik in the Northwest Territories, Manager, MAKE OATH AND SAY AS FOLLOWS:

1. THAT I am an Officer and Director of Shine-On Enterprises Ltd. and as such have personal knowledge of the matters herein deposed to except where alleged to be on information and belief.
2. THAT I made an Affidavit on behalf of Shine-On Enterprises Ltd. in respect of monies owed to the Company by William Walmsley the subject of the within seizure on the 17th day of April, A.D. 1978.
3. THAT I have had the opportunity of reviewing my financial records and it appears that certain information in that Affidavit was incorrect.
4. THAT from June of 1975 to May of 1976 in respect of units numbered Four (4) and Five (5) set out in the Affidavit of Garry Cecil Donaghy, Mr. William Walmsley paid me the sum of ONE THOUSAND EIGHT HUNDRED AND SEVENTY FIVE (\$1,875.00) DOLLARS for rent.
5. THAT I neglected during that period to render and invoice in respect of one of the trailers for the months of February and March, 1976 which sum amounted to TWO HUNDRED AND FIFTY (\$250.00) DOLLARS.
6. THAT from the month of June 1976 till the end of June 1977, Mr. William Walmsley was indebted to Shine-On Enterprises Ltd. in the sum of THREE THOUSAND TWO HUNDRED AND FIFTY (\$3,250.00) DOLLARS for rent.
7. THAT from the month of July 1977 to the month of March 1978 inclusive, Mr. William Walmsley was indebted to Shine-On Enterprises Ltd. in the sum of

"TWO THOUSAND TWO HUNDRED AND FIFTY (\$2,250.00) DOLLARS for rent.

8. THAT my total claim for rent from Mr. William Walmsley to the 31st day of March, A.D. 1978 is the sum of FIVE THOUSAND SEVEN HUNDRED AND FIFTY (\$5,750.00) DOLLARS as detailed above and not as set out in my Affidavit of the 17th of April, 1978.

9. THAT the said units are still located on property owned by Shine-On Enterprises Ltd.

10. THAT in all other respects my Affidavit of the 17th day of April, A.D. 1978 is correct.

11. THAT I make this Affidavit to further clarify the claim of Shine-On Enterprises Ltd. in respect of Mr. William Walmsley.

SWORN BEFORE ME at the Town)
of Inuvik, in the Northwest)
Territories, this 2nd day)
of May, A.D. 1978.)

) "Doug Shinnan"
) Douglas Shinnan
)

A Commissioner for Oaths in)
and for the Northwest Territories,
(My Commission expires: 14/10/79)

Learned counsel for the applicant submitted that the Sheriff should disregard the seizure affected by Shine-On Enterprises Ltd. on the 30th day of September, 1977. In support of his position he relied on the case of Melton Real Estate Ltd. v. National Arts Services Corporation Ltd. and Cross Arctic Transport Ltd. [1977] 3 W.W.R. 248.

After considering this matter, I adopt the reasoning of McFadyen D.C.J. particularly at page 253:

"A similar problem was considered by the Chief Justice of the Saskatchewan Court of Queen's Bench in Western Mobile Homes Ltd. v. Gaudet, [1971] 4 W.W.R. 398. Bence C.J.Q.B. stated at p. 400:

'In my opinion, the landlord was entitled to distrain for the rent when he did and that his right was not affected by the prior seizure under the chattel mortgage and I so find.'

The provision relating to the right of the landlord to distrain is similar to s. 19 of The Seizures Act. It is not clear from the reasons for judgment whether the seizure on behalf of the chattel mortgagee was made by the sheriff, which appears to be required in the circumstances by The Distress Act, R.S.S. 1965, c. 99. The reasons for judgment do not disclose that the question of the chattels being in custodia legis was argued before the learned Chief Justice. This decision is distinguishable on that basis.

The applicant submitted that only such goods as are removed by the sheriff and are retained in his actual custody are in custodia legis. This was not the position at common law, and is not the position under s. 16 of The Seizures Act. There is no evidence that the seizure was abandoned, or that the chattel mortgagee lost his rights under the seizure because of delay or otherwise. The provisions of s. 16 of The Seizures Act authorize the procedure followed in this case. Section 25(2) provides:

'(2) Any seizure made pursuant to this Act shall be deemed to be a continuing seizure
(a) until such time as the sheriff by notice in writing releases the seizure, or
(b) until the goods or property under seizure have been sold.'

I, therefore, find that, following seizure by the sheriff under the distress warrant issued by Cross Arctic, there were no goods or chattels which the landlord could distrain for rent. The landlord is, therefore, left to his other remedies to recover the rent owing. Cross Arctic is entitled to be paid in priority to the claim of Melton. It is clear that there will be no excess."

Under the circumstances I accordingly hold that the purported seizure effected by Shine-On Enterprises Ltd. of the mobile homes in question is a nullity and the Sheriff is entitled to disregard the same. I also 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:

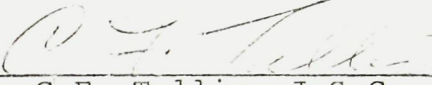
One 1967 10'x56' Parkwood Mobile Home,
Serial No. 2467, Bailee - Canadian
Imperial Bank of Commerce

One 1972 10'x38' Tisstington, Serial
No. 11674, Bailee - Canadian Imperial
Bank of Commerce.

Once again I would point out that the applicant is not relieved of its responsibility to obtain the highest possible price when effecting a private sale and if there is any excess over the applicant's claim then this must be properly accounted for as required by law.

Under the circumstances there will be no order as to costs.

DATED at the City of Yellowknife, in the Northwest Territories, this 12th day of June, A.D. 1978.



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

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NORTHWEST TERRITORIES

IN THE MATTER OF the Seizure
Ordinance, R.O.N.W.T. Ch. 10
as amended;

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

B E T W E E N :

CANADIAN IMPERIAL BANK OF
COMMERCE

APPLICANT

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RESPONDENT

REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE C. F. TAYLOR
WITH RESPECT TO THE ISSUE INVOLVED
SHINE-ON ENTERPRISES LTD.

