IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *LLS America LLC (Trustee of) v. Wilson,* 2015 BCSC 441

Date: 20150323
Docket: L130111
Registry: Vancouver

Between:

Bruce P. Kriegman, solely in his capacity as court-appointed Chapter 11 Trustee for LLS America LLC

Plaintiff

And

Ana Wilson and Larry Wilson

Defendants

Corrected Judgment: The text of the judgment was corrected on the front page where changes were made on April 28, 2015.

Before: The Honourable Mr. Justice Affleck

Reasons for Judgment

Counsel for the Plaintiff:	J. L. Williams
Counsel for the Defendant, Anna Wilson:	P. J. Roberts J. R. Pollard
Place and Date of Trial/Hearing:	Vancouver, B.C. November 25, 2014 and January 23, 2015
Place and Date of Judgment:	Vancouver, B.C. March 23, 2015

Introduction

[1] On April 10, 2013, pursuant to sections 29 and 30 of the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78 (the "*COEA*"), an order (the "Registration Order") was made on the application of the plaintiff without notice to the defendants, registering a default judgment dated October 31, 2012 of the United States District Court Eastern District of the State of Washington (the "Washington Court") in the sum of $347,044.92 plus U.S. $250 in costs. The defendant Larry Wilson died in November 2010. The remaining defendant, Ana Wilson, who I will refer to as "the defendant", applies for an order that the registration order be set aside. After anxious consideration I have decided I must dismiss the application.

Background

[2] The plaintiff is the trustee in U.S. bankruptcy proceedings of LLS America LLC, the company used by a person named Doris Nelson, known as "Dee", to effect a fraudulent scheme in which the defendant and her late husband were ensnared.

[3] The defendant is 67 years old. She has no formal education beyond high school education, which she completed in Argentina. She deposes she has "difficulty reading and understanding technical language in English".

[4] The defendant and her late husband met Dee Nelson in 2005 and they were "persuaded to invest" in a payday loan business called Little Loan Shoppe. The defendant understood the money she and her husband invested would be used by Little Loan Shoppe to make short term loans at high interest rates. The defendant deposes she believed annual rates of return as high as 40 to 60% were possible. She had no investment experience.

[5] Dee Nelson received money from investors in Canada into two companies 639504 B.C. Ltd. and 0738116 B.C. Ltd. ("the British Columbia Companies"). Both were incorporated in British Columbia and at least one had a bank account in a branch of the Canadian Imperial Bank of Commerce in Abbotsford, B.C. The

defendants made deposits for investments in Little Loan Shoppe into an account of one of the British Columbia Companies at that bank branch.

[6] In 2005 over several months the defendants deposited a total of $220,000 into that bank account and were given three promissory notes. The promissory notes totalled that same sum of money, through notes for $100,000, $40,000 and $80,000. Two notes for interest at 60% and one at 40% per annum. The defendant describes these notes in her evidence collectively as the "Original Promissory Notes".

[7] Monthly payments on the Original Promissory Notes were received by the defendants at various dates in 2005 and 2006. The defendant received cheques for $5,000 each, commencing April 2005, in the relation to the promissory note for $100,000.. The cheques were drawn on an account of 0738116 B.C. Ltd. with the Canadian Imperial Bank of Commerce branch in Nelson, B.C. The defendants retained three of those cheques uncashed on the instructions of Dee Nelson.

[8] In March 2007 the defendants received a letter from Little Loan Shoppe requesting return of the Original Promissory Notes in exchange for two new promissory notes (the "New Promissory Notes"). One was for $140,000, with interest at 60% per annum, and the other for $80,000 with interest at 40% per annum. The defendants complied with that request and received the New Promissory Notes and cheques from 0738116 B.C. Ltd. totalling $28,999.98 ostensibly for monthly payments on the Original Promissory Notes since January 2006. The defendants received payments in 2007 and 2008 on the New Promissory Notes totaling $94,720.

[9] In aggregate on both the Original Promissory Notes and the New Promissory Notes the defendants received payments of $252,720 and after taxes the defendant deposes they received a net profit of $13,460 since their first deposit to the bank account of 0738116 B.C. Ltd. in 2005. The evidence does not indicate the defendants participated in what is described as the "Ponzi scheme" of Dee Nelson.

[10] In 2009 the defendants received emails from others who had invested in Little Loan Shoppe and thereby learned of its bankruptcy. The defendants were contacted by U.S. lawyers acting for creditors in the United States who ultimately declined to act for them. In 2009 the defendants received a proof of claim from the United States Bankruptcy Court District of Nevada which they completed, signed on November 17, 2009 and returned claiming $355,666.69 Canadian. On the proof of claim they provided their telephone number.

[11] On August 10, 2011, the defendant traveled to Argentina and returned to Vancouver on December 10, 2011. Receipts for international mail dated August 22 and 26, 2011 were filed in the Washington Court apparently as proof of service of an "adversary proceeding" in the Washington Court naming the defendant as a defendant in that proceeding. The defendant deposes that the signatures of the addressees on the delivery receipts are neither hers nor, of course, that of her late husband. The name IBARRA JOSE is written on the delivery receipts. The evidence is that this is the name of the defendant's son. The defendant deposes that her son did not advise her of the delivery of the adversary proceeding materials while she was in Argentina.

[12] On return from Argentina in December 2011, the defendant found a two page letter addressed to her, dated August 19, 2011. The letter came from a Washington State law firm, Witherspoon Kelley, which advised that it represented the trustee in bankruptcy for LLS America LLC. In the letter the defendant was informed that the adversary proceeding names her as a defendant and that:

> … under applicable bankruptcy and state law, LLS America and its related companies were involved in a in a "Ponzi scheme". This means that money received by LLS America from investors was generally used to pay back loans to previous investors in the companies. Under Bankruptcy Code terminology, these payments made by LLS America to prior investors using funds of subsequent investors constituted "fraudulent conveyances." Under applicable law, the bankruptcy estate of LLS America may be entitled to "claw back" any payments made, regardless of whether an investor received back from LLS America all of the money the investor may have invested.

[13] The letter goes on to say:

> Please be aware that the Bankruptcy Court has ordered that LLS America's operations and assets be consolidated with the operations and assets of certain related companies. These companies include: D&D and Associates, LLC; Team Spirit America, LLC; LLS Canada, LLC; Little Loan Shoppe America, LLC; Little Loan Shoppe, Ltd.; 639504BC; Little Loan Shoppe Canada, LLC; 0738106BC, Ltd.; 0738116BC, Ltd.; 0738126BC, Ltd.; 360 Northwest Networks, LLC; and LLS North America, LLC. In this regard, when we use the name "LLS America," we are incorporating these other companies, and it may be those companies that were involved in receipt of funds loaned by you.

[14] The defendant was given until October 15, 2011 to file an answer to the adversary complaint. The defendant deposes she read the letter, but did not understand it, and because the deadline for answering had passed she did not think there was anything she could do in response.

[15] In January 2012 the defendant's youngest son was admitted to Surrey Memorial Hospital and placed on life support. He remained in hospital until December 2012. The defendant deposes that in those months she received "several other pieces of mail from the U.S. Trustee" and although she read them she did not understand them and did not respond "because [she] was consumed with caring for" her son.

[16] In September 2012 the defendant wrote to Weatherspoon Kelley advising she had "been receiving many pieces of mail and read them but most of the [time] I'm not sure what these letters say, I don't know legal language". She then describes her son's illness; and an illness of her own and remarks that:

> … I don't write this to make you feel sorry for us, just done for you to understand that with all the worries I had these past 2 years, I don't have a clear mind to try to understand legal terms and figure who does what and why.

[17] The letter ends "please keep me informed as to what is going on". It is notable that at no time was the defendant contacted at the telephone number which was put on the proof of claim which went to the Nevada Court.

[18] The defendant deposes she did not realize until the spring of 2013 that she and her late husband were being sued in the Washington Court. When she received

"some documents in the mail" from Jonathan Williams whom she understood was "the lawyer for the U.S. trustee" she telephoned Mr. Williams who told her to call "Bruce" of Witherspoon Kelley. She spoke to Bruce on the phone and told him that she did not understand why she had been sued. He said it was because "we were Ponzi people". The defendant was offended at being accused of stealing people's money. In evidence from Shelley Ripley, of Witherspoon Kelley, Ms. Ripley denies the defendant spoke with Bruce Kriegman, the trustee and plaintiff in this proceeding. Ms. Ripley's evidence in that regard is hearsay. Mr. Kriegman has not provided an affidavit.

[19] The defendant, on speaking with "Bruce", contacted the Canadian Bar Association lawyer referral service and the American Bar association lawyer referral service but was "unable to find a lawyer to represent [her]". It was not until after she learned of the registration order that she retained her present counsel in British Columbia.

[20] Jonathan Williams appears as counsel before me on this application, and is a shareholder of Owen Bird Law Corporation, the solicitors for the plaintiff in the matter before me. Mr. Williams in his own affidavit to which no objection was taken deposes on information and belief that the plaintiff was appointed trustee of the estate of LLS America LLC under Chapter 11 of the U.S. Bankruptcy Code and has an address care of Witherspoon Kelley in Spokane, Washington. LLS America LLC, Mr. Williams deposes "filed a voluntary petition" on July, 21 2009 in the Bankruptcy Court in the District of Nevada. That venue was transferred to the Bankruptcy Court of the Washington Court by a court order on November 4, 2009. Mr. Williams deposes that the defendants attorned to the jurisdiction of the Washington Court "by filing therein a proof of claim". The application record before me includes only the proof of claim from the defendants in the Bankruptcy proceedings in the Nevada court.
Mr. Williams deposes that the plaintiff filed an "Ancillary Complaint" in the Washington Court bankruptcy proceedings pursuant to s. 544 and 548 of the United States Bankruptcy Code and Chapter 19.40 of the Revised Code of Washington

State. The Ancillary Complaint alleges the "defendants received fraudulent transfers" from LLS America LLC "or related companies".

[21] Mr. Williams further deposes that the defendants were "duly served with the Ancillary Complaint by registered mail" but took no steps to defend and judgment was entered in the Washington Court on October 31, 2012 for $347,044.92 in Canadian Dollars plus costs.

[22] Mr. Williams gives his evidence on the basis of facts disclosed to him by a lawyer with Witherspoon Kelley. Mr. Williams deposes that the judgment given against the defendants "does not fall within any of the cases in which, under s. 29(6)(a) to 29(6)(g) of the *COEA* a judgment cannot be registered"

[23] Reilly Pollard, an associate with Lawson Lundell LLP, the solicitors for the defendant, deposes that he searched court records in the state of Nevada regarding the bankruptcy of Little Loan Shoppe and the adversary proceedings against the defendants. The defendants are listed as recipients of a mailing to advise them of a meeting of creditors. Mr. Pollard deposes to a Certificate of Service filed in the Nevada bankruptcy proceedings regarding a "motion to transfer venue" to the Washington Court. The defendants are not named on the transfer motion. On October 22, 2009, the Nevada bankruptcy proceedings were transferred to the Washington Court.

[24] Mr. Pollard was informed by registry staff with the Nevada court that its practice dictates that once the bankruptcy proceeding was transferred to the Washington Court the proof of claim filed in the Nevada Court by the defendants would be forwarded to the Washington Court for filing there.

[25] Shelley Ripley is an attorney with Witherspoon Kelley. She deposes that on September 30, 2009 an application was made to the Nevada Bankruptcy Court "on notice to Larry Wilson and Ana Wilson" to transfer the venue of the proceeding to the Washington Court on the basis the latter court was "the more appropriate venue" because LLS America LLC had its headquarters in Washington State and "Doris

[Nelson], the principle behind LLS conducted most of her business in Spokane". No source is given for that information including any source for the assertion that notice was given to the defendants. It is inadmissible unattributed hearsay.

[26] Ms. Ripley also deposes that the defendants "transacted business with LLS in the State of Washington. Evidence of that can be found on the promissory notes which were attached to their proof of claim, which were notarized in the State of Washington".

[27] I do not accept Ms. Ripley is in a position, at least on the evidence in her affidavit, to depose that the defendants transacted business in the State of Washington. Neither the new nor the old promissory notes are evidence to that effect. The promissory notes were made by the numbered British Columbia Companies and signed by Dee Nelson as "managing member". Although her signatures are witnessed and a seal applied by a Washington State notary public, there is no evidence the seal was applied at the time the notes were signed by Dee Nelson, nor is there evidence about where she signed them, and the notes are not signed by the defendants. Further they expressly provide that they are to be construed and applied in accordance with the laws in British Columbia. It might be added that in accordance with the law of British Columbia the seal adds nothing to the legal sufficiency of the notes.

[28] Ms. Ripley further deposes that a meeting of creditors was to be held in Spokane of which notice and "instructions to file a proof of claim were given to Larry and Ana Wilson". A "certificate of notice" is attached to Ms. Ripley's affidavit; it includes a very lengthy list of names and addresses of both individuals and companies. The defendants' names are on the list. The certificate begins: "The following entities were noticed by first class mail on November 6, 2009". Ms. Ripley describes this as "service of notice of the meeting" on the defendants.

[29] There is no evidence that notice actually reached the defendants and certainly no evidence of "service" in the sense that the notice was delivered

personally. The certificate could not be used in British Columbia to demonstrate personal service.

[30] Ms. Ripley also deposes as follows, saying that Witherspoon Kelley:

> … represents the plaintiff against many of the defendants that participated in the LLS Ponzi scheme. It is my experience that there is a great deal of communication among the defendants and other participants in the LLS Ponzi scheme, such that they are aware of the proceedings, and are aware of the names of counsel who defended other defendants and participants. Apart from the documentary evidence of their knowledge, it is my belief that the Wilsons should have been aware, in 2009, that the venue of the proceedings had been transferred from Nevada to Washington.

[31] In my opinion this is inadmissible speculation at best and furthermore, is an argument disguised as evidence.

[32] Ms. Ripley deposes that the defendants filed their proof of claim on November 20, 2009 in the Washington Bankruptcy Court.

[33] However, Ms. Ripley offers no other evidence that the proof of claim was filed in the Washington Court. The evidence in the record before me is that it was filed in the Nevada Court.

[34] Ms. Ripley deposes as follows in relation to the Adversary Complaint filed by the plaintiff:

> Under United States procedure in bankruptcy matters, it is the Clerk of the Court that issues the summons for an Adversary Complaint. In order to effect service on an individual in a foreign country, the United States Federal Rules of Civil Procedure and the Federal Bankruptcy Rules allow the clerk of the Court to address and mail a copy of the Summons and Adversary Complaint to the defendant by registered mail.

[35] Ms. Ripley deposes that the summons and complaint in the adversary proceeding were sent by the Clerk of the Bankruptcy Court by international registered mail to the defendants at the address on the proof of claim along with a "return receipt" which was received by Witherspoon Kelley "indicating delivery" to the defendants.

[36] Ms. Ripley attaches the receipts "for Ana Wilson and Larry Wilson". At mentioned earlier in these reasons the receipts indicate the summons and complaint were received by someone other than the defendants.

[37] Ms. Ripley deposes that on June 22, 2012 a "notice of motion to withdraw the bankruptcy reference for entry of default judgment by the District Court was filed and mailed to the Wilsons" giving them 24 days to respond. They did not.

[38] A certificate of service is attached to the notice of motion and Ms. Ripley deposes the certificate is "proof of service on the Wilsons".

[39] By that time Mr. Wilson was dead. The unsworn certificate of service indicates in relation to the defendants only that something described as "the document" was mailed to the defendants. In my opinion the certificate would not be received in a British Columbia Court as proof of mailing of the notice of motion and would not be proof of its service.

[40] Ms. Ripley deposes that she "reasonably believed" the defendant had received the Adversary Complaint and had read the affidavit of the defendant of September 8, 2014 in which the defendant deposed that:

> I am advised by my current lawyers that the US Trustee attempted service by mailing court documents to my home on August 13 or August 22, 2011. I was not in the country at this time and did not receive the documents that were sent by the US Trustee.

[41] Ms. Ripley goes on to comment on the defendant's evidence:

> …I note that this statement is ambiguous as to whether Ms. Wilson is alleging that she did not receive the Adversary Complaint and Summons at the time that she was away, leaving open the likelihood that she received them on her return, or whether she is alleging that she did not receive them at all.
>
> If she is alleging that she did not receive the Adversary Complaint and Summons at all, I dispute whether she is being accurate, but regardless, Ms. Wilson was at the very least made aware of the Adversary Action by the correspondence from my firm, which she admitted receiving. Her well written letter to my firm made it appear that she was able to understand the Adversary Complaint, the Summons, and the correspondence which my firm sent to her.

[42] Ms. Ripley's comments are not evidence of anything except perhaps an argument she might make to set aside the registration order, if she were counsel on this application. I have ignored the comments.

[43] Ms. Ripley further deposes that on July 2, 2013, Witherspoon Kelley was contacted by a lawyer in Spokane on behalf of the defendant who had represented other defendants in the adversary proceeding.

[44] This evidence is intended to go to the issue of attornment, but I am informed that by July 2, 2013 the adversary proceeding had concluded.

Analysis

[45] The defendant submits the judgment taken against her does not accord with the principles found in *Beals v. Saldanha*, 2003 SCC 72, and is inconsistent with the "framework for registration" required by the *COEA*.

[46] In *Beals* the parties conceded that the Florida Court which had given judgment in that case properly took jurisdiction over the action because the "real and substantial connection" test articulated in *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, had been satisfied. Justice Major writing for the majority in *Beals* observed, at para. 32 that:

> 32 The "real and substantial connection" test requires that a significant connection exist between the cause of action and the foreign court. Furthermore, a defendant can reasonably be brought within the embrace of a foreign jurisdiction's law where he or she has participated in something of significance or was actively involved in that foreign jurisdiction. A fleeting or relatively unimportant connection will not be enough to give a foreign court jurisdiction. The connection to the foreign jurisdiction must be a substantial one.

[47] I cannot detect a real and substantial connection between the defendant and the foreign Washington Court which gave judgment against her. The only connection whatsoever is the notarial seal on the promissory notes. As I have already commented there is nothing in the evidence to indicate where the maker of the notes, Dee Nelson, signed them. They may have been signed by her in British Columbia and the notarial seal may have been applied later in Washington State.

The promissory notes are subject to British Columbia law which suggests they were made in British Columbia. The seal may be indicative of some connection to Washington State, but it had no effect on the validity of the notes pursuant to British Columbia law and is of such a "fleeting or relatively unimportant connection" to Washington State that the test of connection in *Beals* is not met.

[48] Section 29 of the *COEA* addresses the registration of judgments given in a reciprocating state, one of which is Washington State. Subsection (2)(a) of that section reads:

> (2) An order for registration under this Part may be made without notice to any person in any case in which
>
> (a) the judgment debtor
>
> (i) was personally served with process in the original action, or
>
> (ii) although not personally served, appeared or defended, or attorned or otherwise submitted to the jurisdiction of the original court …

[49] I am not persuaded the defendant was "duly served" with the process of the Washington Court, nor did she appear or defend or attorn to the jurisdiction of that court. There was no necessity for the defendant to appear or defend in the United States proceedings. All transactions the defendants engaged in to invest in Little Loan Shoppe occurred entirely in Canada, in Canadian Dollars.

[50] The defendant argues that the registration should be set aside. The *COEA* contemplates a process for an order, where made without notice, to be set aside. Section 34 reads as follows"

> 34 (1) If a judgment is registered under an order made without notice to any person
>
> (a) within one month after the registration or within a further period as the registering court may at any time order, notice of the registration must be served on the judgment debtor in the same manner as a notice of civil claim is required to be served, and
>
> (b) the judgment debtor, within one month after he or she has had notice of the registration, may apply to the registering court to have the registration set aside.

> (2) On an application under subsection (1) (b), the court may set aside the registration on any of the grounds referred to in section 29 (6) and on terms the court thinks fit.

[51] In *LLS Amercia LLC (Trustee of) v. Grande*, 2013 BCSC 1745, Justice Grauer set aside registration of a judgment granted by the Washington Court. Justice Grauer commented as follows on the facts surrounding service in that case, at paras. 47- 49:

> [47] The evidence put before me, about which I shall have more to say, seems to indicate that a package addressed to Diane Grande was delivered to the Piccadilly Plaza Post Office at the Shoppers Drug Mart in Salmon Arm, but was returned to the sender "unclaimed". With respect to Frank Grande, the evidence consists of a copy of a printout from a United States Postal Service *Track & Confirm* webpage showing that a first-class package with the label number relating to his address was "delivered" on August 18, 2011, by "registered mail with return receipt".
>
> [48] Nothing tells me what was in either package. The plaintiff was unable to produce any return receipts, and Mr. Grande denies receiving the summons on August 18, 2011, or at all.
>
> [49] The evidence adduced in this regard is wholly unsatisfactory. It consists of photocopies of third party documents. The photocopies were enclosed with a letter to counsel for the plaintiff from his instructing United States attorney, a copy of which letter and enclosures are exhibited to an affidavit from the attorney. They are not even sworn to be true copies, and are not identified in the affidavit at all. The attorney does not depose on information from an appropriate source as to what the documents pertain, or how or by whom they were generated. They are referred to only in the attorney's letter exhibited to the affidavit, in which they are described simply as "proof of service". I do not consider them to be proof of anything. Even on their face they do not answer the important questions.

[52] *Mutatis mutandis* some of the same difficulties arise in the matter before me. Mr. Justice Grauer found the defendants in *Grande* had not been duly served within the meaning of section 29(6)(c) of the *COEA* and observed, at paras. 59-61:

> [59] In my view, it does not necessarily follow, as the defendants argue, that only personal service would suffice. As this court stated in *Re Gacs and Maierovitz* (1968), 68 D.L.R. (2d) 345, "duly served" does not necessarily mean "personally served". In the circumstances of this case, however, I find that it means more than just putting the summons in the mail. If the plaintiff had been able to produce a signed receipt showing acknowledgement by the defendants that they had received the package containing the summons, which is what registered mail is designed to accomplish, then that may well have satisfied the requirement that the defendants be "duly served". As it is, there is no acceptable evidence to counter the sworn evidence of the

> defendants that they did not receive notice. There is also no evidence of any attempt by the defendants to evade service, or of any knowledge on their part of what was transpiring in the Bankruptcy Court proceedings beyond their filing of a Proof of Claim.
>
> [60] I consider this analysis to be entirely consistent with the scheme of section 29 of the *Act*. Section 29(2) allows for registration without notice only where the judgment debtor was either *personally* served, or had appeared or defended or attorned or otherwise submitted to the jurisdiction of the original court. Section 29(6)(c), in essence, provides that even where the judgment debtor had agreed to submit to the jurisdiction of the court, he or she must have been *duly* served.
>
> [61] What will constitute due service will depend on the circumstances, and the nature of the process. Where, as here, the process is the commencement by summons of a proceeding intended to culminate in a money judgment against the defendant, of which proceeding the defendant is unaware, then I find that due service requires, at the minimum, steps from which it may reasonably be inferred that the defendant received adequate notice that granted him an opportunity to defend. Those steps may consist, for instance, of personal service or *delivery* by registered mail or courier. In the absence of any evidence of such steps, the only reasonable conclusion where the defendants credibly deny actual notice is that they have been deprived of an opportunity to be heard in the defence of the claim against them, offending fundamental principles of natural justice.
>
> [Emphasis added.]

[53] The foregoing considerations would incline me to set aside the registration order. However, I do not have jurisdiction to do so in the face of s. 34(1)(b) of the *COEA*, which required the defendant to apply to set aside the registration order within one month of receiving notice of it. In an affidavit made on September 8, 2014 the defendant deposes that "[i]n March 2014 [she] learned that the Registration Order had been registered on title to [her] home", in Surrey, British Columbia. It was not until September 9, 2014 that the defendant filed a Notice of Application in this court to set aside the Registration Order.

[54] The defendant submits that this court should extend the time contemplated by s. 34(1)(b) of the *COEA* relying on s. 24 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, which reads as follows:

> **Relief against penalties and forfeitures**
>
> 24 The court may relieve against all penalties and forfeitures, and in granting the relief may impose any terms as to costs, expenses,

> damages, compensations and all other matters that the court thinks fit.

[55] Section 24 of the *Law and Equity Act* does not empower this Court to relieve a party from a statutory forfeiture: *Ganitano v. Metro Vancouver Housing Corporation*, 2014 BCCA 10, at para. 34. In *Martin Mine Ltd. v. British Columbia* (1985), 62 B.C.L.R. 107 (C.A.) at 116, Craig J.A., writing for the Court of Appeal, commented as follows on what was then s. 21 of the *Law and Equity Act*:

> I respectfully disagree with the view that s. 21 [now s. 24] of the *Law and Equity Act* gives a court the power to relieve against statutory forfeiture. I think that the views expressed by the Supreme Court of Canada and the Privy Council in the case of *Can. Nor. Ry. Co. v. R.* (1922) 64 S.C.R. 264 and (1923) A.C. 714 clearly establish that s. 21 does not give a court the power to relieve against "statutory" forfeiture. A provision in the Supreme Court Act of Alberta gave the Court the power to relieve "against all penalties in forfeitures" (like s. 21 of the *Law and Equity Act*). The main issue in the case was whether the Court had power to relieve against financial penalties imposed upon the railway companies under the terms of provincial legislation. The Appellate Division of the Supreme Court of Alberta unanimously held that the power to relieve against penalties in forfeitures did not authorize relief against statutory penalties (1921) 1 W.W.R. 178. The Supreme Court of Canada unanimously agreed with this view, including Idington J. and Anglin J. who dissented. At p. 269 Idington J. said:
>
> > The contention founded upon the power of the court to relieve from such penalties ... seems to me to be applicable only to such contractual penalties and forfeitures as the Court of Chancery had exercised jurisdiction in regard to".
>
> Duff J. said at p. 272:
>
> > I am unable to accept the contention that the authority to relieve from forfeitures expressed in general terms and conferred upon the Supreme Court by the statute of 1907 extends to penalties and forfeitures declared by a public enactment and thereby made exigible upon the non-performance of a general duty created by such enactment, such as a duty to pay taxes or to make a return under a taxing statute."
>
> The Privy Council agreed with this view. In giving the judgment of the Privy Council, Lord Parmoor said at p. 722:
>
> > The Chief Justice (Chief Justice Harvey of the Appellate Division) expresses the opinion that if the power given to the Court to relieve against penalties applied to statutory penalties, this would, in effect, be giving an authority to enable the Court to repeal statutes. This decision was unanimously confirmed in the Supreme Court of Canada. Idington J. says in his judgment “that the power in the Court to relieve from penalties seemed to him to be applicable only to such

> contractual penalties, and forfeitures as those to which the Court of Chancery had exercised jurisdiction."
>
> I think that these views are determinative of this issue and that a court cannot relieve against penalties or forfeitures which are statutory in origin.

[56] Accordingly, this court cannot relieve the defendant from the expiration of the time limit as set out in s. 34(1)(b) of the *COEA*.

[57] The defendant did not advance an argument that the proceedings in the Washington Court were conducted in a manner contrary to natural justice, nor did she argue that this court should set aside the registration on the basis that recognizing the judgment would be contrary to public policy.

[58] In light of the foregoing, the defendant's application is dismissed.

"Affleck J."