

In the Court of Appeal of Alberta

Citation: Snake River Contracting Ltd v Cordwell, 2026 ABCA 177

Date: 20260525

Docket: 2501-0179AC

Registry: Calgary

Between:

Snake River Contracting Ltd.

Respondent

- and -

Myles Cordwell, Dawn Cordwell, Cordwell Fine Homes Inc. and Kason Homes Inc.

Appellants

The Court:

**The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Jolaine Antonio
The Honourable Justice Alice Woolley**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice C.D. Simard
Dated the 13th day of June, 2025
Filed on the 18th day of June, 2025
(Docket: 1601-08251)

Memorandum of Judgment

The Court:

[1] The appellant Myles Cordwell appeals a decision granting the respondent Snake River Contracting Ltd. a declaration that the debt arising from a judgment against him is not released by an order of discharge from bankruptcy because the debt falls within the scope of s 178(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

[2] Section 178(1) “sets out a specific list of debts that are not released by an order of discharge and that therefore survive bankruptcy”: *Poonian v British Columbia (Securities Commission)*, 2024 SCC 28 at para 25. Here, the appellant’s debt was not discharged because it was found to be a misappropriation while acting in a fiduciary capacity, which s 178(1)(d) excludes from an order of discharge:

178 (1) An order of discharge does not release the bankrupt from...

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;

[3] The appellant worked on contract as an administrator for the respondent’s construction business. After the respondent terminated its contract with the appellant in June 2016, it discovered significant funds were missing or unaccounted for, and commenced an action against the appellant and others to recover those funds. In 2019, following a five day trial, the appellant was found liable for amounts the respondent claimed the appellant had wrongfully taken: *Snake River Contracting Ltd v Cordwell*, 2019 ABQB 382 at paras 103, 108, 124 [*Trial Decision*]. In finding the appellant liable, the trial judge said it was necessary to “characterize the nature of the liability”: *Trial Decision* at para 104. The trial judge found the appellant worked in a fiduciary capacity for the respondent. Then, citing a case on the interpretation of “misappropriation” for the purposes of s 178(1)(d), *Valastiak v Valastiak*, 2010 BCCA 71 [*Valastiak*], the trial judge concluded he had “no hesitation in holding that Mr. Cordwell misappropriated Snake River’s funds while he was acting in a fiduciary capacity”: *Trial Decision* at paras 104-108.

[4] Judgment was pronounced against the appellant on May 23, 2019 in the amount of \$159,175.52 plus interest and costs. The preamble to the judgment included, “AND UPON the Court finding that the Defendant, Myles Cordwell, misappropriated funds while acting in a fiduciary capacity, and the amounts adjudged herein are liabilities as against Myles Cordwell arising out of misappropriation while acting in a fiduciary capacity”.

[5] The appellant approved the form of judgment. He did not appeal the *Trial Decision*.

[6] On August 1, 2019, the appellant made an assignment into bankruptcy. The respondent filed a writ of enforcement on November 22, 2019, and provided a proof of claim to the appellant's trustee in bankruptcy, asserting that the appellant's debt to the respondent was to be excluded from discharge by virtue of s 178 of the *Bankruptcy and Insolvency Act*.

[7] The appellant was discharged from bankruptcy on May 2, 2020. The certificate of discharge excluded "those matters referred to in subsection 178(1)".

[8] On November 4, 2024, the respondent filed an application seeking a declaration that the judgment arising from the *Trial Decision* survived the appellant's discharge from bankruptcy. The appellant brought a cross-application seeking to have the respondent's writ of enforcement removed from title to his property upon payment of funds into trust.

[9] On December 9, 2024, the appellant was ordered to pay \$160,000 into court.

[10] On June 13, 2025, the chambers judge granted the respondent a declaration that the judgment granted pursuant to the *Trial Decision* was "not released by order of discharge in accordance with s. 178(1)(d)" and ordered the funds paid into court to be released to the respondent.

[11] The chambers judge found the trial judge had decided that the appellant's liability to the respondent fell within s 178(1)(d) when he found the appellant had misappropriated funds while acting in a fiduciary capacity. He concluded the *Trial Decision* had already decided the issue before him; it was, in effect, *res judicata*.

[12] The chambers judge made no reviewable error in reaching that conclusion.

[13] The appellant's argument turns on a comment made by the trial judge when he denied punitive damages to the respondent. The trial judge said:

Nonetheless, it is possible that Mr. Cordwell misapprehended his role in Snake River and his entitlement to be reimbursed for certain expenses. In other words, his actions might have been negligent, rather than deliberate. The cases to which this Court referred earlier said that its discretion in awarding punitive damages must be carefully considered and cautiously exercised, and that punitive damages should be resorted to only in exceptional cases and with restraint. In keeping with its cautious discretion, this Court chooses not to award punitive damages as against the Defendants.

[Emphasis added]

Trial Decision at para 123.

[14] The appellant submits that observation by the trial judge – that the appellant may have misapprehended his role and been negligent and not deliberate in taking the respondent’s funds – means the trial judge’s earlier finding that he “misappropriated... funds while he was acting in a fiduciary capacity” cannot be treated as a finding of “misappropriation” for the purposes of s 178(1)(d). To fall within s 178(1)(d) the misappropriation must involve some element of intentional wrongdoing, and the suggestion that the appellant might have merely been negligent is inconsistent with that conclusion.

[15] The chambers judge did not accept the appellant’s characterization of the trial judgment and neither do we. The trial judge explicitly and clearly found the appellant’s liability was for misappropriation of funds while acting in a fiduciary capacity. He did so based on case law interpreting misappropriation in the context of s 178(1)(d), and which states that misappropriation connotes “some element of wrongdoing, improper conduct or improper accounting”: *Valastiak* at para 31. The final form of judgment replicated the trial judge’s finding that the appellant misappropriated funds while acting in a fiduciary capacity. The trial judge’s decision that the appellant misappropriated funds while in a fiduciary capacity is clear, final and conclusive: *Patrick Street Holdings Ltd v 11368 NL Inc*, 2026 SCC 15 at para 40.

[16] In other words, a prior proceeding between the appellant and respondent resulted in a final decision that the appellant had misappropriated funds while acting in a fiduciary capacity within the meaning of s 178(1)(d). The appellant cannot now relitigate that issue: *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 23.

[17] The appeal is dismissed.

Appeal heard on May 14, 2026

Memorandum filed at Calgary, Alberta
this 25th day of May, 2026

Strekaf J.A.

Antonio J.A.

Woolley J.A.

Appearances:

C. Sutter
for the Respondent

M. Sadiq
for the Appellant