

# Court of King's Bench of Alberta

**Citation: Bokenfohr v Van Bruggen, 2026 ABKB 435**

**Date:** 20260608  
**Docket:** 2401 02854  
**Registry:** Calgary

Between:

**Chris Bokenfohr, Vor Allem Consulting Ltd.**

Applicants

- and -

**Jan Van Bruggen, Batavi Venture Group Inc. Barricades and Signs Ltd., Matthew Dwight Powell, 1288078 Ontario Inc., 1964740 Alberta Inc., Candesto Enterprises Corp., D3 Infrastructure Services Inc., Safe Roads Alberta**

Respondents

---

## Reasons for Judgment of the Honourable Justice C.M. Jones

---

### I. Introduction

[1] This is an application (the “Application”) for an attachment order pursuant to the *Civil Enforcement Act*, RSA 2000, c C-15 (the “CEA”). The request arises out of an action (the “Action”) for damages, alleging that the defendant Respondents failed fully to discharge their obligations to the plaintiff Applicants under the terms of certain commercial agreements.

[2] For the reasons that follow, the Application is dismissed.

### II. Background

#### A. Parties

[3] The Applicants on this Application are the plaintiffs in the Action: Chris Bokenfohr and his wholly-owned company, Vor Allem Consulting Ltd. (“Vor Allem”).

[4] The Respondents on this Application are the defendants in the Action: Jan Van Bruggen, Batavi Venture Group Inc. (“Batavi”), Barricades and Signs Ltd. (“Barricades and Signs”), Matthew Dwight Powell (“MD Powell”), 1288078 Ontario Inc. (“128 Inc.”), 1964740 Alberta Inc. (“196 Inc.”), Candesto Enterprises Corp. (“Candesto Corp”), D3 Infrastructure Services Inc.

(“D3”) and Safe Roads Alberta (“Safe Roads”). Notwithstanding that identical entities are named as defendants in the Action and Respondents on the Application, Applicants’ counsel advised that relief in the Application is sought only against Van Bruggen, Batavi and Barricades and Signs.

[5] In addition, the Application at clause 1(e) seeks injunctive relief against an entity referred to as Universal Group, which is not named as either a defendant in the Action or a Respondent in the Application. However, Applicants’ counsel advised that no relief is sought against Universal Group in the appearance before me.

[6] It is unclear to me why relief on this Application is sought against some, but not all, of the defendants in the Action. That being the case, however, I will use the term “Respondents” herein to refer only to those entities against which relief is sought on this Application. To avoid distraction in the Background which follows, I will avoid describing in detail the involvement of named entities, specifically MD Powell, 128 Inc. and 196 Inc., against which no relief is sought.

[7] As will be discussed in more detail herein, Batavi and Barricades and Signs amalgamated and continued as Barricades and Signs. Subsequent to the hearing of this matter, I asked counsel for the Applicants to clarify why relief was sought on this Application against Batavi notwithstanding the amalgamation. Counsel provided a lengthy reply that included the following:

Batavi was named as a party in this attachment order application for the following reasons:

1. It is known that Batavi engaged in dealings (transfer of assets and amalgamation) with its exigible property. This is not speculation. Rather, the evidence is specific and solid.
2. Batavi engaged in these dealings only after it was named as a defendant in the plaintiffs’ lawsuit, and close in time to learning that steps were being taken by the plaintiffs to move forward after it was served the amended statement of claim. This raises legitimate concerns that the timing and purpose of those dealings was to hinder enforcement of a judgment against it. [Emphasis in original.]
3. Batavi remains a plaintiff by counterclaim in this Action.
4. As a result of its dealings, Batavi disposed of the entirety [sic] its assets, while a key and active defendant in the plaintiffs’ lawsuit. There has been no evidence led to offset the instinctive alarm that these dealings were done to meet any reasonable and ordinary living expenses. At the same time, disposing of the entirety of the corporation’s assets, particularly without evidence of a compelling business need or a “reasonable and ordinary expense” is, respectfully, an anathema to the presumption we believe Sec. 17(b) of the *Civil Enforcement Act*, RSA 2000, c C-15 (“**Act**”) contemplates – that the corporate defendant would be entitled to divest itself of all of its exigible property and disappear. [Emphasis in original.]
5. Section 17(3) of the Act grants the Court broad powers when considering the appropriate terms of an attachment order. The Act provides:

*(3) In granting an attachment order, the Court may do one or more of the following:*

*(b) prohibit any dealing with exigible property of the defendant;*

*(c) impose conditions or restrictions on any dealings with exigible property of the defendant;*

*...*

*(g) include in the order any term, condition or ancillary provision that the Court considers necessary or desirable.*

The plaintiffs believe the dealings in which Batavi was engaged, as referred to above, were done to seriously hinder the plaintiffs in the event they were successful in their claim against Batavi while at the same time to protect and insulate its assets, and their value, in the amalgamation, for the benefit of one or more of the other defendants from enforcement of a judgment against Batavi. While Batavi may no longer exist as a separate legal entity, there would be a value assigned to the assets it contributed to the amalgamation with Barricades and Signs. And, since Barricades and Signs remains an active Alberta corporation, the plaintiffs believe that the Court can, and should, order that Barricades and Signs post funds equivalent to the cash value of the assets Batavi contributed to the amalgamation up to the value of the damages claimed in the lawsuit pursuant to the powers in Sec. 17(3) to account for Batavi's improper dealings with its exigible property.

[8] In response, counsel for the Respondents pointed out that, pursuant to ss 186(d) and (e) of the *Business Corporations Act*, "the effect of an amalgamation does not impair an existing cause of action, and a civil proceeding commenced against an amalgamating corporation may continue to be prosecuted by or against the amalgamated corporation."

## **B. The Transactions**

[9] The Applicants operated a roadway signage, guardrail and high-tension cable barrier installation company under the name of Candesto Enterprises Inc. ("Candesto Inc.").

[10] Prior to the transactions at issue, Bokenfohr and Vor Allem were shareholders in Safe Roads, D3 and Candesto Corp (collectively, the "Corporations").

[11] Apparently, a group (the "Powell Group") consisting of 128 Inc., 196 Inc., MD Powell and William F. Powell also had direct or indirect equity interests in the Corporations. However, since no relief is sought on this Application against members of the Powell Group, it is not necessary to describe the complicated structure of personal and intercorporate shareholdings that existed prior to the transactions in question.

[12] At that time, Batavi was owned in equal shares by Van Bruggen and his wife.

[13] Vor Allem had provided unsecured shareholder loans to Safe Roads and Candesto Corp. As of September 10, 2021, Safe Roads owed Vor Allem \$565,128.94 (the “Safe Roads Loan”). As of September 16, 2022, Candesto Corp owed Vor Allem \$388,990.59 (the “Candesto Loan”).

[14] Pursuant to an agreement signed May 24, 2022 with effect from January 31, 2022 (the “Share Purchase Agreement”), Bokenfohr and Vor Allem sold their shares of the Corporations to Batavi (the “Share Sale”). Bokenfohr claims that Batavi agreed to pay \$125,000 at closing and a further \$625,000 over 5 years, commencing January 31, 2023.

[15] Incidental to the Share Sale, Safe Roads issued a promissory note (the “Promissory Note”) to Vor Allem in the amount of \$250,000. Bokenfohr claims that the Promissory Note was issued to reflect significant inventory value in Safe Roads.

[16] Also as part of the Share Sale, a consulting agreement was entered into (the “Consulting Agreement”) pursuant to which Bokenfohr would provide consulting services to Batavi for a period of 60 months at a rate of \$14,354.87 (inclusive of GST) per month.

[17] It appears undisputed that, after the closing of the Share Sale, Safe Roads sold its inventory to Barricades and Signs at less than fair market value. Bokenfohr claims that shortly after that, 196 Inc, Batavi and Van Bruggen caused the Corporations to re-acquire that inventory at more than fair market value (together, the “Inventory Transactions”). Bokenfohr alleges that the Inventory Transactions resulted in the extraction of valuable Safe Roads inventory at a loss to Safe Roads and a profit to Barricades and Signs.

[18] On December 19, 2023, the Corporations were granted CCAA protection by this Court.

[19] In 2024, as discussed above, Batavi and Barricades and Signs amalgamated. The amalgamated Barricades and Signs held the shares of the Corporations formerly held by Batavi.

[20] On September 10, 2014, the Applicants filed an amended statement of claim (the “Amended Statement of Claim”) naming as defendants Van Bruggen, Batavi, Barricades and Signs, MD Powell, 128 Inc, 196 Inc, Candesto Corp, D3 and Safe Roads.

[21] It appears that in December 2024, Universal Group, a portfolio company owned by CAI Capital Partners, acquired all of the shares of the amalgamated Barricades and Signs (the “Acquisition”). As a consequence, it appears that Van Bruggen divested himself of any interest in the Corporations, at least insofar as he held it through his ownership in Barricades and Signs.

[22] In argument before me, Applicants’ counsel offered the view that during the course of the CCAA Proceedings, the Corporations dispersed or sold all of their assets and were wound up. Counsel later clarified in an email that this was not the case for all of the Corporations:

It was the Plaintiffs/Applicants understanding that at the conclusion of the Receivership matter that Candesto Enterprises Corp., Safe Roads and D3 Infrastructure would all be struck. We have conducted corporate searches today to confirm their status and advise that Safe Roads remains an active corporation, D3 Infrastructure is pending revival/restoration, and Candesto has been struck.

[23] Bokenfohr claims that, upon learning of the Acquisition, Applicants’ counsel sent emails to counsel for Van Bruggen, Batavi and Barricades and Signs requesting confirmation that the

proceeds of sale arising from the Acquisition would be held in trust pending the outcome of the litigation.

### III. Legislation

[24] The Applicants seek an Order pursuant to s 17(2) of the *CEA*, which provides:

On hearing an application for an attachment order, the Court may, subject to subsection (4), grant the order if the Court is satisfied that

- (a) there is a reasonable likelihood that the claimant's claim against the defendant will be established, and
- (b) there are reasonable grounds for believing that the defendant is dealing with the defendant's exigible property, or is likely to deal with that property,
  - (i) otherwise than for the purpose of meeting the defendant's reasonable and ordinary business or living expenses, and
  - (ii) in a manner that would be likely to seriously hinder the claimant in the enforcement of a judgment against the defendant.

### IV. Issues

[25] It is clear from this provision that the Applicants must satisfy all of the above three criteria to be granted an attachment order.

[26] The Application seeks the following relief:

1. Van Bruggen be prohibited from dealing in any manner whatever with: (a) shares of, and assets held in, Batavi; (b) proceeds and assets received from the sale of Barricades and Signs to CAI Capital Partners and the Universal Group in furtherance of the Acquisition; (c) real property, more particularly described in the Application;
2. Batavi be prohibited from dealing with (a) proceeds and assets received from the Acquisition; and (2) any and all share certificates, negotiable instruments, and the like;
3. Barricades and Signs be prohibited from dealing in any manner with its assets and property located in Alberta or elsewhere;
4. Van Bruggen, Batavi and Barricades and Signs (collectively, the "Enjoined Defendants") be prohibited from dealing with or using in any manner any secured credit, including but not limited to credit cards, loans, or lines of credit for which payment is secured against any personal or real property of any of the Enjoined Defendants.
5. The Enjoined Defendants be prohibited from removing any assets from Alberta without consent or Court Order.

6. In addition to other relief that extends to third parties, an Order directing disclosure of the Enjoined Defendants' respective assets.

[27] This is an expansive request for relief. As noted above, at paragraph 1(e) of the Application, relief also was sought against Universal Group, but Applicants' counsel indicated at the hearing that this relief was not being pursued.

## V. Preliminary issues

[28] Before I consider the arguments on the application of s. 17(2) of the *CEA*, the parties raised some preliminary issues. I review these preliminary issues for completeness but, given my findings on the application of the *CEA*, I need not arrive at conclusions on them.

### 1. Further Evidence

[29] In their brief, the Applicants point out:

Notwithstanding the Claim was filed in 2024, the action has yet to advance significantly to date. This is due in part to the procedural challenges the Plaintiffs/Applicants have faced in advancing the application and the impact that has had on closing pleadings and proceeding to discoveries. As a consequence, the evidence filed to date has been principally been [sic] contained in the Affidavits of Bokenfohr and Van Bruggen and their respective and limited examinations.

[30] The Applicants complain that some of Van Bruggen's answers to questions on cross-examination were "oblique", leading to his refusal of four undertakings. They set out their position as follows in their brief:

Many of [sic] questions and clarity about the actual purpose of the sale transaction and status of Van Bruggen's, Batavi's and Barricades and Sign's exigible property can't be answered not only because the factual circumstances leading to the transactions are suspicious but because of the cloak of secrecy adopted in disclosing any detail to the parties to whom they now have an alleged liability to [sic], by every party involved in the transactions.

...

In the absence of being able to know details about the transaction that, on its face involved some element of exigible property of each of Van Bruggen, Batavi and Barricades and Signs, the only logical conclusion is that the dealing of that exigible property was otherwise than for the purpose of meeting the defendant's reasonable and ordinary business or living expenses, **and** in a manner that would be likely to seriously hinder the claimant in the enforcement of a judgment against the defendant. [Emphasis in original.]

[31] The Applicants seem to assert that an absence of evidence requires a finding of impropriety. I do not see why that is the only logical conclusion. There might well be an innocuous explanation.

[32] The Respondents argue that information Van Bruggen declined to provide was confidential pursuant to the terms of the Acquisition. They also point out that the Applicants could have availed

themselves of the following directions in Schedule B to the Order of Applications Judge Latimer dated October 30, 2025:

4. Questioning of Mr. van Bruggen's responding affidavit is to be completed no later than December 12, 2025; and

6. Any Rule 6.8 Questioning is to be completed no later than January 31, 2026.

[33] Further, the Respondents point out that the Applicants brought an application to compel responses to undertakings but did not pursue it. They note that unless enforcement of an undertaking has been pursued, the witness is entitled to assume that an answer is no longer required. An unanswered undertaking does not necessarily support an adverse inference that the answer would have been unfavourable to the witness, because there are many reasons that undertakings are not answered, including the waiver implied by non-enforcement: *Abt Estate v Ryan*, 2020 ABCA 133 at para 43.

[34] The only explanation offered by the Applicants for failing to take these steps was that their efforts would have encountered resistance, taken a long time and cost money. It appears they simply decided at some point that it might be more expeditious to seek the relief in this Application, rather than try to compel answers to their questions. Nevertheless, they invite the Court to draw a negative inference from Van Bruggen's refusal to answer certain questions.

[35] I will discuss the lack of evidence further in the analysis below.

## 2. Collateral Attack

[36] The Respondents assert that this Application is an improper collateral attack on the CCAA Proceedings where the circumstances, including the transactions challenged in the Action, were disclosed to the Court in those proceedings. The Respondents point out that the Applicants were served with the CCAA Proceedings, including evidence of the financial challenges confronting the subject companies, but took no steps to challenge that evidence.

[37] The Applicants allege that the Respondents' actions, including initiating CCAA Proceedings, were taken to extract valuable assets from the Corporations and avoid payment of outstanding obligations to the Applicants. They argue that the CCAA Order prevents them from enforcing the terms of the Share Purchase Agreement. The Respondents assert that these arguments were not raised by the Applicants in the CCAA Proceedings.

[38] I agree that this Application may constitute a collateral attack on the CCAA Proceedings. That may be sufficient to justify its refusal. However, given my findings below, it is not necessary for me to arrive at a definitive conclusion on this point.

## 3. Delay

[39] The Respondents argue that delay in bringing an application for interlocutory relief may be grounds for denial. Citing *AB v College of Physicians and Surgeons of Alberta*, 2021 ABCA 320 at para 50 and *Secure 2013 Group v Tiger Calcium Services Inc*, 2017 ABCA 316 at para 126, they assert in their brief that:

An applicant otherwise entitled to an injunction may lose that right on account of delay. The very fact of delay by the plaintiff, quite apart from any question of

prejudice to the defendant, may often serve as evidence that the risk is not significant to warrant interlocutory relief.

[40] The Respondents note that:

1. The Applicants commenced the Action on February 27, 2024;
2. The Respondents' Statement of Defence was filed on October 23, 2024;
3. The Applicants filed a Request for Particulars on November 25, 2024;
4. A Reply to the Request for Particulars was filed January 20, 2025;
5. The Applicants filed the Application on January 27, 2025; and
6. The Applicants' Affidavit of Records was due on January 23, 2025.

[41] A review of the Court's procedure card in this Action indicates that the Applicants' Affidavit of Records has yet to be filed.

[42] The Applicants have substantial discretion in deciding how they will pursue their litigation. It troubles me, however, that two years have passed since the Applicants commenced the Action, yet an Application for what amounts to injunctive relief pursuant to the *CEA* has only now been brought before the Court.

[43] It is worth remembering that an attachment order is a discretionary remedy and delay is one factor that may lead the Court to refuse the remedy. Given my findings below, however, it is not necessary for me to decide this point.

## VI. Analysis

[44] I turn now to the parties' main arguments on this Application.

### A. *Distinct Real Estate*

[45] Recently, Justice Marion of this Court considered the law relating to the application of s 17(2) of the *CEA* in a clear and comprehensive fashion in ***Distinct Real Estate USA 2 v Wazonek***, 2025 ABKB 275. He made a number of points that are apposite for this Application.

[46] At paras 75 and 76, Justice Marion noted that "Pre-judgement attachment is a 'powerful', 'extraordinary' remedy, with a 'strict' test that is not granted lightly" and that "The burden is on the applicant".

[47] I will refer to further comments from ***Distinct*** in considering the specific requirements of s 17(2) of the *CEA* below.

### B. Reasonable Likelihood of Establishing Claim

[48] Section 17(2)(a) of the *CEA* requires an applicant to show that there is a reasonable likelihood that the claim will be established. In respect of this requirement, Justice Marion held at para 77 of ***Distinct*** that "The standard for an attachment order is a reasonable likelihood that the case will be established (not as high as, and arguably lower than, a strong *prima facie* case)". Citing ***Qualex-Landmark Towers Inc. v 12-10 Capital Corp.***, 2024 ABCA 115 at para 15, he went on in the same paragraph to state:

It does not require the applicant to show on a balance of probabilities that they will obtain the remedy sought, but something more than “suspicion or subjective hope” is required.

[49] Accordingly, it is necessary to perform some review of the merits of the Action to determine if there is a reasonable likelihood that it will be established.

[50] In the Amended Statement of Claim, the Applicants allege breach of contract, induced breach of contract, fraudulent preferences, negligent misrepresentation and corporate oppression arising from conduct that was oppressive and unfairly prejudicial and that unfairly disregarded the Applicants’ interests.

[51] The Amended Statement of Claim alleges that certain representations were made to the Applicants in the course of negotiations for the Share Sale, including that (1) Batavi, 128 Inc and 196 Inc were jointly pursuing purchase of the shares in the Corporations (the “Corporations Shares”), (2) the price for the Corporations Shares (the “Purchase Price”) would be \$1,500,000, with 128 Inc and/or 196 Inc paying \$1,000,000 and Batavi paying \$500,000, (3) the Purchase Price would be paid in annual instalments and/or compensation for consulting services by Bokenfohr and (4) the Corporations Shares would be transferred to Batavi at the closing of the Share Sale.

[52] The Amended Statement of Claim alleges that the Share Purchase Agreement included an express or implied term that Batavi would replace the Applicants as indemnitor or guarantor of the Corporations with Trisura Guarantee Insurance Company (the “Trisura Agreement”). It also alleges that the Share Purchase Agreement included an express or implied term that Candesto Corp would repay the Candesto Loan to Vor Allem and Safe Roads would repay the Safe Roads Loan to Vor Allem.

[53] The Amended Statement of Claim alleges that on January 24, 2023, 128 Inc advanced funds to Candesto Corp, which then entered into a general security agreement and issued a promissory note (the “128 Inc Security Documents”). It also states that in January 2023, Barricades and Signs advanced funds to the Corporations, which then entered into a loan agreement and issued a revolving promissory note (the “Barricades and Signs Security Documents”). The Amended Statement of Claim then alleges:

The Defendants strategically pursued the Share Purchase Transaction, 128 Inc Security Documents, Barricades and Signs Security Documents and CCAA Proceedings to extract valuable assets, work in progress, accounts receivables, and ongoing contracts from the Corporations and at the same time avoid payment of their outstanding obligations to the Plaintiffs.

[54] Essentially, the Applicants argue that the post-Share Sale transfer of Safe Roads’ inventory to Barricades and Signs at less than fair market value, followed by its sale by Barricades and Signs to the Corporations at greater than fair market value extracted that inventory at a loss to Safe Roads and a profit to Barricades and Signs. This, combined with the CCAA Proceedings, left the Corporations with no assets such that Safe Roads and Candesto Corp could not pay off the Loans from Vor Allem and Batavi and the Corporations could not pay Bokenfohr under the Consulting Agreement.

[55] The amalgamation of Batavi and Barricades and Signs followed by the Acquisition of the amalgamated Barricades and Signs by Universal Group is alleged to be indicative of the extent to which Van Bruggen, Batavi and Barricades and Signs would deal with assets and properties that might otherwise be accessed in an attempt to enforce judgment against them.

[56] The Amended Statement of Claim also includes the following allegations against Van Bruggen and MD Powell:

39. During the 2022 Negotiations, Mr. Powell caused Candesto Corp to enter into various unprofitable contracts that necessitated the Candesto Loan. Further, or in the alternative, Mr. Powell caused Candesto Corp to pursue these unprofitable contracts in preparation for the CCAA Proceedings.

40. Further during the 2022 Negotiations, Mr. Powell, using his position as a director of the Corporations, 128 Inc., and 196 Inc., pressured Mr. Bokenfohr to close the Share Purchase Transaction under threat of dissolving the Corporations and diverting business to a new entity controlled by 128 Inc., 196 Inc., or both, to the exclusion of the Plaintiffs.

41. Similarly, Mr. Van Bruggen, using his position as the directing mind of Batavi and director and shareholder of Barricades and Signs, and in concert with Mr. Powell, also exerted undue pressure on Mr. Bokenfohr to close the Share Purchase Transaction.

[57] The Amended Statement of Claim also alleges that MD Powell and Van Bruggen (i) caused Batavi to not make payments to the Applicants pursuant to the Share Purchase Agreement, (ii) caused Batavi to not remove or replace the Applicants as indemnitor or guarantor pursuant to the Trisura Agreement and (iii) caused the Corporations to not make payments to the Applicants pursuant to the Consulting Agreement.

[58] The Amended Statement of Claim alleges that MD Powell and Van Bruggen acted in a manner that was oppressive, unfairly prejudicial to, and unfairly disregarded the Applicants' reasonable expectations and interests in the Corporations by:

- (a) Affirming, explicitly or implicitly, that certain representations made during the course of negotiations for the Share Purchase Agreement were true when they knew or ought to have known those representations were false or would not be fulfilled;
- (b) Agreeing to Safe Roads' issuance of the Promissory Note when they knew or ought have known, that it would not be paid following the Safe Roads Inventory Transaction;
- (c) Failing to ensure the Corporations discharged their obligations to the Applicants in accordance with the Promissory Note and Consulting Agreement;
- (d) Failing to inform the Applicants when they knew or ought to have known that Batavi, Van Bruggen and/or the Corporations had no intention of fulfilling their obligations pursuant to the Share Purchase Agreement, Consulting Agreement and/or Promissory Note;

- (e) Failing to release the Applicants from the Non-Compete Agreement after knowing Batavi and the Corporations would not fulfill their obligations pursuant to the Share Purchase Agreement, Consulting Agreement and/or Promissory Note;
- (f) Initiating CCAA Proceedings to induce or attempt to induce clients with whom the Corporations had relationships to alter, leave, or terminate their relationships with the Corporations in order to establish relationships with Barricades and Signs or others;
- (g) Planning to cause the Corporations to initiate CCAA Proceedings to avoid obligations owed to the Applicants;
- (h) Making financial decisions that benefited themselves and other shareholders, and harmed the Applicants and the Corporations;
- (i) Converting or misappropriating the capital, assets, and revenues of the Corporations;
- (j) Causing the Corporations to incur and fail to repay debt; and
- (k) Failing to discharge their statutory obligations under the *Business Corporations Act*, RSA 2000, c B-9.

[59] In their Statement of Defence filed October 23, 2024, the Respondents:

- (a) dispute some of the Applicants' factual allegations and reject assertions of improper conduct on their part;
- (b) allege that the Applicants misrepresented the financial circumstances of the Corporations prior to the conclusion of the Share Sale;
- (c) allege that the Respondents were required to undertake various restructuring/refinancing transactions in an attempt to salvage a business that was in serious financial condition as a result of the Applicants' mismanagement;
- (d) deny that the Share Sale, 128 Security Documents, Barricades and Signs Security Documents and CCAA Proceedings were pursued for an improper purpose;
- (e) claim that the Applicants failed, prior to the closing of the Share Sale, to disclose information vital to a proper assessment of the financial and contractual defaults of the Corporations;
- (f) assert that various agreements, including the 128 Security Documents, the Barricades and Signs Security Documents and the Safe Roads' Inventory Transaction were executed prior to any secured creditor claims or CCAA Proceedings. They assert that security documents were executed transparently and in good faith by the directors of Candesto Corp with a view to the best interests of the corporation;
- (g) assert that all representations made by Van Bruggen and Batavi were made in good faith.

[60] Much of the Respondents' brief is devoted to explaining that they defend the Action on the basis that the Applicants misrepresented the profitability and standing of the business by both

withholding crucial information and providing inaccurate information concerning Candesto Corp's financial status, operations and business prospects. This evidence of possible defences to the Action weighs in the assessment of whether there is a reasonable likelihood that the Applicants' claim will be established at trial.

[61] Assessing the merits of the Action for purposes of this Application is made more difficult by the fact that a significant component of the Applicants' case rests on allegations of a conspiracy between the Respondents and the Powell Group, but no relief is sought against the latter on this Application. This means that the allegations of a conspiracy among the totality of Defendants in the Action cannot be meaningfully tested. It is difficult to evaluate the merits of a claim that the Respondents conspired with the Powell Group to defeat the Applicants' interests when the evidence and arguments of one party to the alleged conspiracy are not before the Court. The Court risks making findings against the Respondents at this interlocutory stage that could prejudice the other Defendants at the trial stage. This is entirely unacceptable.

[62] Though not advanced in argument by the Respondents, this "gap" in argument and evidence is, in my view, sufficient to justify dismissal of the Application, particularly given the discretionary nature of the attachment order sought by the Applicants.

[63] Even if that were not the case, I find that neither the Bokenfohr Affidavit nor the Van Bruggen Questioning Transcripts support the conclusion that there is a reasonable likelihood that the Applicants' claim against the Respondents will be established. Essentially, the Applicants seek to persuade this Court that uncertainty in the evidentiary record demonstrates culpability. They have failed to do so.

[64] As an example, the Applicants' refer in their brief to the amalgamation of Batavi with Barricades and Signs and argue that "This step may be seen as innocent at the time but it is a transfer and it is done after the activities of Van Bruggen in his own capacity and on behalf of Batavi, begin to unfold as set out above and described in the Claim. The amalgamation is hardly innocuous."

[65] This kind of conclusory reasoning is, in my view, insufficient to establish the "something more than suspicion or subjective hope" required to meet this first part of the test for an attachment order. Consequently, the Applicants have failed to convince the Court that there is a reasonable likelihood that their claim against the Respondents will be established.

### C. Dealings With Property

[66] Though the above conclusion is sufficient to deny the Applicants' requested relief, I will consider the other parts of the test as articulated by Justice Marion in *Distinct*, which require the Court to determine whether there are reasonable grounds to believe that the Respondents are dealing with their exigible property, or are likely to deal with that property, (i) otherwise than for the purpose of meeting the Respondents' reasonable and ordinary business or living expenses, and (ii) in a manner that would be likely to seriously hinder the Applicants in the enforcement of a judgment against the Respondents.

[67] Citing considerable authority, Justice Marion tells us at para 97 of *Distinct* that:

This requirement is “rigorous and specific”, and requires “solid evidence”, not merely the applicant’s belief: *Athabasca Minerals Inc v Syncrude Canada Ltd*, [2017 ABQB 47](#) at para [129](#); *GEMBA LLC v Nixious Investments Inc*, [2014 ABQB 197](#) at para [44](#); *Welcome Ford Sales Limited v Hellec*, [2011 ABQB 753](#) at paras [39-40](#); *Devani* at para [35](#); *Ridge Development Corporation* at para [34](#); *Edmonton Region Community Board for Persons with Developmental Disabilities v Pearl Villa Homes Ltd*, [2003 ABQB 1026](#) at para [29](#); *First Mortgage Fund (V) Inc (Receiver-Manager of) v Boychuk*, [2003 ABQB 217](#) at para [30](#).

[68] Justice Marion goes on to note at para 98 that:

When assessing this part of the [CEA](#) test, the Court may look to various non-exhaustive factors, including:

- (a) the timing of the creation of debts by the defendant;
- (b) whether the debts were created out of the ordinary course of business;
- (c) whether assets have disappeared;
- (d) whether assets have been sold to non arms-length parties for less than market value;
- (e) whether the value of the defendant’s exigible assets greatly exceeds the sum of the plaintiff’s claims;
- (f) unexplained transfers of funds;
- (g) hidden bank accounts;
- (h) liquidation of real property or investments; and
- (i) attempts to move assets outside Alberta

See: *Kleiman* at para 49, citing *Edmonton Region Community Board* at para 28; *Welcome Ford Sales* at paras 42-43; *Devani* at para [38](#); *Simonelli v Ayrton Developments Inc*, [2010 ABQB 565](#) at para [156](#).

### 1. Other Than Ordinary Course

[69] The Applicants note that s 16 of the *CEA* provides that “‘dealing’, in reference to property, includes transferring, mortgaging, charging, using, disposing of, creating an interest in or doing anything to the property”. They speculate that the Share Purchase Agreement, the Safe Roads Loan, the Candesto Loan, the Promissory Note, the amalgamation of Batavi and Barricades and Signs, the CCAA Proceedings and the Acquisition were conceived with the intent to defraud them. They state in their brief that “The Safe Roads’ Inventory transaction, CCAA Proceedings, Van Powell Transactions and the Acquisition show that Van Bruggen, Batavi and Barricades and Signs have no hesitation with moving assets and properties through various means, including during the course of this litigation.”

[70] The Applicants concede that they lack knowledge of the purpose of various transactions, saying in their brief (as quoted above):

Many of questions and clarity about the actual purpose of the sale transaction and status of Van Bruggen's, Batavi's and Barricades and Sign's exigible property can't be answered not only because the factual circumstances leading to the transactions are suspicious but because of the cloak of secrecy adopted in disclosing any detail to the parties to whom they now have an alleged liability to [sic], by every party involved in the transactions.

[71] As noted above, the Respondents assert that the Acquisition includes a confidentiality provision that prohibits them from disclosing further details of the transaction without the consent of all parties involved. Again, they note that the Applicants brought an application to compel responses or better answers but did not pursue it.

[72] The Respondents deny that they in any way strategically pursued transactions or dealt with their assets with the intention of defeating the Applicants' interests.

[73] Reviewing the factors enumerated by Justice Marion in *Distinct*, I note the following:

(a) the timing of the creation of debts by the defendant;

The Respondents explain that the transactions in question arose as a consequence of the need to deal with the Applicants' mismanagement of the Corporations' business opportunities.

(b) whether the debts were created out of the ordinary course of business;

The Respondents explain that the 128 Security Documents were created in an effort to capitalize an undercapitalized business. They further explain that Candesto Corp borrowed money from Barricades and Signs so that Candesto Corp could acquire products and materials needed to complete various projects.

(c) whether assets have disappeared;

The Respondents point out that the Acquisition was a share transaction, not disposition of underlying corporate assets. The movement of assets appears to have been largely explained. In the absence of an application by the Applicants to compel further disclosure, I am willing to accept that some confidentiality may extend to the terms of the Acquisition.

(d) whether assets have been sold to non-arm's length parties for less than market value;

Other than the transfer of Safe Roads inventory to Barricades and Signs, there is no evidence that assets have been disposed of in this manner.

(e) whether the value of the defendant's exigible assets greatly exceeds the sum of the plaintiff's claims;

The Applicants offer no evidence that this is the case.

(f) unexplained transfers of funds;

The Applicants claim not to understand why the Respondents undertook certain transactions. The Respondents argue that they took those steps to save the business they acquired from the Applicants. The Respondents also point out that

if the Applicants were unsatisfied with the explanation for certain transfers, they could have sought further information through the Court-supervised CCAA Proceedings and/or made an application for better answers to undertakings or to compel further disclosure. The Applicants' explanation for choosing not to pursue their right to take these steps is unconvincing.

(g) hidden bank accounts;

The Applicants have offered no evidence to suggest that the Respondents maintain hidden bank accounts.

(h) liquidation of real property or investments;

The Applicants have offered no evidence to suggest that the Respondents have undertaken these types of transactions.

(i) attempts to move assets outside Alberta;

The Applicants have offered no evidence in this regard.

[74] To the extent the Applicants have shown that the Respondents have been dealing with their exigible property, they also must establish that such dealings were otherwise than for the purpose of meeting the Respondents' reasonable and ordinary business expenses. This is a question of fact based on determining the usual or regular type of transactions engaged in by people in the Respondents' business: *Distinct* at para 99. The Applicants have offered no evidence regarding the Respondents' reasonable and ordinary business expenses.

[75] In my view, the Applicants offer no rigorous, specific or solid evidence that would assist the Court in determining what the Respondents' exigible property is and how, other than through a series of corporate reorganizations, restructurings and dispositions, the Respondents are dealing with that property. Nor have they provided any evidence that any such dealings were otherwise than for the purpose of meeting the Respondents' reasonable and ordinary business expenses.

[76] Accordingly, the Applicants have failed to meet this part of the test for an attachment order.

## 2. Likely to Seriously Hinder

[77] Finally, if the Applicants are able to show that the Respondents are dealing with their exigible property, they also must show that those dealings are such that they would be likely to seriously hinder the Applicants in the enforcement of a judgment against the Respondents.

[78] Justice Marion held in *Distinct* at para 112 that the spending or use of assets must involve a "serious hinderance" based on a serious examination of the Respondents' situation.

[79] The Applicants have offered no evidence to suggest that the Respondents' use of assets, whatever that might be, seriously hinders the Applicants' ability to enforce a judgment.

[80] In essence, the Applicants' assertions amount to the allegation that Powell and Van Bruggen set out to render the Corporations incapable of generating funds necessary to achieve full discharge of their obligations under the Share Purchase Agreement. The Applicants offer no

meaningful evidence to support that assertion. Based on the evidence before me, the Respondents' actions post-closing of the Share Sale seem equally consistent with an attempt to salvage an enterprise that they allege the Applicants had mismanaged.

[81] Therefore, I find that the Applicants have failed to establish this part of the test for an attachment order.

## VII. Conclusion

[82] In the result, I find that the Applicants have failed to meet the test for an attachment order under s. 17 of the *CEA*. They simply have not put before the Court the kind of "solid evidence" referred to by Justice Marion in *Distinct*.

[83] Had the Applicants pursued further Questioning or made further efforts to compel responses, those efforts might have provided them with a stronger evidentiary foundation upon which to advance this Application. Perhaps the Respondents' transactions, if subjected to greater scrutiny, would have revealed an attempt to frustrate their obligations to the Applicants under the various contracts. Instead, in my view, the Applicants decided to avoid these obstacles by proceeding on the basis of speculation that unexplained transactions and events must have nefarious objectives.

[84] Consequently, the Application is dismissed. If the parties cannot agree on costs, they may make written submissions, not to exceed seven pages in length, not later than thirty days after the date of this Decision.

Heard on the 28<sup>th</sup> day of April, 2026.

**Dated** at the City of Calgary, Alberta this 8<sup>th</sup> day of June, 2026.

---

**C.M. Jones**  
**J.C.K.B.A.**

## Appearances:

Peter J. Major, KC  
for the Applicants

G. James Thorlakson  
for the Respondents