

Court of King's Bench of Alberta

Citation: Pacific West Systems Supply Ltd v A & K Tiles & Drywall Ltd, 2026 ABKB 526

Date: 20260721

Docket: 2503 10884, 2603 03356

Registry: Edmonton

Between:

2503 10884

Pacific West Systems Supply Ltd.

Plaintiff

- and -

A&K Tiles & Drywall Ltd., Joga Dhothar also known as Joga Singh Dhothar, Blackmud Enterprises Ltd., Daljit Singh Aulakh, Tavinder Kaur Aulakh, Gurmeen Aulakh, Harjot Aulakh, Royal Bank of Canada, Canadian Western Bank, The City of Leduc, Fortis Alberta Inc., 1098949 Alberta Ltd., 412660 Alberta Ltd., The Toronto Dominion Bank., Her Majesty The Queen in Right of Canada c/o The Minister of National Defence, ATCO Gas and Pipelines Ltd., Epcor Distribution & Transmission Inc., Telus Communications Inc., Shaw Cable Systems Limited., and Epcor Water Services Inc.

Defendants

-and -

A&K Tiles & Drywall Ltd., and Joga Dhthar also known as Joga Singh Dhothar

Respondents

Between:

2603 03356

Pacific West Systems Supply Ltd.

Plaintiff

-and -

Dhothar Developments Inc.

Defendant

**Reasons for Decision
of the
Honourable Justice Douglas R. Mah**

A. Nature of Application

[1] Pacific West Systems Supply Ltd (Pac West) is the common plaintiff in an action against A&K Tiles & Drywall Ltd (A&K) and Joga Dhothar (Joga) for contractual debt *and* a second action against Dhothar Developments Inc (DDI) for wrongful receipt of funds from A&K. Pac West's basic theory across both actions is that funds belonging to A&K, which should have been used to pay down the debt to Pac West, were wrongfully diverted to DDI. It is further alleged that DDI in turn used those funds to acquire a property it has developed on 81 Avenue in Edmonton, AB (81 Ave).

[2] 81 Ave is in the process of being sold. Pac West asks for a pre-judgment Attachment Order under s 17 of the *Civil Enforcement Act* (CEA) to freeze the net proceeds of sale, understood to be in the area of \$200,000.

B. Background

[3] Pac West is a supplier of drywall products and accessories. A&K operates as a tile and drywall installer. DDI is related to A&K through a common director and is in the business of property development. Joga is the sole director and shareholder of A&K. He and his son Amardeep Dhothar (Amardeep) are the directors of DDI. Paramjit Dhothar (Paramjit) is Joga's spouse and Amardeep's mother.

[4] A&K has a long-standing credit relationship (going back to 2011) with Pac West for supply of drywall and construction materials. In February 2022 the account became significantly overdue. As a result, Pac West requested and received financial statements from A&K. Pac West's deponent, Ms. Tomé, indicated that starting in 2022 Pac West had noticed and began questioning what seemed to be a \$400,000 cash advance from A&K to DDI.

[5] As part of shoring up Pac West's security in October 2024, Ms. Tomé says she inquired of Joga, Paramjit and Amardeep about any properties owned by either A&K or Joga, other than disclosed and was told there were none. On November 4, 2024, Joga signed an unlimited personal guarantee of A&K's debt in favour of Pac West.

[6] As a result of its own inquiries, Pac West learned in April 2025 that DDI had purchased 81 Ave back on October 8, 2024. Ms. Tomé deposed that at one point, Paramjit had verbally confessed that the \$400,000 transfer was used by DDI to purchase 81 Ave. Since then, Paramjit has recanted that statement. Ms. Tomé says that in a recorded April 28, 2025 call with the Dhothars, Amardeep and Paramjit denied that DDI had received the funds from A&K.

[7] Ms. Tomé also states a belief in her February 11, 2026 affidavit that materials purchased from Pac West and delivered to A&K's warehouse have been incorporated into the 81 Ave building.

[8] Pac West alleges that A&K owes about \$802,000 at present.

[9] A&K and DDI have quite a different perspective. They speak respectively through Joga and Amardeep. First, they say that there needs to be a reconciliation of A&K's account with Pac West. Although A&K admits to some indebtedness, it disputes the extent claimed by Pac West.

[10] Second, they say there is no connection between 81 Ave, and the \$400,000 transfer Pac West says is shown in the A&K financial statements. The sum in question is actually \$350,000, not \$400,000. Both Joga and Amardeep deposed that in 2021, Business Development Bank of Canada (BDC) loaned \$350,000 to A&K for business expansion. The loan occurred prior to the credit issues with Pac West. The loan proceeds were then transferred to DDI by way of shareholder's loan and used to acquire a property on 77 Ave (77 Ave). After 77 Ave was developed and sold, the shareholder's loan was repaid to A&K which in turn repaid BDC.

[11] DDI asserts that 81 Ave is a completely different project. It was financed separately through a \$1 million loan by Servus Credit Union to DDI in August 2024.

[12] A&K and DDI say there was no admission by Paramjit as described by Ms. Tomé.

C. Section 17(2) of the *Civil Enforcement Act*

[13] To grant an Attachment Order under section 17(2), the Court must be satisfied:

- there is a reasonable likelihood that the claimant's claim against the defendant will be established, and
- 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,
 - 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.

[14] In *Bank of Nova Scotia v Five Star Motor Group Ltd*, 2020 ABCA 244, the Court of Appeal said at paras 17-18:

- The "reasonable likelihood" test under the *CEA* is arguably lower than the test of a "strong *prima facie* case" that might be needed for a common law *Mareva* injunction. The applicant need not prove the claim on a balance of probabilities, but something more than mere suspicion is required.
- The "reasonable grounds" that the defendant is likely to deal with its assets out of the ordinary course of business, and in a way that is "likely to seriously hinder the claimant" in recovering its claim must consist of "something more than mere suspicion."
- If the claim is in fraud or other similar misconduct, and if it is "reasonably likely" that the claim will be established under the first

part of the test, that *may* support an inference that the defendant is likely to deal with its assets in a way that will satisfy the second part of the test. That, however, is not a universal or mandatory inference that should be drawn.

[15] In **1498587 Alberta Inc. v Devani**, 2012 ABQB 324 (Yamauchi J) at para 38, this Court said that under s17(2) of the *CEA*, a moving party may satisfy its burden of showing that there are reasonable grounds to believe a defendant is dealing with its property for a purpose other than meeting the defendant's reasonable and ordinary business expenses if it shows evidence of:

- assets disappearing;
- assets being sold to non-arms length parties for less than fair market;
- unexplained transfers of funds;
- hidden bank accounts;
- liquidation of real property, investments or attempts to move assets to locations outside Alberta.

[16] Veit J in **Edmonton Region Community Board for Persons with Developmental Disabilities v Pearl Villa Homes Ltd**, 2003 ABQB 1026 at para 28 noted:

In determining the issue of whether an applicant has proved that the defendants have dealt with, or are likely to deal with, their exigible property otherwise than for the purpose of meeting their ordinary and reasonable business and living expenses and in a manner that would seriously hinder the plaintiff in enforcing a judgment, the court can look at such matters as the timing of the creation of debts by a defendant, whether debts were created out of the ordinary course of business, whether assets have disappeared, whether assets have been sold to non arms'-length parties for less than market value, whether the value of the defendant's exigible assets greatly exceeds the sum of the plaintiff's claims, etc.

[17] She also noted at paras 29-31 that:

- The plaintiff's mere belief that the defendant is dealing improperly with its assets is insufficient; there must be evidence;
- The mere fact that a defendant is not paying his due debts does not establish that the defendant is not carrying on his business in a reasonable and ordinary manner; and
- The mere fact that there are dealings with non-arms-length companies does not, without more, establish that the defendant is not carrying on its business in a reasonable and ordinary manner.

[18] The Court of Appeal in **Kleiman v Innes**, 2026 ABCA 112 at para 43 noted that an Attachment Order, when granted, should:

- be fashioned in such a manner that it causes as little inconvenience to the defendant as is consistent with achieving the purposes for which the order is granted [per s 17(5) of the *CEA*]; and
- where feasible, not attach property of a value exceeding the claim and related writs [per s 17(6) of the *CEA*].

[19] Further, at para 44, the Court said:

The limitation on the scope of the attachment order imposed by s 17(6) is consistent with the principle that the pre-judgment attachment order is an extraordinary remedy with a strict test and should not be granted lightly: ***Lyons v Creason***, 2008 ABQB 550 at para 51. An attachment order can only be granted when the claimant has satisfied the statutory criteria and established that the order is an appropriate exercise of the court's discretion, having regard to all the circumstances: ***Qualex-Landmark Investments Inc v Soroya***, 2009 ABQB 689 at para 10, citing Veit J in ***Edmonton Region Community Board*** ...

[20] From the above discussion of case law, I consider these among the important points for application in this case:

- the discretionary nature of the Attachment Order remedy;
- the burden on the Applicant to establish both components of the strict legal test in s 17(2);
- the degree of proof required being less than a strong *prima facie* case but more than mere suspicion;
- how such proof may rest on a circumstantial or inferential basis;
- the presence of any of the indicia or factors from ***Devani*** and ***Edmonton Region Community Board***.

D. Positions

[21] In addition to Ms. Tomé's affidavit and its original Applicant's Brief, Pac West's counsel also filed a Reply Brief to respond to some of the factual information alleged by A&K and DDI. Pac West says:

- Pac West has a strong case with regard to the debt owing by A&K. Therefore, the case against A&K is established.
- DDI is controlled by or closely related to the Dhothar family.
- Financial statements provided by A&K disclose a shareholder loan or payment advanced by A&K to DDI. The transfer is self-dealing that benefits a related entity. The transfer was not in the ordinary course.
- The Dhothars have proven untrustworthy. Paramjit's retraction of the admission is self-serving. They were each evasive if not outright deceptive

in their dealings with Pac West. A&K's own financial statements do not align with the repayment of the shareholder's loan as described by Joga and Amardeep.

- The fact that 81 Ave is up for sale shows a risk of dissipation unless the net proceeds are captured by an Attachment Order.
- Materials originating from Pac West may have been incorporated into 81 Ave.
- Overall, there is a sufficient evidentiary basis to show that funds or assets belonging to A&K ultimately went to supporting the acquisition or building of 81 Ave, thus establishing the case, at this stage, against DDI to the required standard.

[22] A&K and DDI say:

- The extent of Pac West's underlying debt claim against A&K is materially disputed and requires reconciliation, due to accounting, payment-allocation, and pricing issues.
- The transfer of \$350,000 from A&K to DDI is not disputed but is adequately explained: separate business financing advanced by a *bona fide* lender, used for the intended business purpose (development of 77 Ave) and repaid to the lender.
- Pac West knew or is deemed to know about the transfer (which occurred in 2021) by early 2023 with the disclosure of A&K's 2022 financial statements. Any attempt by Pac West to reverse the transfer or recoup those funds is barred by limitation.
- The 81 Ave project is completely unrelated.
- There is no tracing evidence. There is no documentary trail of cash-on-hand in possession of A&K in 2022 that found its way into the 81 Ave asset belonging to DDI.
- The materials-incorporation assertion is completely speculative. There is no record showing materials delivered to the A&K warehouse have been used in 81 Ave.
- There is no evidence of assets being concealed, moved or dissipated. The 77 Ave and 81 Ave projects were financed, built and sold (or being sold) in the ordinary course. All funds have been transparently dealt with and reflected in the disclosed financial statements.
- DDI is willing to hold the net proceeds from the sale of 81 Ave in trust until settlement or further Court Order, so there is no danger of dissipation

E. Ruling

[23] Regarding the first part of the legal test of whether there is a reasonable likelihood that the claim will be established, I note that Pac West is not required to show a strong *prima facie*

case but there is still a degree of proof required that is more than mere suspicion. The Court must still act judicially and be sufficiently confident in the strength of the case in order to exercise discretion to grant an extraordinary remedy that deprives a defendant of its property before judgment.

[24] I bear in mind that there are two actions against separate defendant parties. Pac West must show “reasonable likelihood” of success with regard to both claims. I feel confident that even if A&K’s “reconciliation” defence is fully accepted, there will be some debt owing, although the precise extent is unknown. However, Pac West concedes that there is no tracing evidence showing that funds belonging to A&K in 2022 were used to acquire 81 Ave. The assertion has no real factual foundation and the contrary evidence of the BDC loan for 77 Ave and the separate Servus loan for 81 Ave is sufficient to refute the assertion at this stage. Furthermore, the suggestion that materials supplied by Pac West to A&K but unpaid for and then used in the construction of 81 Ave is mere conjecture.

[25] I also feel that DDI has a more than arguable limitations defence. The action against DDI is for “knowing receipt.” By Pac West’s own evidence, it became aware of the transfer and began questioning A&K about it in 2022. If the transfer was wrongful, as Pac West alleges, that DDI converted the funds into real estate in 2024 does not change the fact that Pac West was aware of the transfer in 2022. The “knowing receipt” action was not commenced against DDI until February 12, 2026.

[26] I accept that Pac West has a reasonable likelihood of establishing some of its debt claim against A&K. It does not have a reasonable likelihood, within the meaning of s 17(2) of the CEA, of establishing the claim against DDI. DDI is the defendant that matters in this application, since it is DDI’s property for which Pac West seeks pre-judgment attachment.

[27] Having made the above ruling, it is strictly speaking not necessary for me to consider the second part of the statutory test as the two parts are conjunctive. But I will make some observations, nonetheless. Overall, I understand how some of the evidence of the three Dhothars might be considered inconsistent and evasive and thus give rise to suspicion. But the evidence of the origin and business purpose of the funds used for each of 77 Ave and 81 Ave counters that suspicion, at least at this stage. That applies to both A&K and DDI.

[28] Finally, DDI’s offer on the record to place the net proceeds from the sale of 81 Ave in trust, pending settlement or further Court Order, obviates any risk to Pac West. Pac West’s application before me was restricted to those exact proceeds. In view of the offer to hold the funds in trust, the second part of the statutory test cannot be met.

[29] The application by Pac West for a pre-judgment Attachment Order is dismissed as it pertains to all of the Defendants/Respondents. However, DDI by its counsel is directed to hold the net proceeds of sale of 81 Ave in trust until both actions are settled or there is a further Court Order concerning those proceeds.

[30] I also make an Order consolidating the two actions into one.

F. Costs

[31] I encourage the parties to continue their settlement discussions and, in particular, to engage in the process of reconciling A&K’s account with Pac West. The parties should include the costs of this application in their settlement discussions.

[32] If costs cannot be agreed upon, then the parties, through their counsel, may make written submissions to me within 30 days of the date of this decision, in the form of a letter not to exceed 2 pages, excluding exhibits and authorities, and supported by a draft Bill of Costs.

Heard on the 19th day of June, 2026.

Dated at the City of Edmonton, Alberta this 21st day of July, 2026.

Douglas R. Mah
J.C.K.B.A.

Appearances:

Dana Nowak and Carly Toronchuk, MLT Aikins LLP
for the Plaintiff/Applicant, Pacific West Systems Supply Ltd

Joshua Lloyd Threinen, J. Threinen Professional Corporation
for the Defendants/Respondents, A & K Tiles & Drywall Ltd. and Joga Dhothar

C. Blair Falconer, Falconer Law
for the Defendant/Respondent, Dhothar Developments Inc