SUPREME COURT OF NOVA SCOTIA

Citation: *Rockstone Investments Ltd. v 3095810 Nova Scotia Limited*, 2021 NSSC 243

Date: 20210811

Docket: *Halifax,* No. 498470

Registry: Halifax

Between:

Rockstone Investments Ltd.

Applicant

v.

3095810 Nova Scotia Limited,
Provincial Spring Shop Limited and Derrick Forgeron

Respondents

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Judge: The Honourable Justice Gail L. Gatchalian

Heard: July 20, 2021 in Halifax, Nova Scotia

Written Decision: August 11, 2021

Subject: Fraudulent conveyance, oppression, unjust enrichment

Summary: The Applicant Rockstone Investments Limited sought to set aside the sale by the Respondent 3095810 Nova Scotia Limited of its assets to the Respondent Provincial Spring Shop Limited. The Respondent Derrek Forgeron is the sole director and officer of 810 Ltd. and Provincial Spring Shop. The sale took place at a time when 810 Ltd. owed Rockstone rent. Rockstone obtained a judgment against 810 Ltd., but 810 Ltd. had no assets left to satisfy the judgment.

Issues: (1) Was the asset sale a fraudulent conveyance under the *Assignments and Preferences Act*, R.S.N.S. 1989, c.25 or the *Statute of Elizabeth*, 1571 (13 Eliz 1), c.5?

(2) Did the asset sale constitute oppression under the Third Schedule of the *Companies Act*, R.S.N.S. 1989, c.81?

(3) Were Mr. Forgeron and Provincial Spring Shop unjustly enriched by the asset sale?

Result: Application Dismissed.

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Heard: July 20, 2021, in Halifax, Nova Scotia

Counsel: Melanie Gillis, for the Applicant
Colin D. Bryson, Q.C. for the Respondents

By the Court:

INTRODUCTION

[1] The Respondent 3095810 Ltd. rented commercial space on Windsor Street in Halifax from the Applicant Rockstone Investments Limited. In January 2018, 810 Ltd. moved to new premises along with another company, Provincial Spring Shop Limited. 810 Ltd. did not pay Rockstone rent after March 2018. There were three years left on the lease. Under the lease, twelve months' rent became due upon default.

[2] On September 25, 2019, Rockstone obtained default judgment against 810 Ltd. 810 Ltd. had no assets to satisfy the judgment because it had sold all its assets to Provincial Spring Shop on April 30, 2018.

[3] 810 Ltd. and Provincial Spring Shop are both controlled by the Respondent Mr. Forgeron. He is the sole director and officer of both. His wife is the only shareholder of 810 Ltd. The Forgerons are the only shareholders of Provincial Spring Shop.

[4] Rockstone claims that the asset sale is void as a fraudulent conveyance under both the *Assignments and Preferences Act*, R.S.N.S. 1989, c.25 and the *Statute of Elizabeth*, 1571 (13 Eliz 1), c.5. In the alternative, Rockstone argues that

the transfer constitutes oppression under the *Companies Act*, R.S.N.S. 1989, c.81, or that Mr. Forgeron and Provincial Spring Shop were unjustly enriched.

[5] 810 Ltd. says that it entered into the asset purchase agreement in good faith, for legitimate business reasons and for valuable consideration, and therefore it had no intent to defraud Rockstone, it did not engage in oppressive conduct, and there was a juristic reason for any enrichment and corresponding deprivation.

ISSUE 1: FRAUDULENT CONVEYANCE

Assignments and Preferences Act

[6] Section 4(1)(a) of the *Assignments and Preferences Act* provides as follows:

> 4(1) Every transfer of property made by an insolvent person
>
> (a) with intent to defeat, hinder, delay or prejudice his creditors, or any one or more of them; …
>
> …
>
> shall as against the creditor or creditors injured, delayed, prejudiced or postponed, be utterly void.
>
> …

[7] Rockstone must establish the three factors set out in *Kent Building Supplies v. Cumberland Builders Ltd.* (1997), 163 N.S.R. (2d) 289 (NSSC) at para.28 in order to obtain a remedy under the *Assignments and Preferences Act*:

1. there was a transfer of property
2. by an insolvent person
3. with the intent of defeating, hindering, delaying or prejudicing creditors

[8] The parties agree that there was a transfer of property and that 810 Ltd. was insolvent at the time, as it was unable to pay its debts in full. Rockstone's claim of a fraudulent conveyance under s.4(1)(a) of the *Assignments and Preferences Act* therefore turns on the third factor.

[9] The Court may infer that a transfer was made with an intent to defeat, hinder, delay or prejudice one or more creditors. The Court in *Kent* identified common indicia, or badges, of fraud at para.39:

> ... Certain circumstances have always been looked upon as badges of fraud, that is, unless satisfactorily explained, as evidence of bad faith or fraudulent intention within the *Act*: Halsbury's *Laws of England* (3rd edition) Vol. 17, p.657, and *May on Fraudulent Conveyances* (Second edition, 1887) p.95. Here, those badges are: the transfer was effected in secrecy from a principal creditor; the transfer was of all, or virtually all, of the assets of the transferor; the transfer was effected at a time when the transferor was experiencing serious financial difficulties, and in the face of at least one judgment which had been obtained by Kent Building Supplies and, possibly, a second judgment by a company called "Ocean"; the transfer was not effected in writing, and there was no written record of it anywhere; the transfer was effected out of the usual course of business, and in a manner which would be unusual for a normal business to do; the transfer was effected without any money or other consideration at the time of transfer; the transfer was effected between two entities controlled by the same person; and the transfer was effected through the thin disguise of a business name which was registered immediately before the time of transfer and for what must have been only that purpose.

[10] The effect of a transfer is one of the considerations in determining whether a transfer was made with the intent to defeat, hinder, delay or prejudice one or more creditors: *Whiteway v. Courtland Properties Inc.* (1997), 162 N.S.R. (2d) 161 (NSSC) at para.19, citing *Burchell v. Morrison* (1978), 33 N.S.R. (2d) 261(NSTD).

[11] Rockstone filed affidavits from Kevin Nettle, the Commercial Property Manager for Paramount Management, through which Rockstone carries out its general property management business. Mr. Forgeron filed affidavits. There was no cross-examination. There is very little dispute, if any, about the facts.

[12] The following common indicia of fraud are present in this case:

- The transfer was made at a time when 810 Ltd. was experiencing serious financial difficulties.
- Rockstone was a known creditor at the time of the transfer.
- The transfer was of all the assets of 810 Ltd.
- The transfer was made between two entities controlled by Mr. Forgeron.
- The transfer was made out of the usual course of business.

[13] Other common indicia of fraud are not present in this case. In particular:

- the transfer was effected in writing, in the form of an Agreement of Purchase and Sale, and
- the transfer was not effected through the thin disguise of a business name registered immediately before the time of transfer and for what must have been only that purpose, as Mr. Forgeron incorporated Provincial Spring Shop in 2000.

[14] Rockstone argues that the following additional badges of fraud are present in this case:

- The exclusion of lease obligations from the liabilities to be assumed by Provincial Spring Shop in the Agreement of Purchase and Sale.
- The transfer was done in secret.
- The price paid was under value.

- The transfer had the effect of defeating or delaying Rockstone.

Wording of the Agreement of Purchase and Sale

[15] Rockstone argues that the explicit exclusion of lease obligations from the liabilities to be assumed by Provincial Spring Shop in the Agreement of Purchase and Sale objectively demonstrates 810 Ltd.'s fraudulent intent. This wording, on its own, devoid of context, is not sufficient to prove fraudulent intent on the part of 810 Ltd.

Secrecy?

[16] Rockstone asserted that it was upon discovery in aid of execution on November 28, 2019 that it realized that 810 Ltd. had transferred all its assets to a commonly controlled company, Provincial Spring Shop. It impugned the timing of the asset sale, emphasizing that 810 Ltd. authored a letter terminating the lease the day after the sale.

[17] However, the undisputed evidence of Mr. Forgeron, which I accept, was that:

- In or about August 2017, Mr. Forgeron met with Taryn Stiles and John Lawen of Paramount Management and informed them of the plan to sell the assets of 810 Ltd. to Provincial Spring Shop, to terminate the lease with Rockstone, and to vacate the Windsor Street premises in the winter of 2018.

- On October 11, 2017, Mr. Forgeron sent Ms. Stiles of Paramount Management an email notifying her that he had hired Colliers International to find a new tenant to assume the remaining term of the lease for the Windsor Street location.
- Colliers and Mr. Forgeron engaged in significant efforts over the course of five months to find a new tenant for the Windsor Street location, and Rockstone was aware of and involved in these efforts.
- On or about March 2, 2018, Rockstone provided Mr. Forgeron with a draft Lease Termination Agreement, in light of a pending deal with a potential tenant. Mr. Forgeron signed on behalf of 810 Ltd. on or about March 5, 2018. Pursuant to the agreement, the lease was to be deemed terminated on March 14, 2018, and 810 Ltd. was to pay Rockstone $30,000.

[18] I find that the asset sale, and the associated plan of 810 Ltd. to terminate the lease with Rockstone and vacate the Windsor Street premises, was not done in secret.

Lack of Valuable Consideration?

[19] According to its April 30, 2018 balance sheet, 810 Ltd. had $594,321 in assets, consisting of $520,856 in inventory (valued at cost), $13,718 in accounts receivable and $59,747 in machinery and equipment.

[20] Under the Agreement of Purchase and Sale, the purchase price for the assets of 810 Ltd. was set at $634,574.38. Of that amount, $584,574.38 was attributed to

the hard assets and accounts receivable of 810 Ltd. and $50,000 was attributed to goodwill.

[21] Rockstone questioned the appropriateness of valuing the inventory at cost and goodwill at $50,000. Rockstone criticized 810 Ltd.'s valuations because they were not independent or performed by a professional. However, Rockstone did not challenge Mr. Forgeron's evidence on these matters nor did it adduce any evidence to the contrary. I accept as reasonable Mr. Forgeron's valuation of the assets of 810 Ltd.

[22] Under the Agreement of Purchase and Sale, Provincial Spring Shop paid the purchase price by a payment of $125,000 in cash and by assuming 810 Ltd.'s Assumed Liabilities. As per the "Aged Open Items Summary" attached to the Agreement, the Assumed Liabilities consisted of $439,276 in "Secured Debts" and $88,727 in "Trade Payables," for a total of $528,003. However, based on the subsequently signed assumption agreements with the secured creditors, the Secured Debts totalled $484,356.78, which, in addition to the $88,727 in Trade Payables, resulted in a total of $573,083.78 in Assumed Liabilities.

[23] In *E.E. McCoy v. Wiseman* (1987), 80 N.S.R. (2d) 1 (NSCA), a case relied on by both Rockstone and the Respondents, the Court of Appeal held that the

assumption of existing encumbrances constitutes valuable consideration under the *Statute of Elizabeth*, stating as follows at para.18:

> There can be little doubt that the assumption of encumbrances can provide valuable consideration for a conveyance particularly when the encumbrance equals or exceeds the value of the property. See: *Leighten v. Muir et al.* (1962), 4 C.B.R. (N.S.) 137. In the present case the evidence revealed the encumbrances assumed by the grantee far exceeded the value of the property. Thus I can find no error in principle committed by the trial judge in holding good and valuable consideration was given to support the conveyance.

[24] In this case, based on the Aged Open Items Summary, between the cash payment of $125,000 and the assumed liabilities of $528,003, Provincial Spring Shop paid a total of $653,003 for the assets of 810 Ltd., $58,682 more than the value of the assets. Based on the records of the secured creditors, between the cash payment of $125,000 and the assumed liabilities of $573,083.78, Provincial Spring Shop paid a total of $698,083.78, $103,762.78 more than the value of the assets. I find that Rockstone has failed to establish that the purchase price was under value.

Effect of Transfer

[25] I accept the undisputed evidence of Mr. Forgeron that, at the time of the asset purchase, the assets of 810 Ltd. were subject to security held the Royal Bank of Canada and the secured creditors as follows:

1. Pursuant to a loan agreement for a $125,000 revolving demand facility, RBC was granted a general security interest in all of 810 NS Ltd.'s property. As of April 30, 2018, 810 Ltd. owed RBC $124,984.

2. Honda held a purchase money security interest in the inventory and proceeds of 810 Ltd.

3. Wells Fargo held a purchase money security interest in certain inventory of 810 Ltd. and a general security interest over all property of 810 Ltd.

4. TCF Commercial Finance Canada Inc. held a general security interest in all of 810 Ltd.'s property.

[26] The Respondents asserted, the evidence supports, and Rockstone did not dispute that 810 Ltd.'s indebtedness to its secured creditors exceeded the fair market value of its assets, and that 810 Ltd.'s secured creditors had priority to Rockstone's claim at the time of the asset transfer. Rockstone has not established that, had the assets remained the property of 810 Ltd., Rockstone would have realized anything on execution. Rockstone has therefore failed to establish that the asset transfer had the effect of defeating, hindering, delaying or prejudicing it.

Inference of Fraudulent Intent?

[27] I find that that Rockstone has not established a *prima facie* case of fraudulent intent on the part of 810 Ltd. While certain badges of fraud are present in this case, others are not. Most significantly: (a) the asset sale was not secret, (b) the sale was for valuable consideration, and (c) Rockstone did not establish that the transfer had the effect of defeating, hindering, delaying or prejudicing it. Even if Rockstone had proved a *prima facie* intent on the part of 810 Ltd. to defraud it, I am satisfied that 810 Ltd. has provided a satisfactory explanation for the transfer.

Satisfactory Explanation

[28] A plaintiff can raise an inference of fraudulent intent sufficient to place a burden of explanation on the defendant. However, the Court is not compelled to draw an inference of fraudulent intent from badges of fraud pleaded by the plaintiff, and may dismiss a claim of fraudulent conveyance if the surrounding circumstances taken as a whole explain away the plaintiff's evidence: *RL Receivables Trust 2002-A (Administrator of) v. Cobrand Foods Ltd.*, 2007 ONCA 425 at paras.39-40.

[29] Mr. Forgeron's explanation for the asset transfer was not challenged by Rockstone, and I accept his evidence on these matters.

[30] In or about May of 2017, Mr. Forgeron decided to consolidate 810 Ltd. and Provincial Spring Shop under one roof at a new location. There were three main reasons for this decision.

[31] First, on or about May 11, 2017, Honda Canada Inc. gave Mr. Forgeron notice that 810 Ltd. would be required to relocate before the end of the year or risk Honda terminating 810 Ltd. status as an "Authorized Honda Multi Products Dealer."

[32] Second, around the same time, Ms. Forgeron, who had been running the day-to-day operations of 810 Ltd. at the Windsor Street location, expressed her intention to retire at the end of 2017. Mr. Forgeron would have to find another individual to run the day-to-day operations of 810 Ltd. if he intended to continue to operate Provincial Spring Shop and 810 Ltd. in separate locations.

[33] Third, 810 Ltd. was struggling financially. While it was able to pay its debts on an ongoing basis, it would not be able to continue to do so indefinitely without an infusion of capital.

[34] Given these three circumstances, Mr. Forgeron decided to consolidate Provincial Spring Shop and 810 Ltd. under one roof at one location to be determined. This decision made business sense to Mr. Forgeron because running

both businesses under one roof would reduce costs and solve the need for a new manager of 810 Ltd., as he intended to manage both Provincial Spring Shop and 810 Ltd.

[35] Shortly after he made the decision to consolidate both businesses under one roof, Mr. Forgeron met with his corporate counsel, and as a result concluded that it would be impractical to operate two separate legal entities in one location. He therefore decided to cause 810 Ltd. to sell all its assets to Provincial Spring Shop and operate both businesses through Provincial Spring Shop. Mr. Forgeron understood that if Provincial Spring Shop did not pay fair market value for the assets of 810 Ltd., and the creditors of 810 Ltd. were prejudiced as a result, the transaction could be declared void.

[36] In or about July, 2017, Mr. Forgeron found commercial space for lease on Horseshoe Lake Drive, which was big enough to house the operations of both 810 Ltd. and Provincial Spring Shop. On or about July 28, 2017, Honda provided its consent for the new location.

[37] In August 2017, Mr. Forgeron decided to set the closing date of the asset sale on April 30, 2018, as this date corresponded to the end of the fiscal quarter for

Provincial Spring Shop. Renovations at Horseshoe Lake Drive were also projected to be completed by then.

[38] I find that 810 Ltd. has provided a satisfactory explanation for the transfer. 810 Ltd. sold its assets for *bona fide* business reasons. 810 Ltd. made Rockstone aware of the plan well in advance. 810 Ltd. had every intention of finding a new tenant to take over the lease and made significant efforts in that regard, all known to Rockstone. The fact that all potential leads fell through by April 30, 2018, the date of the long-planned asset sale, did not, in my view, convert what was otherwise a valid and good faith asset sale to one that was done fraudulently or in bad faith.

[39] Based on the undisputed evidence, and considering the surrounding circumstances as a whole, I find that 810 Ltd. did not transfer its assets with the intent to defeat, hinder, delay or prejudice Rockstone. I therefore find that the transfer was not a fraudulent conveyance under s.4(1)(a) of the *Assignments and Preferences Act*.

Statute of Elizabeth

[40] Under the *Statute of Elizabeth*, there is no requirement to prove that the transferor is insolvent. In *Bank of Montreal v. Crowell* (1980), 37 N.S.R. (2d) 292

(NSTD), the Court provided the following description of the *Statute of Elizabeth* at para.11:

> The plaintiff relies on the so-called Statute of Elizabeth which statute provided, according to *Kerr on Fraud and Mistake,* 7th ed. (1952), p. 298:
>
> > The statute 13 Eliz. c. 5, was made for the protection of creditors. It provided, in effect, that all conveyances and dispositions of property real or personal, made with the intention of delaying, hindering, or defrauding creditors, should be null and void as against them, their heirs, etc., and assigns. It also provided that nothing therein contained should extend to any estate or interest made on good consideration and *bona fide* to any person not having, at the time, any notice of such fraud.

[41] The Court in *Crowell, supra* set out the following three-part test for a claim under the *Statute of Elizabeth* at para.27:

> To succeed under the *Statute of Elizabeth*, the plaintiff need only prove three facts:
>
> > 1. The conveyance was without valuable consideration. It may not be sufficient if the plaintiff proves only that the consideration was somewhat inadequate (*Leighton v. Muir, supra*); in that case, there was inadequate consideration and although the Court held the conveyance could not be set aside under the *Statute of Elizabeth*, it was set aside under the *Assignment and Preferences Act*. The consideration must be "good consideration"; so-called meritorious consideration, that is, love and affection, is not valuable consideration and therefore not consideration within the meaning of the *Statute of Elizabeth*. (*Cromwell v. Comeau* (1957), 8 D.L.R.(2d) 676, at p. 684..)
>
> > 2.The grantor had the intention to delay or defeat his creditors. It is not necessary that the creditor exist at the time of the conveyance (*Traders Group Ltd. v. Mason et al., supra*.). However, the Court will impute the intention if the creditors exist at the time of the conveyance provided the conveyance is without consideration and denudes the grantor debtor of substantially all his property that would otherwise be available to satisfy the debt (*Sun Life v. Elliott, supra*). Apart from that situation, intention to delay or defeat creditors is a question of fact. The Court must look at all the circumstances surrounding the conveyance. The Court is entitled to

> draw reasonable inference from the proven facts to ascertain the intention of the grantor in making the conveyance. Suspicious circumstances surrounding the conveyance require an explanation by the grantor.
>
> 3.That the conveyance had the effect of delaying or defeating the creditors. This too is a question of fact. The plaintiff must first obtain a judgment against the debtor prior to commencement of proceedings to set aside the conveyance under the Statute of Elizabeth and must on the application to set aside adduce sufficient evidence to enable the court to make a finding that the conveyance had the effect of delaying or defeating the creditors."

[42] Rockstone's claim of a fraudulent conveyance under the *Statute of Elizabeth* also fails, as the transfer in this case was made with proper and valuable consideration, 810 Ltd. did not have the intent to delay or defeat Rockstone, and Rockstone has not established that the effect of the transfer was to defeat, hinder, delay or prejudice it.

ISSUE 2: OPPRESSION

[43] Rockstone also seeks an oppression remedy, the setting aside of the asset purchase agreement, under s.5 of the Third Schedule of the *Companies Act*, which reads as follows:

> 5 (1) A complainant may apply to the court for an order under this Section.
>
> (2) If, upon an application under subsection (1) of this Section, the court is satisfied that in respect of a company or any of its affiliates
>
> (a) any act or omission of the company or any of its affiliates effects a result;
>
> (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or
>
> (c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

> that it is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.
>
> (3) In connection with an application under this Section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,
>
> ...
>
> (h) an order varying or setting aside a transaction or contract to which a company is a party and compensating the company or any other party to the transaction or contract;
>
> …
>
> (j) an order compensating an aggrieved person; ...

[44] The parties agree that the two-part test for an oppression remedy is set out by the Supreme Court of Canada in the leading case of *BCE v. 1976 Debentureholders*, 2008 SCC 69 at para.68:

> [68] In summary, the foregoing discussion suggests conducting two related inquiries in a claim for oppression: (1) Does the evidence support the reasonable expectation asserted by the claimant? and (2) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest?

[45] The first part of the test was described as follows by the Court in *BCE, supra* at para.62:

> 62 As denoted by "reasonable," the concept of reasonable expectations is objective and contextual. The actual expectation of a particular stakeholder is not conclusive. In the context of whether it would be "just and equitable" to grant a remedy, the question is whether the expectation is reasonable having regard to the

> facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations.

[46] The Court in *BCE, supra* set out a non-exhaustive list of factors to take into account in determining whether a reasonable expectation exists at para.72:

> 72 … general commercial practice; the nature of the corporation; the relationship between the parties; past practice; steps the claimant could have take to protect itself; representations and agreements; and the fair resolution of conflicting interests between corporate stakeholders.

[47] The Court in *BCE, supra* described the concepts of oppression, unfair prejudice and unfair disregard as follows at para. 67:

> [67] … "Oppression" carries the sense of conduct that is coercive and abusive, and suggests bad faith. "Unfair prejudice" may admit of a less culpable state of mind, that nevertheless has unfair consequences. Finally, "unfair disregard" of interests extends the remedy to ignoring an interest as being of no importance, contrary to the stakeholders' reasonable expectations …

[48] In its brief, Rockstone asserted that it had a reasonable expectation that 810 Ltd. would honour its lease obligations. However, Rockstone already sued and obtained judgment for breach of the lease agreement. This Application concerns the asset transfer. The proper question is whether Rockstone had a reasonable expectation that 810 Ltd. would not sell its assets while it owed rent to Rockstone under the lease agreement. Rockstone has not established that it had such an expectation, or if it did, that such an expectation was reasonable, because in or about August, 2017, Rockstone knew that 810 Ltd. planned to sell its assets to

Provincial Spring Shop, terminate the lease with Rockstone, and vacate the Windsor Street premises in the winter of 2018.

[49] Rockstone states that it was bad faith and unduly prejudicial to Rockstone for 810 Ltd. to enter into the asset purchase agreement, divest 810 Ltd. of its assets and exclude assumption of the lease obligations when 810 Ltd. knew that a potential tenant had not been secured. Even if Rockstone had succeeded in establishing that it had a reasonable expectation that 810 Ltd. would not sell its assets while it owed Rockstone rent, Rockstone has not established that the asset sale was oppressive or unfairly prejudicial to or unfairly disregarded the interests of Rockstone. On the contrary, 810 Ltd. made the decision to sell its assets to Provincial Spring Shop for legitimate business reasons, informed Rockstone of this plan well in advance, and engaged in reasonable efforts to find a new tenant for the Windsor Street premises.

[50] For all of the above reasons, I find that an oppression remedy is not available in this case.

ISSSUE 3: UNJUST ENRICHMENT

[51] The parties agree that the test for unjust enrichment is as set out in *B2B v. Shane,* 2020 NSCA 15 at para.24:

1. One party is enriched by the receipt of a benefit or relief from loss;
2. The other party suffered a corresponding deprivation; and
3. The enrichment and corresponding deprivation occurred in the absence of a juristic reason.

[52] I find that Provincial Spring Shop was not enriched by the asset transfer. It paid valuable consideration for the assets.

[53] Rockstone argued that Mr. Forgeron was enriched because, it asserted, Provincial Spring Shop assumed all liabilities previously guaranteed by him. However, the undisputed evidence is that Mr. Forgeron personally guaranteed the debt obligations of Provincial Spring Shop to Honda, TCF, and Wells Fargo and Provincial Spring Shop's line of credit with TD Bank. Rockstone has not established that Mr. Forgeron was enriched by the asset transfer.

[54] Rockstone relied on a finding of a void transfer to argue that there was no juristic reason for the asserted enrichment of Mr. Forgeron and Provincial Spring Shop and the asserted corresponding deprivation of Rockstone. However, I have found that the transfer was not void. Even if Mr. Forgeron and Provincial Spring Shop were enriched and Rockstone suffered a corresponding deprivation, I find that there was a juristic reason for the enrichment and corresponding deprivation: the asset purchase agreement was made in good faith, for legitimate business reasons, and for valuable consideration.

[55] I reject Rockstone's argument that Mr. Forgeron and Provincial Spring Shop were unjustly enriched.

CONCLUSION

[56] Rockstone's application is dismissed.

[57] The Respondents were entirely successful in this Application and they are entitled to their costs. If the parties cannot agree on costs, this Court will receive costs submissions within 30 calendar days of this decision

Gatchalian, J.