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Pre-Judgment Remedies

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Agenda

1. What are pre-judgment remedies?
2. Types of pre-judgment remedies
3. Ex-Parte Applications
4. Serious orders with serious consequences
5. Application
6. Executing your order
7. Cryptocurrency and the future of pre-judgment remedies

Pre-Judgment Remedies

What are they?

Types of Pre-judgment Remedies

Investigative Orders

Anton Piller Orders

Freezing and
Preservation Orders

Investigative Orders

- Norwich Pharmacal Orders



Anton Piller Orders

- Access to property and evidence



Freezing and Preservation Orders

- Preservation Orders



Freezing and Preservation Orders

- Attachment Orders



Freezing and Preservation Orders

- *Mareva* Injunctions

INJUNCTION



Ex-Parte Applications

*“An applicant proceeding without notice to the opposing party is required to act with the **utmost good faith** and make **full, fair and candid disclosure** of the facts and this disclosure must include facts which would militate against the application”.*

Secure 2013 Group Inc. v Tiger Calcium Services Inc., 2017 ABCA 316 at para 44



Serious Remedies with Serious Consequences

- ***Secure 2013 Group Inc. v Tiger Calcium Services Inc.***
 - Duty of Candour and Full Disclosure
 - Prompt Applications
 - Set-Aside Applications
- **Undertaking as to Damages**

Serious Remedies with Serious Consequences

- Contempt
 - 336239 *Alberta Ltd v Mella*, 2016 ABCA 226



Scenario 1

A forensic audit of a company unveiled a number of unexplained transactions. The directors of the company suspect that the unexplained transactions are a result of employee fraud. The directors are not certain that a fraud was perpetrated and, if it was, who perpetrated the fraud and where the funds have gone. But they have a suspicion that the company's CEO may be responsible for the unexplained transactions.

What can the company do?

- Norwich Pharmacal order?
- *B. (A.) v. D. (C.)*, 2008 ABCA 51

Scenario 2

Joe, a senior employee of **ABC Investments**, recently tendered his resignation. This resignation was not completely unexpected because there were rumours that Joe was in contact with a competitor of ABC Investments. ABC Investments commenced an internal investigation to look into Joe's resignation. Upon viewing surveillance footage, it was discovered that Joe had printed an entire database with sensitive client information and left the premises with large binders. Joe is subject to a non-compete clause in his employment contract.

What can ABC Investments do?

- *Anton Piller* order?
- *Peters & Co. v Ward*, 2015 ABCA 6
- Consider effects of *Secure 2013 Group Inc. v Tiger Calcium Services Inc.*

Scenario 3

At trial, Mary successfully obtained judgment against **Y Engineering** for breach of a consulting agreement.

Following trial, Mary found out that Y Engineering changed its name to **XYZ Corp.** and had registered general security agreements against all Y Engineering assets. Y Engineering had also granted promissory notes payable on demand to **Mr. Y**, the principal and sole director of Y Engineering.

What can Mary do?

- Attachment Order?
- *Mareva* Injunction?
- *1007374 Alberta Ltd. Ruggieri*, 2013 ABQB 278

Executing Your Order

- Retain independent legal counsel to execute *Anton Piller*
- Coordinated approach of execution (e.g. deploy multiple teams)
- Consider cross-jurisdiction issues
- Logistics



Cryptocurrency and the Future of Pre-Judgment Remedies:

- What is cryptocurrency?
- What happens if cryptocurrency is fraudulently misappropriated?
- Can cryptocurrency be seized?



Cryptocurrency: Challenges to Recovery

Anonymity

Irrevocability

Jurisdiction

Cryptocurrency and the Future of Pre-Judgment Remedies:

- *Macdonald v. Dynamic Ledger Solutions, Inc., et al*
- *United States of America v 50.44 Bitcoins*
- *Google Inc. v. Equustek Solutions Inc.*



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