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Hypothecary Claims, Factoring and Priorities

November 1, 2012

In a recent decision, the Superior Court ruled in favour of GE, Commercial Distribution Finance Canada ('GE') in a dispute against the National Bank of Canada ('NBC'). Both institutions had a common client, New World Zanotti Transblock Inc. ('Zanotti'), which had granted to each of them a hypothec specifically charging its receivables. NBC had agreed to grant GE’s hypothec a prior rank to its own. In order to reduce Zanotti's indebtedness to it, NBC nevertheless collected the proceeds resulting from the sale of Zanotti’s receivables, which were themselves encumbered by GE's hypothec, and deposited those proceeds into Zanotti's operating bank account. The proceeds were paid by NatExport, a subsidiary of NBC, that had purchased the receivables pursuant to a factoring agreement entered into between it and Zanotti. GE claimed damages for an amount equal to the proceeds usurped by NBC on the grounds that NBC had contractually acknowledged GE's priority over those assets.

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