In the Court of Appeal of Alberta

Citation: AutoCanada Capital Motors GP Inc v 2016543 Alberta Ltd, 2026 ABCA 265

Date: 20260813
Docket: 2403-0257AC
Registry: Edmonton

Between:

AutoCanada Capital Motors GP Inc.

Appellant

- and -

**2016543 Alberta Ltd., 2016543 Alberta Ltd.
carrying on business as Canuck Auto, Flawless Integrity Ltd.,
Automotive Finance Canada Inc., and PricewaterhouseCoopers Inc.
solely in its capacity as court-appointed receiver over certain vehicles and related accounts**

Respondents

The Court:

The Honourable Chief Justice Ritu Khullar *
The Honourable Justice Anne Kirker
The Honourable Justice Karan M. Shaner

Memorandum of Judgment

Appeal from the Order of
The Honourable Justice J.J. Gill
Dated the 5th day of November, 2024
Filed on the 18th day of November, 2024
(2024 ABKB 645, Docket: 1803 09167)

*Chief Justice Khullar did not participate in the final disposition of the judgment.

Memorandum of Judgment

The Court:

Overview

[1] The appellant, AutoCanada Capital Motors GP Inc (AutoCanada), appeals from a case management judge's order following an application brought by the respondent, PricewaterhouseCoopers Inc (PwC or the receiver).

[2] The order appointing PwC as receiver clothed it with various investigatory powers and with express authority to provide its factual findings and its lawyers' legal conclusions to the court. The receiver subsequently applied to a case management judge for advice and direction about the effect of the factual and legal conclusions contained in its Sixth Report (the report or the receiver's report), including a request that the court direct certain factual and legal conclusions respecting key issues in the underlying lawsuit be binding on the parties.

[3] AutoCanada objected to the receiver's application. Among other things, it disagreed with a number of the factual and legal conclusions the receiver and its lawyers reached, most notably, the conclusion that one of the defendants in the underlying action, Calvin Mirbach (Mirbach), had ostensible authority to transfer and perform other transactions related to certain vehicles on AutoCanada's behalf. AutoCanada also asserted the receiver exceeded its authority by asking the court to make legal conclusions binding on the parties. Finally, AutoCanada argued there was a reasonable apprehension of bias on the receiver's part because it was acting as a receiver for the defendants Crossline Consulting Ltd, Crossline Truck and Auto Sales Ltd, and related entities (collectively, Crossline) in a separate proceeding. In July of 2018, Crossline, through PwC as receiver, filed a statement of claim against AutoCanada, Mirbach, and others seeking payment for vehicles allegedly purchased by AutoCanada. An amended amended claim was filed on January 26, 2021.

[4] In reasons indexed at ***AutoCanada Capital Motors GP Inc v Mirbach***, 2024 ABKB 645 [***Decision***], the case management judge found the receiver acted within its authority, as an independent officer of the court. He specifically accepted the receiver's conclusion that Mirbach had ostensible authority to conduct various disputed transactions on AutoCanada's behalf. He dismissed AutoCanada's argument that the receiver was biased due to its role as receiver for both AutoCanada and Crossline, noting, among other things, the receiver's transparency and AutoCanada's prior and long-held knowledge of the two appointments.

[5] AutoCanada raises several grounds of appeal. Chief among them is an allegation the process that was followed denied AutoCanada the opportunity to have the issue of ostensible authority determined through an adversarial process, thereby denying it procedural fairness. We grant the appeal on this basis. Our reasons are set out below.

Background

[6] AutoCanada owns and operates a car dealership in Edmonton. It filed a statement of claim in 2018 alleging fraud and forgery by the defendants Mirbach, 2075868 Alberta Ltd (207), Gregory Rasmussen (Rasmussen), and 1859603 Alberta Ltd (GRR) which resulted in a loss of over 100 vehicles. Mirbach, who AutoCanada alleges is the principal of 207, had a desk at AutoCanada's business premises; however, AutoCanada alleges he was a wholesaler and was never one of its employees. AutoCanada further alleges certain other defendants purporting to purchase the vehicles were complicit in the fraud and were not *bona fide* purchasers for value, and it claims it purchased but never received 30 vehicles through 207. Those vehicles originated with Crossline. A central issue, raised by a number of the defendants, is whether Mirbach and 207 had ostensible authority to convey ownership of the vehicles on behalf of AutoCanada.

[7] On May 18, 2018, a case management judge granted AutoCanada a receivership order appointing PwC as the receiver, pursuant to s 13(2) of the *Judicature Act,* RSA 2000, c J-2. It was amended by another case management judge on June 13, 2018, to appoint PwC as the receiver of the records and accounts of Mirbach, 207, Rasmussen, and GRR. The receivership order granted the receiver investigatory powers and imposed reporting obligations, expressed, in part, as follows at paragraph 3:

> (j) to examine under oath any person reasonably thought to have knowledge of the Property, the transactions related thereto and proceeds derived therefrom ... and order any person liable to be so examined to produce any books, documents, correspondence or papers in that Person's possession or power in connection therewith ... ;
>
> (k) to investigate and review the basis of any claims against the Vehicles ("Claims"), including without limitation, the claims alleged in the Statement of Claim ... including but not limited to:
>
>> (i) completing examinations in accordance with section 3(j) of this Order, above; and
>>
>> (ii) seeking from any person, including any party to the within action, the particulars of any transactions, facts, or circumstances and any relevant documents in relation to the Claims (or a Claim);
>
> (l) to prepare and file a written Report to Court setting out the results of its investigations of the Claims, including its factual conclusions, legal opinions of its legal counsel and its recommendations regarding the expeditious and cost-effective resolution of such Claims ...

[8] At the same time as the receivership order in these proceedings was granted, the case management judge appointed PwC as the receiver for Crossline in a different proceeding. AutoCanada had notice of this appointment.

[9] On January 24, 2020, one of the defendants, Automotive Finance Canada Inc (AFC), applied to wind up the receivership so the parties could pursue litigation. This application was dismissed and the ensuing order, in addition to confirming the receivership would continue, included the following direction at paragraph 2:

> The Receiver is directed to continue its mandate as set out in the Receivership Order and, following its investigation of the Claims ..., prepare and file a written report to the Court setting out the results of its investigations of the Claims, including its factual conclusions, legal opinions of its legal counsel and its recommendations regarding the expeditions [*sic*] and cost-effective resolution of such Claims.

[10] On January 26, 2021, PwC, as receiver for Crossline, filed the amended amended statement of claim naming Crossline as plaintiff against AutoCanada, Mirbach, and others, seeking payment for vehicles allegedly purchased by AutoCanada.

[11] The receiver's report, which included the legal opinion, was provided to all parties and then filed with the court on March 28, 2023. It contains the receiver's factual findings, conclusions, and recommendations for the lawsuit going forward.

[12] On July 18, 2024, the receiver filed an application for advice and direction on, among other things*,* the effect of its factual findings, conclusions, and the recommendations set out in the legal opinion. Specifically, and as noted, the receiver sought a direction making the legal opinion binding on the parties. The receiver also sought a direction requiring AutoCanada and other named defendants to attend judicial dispute resolution.

[13] The case management judge accepted the receiver's factual findings and its legal opinion and recommendations. Notably, he held the "factual findings in the Legal Opinion overwhelmingly support on a balance of probabilities a finding of ostensible authority" as it related to one of the key defendants in the action: ***Decision*** at para 41. In accepting the legal opinion, the case management judge indicated that the bounds of a receiver's authority are determined based on the specific wording of the appointing order, having regard to the circumstances of the case. He noted specifically that the receiver had not become the adjudicator and it was up to the court to decide whether to accept the receiver's legal conclusions and recommendations. He found the receiver's legal opinion was owed deference because of its role as an independent, neutral officer of the court.

[14] The case management judge dismissed AutoCanada's argument of reasonable apprehension of bias based on PwC's role as receiver for Crossline. He applied the factors set out in ***YBM Magnex International Inc, Re*** (2000), 275 AR 352 (QB), 2000 CanLII 28169 at para 39, aff'd 2001 ABCA 305. In reaching this conclusion, he observed: AutoCanada had knowledge of

the receiver's role with Crossline for over six years without raising objection until shortly before the receiver's application was made; the complaint was a tactical move by AutoCanada; and removing the receiver so late in the proceedings would be prejudicial to the estate.

Grounds of Appeal and Standard of Review

[15] AutoCanada raises several grounds of appeal. Among these is the argument that by deferring to and then adopting the receiver's factual and legal conclusions, the case management judge denied AutoCanada the opportunity to prove its case through an adversarial process based on a complete record, thereby breaching its right to procedural fairness. This is dispositive.

[16] Questions of procedural fairness are considered contextually to determine if a party received the level of fairness required by law: ***Park v Virtue*,** 2025 ABCA 274 at para 12; ***Loncikova v Goldstein***, 2021 ABCA 390 at para 15.

Discussion

[17] The procedure followed in this case was problematic and unfair to AutoCanada. Although framed as an application for advice and direction, the receiver's application was tantamount to a summary judgment application. The receiver asked the case management judge to accept its legal conclusions, including on a central issue in the underlying lawsuit.

[18] PwC was appointed as what is referred to as an investigative receiver: see, ***Akagi v Synergy Group (2000) Inc***, 2015 ONCA 368 [***Akagi***]. It had a broad investigative mandate, including the ability to provide its legal opinion to the court and the parties. The underlying litigation is complex and in shaping the consent order that appointed the receiver, the parties were clearly looking for a way to reliably and transparently cure informational gaps and imbalances, a key aspect of an investigative receivership: ***Akagi*** at para 90.

[19] The terms of the order appointing PwC as receiver clearly contemplate it would share its lawyers' opinions and recommendations with the parties and the court; however, the receiver acted outside of its mandate in seeking to bind the parties to its legal opinion. Receivers, investigative or otherwise, are officers of the court and among other things, they are required to remain neutral. PwC improperly entered the litigation fray and advocated a position that favoured certain parties over AutoCanada.

[20] The way the receiver's application proceeded resulted in what was in substance a summary dismissal of AutoCanada's claim against a number of defendants, including Crossline. AutoCanada was denied a fair opportunity in an adversarial setting to challenge the evidence the receiver gathered and upon which its lawyers based their conclusions and recommendations. Importantly, while the case management judge acknowledged it was ultimately up to him to decide whether or not to accept the receiver's legal opinion, he considered it only in the context of the evidence the receiver presented. He did not consider or weigh it against the *totality* of the evidence,

i.e. evidence AutoCanada or other parties would have presented either at a trial or within a properly constituted summary judgment or dismissal application. The practical result was that final judgment on a critical issue was rendered in the absence of a complete record, and without AutoCanada having an opportunity to present its case and have it properly adjudicated.

[21] We also note the case management judge erred in finding the receiver's legal opinion was owed deference. Legal conclusions, if they are to be relied upon by a court, must be assessed on a standard of correctness.

[22] Turning briefly to AutoCanada's arguments respecting reasonable apprehension of bias, we are not convinced the case management judge applied incorrect legal principles in addressing this issue.

[23] Given our conclusions, it is unnecessary to address the remaining grounds of appeal.

Disposition

[24] The appeal is allowed.

Appeal heard on September 22, 2025

Memorandum filed at Edmonton, Alberta
this 13th day of August, 2026

Kirker J.A.

Shaner J.A.

Appearances:

M. Wolowidnyk
J. R. Maslen
K. Friesen
for the Appellant AutoCanada Capital Motors GP Inc.

S.E. Hart, KC
for the Respondents 2016543 Alberta Ltd., 2016543 Alberta Ltd. carrying on business as Canuck Auto, and Flawless Integrity Ltd.

M.S. Poretti
for the Respondent Automotive Finance Canada Inc.

D. Curcio Lister, KC
B.A. Hosking
for the Respondent PricewaterhouseCoopers Inc. solely in its capacity as court-appointed receiver over certain vehicles and related accounts