

N.Y. Livent judgement enforceable in Canada

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Byline: Jim Middlemiss
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The Supreme Court of Canada refused a request by former Livent Inc. theatre impresarios Garth Drabinsky and Myron Gottlieb to stop a US\$36-million class-action judgment from being enforced against them here in Canada.

That could include getting a sheriff to garnish income or seize assets "try to get some money in the plaintiffs' pockets," she explained.

The court award was granted in a summary judgment motion during a class-action suit in the United States involving a group of Livent investors.

The men, who were facing criminal charges in the United States, pleaded the Fifth Amendment in relation to those charges on the ground their statements would be incriminatory.

Rather than file their own affidavits in the later civil class-action suit, or seek to have it stayed, they relied on the affidavit of a senior executive to establish a defence in that case. However, the judge found that affidavit to be deficient and granted summary judgment to the plaintiffs.

The investors sought to enforce the decision here in Canada. The Ontario Court of Appeal ruled in July, 2007, that the U.S. judgment could be recognized and the men asked the Supreme Court to overturn that because they claim they haven't been able to make a full defence in the civil suit because of criminal charges against them in Canada and the United States and it was a breach of natural justice.

The SCC declined leave to hear the case Thursday without issuing reasons.

Symon Zucker, a lawyer for Myron Gottlieb, said "Myron, I don't think, is in a position to honour judgments in any event. He has no funds to make this kind of payment."

He noted that the plaintiffs have already held a judgment-debtor examination related to the enforcement of the case. "I don't think they were all that pleased with their findings. They looked under a lot of rocks and there is nothing there."

Jasmine Akbarali, a lawyer from the investor's law firm Lerner's, said the SCC ruling "means it's the end of the road for them [Mr. Drabinsky and Mr. Gottlieb] in contesting whether the New York judgment is enforceable in Ontario. We are now in the process of enforcing that judgment."

She said the law firm has commenced legal examinations of Mr. Drabinsky and Mr. Gottlieb to determine what their assets and income are and "depending on what we learn we'll take appropriate steps."