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Lathigee v. British Columbia Securities Commission, 136 Nev. Adv. Op. 79 (Dec. 10, 2020)

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Recommended Citation

McGrady, Michael, "Lathigee v. British Columbia Securities Commission, 136 Nev. Adv. Op. 79 (Dec. 10, 2020)" (2020). *Nevada Supreme Court Summaries*. 1363.

<https://scholars.law.unlv.edu/nvscs/1363>

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Summary

In an opinion drafted by Justice Pickering, the Nevada Supreme Court considered whether the disgorgement portion of a securities-fraud judgment from British Columbia could be enforced in Nevada. The Court concluded that disgorgement judgments that serve as restitution do not constitute a penalty or fine under NRS 17.740(2)(b),² and that the Canadian judgment was properly recognized by the district court under principles of comity.

Background

This case arose out when appellant Michael Lathigee fled British Columbia to escape a judgment by respondent British Columbia Securities Commission (“BCSC”). BCSC found that Lathigee violated section 57(b) of the BC Securities Act by perpetuating a fraud and raising \$21.7 million (CAD) from 698 investors. The BCSC imposed a disgorgement order on Lathigee under section 161(1)(g) of the BC Securities Act and a \$15 million (CAD) administrative penalty. Lathigee left Canada and relocated to Nevada without paying the judgment. The BCSC then filed a complaint asking the district court to recognize the disgorgement under NRS 17.750(1)³ or as a matter of comity. The BCSC did not seek enforcement of the administrative penalty. The district court recognized the judgment as enforceable under NRS 17.750(1), holding the award was not a penalty but an award designed to afford eventual restitution to the defrauded investors under the notice-and-claim mechanism of 15.1 of the Securities Act. In addition, the court recognized the judgment based on comity. Lathigee appealed.

Discussion

Nevada has adopted the Uniform Foreign Country Money Judgments Recognition Act (2005).⁴ This statute requires Nevada courts to recognize a foreign-country judgment to which NRS 17.700 to 17.820 apply, unless one of the grounds for non-recognition stated in NRS 17.750(2) or (3) is proved or one of the categorical exceptions stated in NRS 17.740(2)(a), (b), or (c) applies.⁵ Thus, the Act does not apply “to the extent that the judgment is . . . [a] fine or other penalty.”⁶ Lathigee hereby argues that the disgorgement judgment constitutes a fine or other penalty. Because the Uniform Act does not define what constitutes a judgment for a fine or penalty, the Court outlined a test to determine whether the judgment’s purpose is remedial in nature with its benefits accruing to private individuals, or it is penal in nature, punishing an offense against public justice.⁷

The Court rejected the argument that the disgorgement is an unenforceable penalty. The BCSC recovered under section 161(1)(g) of the BC Securities Act, which authorizes the BCSC to recover any amount obtained, directly or indirectly, as a result of the Securities Act violation. In addition, the section’s purpose is “neither punitive nor compensatory.”⁸ The Court found the fact that the disgorgement judgment was the exact amount Lathigee obtained from defrauding investors

¹ By Michael McGrady.

² NEV. REV. STAT. § 17.740 (2020).

³ NEV. REV. STAT. § 17.750 (2020).

⁴ NEV. REV. STAT. § 17.700–17.820 (2020).

⁵ NEV. REV. STAT. § 17.750(1) (2020).

⁶ NEV. REV. STAT. § 17.740(2)(b) (2020).

⁷ See generally *Huntington v. Attrill*, 146 U.S. 657 (1892); Uniform Act § 3, cmt. 4, 13 pt. II U.L.A.

⁸ *Poonian v. BCSC*, 2017 BCCA 207, at 23 (CanLII).

weighed in favor of the award being remedial. Further, Section 15.1 of the BC Securities Act requires the BCSC to return any money collected on the disgorgement award to investors the Securities Act violation harmed through a notice-and-claim procedure. Because the BCSC cannot keep the award without obligation to the victims, the award again weighs in favor of being remedial. Thus, the award is not subject to the exception found in NRS 17.740(2)(b).

Finally, the Court considered the question of comity. Notwithstanding the above argument, this Court found the district court properly recognized this as a matter of comity. The comity doctrine is “a principle of courtesy by which the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect.”⁹ Lathigee does not raise any of the defenses to comity recognized in *Gonzales-Alpizar* or the Restatement (Third) of Foreign Relations Law § 482. This Court recognizes that comity has special strength between Canada and the United States. The two countries share a long border, and the SEC and the provinces’ individual securities commissions often work together. Canadian courts regularly uphold SEC disgorgement judgments, and Canadian judgments have long been viewed as cognizable in courts of the United States.¹⁰ Thus the district court properly recognized the judgment under the principle of comity.

Conclusion

The Court affirmed that the BCSC disgorgement award to be remedial in nature and thus enforceable under Nevada law, in addition to being recognizable under the principle of comity.

⁹ *Gonzales-Alpizar v. Griffith*, 130 NEV. 10, 18 (2014).

¹⁰ *See United States (SEC) v. Crosby*, 2000 BCSC 338, at 3 (CanLII); *Alberta Sec. Comm’n v. Ryckman*, 30 P.3d 121, 126 (Ariz. Ct. App. 2001).