

## Case Update: *iTrade Finance Inc. v. Bank of Montreal*

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In our March 2010 issue, we discussed the Ontario Court of Appeal case *Bank of Montreal v iTrade Finance Inc.* This was a case about fraud, and the rights of innocent parties to the proceeds. Webworx Inc., and its principal, Mr. A., successfully perpetrated a fraudulent scheme to obtain funds from iTrade Finance Inc. (“iTrade”). These funds were subsequently used by Mr. A and his spouse Ms. R to purchase shares, which shares were held in an investment account. In exchange for an increased credit limit on their credit card, Mr. A and Ms. R. granted a pledge of the shares held in the investment account to BMO. When the fraud was discovered, iTrade sued and was granted a tracing order for the funds. The tracing order permitted iTrade to trace the funds into the hands of persons other than “bona fide purchasers for value without notice”.

The issue was whether iTrade or BMO was entitled to the funds in the investment account. The Court of Appeal found BMO to be a bona fide purchaser for value without notice, and was consequently entitled to the funds. (See our March 2010 article for a discussion of the Court of Appeal's reasons.)

iTrade appealed, and the Supreme Court of Canada released its judgment in May. The Supreme Court affirmed the decision of the Court of Appeal, concluding that BMO fell within the exception in the tracing order, defeating any interest in the funds asserted by iTrade. BMO was a “bona fide purchaser for value without notice” because (i) it was a “purchaser”, as it acquired an interest in the property by way of a valid pledge, (ii) it had given value, in the form of an increased credit limit to Mr. A and Ms. R, and (iii) it had no notice of the fraud at the time the security interest was obtained.

Since iTrade's interest in the funds held in the investment account derived from the tracing order, and the tracing order expressly excluded BMO (since it was found to be a bona fide purchaser for value without notice), BMO was entitled to the investment account funds. ■