

**CITATION:** Trident Consulting International Inc. et al, 2025 ONSC 3353  
**COURT FILE NO.:** BK-23-00208635-OT31  
**DATE:** 20250605

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

**RE:** IN THE MATTER OF THE BANKRUPTCY OF TRIDENT CONSULTING  
MANAGAEMENT INTERNATIONAL INC. OF THE CITY OF TORONTO, IN  
THE PROVINCE OF ONTARIO

**BEFORE:** Justice J. Dietrich

**COUNSEL:** *Maya Poliak, Laura Culleton*, for Trident Consulting Management International  
Inc.

*Steven Weisz, Robert Sottile, Dilina Lallani*, for Bioventus, LLC

**HEARD:** May 29, 2025

**REASONS FOR DECISION**

**Introduction**

[1] Trident Consulting Management International Inc. (“**Trident**”) seeks an order pursuant to s. 43(7) of the *Bankruptcy and Insolvency Act* R.S.C., 1985, c. B-3 (the “**BIA**”) dismissing the application for a bankruptcy application order commenced against Trident by Bioventus, LLC (“**Bioventus**”).

[2] For the reasons set out below, the Trident’s motion is dismissed.

**Background**

Procedural Background

[3] This motion was commenced following an endorsement of Justice Penny dated August 28, 2024, which stated:

[1] Bioventus seeks to schedule a bankruptcy hearing which is opposed by the debtor, Trident.

[2] Trident is a Wyoming corporation. It filed a voluntary petition under Chapter 7 of the U.S. Bankruptcy Code in Wyoming. I am advised that in January 2024, the Trustee filed a final account and

certified that the estate had been fully administered. Trident remains an undischarged bankrupt.

[3] In these circumstances, Trident raises a serious jurisdictional question as to how Bioventus, which had notice of the U.S. bankruptcy proceeding and attended a meeting of creditors in that proceeding, can commence a bankruptcy application against an undischarged bankrupt in Toronto.

[4] I agree that this issue must be addressed as a threshold issue. Accordingly, Trident shall bring a motion in this proceeding to determine the threshold question of jurisdiction and whether another bankruptcy proceeding against Trident should be allowed. ...

- [4] In Trident's notice of motion dated September 11, 2024, it stated that the issue on this motion was whether the Canadian Court has the jurisdiction to make a bankruptcy order in respect of an undischarged bankrupt.
- [5] However, at the hearing of the motion, Trident narrowed its position, admitting that the Court had jurisdiction to make a bankruptcy order, if the factors set out in s. 43(1) of the BIA were established, despite Trident being an undischarged bankrupt under Chapter 7 of the U.S. Bankruptcy Code: see *Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of)*, 2001 SCC 90, [*Holt Cargo*] at para 79.
- [6] Rather, Trident's position on this motion is that even if the factors set out s. 43(1) of the BIA are established (which is to be addressed at a separate hearing) then it would not be appropriate for a bankruptcy order to be made in the circumstances and the Court should dismiss Bioventus' application under s. 43(7) of the BIA.
- [7] The majority of facts set out below were contained in an agreed statement of facts submitted by the parties for use on this motion.

#### The Parties & the Debt

- [8] Trident is a corporation organized under the law of the State of Wyoming. Trident is also registered in the Province of Ontario as an extra provincial corporation. An Ontario Profile Report and Trident's Wyoming corporate profile list Trident's principal business address as Toronto, Ontario.
- [9] The sole director and officer of Trident is Adrian Travis. Mr. Travis resides in Toronto, Ontario.
- [10] Trident was incorporated in October of 2011 and carried on business as a management consulting firm.

- [11] During its operations, Trident serviced over seventeen customers, including Bioventus and its sister company. These customers were all located in the United States and services were provided in the United States.
- [12] On September 27, 2018, Bioventus commenced litigation against Trident alleging that Trident breached a services agreement entered into between the two parties (the “**Services Agreement**”), under which Trident agreed to provide consulting services to Bioventus.
- [13] On October 20, 2020, the United States District Court for the Middle District of North Carolina (the “**NC Court**”) issued a ruling finding that Trident breached the Services Agreement and was liable to Bioventus for damages in the principal amount of USD \$736,544. On December 23, 2020, the NC Court entered a corresponding judgment in favor of Bioventus against Trident (the “**US Judgment**”). The US Judgment was affirmed on appeal.

#### Post Judgment Events

- [14] Trident did not make payments in satisfaction of the US Judgment. Accordingly, Bioventus conducted post-judgment discovery of Trident.
- [15] This discovery revealed that Trident’s bank accounts were located in Ontario and a substantial portion of the revenues earned by Trident in 2020, 2021 and 2022 were transferred to a related Canadian company, referred to in Trident’s material as Trident Consulting International Inc. (“**TCII**”), as payment of “management fees”. Mr. Travis is also a director of TCII.
- [16] On September 12, 2022, Bioventus filed an application in the Ontario Superior Court of Justice seeking an Order recognizing and enforcing the US Judgment in Ontario. Trident retained counsel who appeared on that application. Bioventus obtained a Judgment dated April 2, 2023, recognizing and enforcing the US Judgment in Ontario (the “**Ontario Judgment**”). No payment has been made on the Ontario Judgment.

#### Canadian Bankruptcy Proceedings

- [17] On July 31, 2023, Bioventus filed an application for a bankruptcy order against Trident pursuant to the BIA.
- [18] Bioventus states that it commenced the bankruptcy application in Ontario given Trident’s connection to Ontario, including, Trident’s principal place of business is listed as Ontario, Trident’s sole director and officer is in Ontario and Trident’s only bank accounts are located in Ontario. Further, Bioventus states that it sought a bankruptcy order against Trident in Ontario to investigate and potentially seek recourse in connection with alleged preferences and alleged transfers at undervalue. Bioventus has concerns that Trident committed a preference or transfer at undervalue to avoid paying the US Judgment. Specifically, Bioventus intends to assert that Trident’s financial statements disclose that Trident’s debts of significant size, aside from the US Judgment, were all “due to related parties”, that millions of dollars of deductions were made on its tax returns for what are

described as “management fees”, and that Trident’s financial statements also reflect that millions of dollars were paid by Trident to a related party as “management fees” in the years 2019 and 2022.

- [19] The application for a bankruptcy order was originally scheduled to be heard in writing on October 25, 2023. Trident did not file a notice of dispute or otherwise indicate that it intended to oppose the application.
- [20] However, on October 17, 2023, Trident filed a voluntary petition under Chapter 7 of the *United States Bankruptcy Code* in the state of Wyoming (the “**Chapter 7 Filing**”).
- [21] On October 24, 2023, Bioventus filed a request for an adjournment of its application for bankruptcy order scheduled on October 25, 2023. The application was adjourned by endorsement dated December 5, 2023.

### The Chapter 7 Proceedings

- [22] David J. Warner was named as insolvency Trustee in the Chapter 7 Filing.
- [23] The Chapter 7 Filing lists Trident’s creditors who are located in the United States. Aside from Bioventus, the only creditors are U.S. taxing authorities.
- [24] Mr. Warner, as Trustee in the Chapter 7 proceedings, conducted an examination of Mr. Travis on November 21, 2023. Joel Nessett, a lawyer from Cozen O’Connor LLP, counsel to Bioventus attended at the examination conducted by Mr. Warner.
- [25] Bioventus did not object to the Chapter 7 Filing or seek to set it aside. Bioventus did not file a claim in the Chapter 7 Filing.
- [26] On January 3, 2024, Mr. Warner filed a Final Account and certified that the estate had been fully administered in the Chapter 7 proceeding.

### Rescheduling the Canadian Bankruptcy Proceeding

- [27] In February of 2024, Bioventus sought to reschedule the previously adjourned hearing date for its application for bankruptcy order.
- [28] On April 11, 2024, Trident delivered a notice of dispute. This led to the Case Conference before Justice Penny noted above and this motion was commenced by Trident.
- [29] Trident did not provide the Chapter 7 Trustee with notice of this motion.

### **Issue**

- [30] The only issue to be determined on this motion is whether the bankruptcy application commenced by Bioventus against Trident should be dismissed pursuant to s. 43(7) of the BIA.

## Analysis

[31] Section 43 of the BIA provides:

### Bankruptcy application

43 (1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that

(a) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and

(b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

...

### Dismissal of application

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

- [32] As noted above, the motion is framed as a threshold motion. Although, there remains a dispute about whether the requirements of s. 43(1) of the BIA have been satisfied, Trident argues that even if those requirements are proven, the bankruptcy application should be dismissed ‘for other sufficient cause’ under s. 43(7) of the BIA.
- [33] The Court’s decision to dismiss an application under s.43(7) of the BIA is discretionary: see *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318 [**Medcap**] at para 10.
- [34] Where a creditor has an ulterior motive for bringing an application for a bankruptcy order, this can be “sufficient cause” within the meaning of s. 43(7) of the BIA see *Medcap* at para 18.
- [35] Further, where no purpose would be served by a bankruptcy, this may also amount to “sufficient cause” within the meaning of s.43(7) of the BIA, however, “a debtor who has (a) committed an act of bankruptcy consisting of not paying debts as they generally come due, and (b) failed to lead evidence to satisfy the court that it has the ability to pay its creditors bears a very heavy onus to show that a bankruptcy would nonetheless serve no purpose” see *Medcap* at para 23.
- [36] Trident submits that (i) that there is no purpose to the Canadian bankruptcy application because the Chapter 7 Trustee, despite its discharge, remains ‘vested’ of all property of Trident whether domestic or foreign; and (ii) Bioventus has brought the bankruptcy application for an improper purpose.

No Purpose

- [37] Trident submits that even if Bioventus were successful in the Canadian bankruptcy application, there is nothing to be gained through that proceeding because the claim for the alleged preferences or transfers at undervalue would not be available to a Canadian bankruptcy trustee.
- [38] Trident relies on an expert opinion of Annette Jarvis, a partner at Greenberg Traurig, LLP for the proposition that what Ms. Jarvis refers to as the ‘Transfers’ and ‘Transfers Actions’ vested exclusively in the Chapter 7 Trustee and that despite the Chapter 7 Trustee’s discharge, they remain vested in the Chapter 7 Trustee as they were not abandoned. Further, Trident argues that the automatic stay of proceedings under the *U.S. Bankruptcy Code* continues to apply to the Transfers and the Transfer Actions cannot be perused outside of the Chapter 7 Filing.
- [39] The opinion of Ms. Jarvis dated January 14, 2025, refers to the Transfers as a series of transfers being ‘management fees’ paid by Trident between 2019 and 2022 as potential ‘preference’ or ‘undervalued’ transfers. Ms. Jarvis also opines that on the filing of a voluntary bankruptcy case, a “bankruptcy estate” is created as provided for in 11 U.S.C. §541 and an ‘automatic stay’ goes into effect pursuant to 11 U.S.C. §362 which protects property of the bankruptcy estate. Further, Ms. Jarvis opines that “property of the estate” is very broadly defined in 11 U.S.C. §541 and subject to narrow exceptions that are not relevant for the current case, includes “all legal or equitable interest of the debtor in property as of the commencement of the case” (emphasis added).
- [40] Ms. Jarvis then goes on to opine that upon the filing of a bankruptcy petition, the right to avoid pre-bankruptcy transfers under non-bankruptcy law becomes property of the bankruptcy estate and vests in the Chapter 7 Trustee exclusively.
- [41] What does not appear to be addressed by Ms. Jarvis’ opinion or any of the U.S. case law referenced by her is the situation at play in this case. Bioventus has been clear that it seeks to pursue the Canadian bankruptcy application to investigate the transfers of funds by Trident to a related party under ss. 95 and 96 of the BIA. Under the BIA, a trustee’s ability to pursue assets from third parties as preferences or transfers at undervalue under ss. 95 and 96 are not assets of the debtor or the bankrupt estate. Rather, these are statutory remedies available to a trustee under Canadian law: see *Tucker v Aero Inventory (UK) Ltd*, 2011 ONSC 4223, [*Aero Inventory*], at paras 137-138. The statutory remedy is not the debtor’s property and will only come into existence when (and if) a bankruptcy order is made against Trident. Accordingly, it cannot amount to property of the estate as referenced by Ms. Jarvis’ opinion.
- [42] Ms. Jarvis also opines that to the extent avoidance or recovery actions existed under Canadian law against Trident, the Chapter 7 Trustee could have petitioned the Canadian

Court for recognition of the Chapter 7 Filing. Trident goes on to argue that this means the Chapter 7 Trustee is exclusively empowered to do so and therefore in these circumstances, Bioventus should not be permitted to proceed with the Canadian bankruptcy application.

[43] I do not accept Trident’s argument. As the Supreme Court of Canada in *Holt Cargo* stated:

79 Further, Canadian law has always recognized that initiation of foreign bankruptcy proceedings does not prevent concurrent insolvency proceedings in Canada: see *Castel, supra*, at p. 565; *Allen v. Hanson* (1890), 1890 CanLII 44 (SCC), 18 S.C.R. 667; *Re Breakwater Co.* (1914), 33 O.L.R. 65 (H.C.), and *Re E. H. Clarke & Co.*, 1923 CanLII 467 (ON SC), [1923] 1 D.L.R. 716 (Ont. S.C.). The existence of two sets of proceedings obviously raises the spectre of conflicting decisions or approaches, although as noted in 1890 by Ritchie C.J. of this Court in *Allen, supra*, at p. 674, it is “the duty of the courts of both countries to see no conflict should arise”. Conflict avoidance can take many forms, including dismissing or staying Canadian proceedings. Section 43(7) of the *Bankruptcy and Insolvency Act* permits the court to dismiss a petition if it has “sufficient cause”. This requirement may be satisfied if the debtor has been declared bankrupt elsewhere. In fact, the courts have stayed liquidation proceedings where bankruptcy proceedings are on foot in a foreign jurisdiction: *Re Stewart & Matthews, Ltd. and The Winding-Up Act* (1916), 1916 CanLII 729 (MB KB), 10 W.W.R. 154 (Man. K.B.). Similarly, in an appropriate case, the Federal Court can avoid conflict by staying its proceedings pursuant to s. 50 of the *Federal Court Act*.(emphasis added)

[44] Although it may be appropriate to stay Canadian insolvency proceedings in favour of ongoing foreign proceedings, it does not follow that if a foreign bankruptcy proceeding is initiated, the terms of foreign insolvency law dictate who may bring (or who may not bring) a bankruptcy application under Canadian law.

[45] The approach suggested by Trident is also at odds with Part XIII (Cross Border Insolvencies) of the BIA. Part XIII of the BIA provides mechanisms for dealing with cross-border insolvencies to promote cooperation between this Court and courts in foreign jurisdictions. No application for recognition of the Chapter 7 Filing as a foreign proceeding has been made. Under Part XIII of the BIA, if a such a recognition application is made and granted, a stay of the Canadian bankruptcy application may be ordered in certain

circumstances and must be ordered if the center of main interests (COMI) of Trident is found to be in the United States. Bioventus has made submissions that Trident's COMI is not in the United States, but this is not an issue which is before me.

- [46] The Chapter 7 Trustee did not make any attempt to avail itself of the procedures required by Part XIII of the BIA to impose a stay. It would be contrary to the purpose of Part XIII of the BIA to find, as Trident submits, that absent any such recognition proceeding, Bioventus is stayed from moving forward with its previously commenced Canadian bankruptcy application.
- [47] Trident's arguments in this regard are, in large part, expressed as concerns with the Chapter 7 Filing and the role of the Chapter 7 Trustee. The Chapter 7 Trustee, however, is not the party making these submissions. Trident, who by its own admission is an undischarged bankrupt in the Chapter 7 Filing, did not provide the Chapter 7 Trustee with notice of this motion.
- [48] I am mindful of the Supreme Court of Canada's caution that conflict between insolvency proceedings should be avoided, however, there does not appear to be, at this point in time, any conflict between the Chapter 7 Filing, which has been closed, and the Canadian proceeding contemplated by the bankruptcy application should it be granted.
- [49] If funds are recovered in the Canadian bankruptcy application, then it may be that coordination is necessary at that time to ensure no conflict between the two proceedings. In this respect, Bioventus has advised that the Chapter 7 Trustee, although discharged, will be provided with notice of the hearing of the bankruptcy application.
- [50] Accordingly, I am not persuaded that Trident has met the high onus required to satisfy the Court that a bankruptcy application should be dismissed under s.43(7) on the basis that the bankruptcy would serve no purpose.

#### Improper Purpose

- [51] Trident also argues that the Bioventus has not provided evidence as to why it could not pursue the Transfers in the Chapter 7 Filing and why a Bankruptcy filing under the BIA would be more advantageous. Accordingly, Trident says that Bioventus must have an improper purpose in bringing the Canadian bankruptcy application.
- [52] Courts have held that a bankruptcy application is filed for improper purpose where, for example, an application was filed to eliminate a business competitor or obtain a business advantage: see: Lloyd W. Houlden, Geoffrey B. Morawetz, Janis P. Sarra, "*Bankruptcy and Insolvency Law of Canada, 4th Edition*" at § 3:58.
- [53] As set out in *Lai (Bankruptcy), Re*, 2005 CanLII 17915 (ONSC) at para 18, in determining if a proceeding in bankruptcy is being brought for an improper purpose or is an abuse of

process, the Court should consider whether the relief sought in the proceeding is consistent with the purpose and intent of bankruptcy legislation which is to provide for the orderly distribution of the assets of the bankrupt among the bankrupt's creditors for the general benefit of such creditors and to provide an opportunity for the granting of a fresh start and rehabilitation for the bankrupt.

- [54] Here, given the corporate nature of the proposed bankrupt – a fresh start *per se* is not relevant. Trindent also submits that respect should be given to the principle of finality for the director of Trindent, Mr. Travis. Trindent submits Mr. Travis complied with his duties in the Chapter 7 Filing should not be required to again submit to examinations and other investigations. In this respect, the Court should keep in mind that the protection of creditors is central to insolvency legislation. See *Medcap* at para 24. Inconvenience to a representative of the debtor, does not outweigh the protection of creditors.
- [55] If assets are recovered in Canadian bankruptcy proceedings, they will, subject to the provisions of the BIA, be available to all creditors with proven claims.
- [56] Trindent argues that it is already subject to the Chapter 7 Filing and Bioventus could have pursued reviewable transaction remedies with respect to the payment of management fees to Trindent's related corporation in that forum and has provided no reason why it did not.
- [57] Rather, the evidence is that Bioventus commenced the Canadian bankruptcy application prior to Trindent's voluntary Chapter 7 Filing in order to investigate potential reviewable transactions with respect to the payment of management fees to the related Canadian company. Bioventus did not file a claim in the Chapter 7 Filing, the Chapter 7 Filing closed three months after it was commenced. There is no evidence that the Chapter 7 Filing changed Bioventus' intention.
- [58] Although Bioventus could have participated in the Chapter 7 Proceedings, I am not persuaded that is a determinative factor. It may be that Bioventus wishes to pursue the Canadian Bankruptcy application as the related company, who is the purported recipient of the 'management fees' in question is a Canadian company. Simply because Bioventus has not explained why it sees the Canadian statutory provisions as more desirable than those at issue in the Chapter 7 Filing does not amount to proof of an improper purpose sufficient to satisfy Trindent's heavy onus under s. 43(7) of the BIA.

### **Disposition**

- [59] For the reasons set out above, Trindent's motion is dismissed.
- [60] Costs are deferred to be determined in connection with the hearing of the bankruptcy application.
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The Honourable Justice J. Dietrich

**Date:** June 5, 2025