IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Smith (Re),*
2025 BCSC 1099

Date: 20250613
Docket: B250134
Registry: Vancouver

In the Matter of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as Amended

- and -

In the Matter of the Bankruptcy of Craig Allen Smith

- and -

Docket: B250135
Registry: Vancouver

In the Matter of the Bankruptcy of Robert Kyle Smith

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for Craig Allen Smith and Robert Kyle Smith:	D. Gruber W.E. Stransky
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Place and Dates of Hearing:	Vancouver, B.C. April 30 and May 7, 2025
Place and Date of Judgment:	Vancouver, B.C. June 13, 2025

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I. INTRODUCTION

[1] On March 12, 2025, Royal Bank of Canada ("RBC") filed applications for bankruptcy orders with respect to Craig Allen Smith and Robert Kyle Smith. The Smiths, as I will collectively call them, are brothers, and also partners in certain business ventures.

[2] The Smiths oppose the bankruptcy orders on three specific grounds, pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*].

[3] For ease of reference, I will refer to the Smiths as "Craig" and "Kyle", meaning no disrespect.

II. BACKGROUND

[4] The Smiths operate or operated a group of companies that were all essentially indirectly owned equally by Craig and Kyle. These indirect interests were held through their holding companies. Craig's company is Bastian Holdings Ltd. ("Bastian"). Kyle's company is Krystle Holdings Ltd. ("Krystle") (or collectively with Bastian, the "HoldCos").

[5] The HoldCos own 100 percent of the shares in the following companies (and their own subsidiaries):

a) Whitewater Concrete Ltd. ("Concrete"), whose wholly owned subsidiary is Whitewater Developments Ltd. ("Developments");

b) 145 Golden Drive Ltd. (“Golden Drive”);

c) 1226745 B.C. Ltd. (“745”), whose wholly owned subsidiary is 1226734 B.C. Ltd. (“734”), which owns and conducts business on industrial property on River Road, in Dewdney, BC, as described below;

d) Skaw Properties Ltd. (“Skaw”), whose wholly owned subsidiary is 27222 Lougheed Highway Holdings Ltd. (“Lougheed”), which owns and conducts business on industrial property on Lougheed Highway, Maple Ridge, BC, (the “Lougheed property”) as described below; and

e) Torrent Shotcrete Holdings Ltd. (“Torrent”).

[6] In addition, the HoldCos own 50 percent of Trilogy Concrete 2021 Ltd. (“Trilogy”).

[7] RBC’s debt is principally owed by Concrete and Developments. Craig and Kyle provided guarantees of both debts in limited amounts.

[8] On July 2, 2024, in another court proceeding (Van. Registry H240524), RBC obtained an order appointing a receiver of Concrete and Developments’ current assets and Golden Drive’s lands, over which RBC held security (the “Receivership Order”).

[9] The Receivership Order also:

a) Set the amount required to redeem RBC’s security ($11,574,543.81);

b) Granted judgment against Concrete ($10,812,163.76);

c) Granted judgment against Developments ($762,380.05);

d) Granted judgment against Craig, Kyle, Bastian and Krystle, jointly and severally ($107,044.10);

e) Granted judgment against Bastian ($1,070,440.89);

f) Granted judgment against Krystle ($1,070,440.89);

g) Granted judgment against each of Craig and Kyle ($481,698.41).

[10] Accordingly, Craig and Kyle are each indebted under RBC's judgments in the amount of $588,742.51, plus interest and costs (the "RBC Smith Judgments").

[11] RBC's prospects to recover its loans from the assets of Concrete, Developments and Golden Drive are dim.

[12] The Receiver reports that he does not expect any significant recovery with respect to the current assets of Concrete and Developments under the Receivership Order, save for one receivable, as discussed below. RBC's second mortgage over Golden Drive's lands appears to have no value, as sale efforts have not produced any offer sufficient to pay the first mortgagee, Business Development Bank ("BDC").

[13] Finally, the Receiver assigned Trilogy into bankruptcy. Trilogy owes money to Concrete, approximately $2.8-$6.7 million. Assuming a 50 percent recovery for the unsecured creditors, the Receiver of Concrete could be paid between $1.4-2.5 million depending on proof of its claim. However, that amount is subject to the deemed trust claim of Canada Revenue Agency ("CRA") for payroll withholdings owing by Concrete of $683,346.67.

[14] In summary, RBC expects to fully pursue Craig and Kyle for recovery under the RBC Smith Judgments.

[15] In January 2025, RBC seized Craig's shares in Bastian and Kyle's shares in Krystle. These are the only execution proceedings taken by RBC to date to collect under the RBC Smith Judgments. RBC has not undertaken any steps to sell these shares.

[16] In addition to the RBC Smith Judgments, Craig and Kyle are indebted or appear to be indebted to others, as follows (based on RBC's evidence):

a) On November 6, 2024, judgment was granted against them in favour of De Lage Landen Financial Services Canada Inc. ("De Lage") in the amount of $3,591,807.25 plus interest (29 percent) and costs (the "De Lage Judgments"); and

b) Both Craig and Kyle, as directors of Concrete, face potential personal liability with respect to (1) CRA's withholding claim (if not paid to Concrete

> via the recovery from Trilogy's estate) and (2) Concrete's GST liability of $172,534.38.

[17] Accordingly, the total amount owed by both Craig and Kyle to their creditors, as put forward by RBC, is about $5 million.

III. CONTEXT OF THE APPLICATION

[18] A creditor seeking a bankruptcy order must establish: a) that it is owed at least $1,000; and b) that the debtor has committed an act of bankruptcy within six months of the filing of the application: *BIA*, s. 43(1).

[19] The Smiths concede that each of them owes RBC over $1,000.

[20] In addition, the Smiths concede that they have committed an act of bankruptcy set out in s. 42(1)(j) of the *BIA*, namely that they have ceased to meet their labilities generally as they became due. Their concession arises without doubt by their failure to pay both the RBC Smith Judgments and the De Lage Judgments.

[21] Accordingly, I am satisfied that RBC has proven the facts alleged in the applications against the Smiths, as required by s. 43(1) of the *BIA*.

[22] Even so, in defence of these applications, the Smiths rely on s. 43(7) of the *BIA* which provides that the Court may dismiss an application in certain circumstances:

> **(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.
>
> [Emphasis added.]

[23] The Smiths argue two points in support of their position – as highlighted in s. 43(7) – in contending that RBC's applications should be dismissed:

a) They are able to pay their debts (I would emphasize here that this means *all* of their debts, not just what is owed to RBC: *Beach (Re)*, 2022 ONSC 6474 at para. 41 [*Beach*]); and/or

b) There is "other sufficient cause" to dismiss the applications.

[24] In the alternative, if the above arguments fail, the Smiths argue that a stay of the proceedings for a few weeks is justified. They rely on s. 43(11) of the *BIA*, which provides:

> **(11)** The court may for other sufficient reason make an order staying the proceedings under an application, either altogether or for a limited time, on any terms and subject to any conditions that the court may think just.

[25] RBC takes the position that the Smiths have failed to establish that they are able to pay their debts. Further, RBC argues that the Smiths have failed to establish any "other sufficient cause" upon which the Court should dismiss or delay the proceedings.

IV. ARE THE SMITHS ABLE TO PAY THEIR DEBTS?

[26] The Smiths argue that they are "able" to pay their debts, as a result of which this Court *must* dismiss the applications: s. 43(7).

a) Onus / Test / Evidentiary Burden

[27] The onus lies on the Smiths to adduce evidence in support of their assertion that they are able to pay their debts: *484030 Ontario Ltd. (Re),* [1992] O.J. No. 517, at para. 23, 1992 CanLII 7417 (S.C.J.) [*484*], citing *Hayes (Re)*, [1979] B.C.J. No. 1447 at para. 2, 1 A.C.W.S. (2d) 119 (S.C.) [*Hayes*]; *Braich v. Clarke*, 2023 BCCA 305 at para. 37 [*Braich BCCA*].

[28] In *484*, Justice Ground stated that the debtor must establish by "clear and independent" evidence that he was meeting his liabilities generally as they become due:

> [26] These decisions would appear to support the position that if the debtor can establish by clear and independent evidence that it was meeting its liabilities generally as they became due, this will rebut the presumption that, because the petitioning creditor and the other creditors named in the petition had not been paid, the debtor was not meeting its liabilities generally as they became due. I do not find that the debtor has satisfied this onus in the case before the court.
>
> [27] If the debtor asserts that its liabilities have generally been met as they became due, sufficient evidence to satisfy the court must be presented. To be sufficient, such evidence would have to indicate the financial position of the debtor and this would require that financial accounts or statements be submitted.

[29] The above test articulated in *484* has been followed in BC: see *0757376 B.C. Ltd. (Re)*, 2011 BCSC 1268 at para. 21 and *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 1409 [*Forjay*] at para. 30.

[30] More recent BC authority on the point is found in *Braich (Re)*, 2022 BCSC 2370 [*Braich BCSC*] at para. 29, where Justice Blake adopted the "clear and independent evidence" requirement.

[31] On appeal, Blake J.'s reasoning and application of the test was upheld in *Braich BCCA* at para. 48. At para. 49 of *Braich BCCA*, the Court emphasized that the debtor must be transparent in terms of his finances and provide current and objective information regarding both his assets and liabilities. The Court also outlined what the "clear and independent" standard requires:

> [37] … Typically, that involves providing a full and transparent outline of the financial position of the debtor supported by such things as financial accounts, financial statements, and/or information regarding the debtor's total indebtedness, revenues, profits, assets, liabilities and/or cash flow: *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 1409 at para. 30; *Sultan [Management (Re)*, 2022 ABQB 262] at paras. 108–110; *Medcap Real Estate Holdings Inc.(Re)*, 2022 ONCA 318 at paras. 14–15.

b) The Smiths' Evidence

[32] The Smiths argue that the value of the assets held through their indirect corporate holdings – leading to their shareholdings in the HoldCos (Bastian and Krystle), and then leading to them personally – are more than sufficient to pay their debts.

[33] Their evidence starts with the value of the underlying real estate held by 745 and Skaw, as follows:

a) River Road:

i. The "River Road" industrial property (in the name of 734 and beneficially owned by 745) was listed for sale on March 25, 2025. As of July 2024, its assessed value was $7.382 million. Grover Elliott provided an unsigned "draft" appraisal of this property as of September 2024 at $21 million; and

ii. Bank of Montreal has two mortgages against the property which Craig indicates was, as of March 2017, outstanding in the amount of just under $7 million;

b) Lougheed Property:

i. In April 2022, the industrial property in Maple Ridge (in the name of Lougheed and beneficially owned by Skaw) was also appraised by Grover Elliott – again on a "draft" basis and unsigned at a value of $28.6 million. As of July 2023, the property was assessed at about $30 million. In August 2024, Craig produced what is apparently Colliers' brief (unsigned) one-page valuation for this property at $35.81 million; and

ii. Craig indicates that the mortgages outstanding on the Lougheed Property are about $15.9 million ($12.9 million to BDC and $3 million to Mandate National Mortgage Corporation ("Mandate")).

[34] The Smiths have also produced documentation that they say shows the overall financial picture of 745 and Skaw:

a) For 745, the Smiths have produced dated (September 2023) financial statements prepared by management. There is a reference to about $3.3 million being owed to "related parties", with an underlying reference to a trial balance that does not even match the figures in the balance sheet. For the year ended September 2023, 745's rental operations appear to have produced net rental income of about $537,200;

b) For Skaw, again the Smiths have produced management-prepared financial statements as dated (December 2023). There is a reference to amount due to "related parties" of about $1.8 million with no other information on that figure at all. The Grover Elliot document refers to Lougheed having net operating income of just over $1 million; however, the financial statement for the year ended December 2023 indicates that Skaw's rental operations produced net rental income of about $61,674.

[35] As a result of the above documentation, the Smiths' counsel submits that there is equity in 745 (about $10.6 million) and Skaw (about $10.6–17.8 million)

that would be distributable to Bastian and Krystle equally.

[36] The Smiths initially provided some documentation as to the status of Bastian and Krystle, as follows:

a) Craig produced management-prepared financial statements for Bastian as of October 2023. The balance sheet shows assets (due from related parties with no detail) and liabilities which also include “due to related parties” and “due to shareholder”, again with no detail. The document is purportedly supported by a trial balance, which is incomprehensible in terms of what is due from or to related parties (which include the ones in receivership or bankruptcy). For the year ended October 2023, Bastian reported no income for 2023 (in 2022, it declared dividend income of over $1.27 million); and

b) Kyle has produced what he describes as “financial statements” for Krystle, however, they are not financial statements at all. They are a trial balance as of October 31, 2023 based on some journal entries, which appears to have been reviewed by a Chartered Professional Accountant, but not approved by anyone. They are incomprehensible in terms of portraying any accurate picture of Krystle’s financial status, despite Kyle’s statement to that effect.

[37] By the initial hearing date in April 2025, Craig and Kyle had failed to provide any complete picture of their personal financial status, including indicating their personal assets and liabilities.

[38] Only on the eve of the second hearing date on May 7, 2025 did both men provide further affidavits setting out their debts in more detail. I can only surmise that this further evidence arose given comments from the Court on April 30, 2025 to counsel about the lack of evidence in Craig and Kyle’s initial affidavits. In this later evidence, neither referred to owning any assets beyond their shareholdings in Bastian and Krystle.

[39] As a result of this further evidence, the Smiths say:

a) Craig asserts that Bastian’s equity (principally arising from the real estate values) is $9.6–13.2 million and that, after deducting his personal debts of

$3.4 million, his personal net worth is $6.2–9.8 million; and

b) Kyle asserts that Krystle's equity (principally arising from the real estate values) is $9.2–12.8 million and that, after deducting his personal debts of $3.5 million, his personal net worth is $5.6–9.2 million.

[40] The Smiths assert that the CRA debt should be paid through the recovery in Concrete's receivership.

[41] In addition, the Smiths state that the De Lage Judgments are likely not realizable in the full amount. They state that there is a dispute with De Lage as to the characterization of equipment that was leased by De Lage to Concrete and Developments. They argue that, upon the return of equipment to De Lage, certain credits will be available to reduce the indebtedness. However, no details as to that matter have been provided that would allow this Court to assess what effect, if any, it has on their overall financial picture.

c) Discussion

[42] The Smiths emphasize that they must only demonstrate that they are "able" to pay debts; not that they are "willing" to do so, citing *Ashton v. Moody*, (1997) 47 C.B.R. (3d) 91; 1997 CanLII 9746 (Sask. C.A.) [*Moody SKCA*]. The latter is clearly evident here.

[43] At para. 2 of *Moody SKCA*, the Court noted that the trial judge had found that the debtor was a "wealthy" person who earned a high income, such that he was able to pay his debts and that he should be required to do so. Nevertheless, the judge granted the petition. The appeal court found these findings contradictory, and therefore remitted the matter back for a determination as to whether the debtor was able to pay his debts.

[44] However, even after considering the Smiths' argument about their wealth, it is manifestly clear that the Smiths have failed to provide clear and independent evidence to satisfy the Court that that wealth actually exists, particularly at the amounts stated. As set out above, to the extent that there are financial statements, they are not current: they are dated from 2023. In addition, those statements have not been independently verified as accurate. No financial statements have been produced by Krystle at all.

[45] For the most part, the financial statements or other financial information show a myriad of intercompany transactions either “due from” or “due to” the various companies, with no real picture as to what value is really left once all of those have been calculated and applied. Many of those transactions relate to Concrete, Developments, Trilogy and Torrent, most of whom are in insolvency proceedings where little or no value is expected for unsecured creditors or equity participants.

[46] Leaving aside the apparent equity in the underlying real property held, the status of the operating companies – 745 (River Road) and Skaw (the Lougheed property) – is murky at best based on the evidence submitted by the Smiths.

[47] It must be emphasized that Craig and Kyle remain in full control of all companies in the corporate group. It is inexplicable why they have not produced more recent and independently confirmed financial information for the benefit of this proceeding. Presumably, those would confirm their bald assertion that there are “no significant debts or liabilities” presently beyond what is shown in the various “financial statements”, let alone clarified the true picture arising from those financial statements.

[48] The Smiths were served with the bankruptcy applications on March 17, 2025 and have had ample opportunity to marshal appropriate evidence in support of their position.

[49] It is impossible to fully comprehend the real financial picture of the HoldCos, the operating companies (745 and Skaw) and the Smiths personally. The information is confusing and, to a degree, contradictory. Two examples will suffice:

a) In Skaw’s December 2023 financial statements, outstanding mortgages against the Lougheed property are stated at $12.9 million. Craig states that there are no other significant debts or liabilities. Yet, in Craig’s earlier affidavit (only two days earlier), he referred to another mortgage payable to Mandate in the amount of $3 million that is also registered against this property; and

b) The Mandate mortgage was produced by RBC on the second day of the hearing. It shows a very different picture beyond what the Smiths indicate in their evidence. In fact, the borrower is not only Lougheed, but Golden Drive

> too. Significantly, Krystle, Bastian, Craig and Kyle are also guarantors. Yet, in Krystle and Bastian's financial documents, no mention is made of this liability. In Craig and Kyle's affidavits sworn on the very day of the hearing – May 7, 2025 – they make no mention of their contingent liability at all. Even assuming that they expect Mandate to be paid by Skaw via the Lougheed property, this material non-disclosure was only revealed by RBC.

[50] I conclude without hesitation that the Smiths have entirely failed to meet their onus in failing to disclose their complete financial picture to the Court, in respect of both their own interests and their indirect interests in the various companies. Similar disclosure was found entirely wanting in *Immeubles Zenda ltée/Zenda Realties Ltd. et A. Schuster Holdings Inc.*, 2020 QCCS 3450 [*Zenda*] at paras. 18-22.

[51] In addition, I find the Smiths' focus on the underlying equity of the real estate assets to be misplaced. Even assuming a balance sheet approach, the Smiths point to a potential value legally held by someone else, not themselves.

[52] Courts have rejected a debtor's assertion that, since they have access to funds held by others, they are "able" to pay their creditors.

[53] For example, after *Moody SKCA* was released, the matter was remitted back to the trial court. In *Moody v. Ashton*, (1997) 1 C.B.R. (4th) 38, 1997 CanLII 11218 (Sask. Q.B.), after a continuation of the earlier hearing, the Court stated that assets alleged to belong to others were not relevant to the issue as to whether the debtor was able to pay his debts.

[54] BC has followed a similar approach. It is not sufficient for a debtor to point to assets held by other persons in which the debtor has a direct or indirect interest. In *Braich BCSC* at paras. 28–29, Blake J. rejected the debtor's bald assertions to that effect, and added that it is not sufficient to simply list assets alleged to be available to satisfy debts.

[55] In any event, I reject the notion that ability to pay is to be assessed on a balance sheet basis. The true test is whether the Smiths are able to pay their debts – not maybe at some point in the future – but generally as they fall due or, within a reasonable period of time.

[56] In *Aircon Electric Ltd. (Re)*, [1978] 1 W.W.R. 1, 1977 CanLII 2244 (B.C.S.C.), Justice Fulton stated at p. 5:

> Next the respondent relies on the provisions of s. 25(7) of the Bankruptcy Act, claiming that he has shown that he can pay his debts now. Financial statements as at 31st August were filed as Ex. 15 in support of this contention. It is true that the balance sheet shows that the company is solvent, but from the cases I find that the test is not: is the bankrupt solvent, or is the person or company solvent, on the basis that the balance sheet shows assets in excess of liabilities? but the test is: can he pay his debts in a reasonable time? This clearly emerges from cases such as *Re Freeholder* [*Re Freeholders Oil Co. Ltd.* (1953), 9 W.W.R. (N.S.) 241, 33 C.B.R. 149 (Sask.)].
>
> [Emphasis added.]

[57] In *Aircon Electric* (p. 6), Fulton J. found that there was no realistic possibility of the debtor paying its debt within a reasonable time, even assuming the balance sheet values.

[58] As I stated in *Forjay* at para. 31, the debtor must establish that it can pay its debts "as they come due": see also *Solid Holdings Ltd. (Re)*, 2019 BCSC 126 at para. 33. The test is not that if someone else realizes on their assets, and eventually pays some of those funds to the debtor, the debtor may be able to pay his creditors: *Beach* at paras. 42–43.

[59] In *Zenda*, Justice Collier also addressed the debtors' argument that they were able to pay their debts. He stated:

> [15] The Debtors argue that the bankruptcy applications should be dismissed because the value of their assets – essentially their investments in commercial properties – is greater than the amount of their debts. However, this is an irrelevant consideration. The issue is not whether the Debtors have sufficient assets to pay their debts, but whether they have ceased to meet their liabilities generally as they become due [citing *BIA* ss 2 and 42(1)(j); *Goulakos (Syndic de),* 2016 QCCS 84, para 37; *Calladine Re,* 1970 CarswellOnt. 100, para 18; *In Re Montcana Industries Ltd.,* 1946 CarswellQue 25 (QCCS) para 15].
>
> [16] Zenda and Levy do not deny that they have ceased meeting their liabilities generally as they become due. They do not deny that they are presently unable to pay their creditors. Their argument is that they need time to liquidate their real estate holdings in order to pay their creditors.
>
> [Emphasis added.]

[60] The fact remains that the RBC Smith Judgments have been outstanding for many months now, since July 2024. RBC demanded payment from the Smiths on

January 10, 2025. Despite that lengthy time, the Smiths have failed to establish any ability to pay the RBC debt (let alone the other debts) in a timely manner.

[61] That the Smiths may have access, through their indirect corporate holdings, to significant value at some future point in time is irrelevant.

[62] As of mid-April 2025, the Smiths' evidence was that they were looking into various avenues to raise funds to repay their debts, including to RBC. It is more than apparent that these efforts only arose after service of the bankruptcy applications:

a) In late March 2025, Kyle indicated that his wife, Leslie, had agreed to loan him up to $700,000. On April 15, 2025, Kyle, Krystle and two other companies executed a promissory note in favour of Westeinde Capital Corporation in the amount of $600,000, which was secured against what appears to be Leslie's interest in a Whistler strata property;

b) On April 8, 2025, Craig indicated he had identified two "sources of funds" that "will at minimum, resolve the indebtedness to RBC" under his guarantee. One such source was that his wife, Julia, had agreed to loan him up to $650,000, based on a term sheet finalized on April 10, 2025. There is no evidence that any such loan has been arranged, let alone funded; and

c) In mid-April 2025, Craig's other identified source of funds included:

   i. The realization of net sale proceeds from the River Road property. However, the listing only occurred after service of these applications and no further information on sale efforts or any sale have been provided; and

   ii. Potential funds from refinancing the River Road and Lougheed property as might be arranged by brokers that Craig contacted again only after service of these applications. No further information has been provided on such efforts or whether any funds can be raised through this means.

[63] Despite the above "efforts" by Craig and Kyle, however late they may have been undertaken, there is no indication that any funds will be flowing in the near

future through the operating companies up to the HoldCos and then the Smiths personally, so as to satisfy the RBC Smith Judgments or any of their other debts.

[64] The only real evidence of their personal and current financial wherewithal was provided by Kyle. On April 30, 2025, Kyle's counsel confirmed that the loan from Kyle's wife to Kyle had been funded and that $600,000 was in his trust account. Nevertheless, Kyle's counsel advised the Court that he had no instructions to pay those monies to any creditor, since there were "matters to be addressed". On that score, I am unclear as to why this loan was even arranged, as might be relevant to this proceeding. There is no suggestion that the funds are being made available to pay Kyle's creditors, including RBC. If Kyle intended that this would represent a carrot to stave off this hearing, RBC is not nibbling.

[65] I agree with RBC's counsel that, if nothing else, the fact that there are "matters to be addressed" before these funds are paid strongly suggests that the true financial picture of the Smiths is quite complicated and not fully revealed in the current evidence.

[66] The Smiths have failed to satisfy their onus to establish that they are able to pay their debts to the creditors, as is meant by that phrase in s. 43(7) of the *BIA*.

V. OTHER SUFFICIENT CAUSE TO DISMISS THE APPLICATIONS?

[67] Section 43(7) of the *BIA* provides that the Court "shall" dismiss a bankruptcy application if the debtor establishes "other sufficient cause": *Kenwood Hills Development Inc., (Re)*, [1995] O.J. No. 161 at para. 4, 1995 CanLII 7364 (S.C.J.).

[68] Notwithstanding the mandatory language in the *BIA*, the case law supports that the power to dismiss is discretionary: *1719108 Ontario Inc c.o.b. Zoren Industries*, 2024 ONSC 909 at para. 81.

[69] In *Zenda*, Collier J. stated that:

> [31] The Court's discretion to stay a bankruptcy application under ss 43(7) and 43(11) *BIA* "should not be exercised lightly, but on the basis of sound judicial reasoning, credible evidence, according to common sense and in a manner which does not cause an injustice" [citing *Goulakos (Syndic de),* 2016 QCCS 84, para 41].

[70] The Smiths argue that their (indirect) wealth and their efforts to come up with a proposal to their creditors (presumably based on that wealth) are a "sufficient cause" under s. 43(7) justifying a dismissal of the applications. They say that RBC should be left to undertake ordinary execution processes while this unfolds, presumably against their shares in Bastian and Krystle.

[71] The Smiths says that they are in the process of retaining an insolvency professional to assist them, such that another "solution" is likely to emerge that will result in RBC being paid.

[72] Kyle states that after retaining his current counsel on April 3, 2025, he and Craig took steps to retain an insolvency practitioner to obtain advice on their financial matters, with a view to settling their debts. They met with one insolvency practitioner on April 7, 2025 and another on April 9 and 14, 2025.

[73] Yet, there is no evidence that the Smiths have retained any insolvency professional at this point.

[74] Again, the Smiths have had plenty of time to seek advice in light of the judgments obtained against them – RBC in July 2024 and De Lage in November 2024. Even the fact of these applications being filed has not spurred them to act. Their arguments under s. 43(7) seem directed more toward delay, rather than action.

[75] At one point, the Smiths' counsel suggested that the applications should be dismissed because the bankruptcy process is not to be used as a collection agency. He suggests that RBC has done nothing to investigate the net worth of the Smiths, such as by examining them. I see no merit in this submission as it is difficult to conceive that anything would be gleaned from such an examination beyond what is now known from the Smiths' evidence (such as it is).

[76] Even so, the Smiths' counsel concedes that RBC is not bound to exhaust its remedies against the assets known to them, before launching these applications: *Czepil v. J.W. Bison Ranch Ltd.*, 2008 BCSC 366 at para. 27. Assuming RBC has met the pre-conditions to obtain a bankruptcy order – which is conceded here – it is entitled to seek a remedy under the *BIA*, assuming the debtors fail to convince the Court that the relief is not available or should be not available in the circumstances under ss. 43(7) or (11).

[77] In addition, it is no answer for the Smiths to suggest that no other creditors beyond RBC are taking active steps to pursue their liabilities to them: *Hayes* at para. 2.

[78] Finally, the Smiths suggest that RBC can realize on their shares in Bastian and Krystle and satisfy the judgements in that fashion. I agree with RBC's counsel that this argument is untenable.

[79] The practical reality is that the Bailiff would have to engage in an expensive advertising process to sell privately held shares that would inevitably yield no offers from the market, other than perhaps by the Smiths themselves. This arises for the most part by reason of the fact that the underlying value is only held through a web of corporate holdings. Even assuming that a person took ownership of the Bastian and Krystle shares, they would have to undertake a myriad of corporate procedures to take control of the further shareholdings. Even assuming, for example, that control of 745 and Skaw can be accomplished, the end result may hold many surprises in terms of the value of realizable assets and the presence and priority of liabilities (including tax) in those operating companies.

[80] In these unique circumstances, RBC is entitled to seek a bankruptcy order that will allow a proper realization process of the shares, in a more beneficial and expedient manner than what would otherwise be available to RBC and the other creditors: *Four Twenty-Seven Investments Ltd. (Re)*, [1985] O.J. No. 1733 at para. 18, 55 C.B.R. (N.S.) 183 (S.C.J.); *Beach* at para. 62.

[81] I am not satisfied that the Smiths have established any other sufficient cause which would justify the Court dismissing the applications.

VI. OTHER SUFFICIENT CAUSE TO STAY THE APPLICATIONS?

[82] Section 43(11) of the *BIA* provides the Court with discretion to stay a bankruptcy application, either altogether or time limited, and on such terms and conditions as are appropriate. Again, the onus lies on the debtor to establish this "other sufficient cause".

[83] The Court's approach to the exercise of its discretion under s. 43(11) was described in *Zenda* at para. 31, as quoted above. See also *Churchill Forest*

Industries (Manitoba) Ltd., [1971] M.J. No. 139 at para. 60, 23 D.L.R. (3d) 301 (Man. Q.B.).

[84] The Smiths argue essentially the same points as above – pointing to their purported wealth and desire to engage an insolvency professional – in support of their request that the matter be adjourned for a few weeks.

[85] The Smiths argue that their evidence displays an intention to engage an insolvency professional to assist them to addressing their financial issues. They cite *Abraham (Re)*, [2008] O.J. No. 3348, 169 A.C.W.S. (3d) 248 (S.C.J.). In that case, the Court adjourned the hearing of a bankruptcy petition to allow the debtor to obtain advice from an accountant and obtain a report on the debtor's finances with a view to demonstrating that he was able to pay his debts.

[86] The facts in *Abraham* have no application here. The Smiths indicated that, weeks ago, they were meeting with insolvency professionals. Yet, there is no evidence that they have retained anyone, let alone that they need a few weeks to obtain advice from that person. Intention, assuming it existed, has not been translated into action.

[87] Stranger still, the Smiths' counsel suggests that this further time is needed to allow them to discuss all of their assets with that yet unnamed insolvency professional. Such a statement begs the question – what assets? Assuming that the Smiths have fully disclosed their assets, the only assets that have been disclosed are their shareholdings in Bastian and Krystle. If there are "other assets", then why have the Smiths not advised the Court?

[88] The same comment applies to the Smiths' counsel's suggestion that a term of the adjournment could be a restriction on disposition of assets. The only assets of Craig and Kyle identified at this time are shares in Bastian and Krystle, which have been seized by RBC. As such, any undertaking not to deal with their assets has no practical value. I have no authority to order any of the corporations to refrain from transferring assets.

[89] I cannot see that anything is to be gained by delaying the granting of the bankruptcy orders at this point. The applications have been outstanding now for many months. Even assuming that the Smiths have wealth to satisfy their debts, no reasonably available solution has emerged that might be considered toward

payment of their debts in the near future. A two week adjournment represents only a short delay, after which the reality remains.

[90] I am not satisfied that the Smiths have established any other sufficient cause which would justify the Court staying the applications, even for the short time they propose.

VII. CONCLUSION

[91] The bankruptcy orders against Craig and Kyle are granted.

“Fitzpatrick J.”