

CITATION: *Re Gore*, 2025 ONSC 4151
COURT FILE NO.: 32-2852766
DATE: 20250714

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: *In the Matter of the Proposal of Ketankumar Sukhlal Gore*

BEFORE: Associate Justice Rappos

COUNSEL: *Howard Manis*, for Ketankumar Sukhlal Gore

Matthew Harris, for Anirban Sarkar

Ken Page, for Rumanek & Company Ltd.

Jordan Rumanek, representative of Rumanek & Company Ltd.

HEARD: February 19, 2025 (via videoconference)

REASONS FOR DECISION

[1] Anirban Sarkar, a creditor, brought a motion for an order annulling the proposal filed by Ketankumar Sukhlal Gore. In an endorsement dated February 19, 2025, I granted Mr. Sarkar’s motion and annulled Mr. Gore’s proposal, for reasons to follow. These are those reasons.

Background

[2] On July 29, 2022, Mr. Gore filed a proposal under section 62 of the *Bankruptcy and Insolvency Act* (the “**BIA**”), with Rumanek & Company Inc. as the Proposal Trustee.

[3] Mr. Gore’s proposal was approved by his creditors in accordance with the provisions of the BIA at a meeting of creditors held on August 19, 2022. The Court approved the proposal pursuant to the Order of Associate Justice McGraw dated October 19, 2022.

[4] The proposal provides for payment of \$83,700 by Mr. Gore, to be paid over 90 months with monthly payments of \$930.

[5] Mr. Sarkar is an unsecured creditor of Mr. Gore. Mr. Sarkar says he became aware of the proposal after the Court had approved it. He filed a proof of claim for \$29,000, which has been accepted by the Proposal Trustee.

[6] The Proposal Trustee reports that Mr. Gore failed to make the monthly payments that were due on September 30, October 31, and November 30, 2023. Additionally, Mr. Gore was late in making the payments due on July 31 and August 31, 2023 by 16 days and 35 days respectively.

[7] On December 6, 2023, the Proposal Trustee issued a notice of default to all of Mr. Gore's creditors and the OSB, informing them that Mr. Gore was in default under the proposal and that Mr. Gore had not remedied the default within the prescribed time.

[8] There were no inspectors appointed for the proposal. The creditors did not waive the default.

[9] The Proposal Trustee also reports that Mr. Gore has continued to make payments following the issuance of the notice of default. However, Mr. Gore has been behind on his payments since the payment that was due on July 31, 2023.

[10] Prior to the beginning of February 2025, Mr. Gore had last made payment on August 29, 2024, which was applied to the amount that was due on May 31, 2024. Mr. Gore made no payments for over five months between August 30, 2024 and February 5, 2025.

[11] Mr. Gore made one payment on February 6, 2025 (applied to the amount due on June 30, 2024) and two payments on February 18, 2025 (applied to the amounts due on July 31 and August 31, 2024).

[12] As a result, Mr. Gore was five months in arrears under the proposal payment schedule at the time of the hearing of the motion. The day before the hearing he provided a cheque to the Proposal Trustee for the outstanding five months. That cheque had not cleared at the time the motion was heard.

[13] The terms of the proposal provide for monthly payments to be made until April 30, 2030.

[14] There was no evidence filed for the motion regarding the current state of Mr. Gore's financial affairs. In the Proposal Trustee's report to creditors dated July 29, 2022, which was filed with the Court in connection with the motion for approval of the proposal, the Proposal Trustee reported that Mr. Gore had a 50% interest in a house in Brampton, and had net self-employment income of \$6,190. Mr. Gore delivered an assignment of remuneration in favour of the Proposal Trustee as security for the performance of the proposal.

Legal Principles

[15] Subsection 62.1 of the BIA, along with rule 93 of the *Bankruptcy and Insolvency General Rules*, provides that where a default is made in the performance of any provision of the proposal, the default is not waived by the inspectors or, if there are no inspectors, the creditors, and the default is not remedied within 30 days after the day the default was made, the proposal trustee shall inform all creditors and the OSB of the default.

[16] Subsection 63(1) of the BIA provides that where default is made in the performance of any provisions in a proposal, or where it appears to the court that the proposal cannot continue without injustice or undue delay or that the approval of the court was obtained by fraud, the court may, on application thereto, annul the proposal.

[17] Subsection 63(4) of the BIA provides that on the annulment of a proposal, the debtor is deemed to have made an assignment in bankruptcy.

[18] As subsection 63(1) uses the term “may”, annulment of a proposal is a discretionary remedy available to the Court. The moving party bears the onus of establishing one of the preconditions set out in subsection 63(1) of the BIA.

[19] In exercising this discretion, the court may annul a proposal even if creditors may be in a worse position than if the proposal is allowed to continue.¹

[20] The BIA is not to be interpreted using a legalistic approach, but rather with sensitivity to commercial realities and preserving commercial morality and the integrity of the bankruptcy system.²

Analysis

[21] Mr. Sarkar has brought this motion in connection with the notice of default issued by the Proposal Trustee on December 6, 2023. While the parties referred the Court to cases that have dealt with the ability of a debtor to cure its default, Mr. Gore was in default under the terms of the proposal at the hearing of the motion, and has been in default since July 31, 2023.

[22] Based on the evidence before the Court, I am satisfied that one of the preconditions under subsection 63(1) of the BIA exists, as Mr. Gore is in default under the proposal.

[23] Mr. Sarkar asks that I exercise my discretion to annul the proposal, which will result in Mr. Gore becoming bankrupt. He argues that Mr. Gore has been in default under the proposal, and that a bankruptcy would be preferable to deal with Mr. Gore’s estate.

[24] Mr. Sarkar brought this motion on notice to all of Mr. Gore’s creditors. No other creditor has taken any position on this motion. Mr. Sarkar argues that the lack of creditor involvement should be interpreted to mean that the creditors do not have any interest in this proposal continuing, as if they did, they would have taken steps to support Mr. Gore.

[25] Mr. Gore argues that he should be permitted to continue with his proposal, and provides his assurances that the cheque recently provided to the Proposal Trustee will clear. He argues that the lack of creditor involvement on this motion should be interpreted to mean that the creditors do not support Mr. Sarkar’s request to annul the proposal and have Mr. Gore put into bankruptcy.

[26] The Proposal Trustee noted that there was no evidence before the court that the cheque recently provided by Mr. Gore will clear. When asked its position with respect to Mr. Sarkar’s motion, the Proposal Trustee did not support the continuation of the proposal.

¹ *Northlands Café Inc. Re*, 44 C.B.R. (3d) 164, 1996 CanLII 10510 (AB KB), para. 12.

² *Re Garrity (Proposal)*, 25 C.B.R. (5th) 95, 2006 ABQB 545, para. 20.

[27] In the circumstances, having balanced the interests of the Mr. Gore and his creditors, as well as considering the integrity of the bankruptcy process, in my view it is appropriate to annul the proposal.

[28] Mr. Gore has continually been in default of the payment terms of his proposal since July 31, 2023, when he failed to make payment of the monthly amount that was then due. Other than payments made by Mr. Gore in the two weeks prior to the hearing of the motion, Mr. Gore had failed to make any payments to the Proposal Trustee for over five months.

[29] The evidence is clear that Mr. Gore has been unable to keep up with the monthly payments and abide by the terms of the “contract” he entered into with his creditors. The proposal payment terms go on until the end of April 2030. There is nothing in the record before me that provides me with any comfort that Mr. Gore will be able to make the monthly payments going forward. Mr. Gore did not file any evidence to show how he would be able to make the monthly payments. Given Mr. Gore’s history of late or no payments, allowing this proposal to continue will be prejudicial to his creditors.

[30] With respect to the lack of creditor involvement in this motion, I refuse to draw the inferences asked by Mr. Sarkar and Mr. Gore. There could be many reasons why Mr. Gore’s creditors have taken no steps in response to the default and this motion, and there is insufficient evidence before me to allow me to make any reasonable inference with respect to their motives.

[31] An annulment of the proposal and the automatic assignment into bankruptcy under the BIA will permit the Proposal Trustee to act as trustee in bankruptcy and recover on Mr. Gore’s assets for the benefit of his creditors. There will be a first meeting of creditors, which will provide an opportunity to Mr. Gore’s creditors to become re-engaged with the bankruptcy process. As noted above, the lack of evidence as to whether the annulment will benefit creditors does not prohibit me from exercising my discretion to annul the proposal.

[32] Mr. Gore’s continue inability to keep up with the payments has left this existing proposal being “spent”. However, the annulment and bankruptcy does not leave Mr. Gore without any options, as under the BIA, as a bankrupt, he still can put forward a new proposal to be considered by his creditors.

Disposition

[33] I hereby grant Mr. Sarkar’s motion and order Mr. Gore’s proposal annulled. As a result of subsection 63(4) of the BIA, Mr. Gore is deemed to have made an assignment in bankruptcy.

[34] As for costs, I strongly urge the parties to come to a resolution. If they are unable to do so, they may contact the court staff to obtain my direction as to the exchange of written submissions.

Associate Justice Rappos

DATE: July 14, 2025