

Court of King's Bench of Alberta

Citation: Crawford v. Dynamic Capital Equipment Finance Inc., 2026 ABKB 100

Date: 20260213
Docket: 24-3178384
Registry: Edmonton

Between:

**In the Matter of the Proposal of Marianne Therese Crawford, also known as Marianne
Therese Keller**

Debtor

- and -

Dynamic Capital Equipment Finance Inc.

Creditor

**Reasons for Decision
of the
Honourable Justice M.E. Burns**

[1] Marianne Crawford filed a Part III Division I Proposal under the *Bankruptcy and Insolvency Act* (“BIA”) on January 24, 2025. She seeks court approval of her Proposal under s 59 of the BIA after creditor acceptance on May 29, 2025. Dynamic Capital Equipment Finance Inc. (“Dynamic”) opposes the court approval.

[2] Dynamic cross-applies seeking a declaration that any Crawford indebtedness due to Dynamic will not be released by a court order approving the Proposal due to alleged fraud. In the alternative, Dynamic seeks an order declaring that the stay of proceedings in place pursuant to section 69.1 of the BIA no longer operates as against Dynamic and granting Dynamic leave to file an Amended Statement of Claim and pursue all relief set out therein.

Context to Dynamic's claim

[3] On July 26, 2024, Crawford, in the course of seeking further credit facilities for her corporations, completed a personal credit application form. On that form she indicated there was a house valued at \$500,000 and a cabin valued at \$275,000. Both these properties had been disclosed to Dynamic on prior credit applications. On July 29, 2024, Crawford, as cosigner with her corporations, entered into a loan agreement with Dynamic. Unbeknownst to Dynamic both the house and the cabin had been transferred into the name of Crawford's spouse for nominal consideration prior to the loan being made. Dynamic alleges accordingly that the loan was obtained by false pretences and misrepresentation such that Crawford's proposal should be refused, a declaration made that there was a breach of s 178(1)(e) and the stay of proceedings lifted.

Approving Crawford's Proposal

[4] Crawford's application is to approve her Division I Proposal. The test for approving the Proposal is set in s 59 of the BIA:

59 (1) The court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms thereof and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, the person making the proposal, any opposing, objecting or dissenting creditor and such further evidence as the court may require.

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in sections 198 to 200.

[5] Prior to approving a proposal, the Court must be satisfied that.

- (a) The **BIA** has been complied with;
- (b) The terms of the proposal are reasonable;
- (c) The terms of the proposal are calculated to benefit the general body of creditors; and
- (d) The proposal is made in good faith.

[6] The court in considering the above should take into account:

- (1) the interests of the debtor in making a settlement with creditors;
- (2) the interests of the creditors in procuring a settlement which is reasonable and which does not prejudice their rights; and
- (3) the interests of the public in the fashioning of a settlement which preserves the integrity of the bankruptcy process and complies with the requirements of commercial morality.

(See: *Mister C's Ltd (Re)*, [1995] OJ No 1390 at para 5 citing *Re Gardner* (1921), 1 CBR 424 at 426 (Ont SC) and *Re Mernick* (1994), 24 CBR (3d) 8 at 13 (Ont

Gen Div) and *Magnus One Energy Corp (Re)*, 2009 ABQB 200 at paras 10 & 11).

[7] There is no question that the formalities of the *BIA* have been followed in the making of the Proposal and putting it to the creditors.

[8] When considering the terms of the Proposal, some context of the process is necessary.

[9] A Division I Proposal is a formal arrangement under the *BIA* that establishes a clear and regulated process to offer an insolvent individual or business the opportunity to propose a structured repayment plan to creditors. This process enabling debtors to address their financial difficulties while potentially avoiding bankruptcy proceedings. The proposal itself represents a negotiated compromise between the debtor and their creditors. Upon acceptance by the required majority of creditors, the proposal becomes legally binding if it also receives court approval and fully complies with the provisions of the *BIA*.

[10] Filing a proposal, or a notice of intention to file a proposal, triggers a “stay of proceedings.” This stay prevents creditors from starting or continuing legal actions against the debtor. If the debtor fails to meet the obligations set out in the proposal, creditors have the right to apply to the court for an order annulling the proposal. Should the court annul the proposal, the debtor is automatically deemed bankrupt.

[11] The burden of establishing that the proposal is reasonable and calculated to benefit the general body of creditors is upon the party asking for approval (*Gareau (Syndic de)*, [1922] QJ No 604).

[12] In this case, on January 24, 2025, Crawford filed a Proposal. The proposal was for payment of \$250,080 over 60 months. The Proposal was expected to realize in excess of \$50,000 over what would be realized in a bankruptcy even taking into account that in a bankruptcy the house and cabin transfer would have to be reversed. In other words, in a bankruptcy that includes the house and cabin, the proposal would realize in excess of \$50,000 more than the bankruptcy.

[13] The terms of the Proposal were actively negotiated with creditors and Crawford's Proposal was later amended on two occasions. On May 29, 2025, an amended proposal was put to the creditors. The amended proposal provided for an additional \$100,000 to be paid over 60 months which was to be funded by Crawford's husband. The amended proposal was expected to allow unsecured creditors double what they would realize in a bankruptcy.

[14] The Proposal was approved by the requisite number of creditors, holding the requisite value of claims.

[15] Dynamic opposes the approval submitting that Crawford committed several bankruptcy offences in s 198 of the *BIA*. These are allegations that are not yet proven. Even if proven the granting of the approval remains discretionary.

[16] Dynamic also alleges that the proposal does not benefit the general body of creditors. I disagree. Given the terms of the proposal, the approval of the creditors and the Proposal Trustee's recommendation, I have little difficulty finding that the proposal is reasonable and to the benefit of the general body of creditors. Particularly compelling is the fact that the Proposal includes funding from outside Crawford's estate - \$100,000 payable from her husband – that would not be available in a bankruptcy.

[17] While the transfer of the home and cabin is possibly void in the context of a bankruptcy, there would be additional considerations, including principal residence exemptions, claims by Crawford's husband for discharging the mortgage and time and delays that ultimately equate to less money available to creditors. I do not accept Dynamic's math with respect to the value of the lands within the bankruptcy and prefer to rely on the Proposal Trustee's view.

[18] In considering the interest of the debtor I note that she has over \$1.8 million in unsecured debts, not including the Dynamic claim. Procuring a settlement even excluding the Dynamic debt appears reasonable and in the interest of both Crawford and the remaining secured creditors. The interests of the public are secured by preserving the integrity of the bankruptcy process while at the same time recognizing the need to carve out claims potentially founded in fraud. Given the timeframe of the proposal and the timeframe of defending a fraud lawsuit settling all other outstanding claims accords with common sense and commercial morality.

[19] Given the above, I am prepared to approve the proposal.

[20] That said, it is noted that the amended Proposal does not contemplate a release of any section 178 claims under the *BIA*. Section 62(2.1) provides:

A proposal accepted by the creditors and approved by the court does not release the insolvent person from any particular debt or liability referred to in subsection 178(1) unless the proposal explicitly provides for the compromise of that debt or liability and the creditor in relation to that debt or liability voted for the acceptance of the proposal.

[21] Dynamic is asserting a claim under s178 and has submitted a Proof of Claim in the proposal proceedings to the proposal trustee in which it asserted a secured claim of \$250,000.00 and an unsecured deficiency claim of \$310,192.07 as at January 24, 2025 (the "Proof of Claim"). Dynamic's Proof of Claim was accepted by the Proposal Trustee.

[22] Dynamic voted against Crawford's amended Proposal during the meeting of creditors and the proposal did not *explicitly* provide for the compromise of Dynamic's debt.

Dynamic's claim

[23] If Dynamic is correct that there was a breach of s 178(1)(e), then their debt will not extinguish upon payment under the Proposal, and they will be able to pursue recover of the rest. Thus, Dynamic seeks a declaration that I should find such a breach.

[24] As noted above, Dynamic's claim arises from allegations that in July 2024, Crawford and her corporations, as co-borrowers, obtained a loan from Dynamic and in obtaining the loan Crawford represented that she owned certain real property in Alberta and British Columbia. At one point the properties were registered in her name, but by the time of her representations to Dynamic and the advance of the loan, those real properties had been transferred to Crawford's husband, Mark Crawford for nominal consideration. Dynamic asserts that it would not have advanced the loan if it had known the truth about the ownership of the real properties. Dynamic asserts it has suffered losses and damages as a result of Crawford's fraudulent misrepresentations and false pretences for the purposes of s 178(1)(e) of the *BIA*.

[25] Much of the argument before me focused on asking me to find if there was a fraudulent misrepresentation or false pretence under section 178(1)(e) of the *BIA*. I considered several

affidavits and transcripts of cross on the affidavits, but I find that I am being asked to make credibility findings without having the traditional tools available to a court - specifically oral evidence where one can assess a witness personally without concern for misapprehensions based on transcripts.

[26] As noted by Master Funduk in *McKee (Re)* 1997 CanLII 14966 (AB KB), whether a court should or must decide s. 178(1) issues will depend on the circumstances of the case. He noted that if the issue cannot be properly decided on the evidence on the application, directing a trial of the issue is available as a proper procedure. In *McKee*, he noted that the fact situation before him was extreme and therefore there was no need to direct a trial of an issue.

[27] Here Crawford admits that there was a representation. The first question is whether there was fraud or deceit. Fraud or deceit is established when it is shown that someone made a false statement either: (1) knowingly, (2) without believing it to be true, or (3) recklessly, not caring if it is true or false. (See *Parna v G & S Properties Ltd*, [1971] SCR 306 at para 23; *Woolf v Harrop*, [2003] Carswell Ont 5073 at paras 71-72 (SCJ)). Finally, there is a question of reliance by Dynamic on the misrepresentation.

[28] While intention in making a false representation may be immaterial, there must still be an intention that the representation will be relied upon. Dynamic argues that there are numerous badges of fraud present. Crawford argues that she did not intend to misrepresent. She asserts that she filled out the form in a way that was responsive to the questions asked. She also answered in a way that was informed by advice (perhaps erroneous) that was given to her. She argues she was not knowingly trying to deceive. A credibility assessment is required.

[29] Further, Dynamic asserts that it specifically relied on purportedly free and clear assets as comfort in its credit adjudication. Crawford alleges that the circumstances surrounding the granting of the loan do not support this assertion of reliance as Dynamic did not conduct further due diligence such as pulling titles, obtaining appraisals, or seeking security over the assets specifically. Crawford also argues that the application was approved quickly and an employee made a commission on the funding of the loan so there was no reliance. Again, this issue requires a credibility determination or at least finding of fact.

[30] While a court may rely on logical reasoning and indirect evidence to make such a determination, in this case I find that a weighing of evidence is called for which is better accommodated in the context of an oral hearing.

[31] I also note that other cases have ventured that fraud alleged by a creditor to have been committed by the bankrupt is a complex matter which should not ordinarily be dealt with on a summary basis and without a full hearing: *Re Taylor Ventures Ltd*, 2002 BCSC 82 (BCSC).

Lifting the stay

[32] Finally, I must determine if I should lift the stay to allow Dynamic to immediately pursue its claim. Section 69.4 of the *BIA* provides:

69.4 A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied (a) that the creditor or person is

likely to be materially prejudiced by the continued operation of those sections; or
(b) that it is equitable on other grounds to make such a declaration.

[33] This is a broad discretion where I must consider the totality of the circumstances and the relative prejudice to the parties involved *Alignvest Private Debt Ltd v Surefire Industries Ltd*, 2015 ABQB 148 at para 40; *Re Ma*, 2001 CanLII 24076 (Ont CA). I must consider if Dynamic will be materially prejudiced or if it is equitable on other grounds to lift the stay.

[34] Crawford alleges that in order to show material prejudice Dynamic must show that it would be treated differently, unfairly, or would suffer worse harm than other creditors if the stay is not lifted. Crawford argues that Dynamic cannot show any special harm which is distinct from Crawford's other creditors.

[35] The cases establish that there is no need for someone seeking a lifting of a stay to establish a *prima facie* case (*Re Ma*, 2001 Canlii 24076 (Ont CA)), but consideration of the merits go to whether there are sound reasons for lifting the stay.

[36] Courts have found that actions against a bankrupt for a debt to which a discharge would not be a defence, such as in the case of fraud per ss 178(1) of the *BIA*, should be permitted to proceed by lifting the stay: *Re Advocate Mines Limited*, (1984) 52 CBR (NS) 277 (ONSC) and *Gagnon (Re)* 2021 ABQB 583.

[37] Justice Lema in *Gagnon (Re)* 2021 ABQB 583, considers the policy and rationale for the material prejudice test and considers the question: What is it about a surviving, or potentially surviving, claim that could show prejudice i.e. some kind of differential disadvantage arising from being bound by the same statutory stay as all other unsecured creditors? (para 63).

[38] Justice Lema finds (at paras 68 to 71):

[68] Their claims are not released, meaning they are free, after the bankrupt's discharge, to commence or continue their claims and seek recovery of the unpaid balance i.e. after giving credit for any dividends received during the bankruptcy.

[69] Such creditors have the best of both worlds: they can prove their claims in the bankruptcy (and receive any dividends generated by it) and pursue the unpaid balance after bankruptcy.

[70] Thus, we see the critical difference between dischargeable and surviving claims and also the rationale for finding prejudice in the latter being subjected to the bankruptcy stay. For dischargeable claims (and again assuming no other Advocate Mines exceptions apply), there is no "life after bankruptcy" and thus no reason for actions to continue.

[71] For surviving claims, by definition, there is "life after bankruptcy."

[39] Justice Lema then concludes at para 73 that the "core prejudice to a surviving or may-survive claimant is being forced, if the stay operates, to wait until the bankruptcy (or, here, the proposal) is completed before being able to commence or continue with its claim". He continues to cite a myriad of cases supporting this conclusion (paras 84 to 91) and also noting that concerns of litigation delay generally are well known, and it is recognized that delay may compromise the fairness of a trial (para 93).

[40] While, as noted above, I cannot make a determination on a finding of fraud, I can, and must, consider the merits of the lawsuit to determine if there are sound reasons for lifting the stay. Here I agree with Dynamic there are many indicia of fraud. Including both a house and cabin on a net worth statement, without mentioning any mortgage or matrimonial claims, may satisfy the evidentiary requirement to substantiate allegations of fraud (see *Gaastra v Watts*, 2012 ABCA 262). Crawford concedes that the transfers of the home and cabin would likely be void as against a Trustee in Bankruptcy. As noted by the Alberta Court of Appeal in *Gaastra* at paragraph 2, “At this stage, it is not necessary that fraud be the only way of interpreting the available evidence, nor is the possibility of a defence decisive”.

[41] I note that the approved proposal has a time frame involving payments over 5 years. Given the nature of the allegations and the material prejudice that will be caused by a delay, I am prepared to lift the stay and allow Dynamic to pursue its claim against Crawford as it sees fit.

Conclusion

[42] The amended proposal is approved. There will be no declaration made regarding a breach of s 178(1) as that will require a trial or at least *viva voce* evidence. The stay of proceedings as against Dynamic will be lifted to allow them to pursue their s 178(1) declaration and the debt from Crawford.

[43] Costs, if not agreed to between counsel, may be addressed by written submissions provided to the court by March 27, 2026. Submissions to be limited to 3 pages not including a draft bill of costs, offers exchanged and authorities.

Heard on the 1st day of October, 2025.

Dated at the City of Edmonton, Alberta this 13th day of February, 2026.

M.E. Burns
J.C.K.B.A.

Appearances:

Kyle R. Kawanami, Emery Jamieson LLP
for the Debtor

Ryan F.T. Quinlan, Duncan Craig LLP
for the Creditor