

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Fox Island Development Ltd. v. Ching*,
2026 BCSC 492

Date: 20260323
Docket: B250584
Registry: Vancouver

Between:

**Fox Island Development Ltd. and
Advanced Venture Holding Co. Ltd.**

Petitioners

And

Mo Yeung Ching also known as Michael Ching

Respondent

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for the Petitioners:

A. Mersich
J. Robertson-Taylor

Counsel for the Respondent:

B. La Borie

Place and Date of Hearing:

Vancouver, B.C.
February 25, 2026

Place and Date of Judgment:

Vancouver, B.C.
March 23, 2026

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INTRODUCTION

[1] The petitioners, Fox Island Development Ltd. and Advanced Venture Holding Co. Ltd. (collectively, "Fox Island"), seek a bankruptcy order against the respondent, Mo Yeung Ching, also known as Michael Ching.

[2] Mr. Ching opposes the order being granted, arguing that Fox Island has not met certain statutory requirements for the relief and, in any event, the application should be dismissed or stayed for certain reasons.

[3] In advance of the hearing of this petition, I dismissed Mr. Ching's application to adjourn this hearing to permit him to cross-examine Fox Island's representative, Wen Yong Wang (also known as Gavin Wang), on his various affidavits. My reasons for doing so are addressed below.

[4] For the following reasons, I grant the bankruptcy order as sought.

THE FACTS

[5] Mr. Ching has been involved in a number of BC real estate developments undertaken by various corporations owned and controlled by him, which are generally described as follows:

- a) A trade centre and strata development in Richmond, BC, which includes a hotel property known as the "Hotel Versante" (the "Hotel"); and
- b) Certain lands in the Comox area of Vancouver Island in five separate lots (the "UB Lands").

[6] In connection with these projects, Fox Island advanced loans to Mr. Ching's debtor corporations, which loans were secured against various properties owned

by them:

- a) What is described as “Loan B”, pursuant to a loan agreement dated from June 2021, as amended, and secured against the Hotel, the UB Lands and personal property; and
- b) What is described as the “UB Loan”, pursuant to a loan agreement dated from April 2021, as amended, secured against three lots in the UB Lands, a strata lot and personal property.

[7] Mr. Ching provided guarantees to Fox Island in respect of both Loan B and the UB Loan.

[8] Enforcement proceedings have been underway in respect of both Loan B/the Hotel and the UB Loan/UB Lands for some time, which include:

- a) In January 2024, Fox Island commenced a foreclosure proceeding in respect of Loan B/the Hotel. On February 29, 2024, this Court granted an Order *Nisi*, which included judgment against the various corporate debtors and Mr. Ching in the amount of \$79,658,326.01. In late 2025, I approved a sale transaction by which Fox Island’s affiliate was to acquire the Hotel, by the application of a “Credit Bid Amount” of \$42.7 million as partial consideration for the purchase, in the event that a prior approved sale did not close;
- b) In August 2024, Fox Island commenced a foreclosure proceeding in respect of its security against the UB Lands. Its mortgage is subordinate to other charges against those lots in the UB Lands, held by 3003297 Nova Scotia Company (“297 NS”) and Beem Credit Union (“Beem”), who have also commenced foreclosure proceedings. Various orders have been granted in respect of the UB Lands:
 - i. On July 22, 2024, in Beem’s foreclosure, this Court granted an Order *Nisi*, which included judgment in favour of Beem against the various corporate debtors and Mr. Ching in the amount of \$19,779,620.51;

- ii. On February 6, 2025, 297 NS commenced a foreclosure, asserting a debt of just shy of \$10 million against one of the UB Loan lots (the debt is estimated to be approximately \$10.2 million now); and
- iii. On August 18, 2025, this Court granted an Order *Nisi* in respect of the UB Loan which included judgment in favour of Fox Island against the various corporate debtors and Mr. Ching in the amount of \$28,327,425.46 and USD \$8,568,730.66.

[9] As a result of the above proceedings, Fox Island estimates that its recoveries and shortfalls will be as follows:

- a) With respect to Loan B, Fox Island says that even after application of the Credit Bid Amount for the Hotel, a further \$70 million would remain outstanding on its debt and security, currently outstanding at over \$119 million as of November 2025;
- b) With respect to the UB Loan and the UB Lands, marketing of the lots is currently underway but is not yet completed. Fox Island has provided certain appraisals, marketing materials and a letter of intent at this hearing, which are confidential and have been sealed by my order. Fox Island estimates that, based on current appraised values, and after recovery by 297 NS and Beem from their security, it will still suffer a shortfall of \$35 million.

[10] Mr. Ching is also subject to various other judgments, being:

- a) On July 8, 2025, 1251626 B.C. Ltd. obtained a judgment for \$150,000;
- b) On August 18, 2025, Cameron Stephens Mortgage Capital Ltd. obtained a judgment for \$14,542,028.96;
- c) On September 4, 2025, Beem obtained another judgment for \$4,744,679.46; and
- d) On October 9, 2025, MorteZ Lending Corp. obtained a judgment for \$1,653,418.01.

[11] Beem supports the granting of the bankruptcy order. Beem has provided evidence of its debt and the security held, including against the UB Lands. Despite some recoveries, Mr. Ching remains indebted to Beem under its judgment in the amount of approximately \$19.5 million. Beem expects to suffer a loss of \$5 million after further recovery under its remaining security.

[12] On October 16, 2025, Fox Island's counsel examined Mr. Ching in aid of execution. The transcript reveals that Mr. Ching indicated that he had no material assets, no source of income and that he is unable to pay his day-to-day expenses on his own. Mr. Ching confirmed various judgments against him (including those listed above) and that he had not paid them. Fox Island's counsel made various requests for further documents to be provided by Mr. Ching, which Mr. Ching's counsel said were all taken "under advisement".

TEST FOR A BANKRUPTCY ORDER

[13] 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: *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*], s. 43(1).

[14] Section 42(1) of the *BIA* sets out various acts of bankruptcy. One is found in s. 42(1)(j) of the *BIA*, which provides that an act of bankruptcy occurs when a debtor has ceased to meet his or her liabilities generally as they become due.

HAVE THE STATUTORY REQUIREMENTS BEEN MET?

[15] Mr. Ching concedes that he has committed an act of bankruptcy as set out in s. 42(1)(j) of the *BIA*, namely that he has ceased to meet his liabilities generally as they become due, as required to be proven under s. 43(1)(b) of the *BIA*.

[16] However, Mr. Ching does not concede that Fox Island has established that it is owed at least \$1,000, as required by s. 43(1)(a) of the *BIA*. Mr. Ching argues that his various corporations have outstanding claims against Fox Island that will more than offset the amount that will be remaining on Loan B and the UB Loan after the various secured assets are realized.

a) Mr. Ching's Evidence

[17] Mr. Ching has provided two of his own affidavits and a third affidavit from his counsel's assistant.

i) The UB Lands

[18] Mr. Ching provided various prior appraisals of the UB Lands. At this hearing, he also produced an appraisal of the UB Lands as of January 29, 2026. He suggests that these various appraisals show values that will provide for payment for all of the secured creditors against the UB Lands.

[19] Mr. Ching also refers to a September 2024 offer to purchase in respect of one of the lots in the UB Lands, although it is unclear what is to be taken by this document.

[20] As above, both Fox Island and Beem disagree as to Mr. Ching's asserted values, indicating that shortfalls are expected after the sale process for the UB Lands is completed.

ii) The Offsetting Claims

[21] On July 29, 2025, Mr. Ching and his various debtor companies filed a notice of civil claim against Fox Island in BCSC Vancouver Registry Action No. S255651 setting out two causes of action.

[22] Firstly, the plaintiffs claimed that the amounts due to Fox Island arising from a July 2023 forbearance agreement were such that a criminal rate was to be paid. The plaintiffs claim that they only "discovered" that the interest rate was criminal and unlawful in March 2025 (after judgment was granted against them all). By way of relief, they seek to void both the loan agreement and the forbearance agreement.

[23] Secondly, the plaintiffs pointed to the fact that Fox Island had conduct of sale of the Hotel from February 2024 (when the Order *Nisi* in the foreclosure was granted) to March 2025 (when a receiver was appointed to undertake sale efforts). They allege that Fox Island failed to conduct its sale efforts honestly and in good faith and failed to take reasonable, prudent and business-like steps to market and sell the Hotel. By way of relief, they seek damages.

[24] On September 3, 2025, Fox Island filed a response to civil claim. They denied any criminal interest rate, and alternatively, claimed that the agreements provide for the application of any such “interest” amounts to the loan balance. They also point to the Order *Nisi* (in February 2024) as establishing that the issue is barred by issue *estoppel* or *res judicata*. Finally, they deny that any of their sale efforts were insufficient.

[25] On October 9, 2025, the plaintiffs filed an amended notice of civil claim (“ANOCC”).

[26] On October 17, 2025, the plaintiffs brought forward an application for a declaration of the criminal interest rate issue and for an order varying the paragraphs of Fox Island’s Order *Nisi* as to the amounts owing to Fox Island under Loan B. Mr. Ching provided an affidavit affirmed October 15, 2025 in support. He also filed an affidavit from an actuary as to effective rates of interest in various scenarios. On October 24, 2025, that application was adjourned generally.

[27] On February 24, 2026, the eve of this hearing, the plaintiffs’ counsel sent a letter to Fox Island’s counsel proposing a schedule to have the criminal interest rate issue determined, referring to the delivery of materials in advance of a hearing to be heard in Spring 2026.

[28] On February 23, 2026, Mr. Ching also provided his Affidavit #2 sworn that date with respect to the plaintiffs’ claim that Fox Island acted improvidently in its sale efforts with respect to the Hotel in the February 2024–March 2025 timeframe. In that respect, Mr. Ching states:

- a) Fox Island had an opportunity to sell the Hotel at a \$73 million valuation through a refinancing of Loan B. Fox Island demanded “onerous conditions” which led to a collapse of the proposed refinancing;
- b) In May 2024, Fox Island exchanged offers for the Hotel with a potential purchaser, 224641 Alberta Ltd. Fox Island was proposing a sale at \$76.8 million, but this potential purchaser offered \$66 million;
- c) Between August 2024 and March 2025, Fox Island received an offer to purchase and a letter of intent from two parties who appear to have been acting in concert–PACM Real Estate Fund II LP (“PACM”) and

Citation Property Holdings Limited (“Citation”)—indicating offers for the Hotel for \$65 million (without parking) and then \$55 million (with parking); and

- d) Mr. Ching contends that the PACM/Citation offers for the Hotel were refused by Fox Island. He also says that the effect of the refusals has been to increase the interest and costs payable on Loan B.

b) The Adjournment Application

[29] Before turning to the application on the merits, I will address Mr. Ching’s adjournment application and his application to allow his counsel to cross-examine Mr. Wang on his affidavits.

[30] I note that Mr. Ching’s notice of application was filed on February 23, 2026, on the eve of this hearing, despite having received the petition and Mr. Wang’s Affidavit #1 on December 8, 2025. The obvious inference is that this is a late tactic to delay the hearing of the matter.

[31] In any event, Mr. Ching asserts that he needs to cross-examine Mr. Wang on his affidavits in order to explore:

- a) What he describes as Fox Island’s “material non-disclosure” of the court proceedings relating to the criminal interest rate issue and improvident sale;
- b) What he alleges are significant disputes concerning the appraisal evidence of the UB Lands and his contention that Fox Island’s valuation of its available security is “absurdly low”;
- c) Fox Island’s efforts to sell the Hotel and its handling of any offers; and
- d) Why Fox Island considers a bankruptcy to be necessary given Mr. Ching’s evidence as to his lack of assets or income and that Fox Island has not provided any evidence to the contrary.

[32] Mr. Ching relies on Rule 22-1(4)(a) of the *Supreme Court Civil Rules* in seeking to cross-examine Mr. Wang.

[33] Mr. Ching refers to *Stephens v. Altria Group, Inc.*, 2021 BCCA 396, which addressed an appeal from a judge's decision to order cross-examination on affidavits on a contested chambers hearing. The Court of Appeal referred to the test as follows:

[5] Altria submits the correct test is that summarized by Justice W. Scarth in *Greenwood v. Greenwood*, [1999] B.C.J. No. 846 at para. 15, and cited in *Equustek Solutions Inc. v. Jack*, 2013 BCSC 882. The three factors to be considered are:

1. whether there are material facts in issue;
2. whether the cross-examination is relevant to an issue that may affect the outcome of the substantive application; and
3. whether the cross-examination will serve a useful purpose in terms of eliciting evidence that would assist in determining the issue.

[34] Mr. Ching also refers to *Upstream Water Management Ltd. (Re)*, 2014 BCSC 159 where the Court (at para. 37) ordered cross-examination on a creditor's affidavit as to certain debts alleged to be owing, based on conflicts in the various affidavits.

[35] For the following reasons, I was not persuaded that cross-examination of Mr. Wang is necessary to decide the issues on this application.

[36] Firstly, Mr. Ching has brought forward all of the information regarding the history and present status of the criminal interest rate issue. Mr. Wang in his Affidavit #2 affirmed February 18, 2026 also provides most of that information.

[37] It is apparent enough that the criminal interest rate issue is extant and may be determined in the future. However, I fail to see what Mr. Wang could add to that situation through any cross-examination.

[38] As Fox Island notes, even if the plaintiffs in the criminal interest rate action succeed in erasing the interest and/or principal of Loan B, Mr. Ching is still obligated under his judgment for the UB Loan. Accordingly, whether or not Mr. Ching remains obligated under Loan B is not a material issue that could affect the outcome here: *Beigi v. Sabaghchian*, 2024 BCSC 812 at para. 36.

[39] Secondly, even accepting that a conflict exists with respect to the value of the UB Lands, I cannot conceive that Mr. Wang would be able to clarify that issue

through any cross-examination. He is not an appraiser or qualified to opine on any valuation issues of those lands.

[40] Thirdly, I also fail to see why Mr. Wang should be cross-examined on Fox Island's sale efforts with respect to the Hotel. Mr. Ching has provided some evidence as to Fox Island's efforts to sell the Hotel as found in his statements in his Affidavit #2, which I will address in more detail below. I accept that the improvident sale allegations are an extant issue, but they are certainly not going to be resolved on this application, including through any cross-examination of Mr. Wang.

[41] Fourthly, I fail to see how a cross-examination of Mr. Wang could advance Mr. Ching's argument that there is no purpose to the bankruptcy order being granted. Mr. Ching has the ability to bring forward all of his evidence and arguments on that point. Mr. Wang is not required to put forward evidence to contradict Mr. Ching's assertions that he has no assets or income. Even if that is true, there may be other reasons to grant the bankruptcy order, as I will discuss below, as is asserted by both Fox Island and Beem.

[42] In summary, I considered that Mr. Ching's application to cross-examine Mr. Wang was of no merit and likely brought forward as a delay tactic to avoid the hearing of this matter on its merits: *Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd.*, 2015 BCSC 1995 at para. 28.

[43] I now turn to the merit of Fox Island's application for a bankruptcy order.

c) Has Fox Island Proven a Claim for at Least \$1,000?

[44] I accept that the onus lies on Fox Island to strictly prove the amount of its debt through sound and convincing evidence: *0757376 B.C. Ltd.*, 2011 BCSC 1268 [0757376] at paras. 12–13; *Bastian Holdings Ltd. (Re)*, 2025 BCSC 2548 at paras. 22–23.

[45] Much of Mr. Ching's arguments have centered on the contention that Fox Island is a "secured creditor" of him, such that Fox Island is required to value its security under s. 43(2) of the *BIA*. Mr. Ching then argues that the value of that security far exceeds his debt to Fox Island such that no amount is owed.

[46] Mr. Ching's argument proceeds on a false premise. Fox Island does not hold any security against Mr. Ching's assets, to the extent that he has any. In fact, the security held by Fox Island is against the assets of Mr. Ching's various corporations.

[47] During the course of this hearing, Mr. Ching's counsel produced helpful authority on the issue: *Fred Walls & Son Holdings Ltd. (Trustee of)*, 14 C.B.R. (4th) 189, 1999 CanLII 2324 (B.C.S.C.) [*Fred Walls*]. In that case, Justice Meiklem considered whether a petitioning creditor was required to account for security granted by the principal debtor when asserting an unsecured debt against a guarantor. At para. 28, the Court stated that "[t]he test of what security must be valued by a petitioning creditor, where security is held on the property of *third parties*, is *whether the property, if given up, would augment the bankrupt's estate.*" (emphasis in original).

[48] Mr. Ching acknowledges that that no such augmentation would arise here, thus obviating any requirement of Fox Island to value the security held against the various corporate debtors in respect of Loan B and the UB Loan.

[49] One case referred to in *Fred Walls* is *Cappe (Re)*, [1993] O.J. No. 775 (Ont. Gen. Div.), 1993 CarswellOnt 198 [*Cappe*], (aff'd [1994] O.J. No. 3860 (Ont. C.A.)), where Justice Ground at 234 confirmed that a petitioning creditor is not required to value any security held by third parties.

[50] Another relevant point made by Ground J. in *Cappe* was to emphasize at 235 that it is not necessary for a petitioning creditor to establish the precise amount of its indebtedness, so long as the court is satisfied that it is at least \$1,000.

[51] *Cappe* at 235 similarly stands for the proposition that a petitioning creditor of a guarantor is not required to exhaust all of its remedies against the principal debtor before proceeding with an application to bankrupt that guarantor. See also *Czepil v. J.W. Bison Ranch Ltd.*, 2008 BCSC 366 at para. 27. In this case, the terms of Mr. Ching's guarantees are to that same effect.

[52] Mr. Ching nevertheless argues that, if and when his various corporations succeed on the criminal interest rate and improvident sale issues, it will indirectly

result in the elimination of the amounts he owed under the judgments in favour of Fox Island under Loan B and the UB Loan.

[53] The onus is on Mr. Ching to establish that a *bona fide* claim exists and that it has the potential to result in a complete elimination of Fox Island's loan debt or a reduction to an amount below \$1,000 – which presumably would indirectly apply to his judgment on the guarantees: *Maple City Ford Sales (1986) Ltd. (Re)*, 14 C.B.R. (3d) 188, [1992] O.J. No. 1736 (Ont. Gen Div.) [*Maple City*] at 193; 0757376 at para. 25.

[54] In *Solid Holdings Ltd. (Re)*, 2019 BCSC 126 [*Solid Holdings*], Justice Jackson discussed that in assessing any countervailing claim, the court is not to determine the merits of any issue and should only focus on whether the debtor has shown the dispute to be *bona fide*:

[18] Where a debtor can establish it has not ceased being able to satisfy its liabilities generally as they become due, but instead has chosen not to pay a particular debt for a justifiable reason (i.e. there is a *bona fide* dispute), a bankruptcy order will not be made. The court hearing the bankruptcy application is not to determine the validity of the debtor's dispute, but only whether the dispute is *bona fide*. As noted in *Re Bearcat Exploration Ltd. (Bankrupt)*, 2003 ABCA 365 at para. 15:

Therefore, when there is a *bona fide* dispute between the petitioner and debtor with respect to the debt, the matter must be decided in proceedings in the ordinary courts, rather than in the bankruptcy court: *Concept Marketing Ltd., Re* (1975), 20 C.B.R. (N.S.) 27 (Ont. S.C.); *Central Coast Carriers Ltd., Re* (2002), 2002 BCSC 312 (CanLII), 32 C.B.R. (4th) 200 (B.C.S.C.) (Chambers). A bankruptcy court's jurisdiction to issue declaratory judgments is limited to the matters allowed for in the *BIA*, *supra*: *Re Holley* (1986), 1986 CanLII 2586 (ON CA), 54 O.R. (2d) 225 (C.A.); *Reynolds, Re* (1928), 1928 CanLII 422 (ON SC), 10 C.B.R. 127 (Ont. S.C.), *aff'd* (1982), 10 C.B.R. 127 at 131 (Ont. C.A.). It is not the judge's function in bankruptcy proceedings to determine whether the respondent has a good defense to the petitioner's claim: *Tawe International Fairs Inc. (Re)*, [1992] B.C.J. No. 2064 (B.C.S.C.) (Chambers) (QL). Accordingly, final decisions or declarations about illegality, severance, principal amounts owing, interest rates and validity of security are beyond the jurisdiction of a bankruptcy court hearing a bankruptcy petition.

[55] Evidence as to the *bona fides* of any claim must be provided: *Solid Holdings* at para. 29; *aff'd Solid Holdings Ltd. v. Grant Thornton Limited*, 2019 BCCA 231 at paras. 14–15. In *R. Home Supply Centre Ltd. (Re)*, 2014 BCSC

2430, aff'd 2015 BCCA 500, Justice Sewell rejected that an alleged setoff claim was a valid reason to refuse the bankruptcy order:

[29] With respect to the claim of set off against BNS, I do not find this a valid reason for refusing a bankruptcy order. In this regard, I respectfully agree with the analysis of the Honourable Mr. Justice Burnyeat in *Central Coast Carrier Ltd. (Re) (Trustee of)*, 2002 BCSC 312, to the effect that a debtor who alleges a counterclaim or set off that would eliminate a claim of a creditor seeking a bankruptcy order must present a well-documented claim in some detail. In this case, I find the notice of civil claim to be vague and lacking in detail. The documentation that was before the Court does not support the allegations of R Home against BNS.

[Emphasis added.]

[56] Even so, the case law supports that the existence of a *bona fide* dispute does not necessarily mean that a petition for a bankruptcy order will be dismissed: 0757376 at para. 30, citing *Vermillion Placers Inc. (Re)*, (1982) 41 C.B.R. (N.S.) 173 at 176.

[57] As does Fox Island, I accept that the criminal interest rate issue is *bona fide* and, if successful, has the potential to eliminate the debtors/Mr. Ching's liability for Loan B. That conclusion arises not only from a review of the ANOCC and the October 2025 notice of application, but also from the evidence of Mr. Ching and the actuary filed in support.

[58] However, even accepting that the criminal interest rate issue has merit, Mr. Ching has not shown that it would have any real effect on his present indebtedness to Fox Island. The fact remains that Fox Island is expecting to suffer a further shortfall on the UB Loan for which Mr. Ching is also liable under the judgment.

[59] Mr. Ching then argues that, if the debtors under Loan B succeed in establishing any liability and damages as a result of the improvident sale allegations, those amounts will also result in a setoff of the UB Loan to that extent of an assumed amount of \$30 million (leaving \$10 million outstanding to Fox Island). Mr. Ching argues that the latter amount would be satisfied by Fox Island's security against the UB Lands.

[60] For the sake of argument, I accept that the ANOCC sets out the improvident sale allegations properly and provides some detail or particulars in paragraph 64. However, in my view, Mr. Ching has failed to provide any or sufficient evidence to

establish the *bona fides* of this claim. In particular, a limited consideration reveals many vague, inconsistent and unsupported aspects of his evidence and allegations:

- a) His Affidavit #2 refers to Fox Island's refusal to refinance at a particular (\$73 million) valuation (which after deduction of the Credit Bid Amount, results in the assumed \$30 million offset). No such allegation is contained in the ANOCC. In any event, I have not been referred to any contractual obligation enforceable by the plaintiffs that would have required Fox Island to refinance its debt;
- b) His Affidavit #2 refers to the exchange of offers with 224641 Alberta Ltd., but it is unclear if this is a purchaser who Mr. Ching alleges that Fox Island did not engage with or if it is the one party whose letter of intent was addressed by Fox Island per the ANOCC;
- c) His Affidavit #2 refers to two offers by PACM/Citation in August 2024 and January 2025, as does the ANOCC. Mr. Ching says that Fox Island refused each offer. However, the allegation in the ANOCC is different, alleging that Fox Island did not engage in good faith with respect to the August 2024 offer, including by refusing to grant an extension of the subject removal date, not that it refused the offer; and
- d) His Affidavit #2 also alleges that Fox Island refused PACM/Citation's offer of \$55 million in January 2025. However, in relation to both this offer and the earlier offer by PACM/Citation, it must be this considered that, on October 24, 2025, I approved a sale transaction by Citation for the Hotel for the purchase price of \$51.5 million. Despite many concessions to allow a closing to occur, Citation could not or would not complete the sale by the December 2025 closing date, which was also extended into January 2026. This would suggest that the earlier offers by PACM/Citation at an even higher purchase price were illusory at best. As above, the collapse of the Citation transaction ultimately led to Fox Island completing the sale through a credit bid.

[61] I consider that Mr. Ching's bald assertions in his Affidavit #2 are just that. He has produced no evidence, such as documentation or communications

between parties, that would even suggest that his allegations have merit. For example, where are the documents indicating Fox Island's communications or negotiations with these potential purchasers, including by either refusing to engage or refusing to grant extensions to subject removal dates?

[62] Mr. Ching has failed to establish the *bona fides* of his allegations of improvident sale, which leaves Fox Island's shortfall on the UB Lands of about \$35 million.

[63] Accordingly, I am satisfied that Fox Island has proven the facts alleged in the applications against Mr. Ching, as required by s. 43(1) of the *BIA*.

IS THERE ANY OTHER REASON TO STAY OR DISMISS THE ORDER?

[64] Even assuming that Fox Island has satisfied the requirements under s. 43 of the *BIA*, Mr. Ching asserts that the Court should exercise its discretion to stay or dismiss the petition.

[65] Section 43(7) of the *BIA* 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.]

[66] Section 43(7) mandates that the Court "shall" dismiss a bankruptcy application if the debtor establishes "other sufficient cause": *Kenwood Hills Development Inc., (Re)*, 30 C.B.R. (3d) 44, 1995 CanLII 7364 (O.N.S.C.) at 44. Notwithstanding the mandatory language in the *BIA*, the case law supports that the power to dismiss is discretionary: *1719108 Ontario Inc. c.o.b. as Zoren Industries*, 2024 ONSC 909 at para. 81.

[67] In the alternative, the Court's discretion to stay an application for a bankruptcy order arises under s. 43(11) of the *BIA* if there is a "sufficient reason" to do so:

(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.

[68] In *Immeubles Zenda Itée/Zenda Realities Ltd. et A. Schuster Holdings Inc.*, 2020 QCCS 3450, Justice Collier 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 at para 41].

[69] Mr. Ching advances two main arguments that there is a "sufficient cause" or "sufficient reason" to either dismiss or stay Fox Island's petition:

- a) The bankruptcy order will end the proceedings in the action relating to the criminal interest rate and the allegations of improvident sale; and
- b) The bankruptcy will serve no purpose.

[70] Firstly, Mr. Ching argues that a bankruptcy order against him will mean that the action against Fox Island will end. However, that is not the case. The major proponents of that action are the various debtor corporations who will be unaffected by any bankruptcy order. If those plaintiffs are ultimately successful, it may be the case that Fox Island's claims in Mr. Ching's bankruptcy will be affected. It will not, however, affect Mr. Ching's many other debts as I have recounted above.

[71] I also see no merit in either dismissing or staying this bankruptcy petition to allow the criminal interest rate issue to be determined. As above, even if the plaintiffs succeed, Mr. Ching faces many other debts and judgments, including to Fox Island.

[72] Secondly, Mr. Ching has failed to convince me that the bankruptcy will serve no purpose, as he alleges.

[73] Whether or not Mr. Ching truly has no assets or income is yet to be tested. It will rarely be the case that unsupported contentions by a debtor to that effect are accepted at face value.

[74] In any event, the results from the examination in aid of execution conducted by Fox Island's counsel raise legitimate issues as to the veracity of Mr. Ching's bald assertions. Mr. Ching produced his bank statements, and the statements from

March 2025 and June 2025 are before the Court. The bank statements from March 2025 show substantial deposits and withdrawals. In June 2025, the statement similarly refers to deposits and withdrawals of approximately \$95,000–100,000, with the withdrawals being transfers to other bank accounts, cheques, debit memos, withdrawals and credit card payments.

[75] For someone who purports to have no assets or income, Mr. Ching’s bank accounts would suggest access to very substantial financial resources. There are also questions as to what information Mr. Ching did not disclose. At the examination in aid of execution, Fox Island’s counsel made fifteen document requests to Mr. Ching, to which no response was delivered. These requests included clarification as to how Mr. Ching is able to access and spend such large amounts given his purported financial circumstances.

[76] Mr. Ching’s failure to cooperate with Fox Island in respect of disclosure may be remedied by a trustee in bankruptcy’s greater powers of compliance under the *BIA*. It is well accepted that one benefit of bankruptcy proceedings is to allow a trustee in bankruptcy to conduct certain investigations into a bankrupt’s affairs: *Maple City* at 192; *Re Bankruptcy of Jonathan Chukwudi Okoakih*, 2013 ONSC 7492 at paras. 35–37. Depending on the results of those investigations, a trustee also has various means to pursue assets that may have been improperly transferred, for example by a transfer at undervalue or a fraudulent preference or conveyance.

CONCLUSION

[77] In summary, I am satisfied that Fox Island has satisfied the statutory obligations under the *BIA* for a bankruptcy order against Mr. Ching. I am not persuaded by Mr. Ching that there is any legitimate basis to exercise my discretion to either dismiss or stay the granting of the order for the reasons he advances.

[78] The bankruptcy order is granted on the terms sought.

“Fitzpatrick J.”