SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: 500- 17-131465-240

DATE: May 5, 2025*

BY THE HONOURABLE GEETA NARANG, J.S.C.

ROYAL BANK OF CANADA
Plaintiff
v.
VLADIMIR BUDKER
Defendant

J U D G M E N T
(Revision of a Decision of the Special Clerk About a Stay of Proceedings Under the *Bankruptcy and Insolvency Act*)

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* *La traduction du présent jugement a été demandée le 5 mai 2025. Vu le délai annoncé pour sa livraison, le Tribunal estime que de retarder la signature du présent jugement dans l'attente de la version traduite entraînerait des inconvénients et serait préjudiciable à l'intérêt public. La Traduction suivra.*

I - SUMMARY THIS JUDGMENT

[1] The Royal Bank of Canada disagrees with a decision rendered by a Special Clerk of this Court and wants the decision to be reviewed.

[2] The Special Clerk decided that RBC could not pursue its *Originating Application to Institute Proceedings* by which it claims for $238 485 from Vladmir Budker because of amounts drawn from a line of credit it extended to Mr. Budker. The Special Clerk decided to stay RBC's lawsuit because Mr. Budker filed a notice of intention under the *Bankruptcy and Insolvency Act* in January 2023, and the line of credit was extended to Mr. Budker in May 2012.

[3] Pursuant to section 69(1)(a) of the *BIA*, no creditor may commence or continue any action for the recovery of a claim that is "provable in bankruptcy".

[4] The Special Clerk's Decision will be reviewed because, for the purposes of a stay of proceedings under the *BIA,* what matters is when Mr. Budker drew on his line of credit and became indebted in the amount of $238 485 to RBC, not when the line of credit was extended. The evidence establishes that Mr. Budker become indebted towards RBC by drawing on his line of credit after becoming bankrupt.

II - FACTS

[5] The relevant facts are as follows:

[6] In May 2012, RBC extended a commercial line of credit to Mr. Budker[1].

[7] On January 26, 2023, Mr. Budker became bankrupt under the *BIA*.[2] As appears from the loan history of the line of credit, a few days earlier, on January 18th, no amount was owing by Mr. Budker to RBC pursuant to the line of credit.[3] Thereafter, Mr. Budker drew various amounts from the line of credit.

[8] On June 17, 2024, RBC filed a proof of claim with Mr. Budker's bankruptcy trustee for $228 472.90. At the hearing, RBC's lawyer explained that this was a clerical error. The claim was withdrawn shortly after it was filed with the trustee.[4]

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1 Exhibit AP-2, *Convention de Marge de Crédit Royale*.
2 Exhibit P-4, *Bankruptcy and Insolvency Act* Search Results.
3 Exhibit AP-5, Loan History Transactions.
4 Exhibit AP-8,Email of July 8, 2024.

[9] On September 25, 2024, RBC instituted proceedings against Mr. Budker, thereby opening the present court file. With its *Originating Application to Institute Proceedings*, RBC asks the Court to:

> CONDEMN Defendant to pay unto the Plaintiff the amount of $238,485.68 due and owing as of June 12, 2024, with interest thereon calculated as follows:
>
> - As of June 12, 2024, to June 24, 2024 - 8.70% per annum (representing Plaintiff's prime rate of 6.95% +1.75%);
> - As and from June 25, 2024, to September 4, 2024 - 8.45% per annum representing Plaintiff's prime rate of 6.70% +1.75%);
> - As of September 5, 2024, onwards - 8.2% per annum (representing Plaintiff's prime rate of 6.45% +1.75%);

[10] Mr. Budker did not respond to RBCs *Originating Application*. As such, on October 30, 2024, RBC filed an *Avis d'audition pour obtenir un jugement par défaut de répondre devant le juge*.

[11] On December 20, 2024, the Special Clerk sent RBC a document entitled *Avis de dossier incomplet* which reads as follows:

> *Selon la pièce-4 versée au dossier, le défendeur Vladmir Budker est en faillite depuis 26 janvier 2023.*
>
> *Par conséquent, nous considérons que la présente affaire est suspendue en vertu de l'article 69 LFI et qu'aucun jugement ne peut être rendu à ce stade.*
>
> *Vu que la marge de crédit a été contractée en mai 2012, nous considérons que l'examen de la preuve (l'admission ou le rejet d'une réclamation prouvable), appartient au syndic en vertu de l'article 135 LFI.*

[12] Thereafter, there were exchanges between the Special Clerk and RBC's lawyer, wherein both re-state their positions and continue to disagree on whether RBC's *Originating Application to Institute Proceedings* should be stayed under section 69 of the *BIA*.

III - PRELIMINARY MATTERS

[13] Before setting out the reasons for which the Special Clerk's decision will be reversed, two preliminary issues must be addressed: the Court's jurisdiction and RBC's failure to file its *Application for Revision of Decision of the Special Clerk* within the time limit set by the *Code of Procedure*.

1. The Court's Jurisdiction

[14] The Court has jurisdiction to review the December 20, 2024, *Avis de dossier incomplet* issued by the Special Clerk.

[15] The first paragraph of article 74 of the *Code of Civil Procedure* provides that:

> Decisions of the court clerk other than administrative decisions and decisions of the special clerk, except judgments rendered by default following the defendant's failure to answer the summons, attend the case management conference or defend on the merits, may, on an application, be reviewed by a judge in chambers or by the court. The same applies to decisions of the appellate clerk, which may be reviewed by an appellate judge.

[16] As appears from the text reproduced at paragraph 11 of this judgment, on December 20, 2024, the Special Clerk made a decision: he analyzed evidence in the court record, applied legal provisions to it and decided that RBC's *Originating Application to Institute Proceedings* should be stayed.

[17] Further, an *Avis de dossier incomplet* has been consistently recognized as a "decision" which may be reviewed by the Court.[5]

[18] The exception of "judgments rendered by default following the defendant's failure to answer the summons" posited at article 74 of the *Code* applies to judgments by which a party is condemned by default, only.[6] As such, it does not apply to the Special Clerk's decision at issue in this case.

2. The Time Limit

[19] The time that lapsed between when the *Avis de dossier incomplete* was issued (on December 20, 2024) and when RBC filed its *Application for Revision of Decision of the Special Clerk* (on February 26, 2025) is not a bar to reviewing the Special Clerk's decision.

[20] The second paragraph of article 74 of the *Code of Civil Procedure* provides that:

> The application for review must state the grounds on which it is based, be notified to the other parties and filed with the court office within 10 days after the date of the decision concerned. If the decision is quashed, matters are restored to their former state.
>
> (Underlining added)

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5 *S.A.* et *Je. A.*, 2022 QCCS 2250, paragraph 15; *Parent* c. *LexisNexis Canada inc.*, 2020 QCCQ 7436, paragraphs 16 and 17; *Caisse Desjardins de Mercier-Rosemont* c. *Edwards Medical Inc.*, 2017 QCCQ 5908, paragraph 5.

6 *Créditmeubles.com inc.* c. *Nobert*, 2021 QCCA 1069, paragraph 14; *Fallon* c. *Cour du Québec*, 2025 QCCS 421, paragraph 20.

[21] RBC filed its *Application for Revision of Decision of Special Clerk* more than ten days after the Special Clerk rendered his decision.

[22] Article 84 of the *Code of Civil Procedure* provides that time limits that are not strict may be extended, and a party may be relieved of the consequences of their failure to respect a time limit that is not strict.

[23] In this case, the time limit will be extended, and RBC will be relieved of the consequences of its failure to file its *Application for Revision of Decision of the Special Clerk* within ten days because:

23.1. The ten-day time limit set out in the second paragraph of article 74 of the *Code of Civil Procedure* is not a strict time limit;

23.2. There were communications between RBC's lawyer and the Special Clerk after December 20, 2024, following which RBC may have – understandably – been under the impression that the Special Clerk may reverse his decision;

23.3. RBC has acted diligently in this matter and a relatively short amount of time has lapsed;

23.4. The consequences of not extending the time limit and relieving RBC of the consequences of its failure to act within the ten-day time limit are serious.

IV - REASONS

[24] The Special Clerk's decision rests on the conclusion that RBC's claim for $238 485 is a "claim provable in bankruptcy" and that, as such, it must be stayed pursuant to section 69 of the *BIA*. This is an error which will be reviewed.

[25] Section 69 (1)(a) of the *BIA* provides that, on the filing of a notice of intention by an insolvent person, no creditor shall "commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy."

[26] Mr. Budker filed his notice of intention on January 26, 2023. It follows that a creditor cannot pursue a claim provable in bankruptcy on this day.

[27] For a claim to qualify as a "claim provable in bankruptcy", it must stem from an obligation incurred before the bankruptcy. Section 121 (1) of the *BIA* provides that:

> All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act. (Underlining added)

[28] Accordingly, debts incurred after bankruptcy do not qualify as "claims provable in bankruptcy", a proposition that is uncontroversial:

> If an undischarged bankrupt has incurred an obligation or debt after bankruptcy, the obligation or debt is not a provable claim and is not affected by the bankruptcy […]. Notwithstanding the bankruptcy, the bankrupt can be sued for such a debt, and there is no need to obtain leave of the bankruptcy court to take the proceedings.[7]

and:

> Creditors dealing with the bankrupt for claims arising after bankruptcy do not require leave of the court if they are unpaid and wish to sue. Such claims are not provable claims and therefore, the claims are not affected by the stay of proceedings.[8]

[29] Hence, if a bankrupt signs a promissory note after filing a notice of intention under the *BIA*, the resulting claim does not qualify as a "claim provable in bankruptcy".[9]

[30] Likewise, when a bankrupt is a tenant, rents that are due on the date they file their notice of intention under the *BIA* qualify as "claims provable in bankruptcy" – and a landlord's claims for these rents will be stayed – but rents that become due after the day of the filing do not qualify as such – and a landlord's claim for these rents are not stayed:

> *(…) dans le cas de faillite ou de cession de biens de la part du locataire, le locateur possède une créance prouvable concernant les loyers dus avant la faillite, mais le locataire demeure tenu au paiement de son loyer après la faillite*.[10]

[31] Hence, the key issue in this case is when Mr. Budker became indebted towards RBC for the $238 485 that RBC is claiming in its *Originating Application to Institute Proceedings*. The answer is after Mr. Budker filed his notice of intention under the *BIA* on January 23, 2023. He may have concluded a line of credit agreement with RBC in May 2012 but, at that time, he did not become indebted towards RBC for $238 485. The debt – and the obligation to repay the amount – arose when he began drawing funds from the line, and this was after January 23, 2023.

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7 Houlden, Lloyd W., Morawtz, Geoffrey B. and Sarra, Janis P. *Bankruptcy and Insolvency Law of Canada*, 4th edition, volume 4. (Toronto: Carswell, 2009, loose-lead edition, updated August 2023), § 7:211.

8 Bennett, Frank, *Bennet on Bankruptcy*, 26th edition (Toronto: LexisNexis, 2024), page 476.

9 *Day* c. *Banque Laurentienne du Canada*, 2014 QCCA 449, paragraph 12; *Medeiros* c. *Walter*, 2023 QCCS 3998, paragraphs 37-38 (appeal dismissed, 2024 QCCA 246); *Forage M. Lafrenière ltée* c. *Goguen*, 2015 QCCS 6415, paragraphs 12 to 14.

10 Rousseau-Houle, Thérèse and De Billy, Martine, *Le bail du logement : analyse de la jurisprudence* (Montréal : Wilson & Lafleur, 1989), page 164. See, also : *Dionne* c. *Mandina-Galipeau*, [2000] J.L. 187 (C.Q.).

[32] As concerns an “obligation”, article 1373 of the *Civil Code of Québec* provides that:

> The object of an obligation is the prestation that the debtor is bound to render to the creditor and which consists in doing or not doing something.
>
> The debtor is bound to render a prestation that is possible and determinate or determinable and that is neither forbidden by law nor contrary to public order.

[33] In May 2012, Mr. Budker did not have a determinate or determinable prestation that he was bound to render to RBC. As such Mr. Budker’s obligation to reimburse RBC $238 485 does not satisfy the definition of a “claim provable in bankruptcy” under the *BIA.*

[34] In some situations, it might be useful to notify, to the bankruptcy trustee, an *Application for Revision of Decision of the Special Clerk*, such as the one filed by RBC in this case, so that the trustee may make representations on the stay of proceedings issue. However, in this case, the record shows that the trustee is aware of the line of credit and shares RBC’s position regarding the stay. In a February 2025 decision rendered in the bankruptcy file, my former colleague Christian Immer, now a judge at the Court of Appeal wrote:

> *Le train de vie de Budker ne semble nullement affecté par cette faillite grâce entre autres, au soutien suivant :*
>
> *Il bénéficie d’une marge de crédit de 250 000$ auprès de la RBC. Bien qu’il y ait un flottement au départ, le syndic prend la position et la RBC convient que ces sommes ont été prêtées après la faillite et que la dette ne peut donc pas constituer une réclamation prouvable dans la faillite de Budker. L’avocate de Budker semblait toutefois prendre la position inverse*.[11]

CONCLUSIONS

FOR THESE REASONS, THE COURT:

[35] **GRANTS** the Plaintiff’s *Application for Revision of Decision of Special Clerk*;

[36] **RELIEVES** the Plaintiff, of the consequences of not having filed its *Application for Revision of Decision of Special Clerk* within the time limit set out at article 74 of the *Code of Civil Procedure*;

[37] **REVERSES** the December 19, 2024, Decision of the Special Clerk, Maître Catalin Curuia rendered in this file;

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[11] *Syndic de Budker*, 2025 QCCS 229, paragraphs 122 and 122.1.

[38] **DECLARES** that the Plaintiff's claim for $238 485.68 set out in its *Originating Application to Institute Proceedings* is not a claim provable in bankruptcy and that the Plaintiff may pursue the claim before this Court;

[39] **REFERS** the present matter and the Plaintiff's October 30, 2024, *Avis d'audition pour obtenir un jugement par défaut de répondre devant le juge* to the Special Clerk, Maître Catalin Curuia, or to another special clerk of the Court;

[40] **THE WHOLE**, without costs.

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GEETA NARANG, J.S.C.

Maître George Peizler
PEIZLER & VANI AVOCATS S.A.
Lawyers for the Plaintiff

Hearing date: March 13, 2025