

COURT OF APPEAL FOR ONTARIO

CITATION: Little (Nautilus North Strength and Fitness Centre) v. Bramcan
Investments Limited, 2025 ONCA 86
DATE: 20250203
DOCKET: COA-24-CV-0336

Tulloch C.J.O., Paciocco and Nordheimer JJ.A.

BETWEEN

John Little o/a Nautilus North
Strength and Fitness Centre

Plaintiff (Appellant)

and

Bramcan Investments Limited,
Catherine Spencer and Geoffrey Crawford

Defendants (Respondents)

David A. Morin and Peter Reinitzer, for the appellant

John L. O'Kane, for the respondents

Heard: January 30, 2025

On appeal from the order of Justice Robert Charney of the Superior Court of Justice, dated March 11, 2024, with reasons reported at 2024 ONSC 1485.

REASONS FOR DECISION

[1] John Little appeals from the order of the motion judge who dismissed his action pursuant to r. 21.01(3)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. At the conclusion of the hearing, we dismissed the appeal with reasons to follow. These are our reasons.

[2] On April 13, 2018, the appellant made an assignment in bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“*BIA*”). BDO Dunwoody Canada Limited (“BDO”) was appointed as the trustee in bankruptcy.

[3] On September 10, 2020, while an undischarged bankrupt, the appellant started this action against his former landlord, Bramcan Investments Limited, and two of Bramcan’s officers and directors, Catherine Spencer and Geoffrey Crawford. In his action, the appellant claims the value of assets disposed of by the respondents, all of which arose out of a fitness and strength building business that the appellant ran. The statement of claim alleges that the value of these assets was approximately \$250,000.¹ The appellant had not included these assets in his Statement of Affairs that he filed with BDO.

[4] The respondents discovered the bankruptcy when conducting a cross-examination of the appellant in August 2023 in response to a summary judgment motion that the appellant had brought. The respondents then brought this motion to dismiss the claim under r. 21.01(3)(b).

[5] The motion judge found that the action was a nullity. He said that only the trustee in bankruptcy had the capacity to commence the action as long as the appellant was an undischarged bankrupt. The motion judge rejected the

¹ The appellant later asserted that the assets were worth \$430,000 and sought to amend his statement of claim to claim that amount.

appellant's submission that the action was not a nullity, but only a misnomer that could be cured under r. 5.04(2) of the *Rules of Civil Procedure*. While the appellant advanced the same submission before this court, he ultimately abandoned it at the hearing. We note that a significant problem with that submission is that the appellant acknowledges that he does not have the consent of BDO to be substituted as the plaintiff in this action.

[6] The central submission now made by the appellant is that the equipment and other items for which he claims damages in this action are personal property, specifically tools of the trade, and thus are not property of a bankrupt under s. 67(1)(b) of the *BIA*.

[7] The difficulty with that submission is that s. 67(1)(b) only exempts personal property to the limits prescribed by regulation under the applicable provincial statute, in this case, the *Execution Act*, R.S.O. 1990, c. E.24. That amount is currently \$14,405, but it is agreed that, at the time applicable in this case, it was \$11,300.

[8] It follows that even if the appellant's submission is correct, his claim would be limited to \$11,300 which, we note, is within the jurisdiction of the Small Claims Court. The appellant attempts to avoid the consequences of that result by saying that he is seeking the return of the equipment rather than damages for its improper

disposal. That attempt cannot succeed since there is no such relief sought in the statement of claim. Only damages are sought.

[9] The appellant also attempts to avoid the result below by asserting that his claim includes a claim for damages for mental distress which he says is also exempt under the *BIA: Meisels v. Lawyers Professional Indemnity Company*, 2015 ONCA 406, 126 O.R. (3d) 448, at para. 13. That effort does not avail the appellant. The damages claimed for mental distress do not arise out of a standalone claim. They are directly linked to the claim for damages arising from the lost property. If the action arising out of the lost property falls as a nullity, the related claim for mental distress falls with it. As Perell J. said in *Stoneman v. Gladman* (2005), 16 C.B.R. (5th) 78 (Ont. S.C.), at para. 29: “The plaintiffs are not advancing a claim that is clearly a personal one; rather, they have threaded a personal claim into the fabric of a cloth of a claim that belongs to the estate in bankruptcy.”

[10] It is for these reasons that the appeal was dismissed. The respondents are entitled to their costs fixed in the agreed amount of \$7,500, inclusive of disbursements and HST.

“M. Tulloch C.J.O.”
“David M. Paciocco J.A.”
“I.V.B. Nordheimer J.A.”