

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN
SUITOR, an individual with a locality of Burlington, Ontario

NOTICE OF APPEAL

THE APPELLANT, THOMAS DYLAN SUITOR, APPEALS to the Court of Appeal from the judgement of Justice Jana Steele (the “**Application Judge**”) dated March 25, 2025, made at the Commercial List, Superior Court of Justice, in Toronto.

THE APPELLANT ASKS that the judgment be set aside and a judgment be granted as follows

1. The application for a bankruptcy order be dismissed with costs;
2. In the alternative, the application for a bankruptcy order be stayed;
3. Costs of the application below and of this appeal; and
4. Such further and other relief be granted as counsel for the Appellant may request and this Honourable Court deems just.

THIS GROUNDS OF THE APPEAL are as follows:

1. The Application Judge erred by holding that Sutor owed a “debt or debts” to the Applicant under s. 43(1)(a) of the *Bankruptcy and Insolvency Act* (“**BIA**”). In particular, the Application Judge erred:

- a. In law in holding that Suitor as a “guarantor” had the same non-contingent liabilities of the principal debtor corporations under promissory note agreements contrary to *Morin v. Hammond Lumber Co.*, [1922 CanLII 33 \(SCC\)](#) and subsequent authorities.
- b. In law in enforcing a guarantee contract without contractual language embodying a promise to guarantee contrary to *Times Square v Shimizu*, [2001 BCCA 448](#) and subsequent authorities.
- c. In failing to apply or misapprehending the principles of *contra proferentum* in interpreting the promissory note agreements; and in failing to address this legal principle or provide adequate reasons in addressing the “drafting issues” in the promissory note agreements and in “reading the document as a whole”.
- d. In law in her contractual interpretation of the promissory note agreements by relying on Suitor’s intentions and subjective knowledge *after* contract formation.
- e. In making findings of Suitor’s credibility and subjective knowledge of his liability under the promissory note agreements that were not available to her on the evidentiary record on the bankruptcy application.
- f. In failing to apply the correct legal principles and/or misapprehending that “debts” under s. 43(1) of the *BIA* cannot be claims or contingent liabilities as confirmed in *Re Bankruptcies of Down et al*, [2000 BCSC 1148 \(CanLII\)](#) aff’d [2000 BCCA 637 \(CanLII\)](#); and in failing to address this law or provide adequate reasons.
- g. In interpreting Suitor’s obligations under the standard form promissory note agreements.

2. The Applicant Judge erred by failing to dismiss or stay the bankruptcy application under ss. 43(7), (10), and/or (11) of the *BIA*. In particular, the Application Judge erred:
 - a. In failing to apply or misapprehending that bankruptcy court is not the appropriate forum where there is a *bona fide* dispute with respect to debt as confirmed by *Re Bearcat Exploration Ltd. (Bankrupt)*, [2003 ABCA 365 \(CanLII\)](#) and subsequent authorities.
 - b. In failing to consider or address Suitor's arguments that its dispute was *bona fide*, Suitor's evidence of virtually identical claims in civil court and argument of the risk of inconsistency findings, and the Applicant's contradictory treatment of the guarantor's obligation under similar contracts.
3. The Application Judge erred in holding that Suitor had ceased to meet his liabilities generally as they become due under s. 42(1)(j) of the *BIA*. In particular, the Applicant Judge erred:
 - a. In failing to apply or misapprehending (i) the Applicant's strict evidentiary burden to establish Suitor has ceased to meet his liabilities generally as they become due with respect to multiple creditors and (ii) the existence of unpaid creditors is not sufficient to satisfy this burden as confirmed by *Levesque (Re)*, [2016 ONCA 393 \(CanLII\)](#).
 - b. In failing to apply or misapprehending the Applicant's strict evidentiary burden to establish special circumstances in single creditor cases, and in law in holding that "numerous creditors potentially involved with [Suitor's] estate" satisfied this burden.
 - c. In making findings that were unavailable to her on the evidentiary application record, including that Suitor had multiple creditors.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Section 193 of the [Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3](#).
2. The decision appealed involves future rights of Suitor.
3. The decision appealed involves property in excess of \$10,000.00.

March 28, 2025

TAP Law
2nd-243 Queen St. W.
Toronto, ON M5V 1Z4

Tanya A. Pagliaroli (LSO #: 43549U)
tanya@taplaw.ca
Tel: 416-583-1570

Vinayak Mishra (LSO #: 74698Q)
vin@taplaw.ca
Tel: 416-203-2577

Lawyers for the Appellant

TO: **Norton Rose Fullbright Canada LLP**
3000-222 Bay St.
Toronto, ON M5K 1E7

Jennifer Stam (LSO #: 46735J)
jennifer.stam@nortonrosefullbright.com
Tel: 416-202-6707

Evan Cobb (LSO #: 55787N)
evan.cobb@nortonrosefullbright.com
Tel: 416-216-1929

Lawyers for the Respondent

AND
TO: **Service List**

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Court of Appeal File No.
Court File No. BK-24-00208718-OT31

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Tel: 416-203-2577

Lawyers for the Appellant