CITATION: Suitor v. Fuller Landau Group, 2025 ONSC 1686
COURT FILE NO.: BK-24-208718-00OT
DATE: 20250325

ONTARIO

SUPERIOR COURT OF JUSTICE [Commercial List]

B E T W E E N:

IN THE MATTER OF THE BANKRUPTCY OF
THOMAS DYLAN SUITOR
AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO

BEFORE: Justice Jana Steele

HEARD: February 25, 2025

COUNSEL: *James Renihan, Jennifer Stam & Lauren Archibald*, for The Fuller Landau Group Inc., in its capacity as Receiver of The Lion's Share Group Inc.

Tanya Pagliaroli & Vinayak Mishra, for Dylan Suitor

George Benchetrit, Secured Lender Representative Counsel

Mario Forte, Unsecured Lender Representative Counsel

Patrick Corney, for the National Bank of Canada

JUSTICE JANA STEELE

[1] The applicant, The Fuller Landau Group Inc. (the "LS Receiver"), in its capacity as receiver of the property of The Lion's Share Group Inc. ("Lion's Share"), asks the court to adjudge Thomas Dylan Suitor as Bankrupt and make a Bankruptcy Order in respect of Mr. Suitor's property pursuant to s. 43 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

[2] The application is opposed by the respondent debtor, Mr. Suitor. Mr. Suitor disputes that the applicant has satisfied the test for a bankruptcy order and asks that the application be dismissed.

[3] In the alternative, Mr. Suitor seeks a stay of the bankruptcy proceedings until his personal liability is determined in civil court.

[4] For the reasons set out below, the application is granted.

Background

[5] On April 3, 2024, the Court appointed The Fuller Landau Group Inc. as receiver of the property of Lion's Share.

[6] Lion's Share's operations consisted principally of the issuance of promissory notes to persons to generate funds to be advanced as loans by way of promissory notes to other individuals and companies.

[7] Claire Drage owns Lion's Share.

[8] Ms. Drage is also CEO of The Windrose Group Inc. ("Windrose").

[9] On April 8, 2024, Ms. Drage filed an assignment in bankruptcy.

[10] Mr. Suitor is one of the four principals of a significant Lion's Share borrower group consisting of Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc., and Joint Captain Real Estate Inc. (collectively, the "Balboa Borrowers"). Mr. Suitor has certain guarantee obligations in respect of the Balboa Borrowers. The Balboa Borrowers commenced CCAA proceedings on or about January 23, 2024.

[11] In addition to the guarantee obligations in respect of the Balboa Borrowers, Mr. Suitor signed promissory notes in his personal capacity in favour of Lion's Share on behalf of certain companies indebted to Lion's Share, including: 10 Norfolk St. Inc. ("Norfolk"), 388 Downie St. Inc. ("Downie"), Commercial Urkel Inc. ("Commercial Urkel"), Happy Town Housing Inc. ("Happy Town"), and Up-town Funk Inc. ("Up-town Funk") (collectively the "Non-Balboa Borrowers"). Mr. Suitor is the sole shareholder of each of these companies (other than Commercial Urkel, of which Mr. Suitor is a 50% shareholder). Each company owns one real property asset, except Happy Town, which owns two.

[12] By letter dated June 18, 2024 to Norfolk, Downie, Commercial Urkel, Happy Town, Up-town Funk, Mr. Suitor, and Aruba Butt, the LS Receiver made demand for payment under the promissory notes. The demand letter stated:

> [...]
>
> The Promissory Notes require the Borrowers to repay the funds advanced by the Lender by certain dates (the "Maturity Dates"). Dylan Suitor (the "Guarantor") is a signatory to each note as a guarantor of the Borrower's obligations. In addition, Aruba Butt (the "38 Duncan Guarantor", and together with the Guarantor, the "Guarantors") is a signatory to the 38 Duncan Note (as defined in Schedule A to this letter) as a guarantor of Commercial Urkel Inc.'s obligations under the 38 Duncan Note.

> Pursuant to each of the Promissory Notes, the Guarantor, on an unlimited basis, guaranteed the obligations of each Borrower to the Lender, including payment of all amounts owing under each Promissory Note. Pursuant to the 38 Duncan Note, the 38 Duncan Guarantor, on an unlimited basis, guaranteed the obligations of Commercial Urkel Inc. to the Lender, including payment of all amounts owing under the 38 Duncan Note. The Maturity Dates for all of the Promissory Notes have now passed and there is unpaid interest on all of the Promissory Notes, but neither the Borrowers nor the Guarantors have paid the amounts owing, as applicable. Please be advised that as further set out below, the Borrowers and the Guarantors are in default of their obligations under each of their respective Promissory Notes, including monetary defaults.
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> [...]
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> On behalf of the Lender, and without in any way prejudicing the Lender from demanding any other amount properly owing to it or taking such other steps and making such further demands as the Receiver may see fit, the Receiver hereby makes formal demand for payment of the following amounts from each Borrower, the Guarantor, and in the case of the amounts owing by Commercial Urkel Inc., the 38 Duncan Guarantor:
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> 1. 10 Norfolk St. Inc.: $281,342.35;
> 2. 388 Downie St. Inc.: $130,981.21;
> 3. Commercial Urkel Inc.: $273,398.32;
> 4. Happy Town Housing Inc.: $318,426.20; and
> 5. Up-town Funk Inc.: $263,801.75;
>
> [...]

[13] On August 16, 2024, the LS Receiver issued a second demand letter to Downie and Mr. Suitor demanding repayment of an amount of $1,403,393.17 from Downie and Mr. Suitor (as guarantor) further to an additional promissory note.

[14] On August 30, 2024, the LS Receiver filed an application for a bankruptcy order in respect of Mr. Suitor.

[15] On October 7, 2024, TDB Restructuring Limited was appointed as the interim receiver of all Mr. Suitor’s property, assets and undertakings.

Analysis

[16] The applicant asks the Court to adjudge Mr. Suitor as bankrupt and make a bankruptcy order. Under s. 43 of the *Bankruptcy and Insolvency Act* (the "BIA"):

> (1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that
>
> > (a) The debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and
> >
> > (b) The debtor has committed an act of bankruptcy within the six months preceding the filing of the application.
>
> [...]
>
> (6) At the hearing of the application, the court shall require proof of the facts alleged in the application and of the service of the application, and, if satisfied with the proof, may make a bankruptcy order.
>
> (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.
>
> [...]
>
> (9) If the debtor appears at the hearing of the application and denies the truth of the facts alleged in the application, the court may, instead of dismissing the application, stay all proceedings on the application on any terms that it may see fit to impose on the applicant as to costs or on the debtor to prevent alienation of the debtor's property and for any period of time that may be required for trial of the issue relating to the disputed facts

[17] The applicant must establish that Mr. Suitor owes it a debt of at least $1,000, and that Mr. Suitor has committed an act of bankruptcy within six months preceding the date of the application. For the purposes of s. 43(1)(b), the act of bankruptcy relied upon by the applicant is s. 42(1)(j) of the BIA: "if he ceases to meet his liabilities generally as they become due."

[18] The burden of proof in a bankruptcy application is the civil standard: *1719108 Ontario Inc. c.o.b. as Zoren Industries*, 2024 ONSC 909, at para. 40.

Does Mr. Suitor have debts owing to the applicant creditor of at least $1,000?

[19] The applicant claims Mr. Suitor owes $2,671,342 to Lion's Share under certain promissory notes with the Non-Balboa Borrowers.

[20] The application is founded based on Mr. Suitor's debts to the applicant. I am satisfied that Mr. Suitor has debts to the applicant of at least $1,000.

[21] The applicant says that Mr. Suitor's debt arises due to certain Promissory Notes he signed as a personal guarantor regarding loans to the Non-Balboa Borrowers. The issue of whether Mr. Suitor has debts owing to the applicant of at least $1,000 comes down to whether he is liable under the promissory notes he signed as guarantor in respect of the Non-Balboa Borrowers.

[22] The parties agree that the form of promissory note that was used for the liability in issue in this proceeding is substantially similar to the form of promissory note at tab 7 of the applicant's oral compendium. At tab 7 of the applicant's oral compendium is a sample promissory note (the "Norfolk Promissory Note"). Mr. Suitor signed eight promissory notes of the same form (different company, debt amount, date, etc.) (each a "Promissory Note").

[23] Despite having signed the Promissory Notes, Mr. Suitor denies that he is personally liable under these Promissory Notes.

[24] Mr. Suitor does not dispute that there is more than $1,000 owing by the companies under the Promissory Notes.

[25] Mr. Suitor submits that the applicant has not proven a debt of $1,000. I disagree.

[26] As noted in *Beach (Re)*, 2022 ONSC 6474, at para. 25, citing *Diewold v. Diewold* (1940), [1941] S.C.R. 35, "[a] debt is a sum payable in respect of a liquidated demand, recoverable by action." The Court states further, at para. 26, citing *Relectra Limited, Re* (1979), 30 C.B.R. (N.S.) 141, that "[s]o long as it is proved that the debtor is indebted to the applicant creditor for at least $1,000, it is unnecessary for the court to determine the exact amount owing to the applicant creditor."

[27] The issue of whether Mr. Suitor is personally liable under these promissory notes is a matter of contractual interpretation.

[28] A guarantee is contractual promise: *Patrick Street Holdings Limited v. 11368 NL Inc.*, 2024 NLCA 11, at para. 540. As noted in *Xiang v. Atlas Healthcare (Brampton) Ltd.*, 2021 ONSC 1225, at para. 43, "the extent of a guarantor's liability under a guarantee is a matter of contractual interpretation with respect to the construction of the guarantee at issue."

[29] The principles of contractual interpretation were recently summarized by the Court of Appeal in *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONCA 54, at para. 25:

a. Determine the intention of the parties in accordance with the language they have used in the written document, based upon the "cardinal presumption" that they have intended what they have said;

b. Read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;

c. Read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and

d. Read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

[30] The applicant submits that the plain language of the promissory notes illustrates an objective intention to make Mr. Suitor liable as a guarantor of the amounts due under the notes. I agree.

[31] In each Promissory Note, Mr. Suitor is described as both a "Borrower" and a "Guarantor". At the top of the Promissory Note the "Borrowers" are set out as follows:

> **Borrowers:** 10 Norfolk St. Inc. [or another company owned by Mr. Suitor, or in the case of Commercial Urkel, by Mr. Suitor and Ms. Butt] (the "Borrowers") with personal guarantor(s) Dylan Suitor (the "Borrowers")

[32] Mr. Suitor is defined as a "Borrower".

[33] The term "Guarantor" (capitalized), although used twice in the Promissory Note, is not a defined term. Guarantor (capitalized) appears on the signing lines and in section 8 of the Promissory Notes.

[34] Mr. Suitor also signed the Promissory Notes twice. Once for the company Borrower, and once in his personal capacity, which signing line is set out as follows:

_____

Dylan Suitor (Borrowers/Guarantors)

[35] The term Borrower(s) is used throughout the Promissory Note to set out the payment and other obligations of the Borrowers. Among other things, in the Norfolk Promissory Note the Borrowers promise to pay the Lenders the principal sum of $200,000. The term Guarantors[1] is used only at the bottom of the Promissory Notes, and in section 8,[2] which provides:

> All costs, expenses and expenditures including, and without limitation, legal costs, fees and disbursements on a **substantial indemnity basis**, incurred by the Lenders in enforcing this Note as a result of any default by the Borrowers, will be added to the principle then outstanding and will immediately be paid by the Borrowers. In the case of the Borrowers default and the acceleration of the amount due to the Lenders all amounts outstanding under this Note will bear interest at the rate of 3% higher than the Initial Interest Rate charged per annum from the date of demand until paid. This Note is secured by the Lenders [*sic*] right to register this Note on title on **all or any properties held by the Borrowers and Guarantors as security** (the 'Security'), if not paid in full by 6:00 pm on April 13, 2024. This includes, but is not limited to, the property located at [...].

[36] Section 8 of the Promissory Notes permits registration on title to any properties held by the Borrowers and Guarantors as security. As noted by the applicants, the ability to register the note on title to Mr. Suitor's personal properties supports their position that he has a payment obligation.

[37] Mr. Suitor argues that he was only a guarantor (and not personally liable) and that the Promissory Notes are void of any terms regarding the guarantee. Mr. Suitor points to *Times Square v. Shimizu*, 2001 BCCA 448, as an example of a case where the majority of the court refused to enforce a guarantee because there was no provision with substantive content defining the guarantee obligation. He submits the Promissory Notes similarly do not define the guarantee obligation. I disagree. In *Times Square* the guarantor was separately defined as the guarantor and there were no obligations on the guarantor. As noted above, in the instant case Mr. Suitor is also defined as a borrower.

[38] Mr. Suitor also points to *Waterloo-Oxford Co-Operative Inc. v. Hamm*, 2005 CanLII 2953 (Ont. Sup. Ct.). For similar reasons, *Waterloo-Oxford* is not applicable to the instant case. In *Waterloo-Oxford* the court was faced with a very broad guarantee that could be interpreted in either of two ways: one party said that it was a guarantee of all debts incurred as of the date of the guarantee; the other party said that it was a guarantee for any debts ever incurred or to be incurred at any time before, during or after the date of the letter. The court refused to enforce the letter guarantee because it lacked enough precision to be enforced.

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[1] The term "guarantor" issued in the definition of "Borrowers" as set out above.

[2] There was a prior form of promissory note that was used to evidence loans with Lion's Share. Section 8 is different in those prior promissory notes.

[39] Mr. Suitor submits that the guarantee provisions in the Promissory Notes are completely lacking. However, this again ignores the fact that Mr. Suitor is also defined as a borrower under the Promissory Notes.

[40] Mr. Suitor states that he cannot have the same obligations as the corporate borrower under the Promissory Notes. He argues that principal debtors and guarantors are distinct at law.

[41] The applicant submits that there is no law that suggests that a guarantor cannot have the same obligations as the principal debtor. This is, there is no reason why a lender and borrower and guarantor cannot sign an agreement where the guarantor is liable for all obligations of the borrower. I agree. This comes down to contractual interpretation and what was agreed among the parties. Mr. Suitor is the sole shareholder of these companies (other than Commercial Urkel), and he contractually agreed to be the personal guarantor in respect of all terms of the Promissory Notes.

[42] Mr. Suitor also relies on *Chand Morningside Plaza Inc. v. Healthy Lifestyle Medical Group Inc.*, 2024 ONSC 7285, which does not apply to the instant case. As noted by Koehnen J. in para. 81, the guarantors in *Chand* were accommodation sureties, the parents of the borrower. They had provided a guarantee "with the expectation of little or no remuneration for the purpose of accommodating others."[3] That is not the case here. Mr. Suitor guaranteed the loans to companies of which he holds, directly or indirectly, 100% of the shares (other than Commercial Urkel, of which he holds 50% of the shares).

[43] The Promissory Notes are each just over two pages long. They have drafting issues. Among other things, the term "Guarantor" is not defined. Mr. Suitor is defined with the corporate entity as the Borrowers. However, reading the document as a whole, and taking into consideration the fact that Mr. Suitor knew that he was a personal guarantor (as discussed further below), the commercially reasonable interpretation is that Mr. Suitor is the guarantor of the loan to the company in which he held all (or 50%) of the shares. The plain language of the document defines Mr. Suitor as Borrower and gives him the same obligations as the corporate borrower. Accordingly, in his capacity as guarantor Mr. Suitor agreed to the same terms as the borrower company. That is the contract that was reached among the parties.

[44] Mr. Suitor also argues that there was no consensus ad idem. As noted by the Court of Appeal in *UBS Securities Canada v. Sands Brothers Canada, Ltd.*, 2009 ONCA 328, 95 O.R. (3d) 93, at para. 47, in order for a contract to exist, there must be a meeting of minds, or consensus ad idem.

[45] Mr. Suitor says that he was not aware of his personal liability under the Promissory Notes. This is not credible given the record before me. Included in Ms. Drage's evidence is a link to a webinar, which I viewed. Ms. Drage stated in her affidavit that she and Mr. Suitor jointly participated in the webinar with some of the lenders to Mr. Suitor and his companies. During the

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[3] *Citadel Assurance v. Johns-Manville Canada Inc.*, [1983] 1 S.C.R. 513, at 521.

webinar Ms. Drage explained to all participants that "Dylan has provided a personal guarantee, not just of the property and the corporation that property's in, but his entire portfolio and assets." Mr. Suitor, who was also on screen at the webinar, including when Ms. Drage made the statement regarding Mr. Suitor's personal guarantee, did not disagree or say anything in response.

[46] Mr. Suitor's position, as set out at para. 93 of his factum, is that:

a. Mr. Suitor was not asked to provide financial net worth information to Drage or lenders.

b. None of the Windrose/Drage materials, communications, and/or advertisements include any reference to personal liability related to the LS-Investor Notes or the Promissory Notes. In fact, the Promissory Notes were consistently described as high risk and requiring a general securities agreement to create security.

c. The term "guarantee" was used inconsistently and ambiguously in the LS-Investor Notes. In early LS-Investor Notes, the right to register the LS-Investor Note on title to the corporate borrower's property was explained as "the personal guarantee", when it did not relate to Suitor. In other LS-Investor Notes, both Suitor and his corporation were described as "Borrowers/Guarantors".

d. The sole Windrose presentation to lenders for Promissory Note opportunities related to Suitor in evidence interchangeably states that Suitor and his corporation provided a "personal guarantee"; the security described in the presentation is exclusively in relation to the lender's right to register the note on the corporate borrower's property. The presentation also referenced that Drage was underwriting the Promissory Note, which created further ambiguity on who (if anyone) was personally liable.

[47] In my view, none of the above submissions take away from the fact that the parties signed the Promissory Notes setting out the terms of the agreement and monies were advanced further to such Promissory Notes. The fact that Mr. Suitor was not asked to provide financial net worth information does not impair the meaning of the contract. The marketing materials and presentations are not part of the contract and were general materials/presentations provided to potential lenders by Windrose/Drage. Finally, the prior promissory notes are just that — prior notes. The form of promissory note used by Lion's Share changed at some point. The ones in issue in this application are the revised form, several of which were signed by Mr. Suitor.

[48] As set out by the Court of Appeal in *UBS Securities Canada*, at para. 86, the test for consensus ad idem is an objective one. I agree with the applicant that because there is a written agreement and money was advanced further to the written agreement, there was consensus ad idem. In respect of each Promissory Note, there was a signed contract and action taken under the contract – of course there was of meeting of the minds.

Are there multiple creditors or special circumstances?

[49] Mr. Suitor submits that the applicants have not established that there are other creditors or special circumstances.

[50] As noted by the Court in *In the Matter of the Bankruptcies of Jasvir Johal Sulakhan Johal*, 2024 ONSC 7386 ("*Johal*"), at para. 43, citing *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 7, "the provisions of the *BIA* are intended to be utilized for the benefit of the creditors of a debtor as a class, not for the enforcement of an individual debt."

[51] Only where special circumstances exist will the court grant bankruptcy in a single creditor case: *Johal*, at para. 44. The categories of special circumstances were set out in *Valente v. Courey* (2004), 70 O.R. (3d) 31, at para. 8:

a. Where repeated demands for payment have been made within the six-month period;

b. Where the debt is significantly large and there is fraud or suspicious circumstances in the way the debtor has handled its assets which require that the processes of the BIA be set in motion; and

c. Prior to the filing of the petition, the debtor has admitted its inability to pay creditors generally without identifying the creditors.

[52] In *Johal*, Osborne J. referred to the expansion of the categories of special circumstances in *Sergio Grillone (Re)*, 2023 ONSC 5710. Osborne J. notes at para. 50:

> In that case, Kimmel J. observed that, in the particular circumstances of that matter, an order under s. 43(1) of the *BIA* was necessary to achieve an orderly distribution of the estate of the bankrupt to creditors, and to create a single forum in which the multiplicity of claims involving the debtor could be determined while ensuring that no creditor obtains an unfair advantage over the others in the interim. In that case, the Court found that such was a special circumstance that supported the granting of a bankruptcy order.

[53] In *Johal* Osborne J. determined that there were no special circumstances justifying the bankruptcy application. The bankruptcy applications were stayed, and the creditor was directed to pursue its claims in CCAA proceedings that were ongoing in respect of the companies owned by the debtors. At para. 51, Osborne J. noted that he was applying the same rationale expressed by Kimmel J. in *Grillone*, namely creating a single forum for the many claims.

[54] Mr. Suitor argues that the applicants have not established that he has other debts, nor are there special circumstances that would warrant a bankruptcy order with a single creditor.

[55] The LS Receiver argues that there are other debts, pointing to (i) the Statement of Claim by Nicole Kelly against Upgrade Housing Inc. and Mr. Suitor, and the Statement of Defence filed (the "Kelly Claim"), (ii) the demand letter to Mr. Suitor, Aruba Butt, and Commercial Urkel from counsel to Dennis and Jessica Domenichini (the "Domenichini Claim"); and (iii) the Balboa creditors under the CCAA proceedings.

[56] The Kelly Claim is a claim for payment of $75,000 (plus interest) in accordance with a promissory note. The Domenichini Claim is for $630,642.38 (plus further interest) in respect of a mortgage that has matured and remains in default since November 12, 2023. There is evidence on the record that there are other creditors. Mr. Suitor has not provided anything to refute that there are other creditors, other than to assert that the applicant's evidence is insufficient.

[57] Mr. Suitor states that the applicant has not led "sound and convincing evidence" of these debts as required. He points to *Barkhouse (Re)*, 2018 NSSC 101 and *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 6. *Barkhouse* deals with proof of the debts owing to the applicant, not other third-party creditors. *Levesque*, at para. 6, in considering the issue of whether the debtor had ceased to meet his liabilities generally as they become due, stated:

> The application judge correctly set out the nature of bankruptcy proceedings and the standard of proof, at para. 4 of her reasons:
>
> > It is well established that proceedings under the *BIA* are quasi-criminal in nature. The act(s) of bankruptcy and all allegations set out in the application must be proven on sufficient evidence: *Re Holmes* (1975), 9 O.R. (2d) 240 (S.C.); *Re Valente* (2004), 70 O.R. (3d) 31 (C.A.).

[58] At para. 4 of *Levesque* the Court of Appeal set out the essential elements that the petitioning creditor must establish to obtain a bankruptcy order, which do not include debts of other creditors. In fact, s. 43(1) of the BIA contemplates that "one or more creditors" may file an application for a bankruptcy.

[59] Based on the record before me, I am satisfied that Mr. Suitor has other creditors. In any event, I agree with the LS Receiver that the special circumstances noted in *Grillone* apply here. Mr. Suitor's plan is to sell the properties that he holds through the various companies. As discussed above, there are numerous creditors potentially involved with this estate. A bankruptcy trustee will be able to deal with Mr. Suitor's assets. Similar to *Grillone*, an order under s. 43(1) of the BIA will allow for the orderly distribution of Mr. Suitor's assets to his creditors and will create a single forum in which the multiple claims involving Mr. Suitor can be determined.

Has Mr. Suitor ceased to meet his liabilities generally as they become due?

[60] The second part of the test that the applicants must satisfy is that Mr. Suitor must have committed an act of bankruptcy. As noted above, the applicants rely on s. 42(1)(j) of the BIA: "if he ceases to meet his liabilities generally as they become due."

[61] The LS Receiver made demand on the non-Balboa promissory notes within six months of the commencement of the application. Payment on the notes has not been made.

[62] Mr. Suitor points to his illiquid assets that he holds personally or directly or indirectly through one of the Non-Balboa Borrowers.

[63] As the Quebec Superior Court clarified in *Immeubles Zenda Ltée/Zenda Realties Ltd. et A. Schuster Holdings Inc.*, 2020 QCCS 3450, at paras. 15-16, the lack of liquidity does not assist a creditor who is unable to pay his or her debts as they become due:

> [15] The Debtors argue that the bankruptcy applications should be dismissed because the value of their assets – essentially their investments in commercial properties – is greater than the amount of their debts. However, this is an irrelevant consideration. The issue is not whether the Debtors have sufficient assets to pay their debts, but whether they have ceased to meet their liabilities generally as they become due.
>
> [16] Zenda and Levy do not deny that they have ceased meeting their liabilities generally as they become due. They do not deny that they are presently unable to pay their creditors. Their argument is that they need time to liquidate their real estate holdings in order to pay their creditors.

[64] Mr. Suitor's case is similar to that in *Immeubles Zenda*. The fact that he has illiquid real estate assets through the companies he holds directly or indirectly does not assist in meeting the test of whether he has ceased to meet his liabilities generally as they become due. It is not a question of whether Mr. Suitor potentially could pay if he sold off his illiquid assets; it is whether he has failed to meet his liabilities as they become due.

[65] I am satisfied that Mr. Suitor has committed an act of bankruptcy.

Should the Court exercise its discretion under s. 43(1) of the BIA?

[66] The Court can exercise discretion under s. 43(7) of the BIA to not grant the bankruptcy order if Mr. Suitor proves that he can pay his debts:

> (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.

[67] Mr. Suitor has not proven that he can pay his debts.

[68] In *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318, 468 D.L.R. (4th) 253, the court stated, at para. 9, that the power in s. 43(7) of the BIA is discretionary.

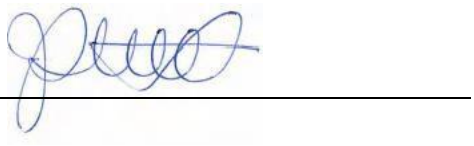
[69] Collier J., of the Quebec Superior Court in *Immeubles Zenda*, at para. 31, citing *Goulakos (Syndic de)*, 2016 QCCS 84, stated:

> 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."

[70] In Mr. Suitor's supplementary affidavit, he provides estimated values of the various properties he owns directly (or through the companies) and details of the mortgages on the properties. He sets out a chart where he estimates that he would have approximately $1.48 million remaining after paying the secured lenders, the debt claimed by the applicants as set out in their demand letters, and commission on the real property sales.

[71] While there are appraisals from within the last year for certain of the properties, in some cases the appraisals date back to 2022 or 2023. Of greater concern, however, is the lack of other financial information regarding the companies. Because the bulk of the real properties are owned by companies which Mr. Suitor either directly or indirectly owns, the Court would need the full financial picture of these companies to understand the value of Mr. Suitor's shares in the companies. Other than the specific property information, Mr. Suitor has not disclosed the other assets and liabilities of the companies. With regard to the properties Mr. Suitor owns personally, even assuming the March and April 2024 valuations continue to represent the value of the properties, after payment of the mortgages on the properties, there would not be sufficient net proceeds to satisfy the applicant's debt.

[72] Accordingly, I am not satisfied that the court should exercise its discretion under s. 43(7) of the *BIA*.



J. Steele J.

Released: March 25, 2025

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DATE: 20250325

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR
AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO

REASONS FOR DECISION

Justice Steele

Released: March 25, 2025