

THE LEGAL EYE: TECHNICAL UPDATE

CAIRP

May 8, 2025

OVERVIEW

- ACTS OF BANKRUPTCY (Single Debt/Creditor):
The Bankruptcy of Galton Corporation, 2025 MBKB 13
- RVOS:
British Columbia v Peakhill Capital Inc., 2024 BCCA 246
- PERSONAL PROPERTY CLAIMS PROCESS:
A Manitoba example
- REGISTRATIONS BY PROPOSAL TRUSTEE IN MB LTO:
A Manitoba example
- FRAUDULENT CONVEYANCES AND PREFERENCES:
Caplan and Company Ltd. v 6136380 Manitoba Ltd. et al. MBKB File No. CI23-01-40291
- DEBTS SURVIVING BANKRUPTCY:
Stewart v Auch, 2025 MBKB 26

THE BANKRUPTCY OF GALTON CORPORATION, 2025 MBKB 13

Facts:

- Sensible Capital Corp. applied for a bankruptcy order in respect of Galton Corporation
- Applicant alleged the Debtor is indebted to it in the amount of \$500,000 under a judgment, and ceased to meet its liabilities as they became due
- Debtor contested the application

THE BANKRUPTCY OF GALTON CORPORATION, 2025 MBKB 13

Facts (Cnt'd):

- Prior to making the application, Applicant attempted to enforce its judgment without success
- Debtor argued that it had ongoing litigation in Manitoba and Ontario involving its wholly owned subsidiary, and if the litigation was resolved in subsidiaries favour, it would have the funds required to repay the Applicant and other creditors
- Debtor argued that a bankruptcy order would impair its and its subsidiary's ability to obtain funding to prosecute the litigation
- Debtor also alleged that the application had been brought for an improper purpose

THE BANKRUPTCY OF GALTON CORPORATION, 2025 MBKB 13

“Special Circumstances”

- In this case, a single creditor made the application based on one judgment debt
- Courts in other jurisdictions have found that there must be “special circumstances” for a single debt to constitute an act of bankruptcy (ceasing to meet liabilities generally as they become due)
- Special circumstances have included:
 - *Where repeated demands have been made within the six-month period*
 - *The debt is significantly large and there is fraud or suspicious circumstances in the way the debtor has handled its assets*
 - *Debtor has admitted inability to pay creditors generally, without identifying the creditors*

THE BANKRUPTCY OF GALTON CORPORATION, 2025

MBKB 13

Special Circumstances Not Required in Manitoba

- However, Justice Bock confirmed that in Manitoba, special circumstances are not required given Justice Kroft's decision in *Re Smith*, (1992) 80 Man. R. (2d) 216) in which he stated:

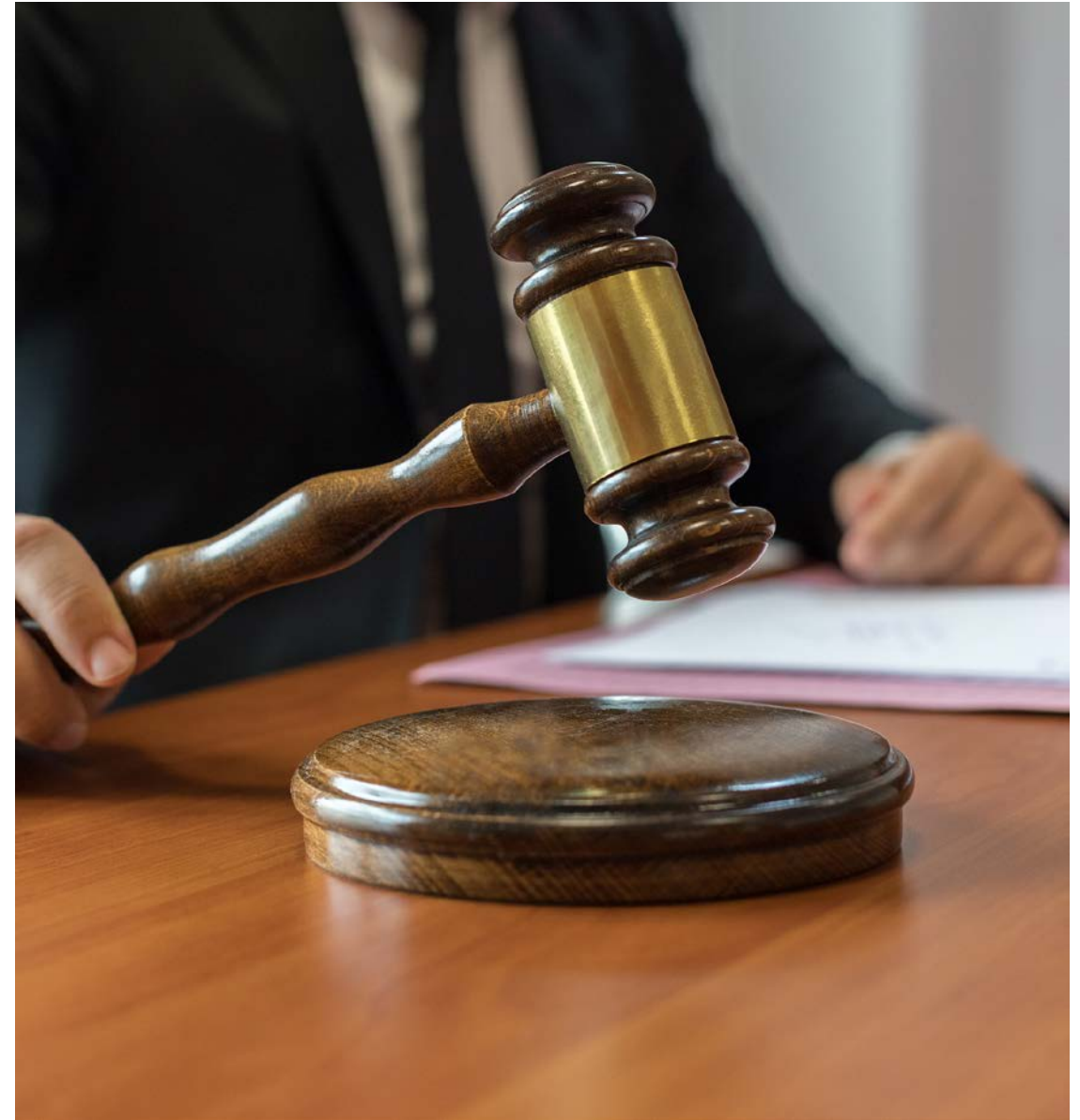
I am satisfied from my reading of the Bankruptcy Act, supra, and the authorities to which I have referred that there is nothing in law to preclude a single creditor from obtaining a receiving order. As with every application, however, the onus is on the petitioner to strictly prove the allegations contained in its petition which, in a case like this, requires that it prove that the debtor, within the six months preceding the date of the petition, ceased to meet his liabilities generally as they became due.

In exercising its discretion, a court must always consider all of the circumstances. Accordingly, the question is not so much whether the circumstances are "special", but whether, in light of all of the evidence, it can be said that the petitioner has discharged its onus.

The Bankruptcy of Galton Corporation, 2025 MBKB 13

Decision:

- Justice Bock found the requirements for a bankruptcy order were met, and confirmed that:
 - *Failure to pay even a single creditor can constitute an act of bankruptcy*
 - *In Manitoba, a single creditor need not establish the existence of a “special circumstance”*
 - *The judgment obtained by the Applicant against the Debtor constituted an ongoing demand for payment, thus satisfying the requirement that demand for payment has been made within 6 months of the application*
- Justice Bock also found there was no improper purpose for the Application and adjudged the Debtor bankrupt



British Columbia v Peakhill Capital Inc., 2024 BCCA 246

Facts:

- B.C. appealed lower Court's decision to grant a RVO solely for the purpose of achieving a tax benefit in the context of receivership proceedings.
- Tax benefit was to save the purchaser from paying \$3.5 M for property transfer tax under B.C. provincial legislation. If the purchaser was required to pay the tax, the purchase price would be reduced by \$3.5 M

British Columbia v Peakhill Capital Inc., 2024 BCCA 246

- **B.C argued on appeal that:**

- 1) Section 243 of the BIA does not confer jurisdiction upon the Court to grant an RVO
- 2) If the Court did have jurisdiction, that jurisdiction should not have been exercised in the context of this case

British Columbia v Peakhill Capital Inc., 2024 BCCA 246

Issue 1: Jurisdiction

- BCCA confirmed that the BCSC has jurisdiction under section 243(1)(c) to grant an RVO in the context of receivership proceedings

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;*
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or*
- (c) take any other action that the court considers advisable.*

British Columbia v Peakhill Capital Inc., 2024 BCCA 246

Issue 1: Jurisdiction (cnt'd)

BCCA stated:

“It follows, in my view, that there is a clear jurisdiction to authorize an RVO found in s. 243, provided that the vesting order in question is incidental and ancillary to the receiver's power to liquidate the assets by sale. The shares of the insolvent company are assets within the receivership. The receiver has taken possession and control of them. They are capable of being sold or liquidated just as underlying assets held by the company can be sold or liquidated. Just as the company's underlying assets can be prepared for the sale in a manner intended to maximize their fair market value (as in an AVO), so too can arrangements be made to enhance the value of the shares by transferring the liabilities that serve to depress the value of those shares to another entity. I can see no reason to conclude that an RVO is not incidental or ancillary to a receiver's power to sell. An RVO advances the same goals as an AVO — albeit by employing a different transaction structure.”



British Columbia v Peakhill Capital Inc., 2024 BCCA 246

Issue 2: Exercise of Jurisdiction

- BCCA found that structuring a transaction to avoid the transfer of title and thereby the transfer tax is a legitimate commercial practice outside of the insolvency context, and stated:

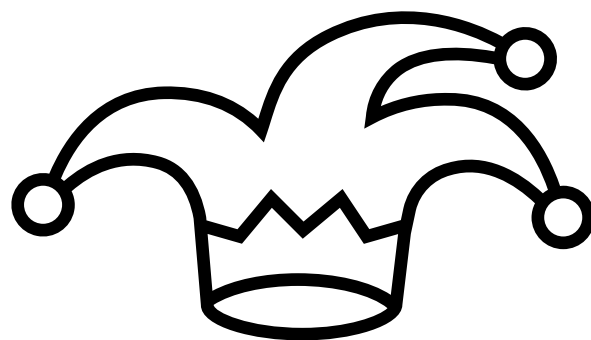
“I can see no reason why that which is legitimate and proper outside the insolvency context should be viewed differently within it.”

British Columbia v Peakhill Capital Inc., 2024 BCCA 246

Conclusion

- B.C.'s appeal was dismissed
- B.C. sought leave to appeal the BCCA's decision to the SCC. Leave was refused on May 1, 2025

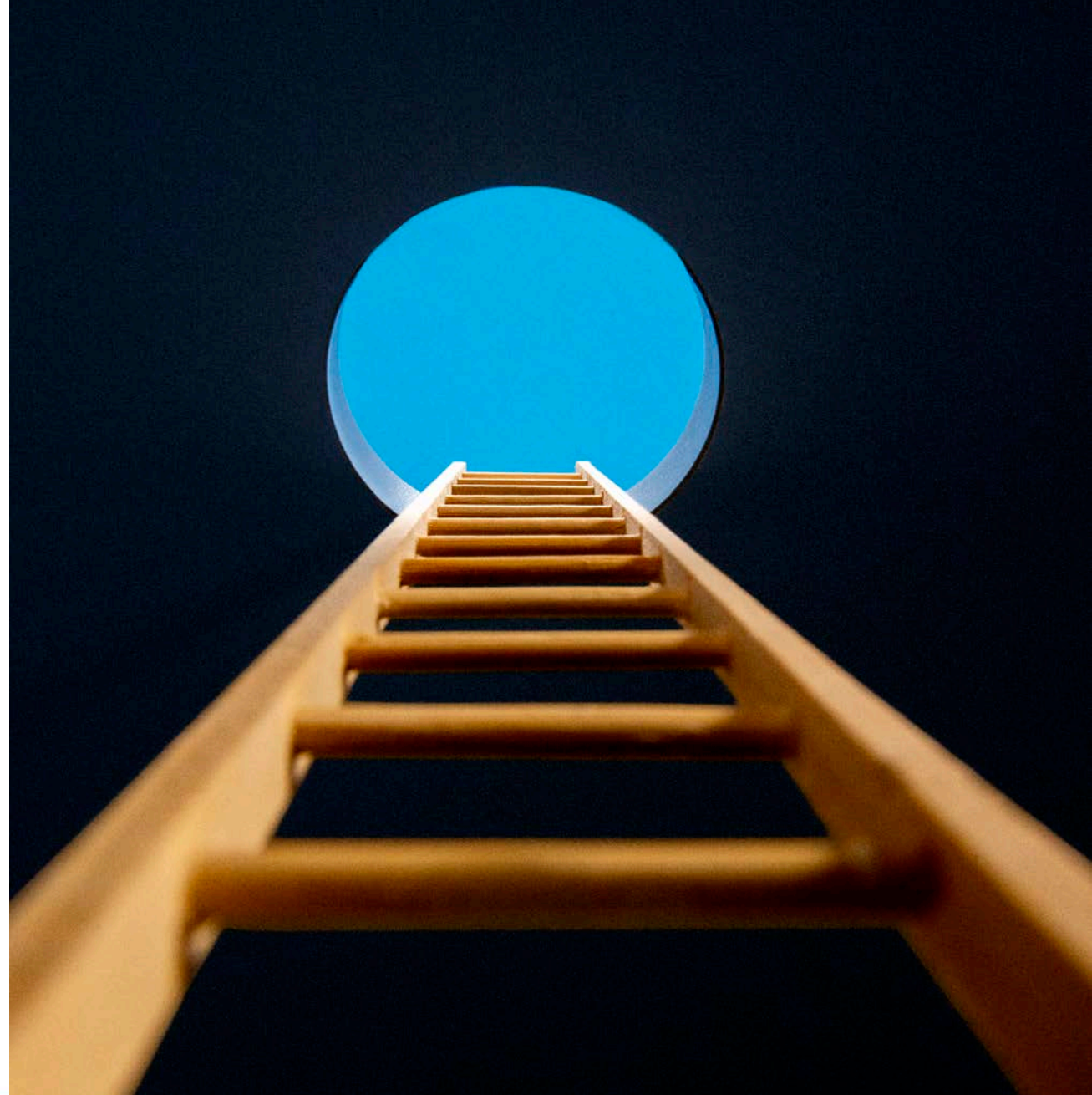
Bankruptcy and Insolvency Dad Joke



Why did the bankrupt company bring a ladder to the insolvency hearing?

BANKRUPTCY AND INSOLVENCY DAD JOKE

Because they heard they were
going *under* and thought they
might need a way *up*!



Claims Process for Personal Property

Facts:

- MBKB appointed Receiver over assets, undertakings and property (the “Property”) of a debtor, comprising located at, or relating to the development of a project (the “Project”) involving the development of a housing complex
- Shortly after its appointment, Receiver took inventory of various tools, materials and equipment (the “Personal Property”) that had been abandoned onsite at the Project premises after work on the Project had ceased
- Former contractor and certain subcontractors came forward and claimed ownership of the Personal Property. The Receiver requested that the claimants submit proofs of claim proving ownership of the Personal Property

Claims Process for Personal Property

Facts (cnt'd)

- Notwithstanding the Receiver's efforts, several claims for ownership remained unresolved
- On December 2, 2024, the Receiver was seeking the Court's approval to implement a SISP in respect of the Project
- Personal Property could not longer be stored on Project premises, and they either needed to be claimed, or sold concurrent with or prior to any sale under the SISP



Claims Process for Personal Property

Facts (cnt'd)

- Receiver recommended that the Court approve a claims process to deal with the remaining Personal Property at the Project premises:
 - Any claims to the Personal Property needed to be proven within 30 days of pronouncement of the Order approving the claims process
 - Should any claimant dispute the Receiver's determination as to whether ownership of claimed Personal Property was proven, they would have until a set deadline to file a motion together with supporting evidence
 - Any claims to Personal Property not proven in accordance with the claims process would be deemed Property under the Receivership Order, and the Receiver would be entitled to deal with it to maximize the value in the SISP

Claims Process for Personal Property

Receiver's Argument

- In support of the proposed claims process, Receiver cited *Re Nishiyama* (British Columbia Supreme Court File No. S-1813807)
- Receiver argued that the claims process was just and reasonable because the Personal Property had either been abandoned or would be considered abandoned following the claims deadline. Factors indicating abandonment include:
 - *Passage of time*
 - *Nature of transaction*
 - *Owner's conduct*

Claims Process for Personal Property

Conclusion:

- Court granted Order approving of the Personal Property claims process

I Need an Adjustment

- Chiropractor owed approximately \$212,000 to CRA
- Chiropractor owned house in joint tenancy with wife with approximately \$160,000 equity
- CRA concerned chiropractor may sell, re-mortgage or otherwise dispose of house and requested the proposal trustee register a caveat on title.



I Need an Adjustment

In a previous proposal for, as coincidence would have it, another chiropractor we were advised by the Land Titles Office that a proposal Trustee could not file a caveat on title to a debtor's real property due to the fact that it was Div. I proposal, rather than a bankruptcy or Div. II proposal.

I Need an Adjustment

The LTO took the position that there is no provision in the BIA that allowed for filing a caveat in Div. I proposal.

BIA s. 30(1)(g) allows a Trustee with permission of the inspectors to give security on any property of the bankrupt.

BIA s. 66.29(1) states in part as follows: *“If a consumer proposal is approved or deemed approved by the court, the administrator may, if the administrator believes that the debtor owns land, cause the certificate to be filed.”*



I Need an Adjustment

Proposal trustee took the position that there was a clause in the Div. I proposal allowing for filing the caveat, the chiropractor specifically consented in the proposal to have the caveat filed on his residence and all provisions of the BIA, except for Division II proposals apply equally in Div I proposal.“

I Need an Adjustment

Unfortunately, LTO would not accept the proposal trustee's position. Fortunately, it wasn't fatal in that case because there weren't any creditors insisting on the caveat.

I Need an Adjustment

- In the current case of the chiropractor's proposal, CRA insisted a caveat be filed, or the proposal would not be accepted by CRA.
- Counsel for the proposal trustee called the LTO, and was advised that a caveat could be filed on the property provided it was supported by an equitable mortgage
- Counsel drafted an agreement for the chiropractor to sign giving an equitable mortgage to the proposal trustee for the then balance of his proposal payments, which was filed in the LTO along with the caveat and successfully registered on title.

I Need an Adjustment

AGREEMENT

FOR VALUE RECEIVED, I, _____, promise to pay to CAPLAN and COMPANY LTD. the sum of one hundred and sixty two thousand, five hundred dollars **(\$162,500)**, repayable as follows: \$3,000 per month for 54 months commencing December 2024 plus a final payment of \$3,500 in the final month.

FOR VALUE RECEIVED, I hereby acknowledge that the within shall form an equitable charge and interest in the lands commonly known as _____, in Winnipeg, Manitoba and legally described as:

(the "Property").

I hereby covenant and agree that CAPLAN and COMPANY LTD. shall register a Caveat in its favour against my interest in the Property, which will be registered as an equitable mortgage and charge in favour of CAPLAN and COMPANY LTD.

DATED at the City of Winnipeg, Manitoba, effective the _____ day of _____, 20____

Witness

Caplan and Company Ltd. v 6136380 Manitoba Ltd. et al. MBKB File No. CI23-01-40291

- Caplan and Company Ltd. is the LIT of the Estate of Thomas Harold Standing, and filed a Statement of Claim against 6136380 Manitoba Ltd. ("613 Ltd."), Thomas Harold Standing ("Tom") and Bobbi-Lynn Standing ("Bobbi-Lynn") claiming:
 - a. A declaration that the issuance of shares by 613 Ltd. to Bobbi-Lynn (the bankrupt's wife) and the transfer of certain personal property was made with the intent to defeat, hinder, delay and/or defraud Tom's creditors within the meaning of s. 2 of *The Fraudulent Conveyances Act* and thus are void
 - b. A declaration that the said issuance and transfer constitute a preference and/or a transfer at undervalue of Tom's property under ss. 2, 95 and 96 of the BIA(ctn'd...)

Caplan and Company Ltd. v 6136380 Manitoba Ltd. et al. MBKB File No. CI23-01-40291

(...cnt'd)

- c. A declaration that the Defendants conspired to defraud Tom's creditors by way of the said issuance and transfer and the events which followed; and
- d. Judgment for the value of the said shares and the underlying assets owned by 613 Ltd. at the time of the said issuance and transfer;

***Caplan and Company Ltd. v
6136380 Manitoba Ltd. et al. MBKB
File No. CI23-01-40291***

- Tom made an assignment in bankruptcy under the BIA on July 29, 2021
- Tom incorporated 613 Ltd. in 2010, remained its sole director and controlling mind, and was its beneficial owner, although no shares were issued until March 29, 2021
- Four months before his bankruptcy, Tom caused 613 Ltd. to issue shares to Bobbi-Lynn
- In 2010, 613 acquired a lease to a cottage property from Tom's parents and later became the owner
- Tom and/or 613 demolished the original cottage and built a new one, which Tom and Bobbi-Lynn used for personal recreation, along with related equipment purchased through 613

Caplan and Company Ltd. v 6136380 Manitoba Ltd. et al. MBKB File No. CI23-01-40291

- In April or May 2021, Tom and/or Bobbi-Lynn sold the cottage and related equipment and assigned the lease to a third party for \$1.8 million
- Bobbi-Lynn retained the proceeds for personal use
- The Trustee claims these transfers were made to defraud, hinder, or delay creditors, asserting Tom remained the true beneficial owner of the cottage and equipment
- The Trustee also argues that the share transfer and property sale lacked adequate or any consideration from Bobbi-Lynn and were executed while Tom was insolvent
- These actions are alleged to be fraudulent preferences or undervalued transfers under the BIA

Caplan and Company Ltd. v 6136380 Manitoba Ltd. et al. MBKB File No. CI23-01-40291

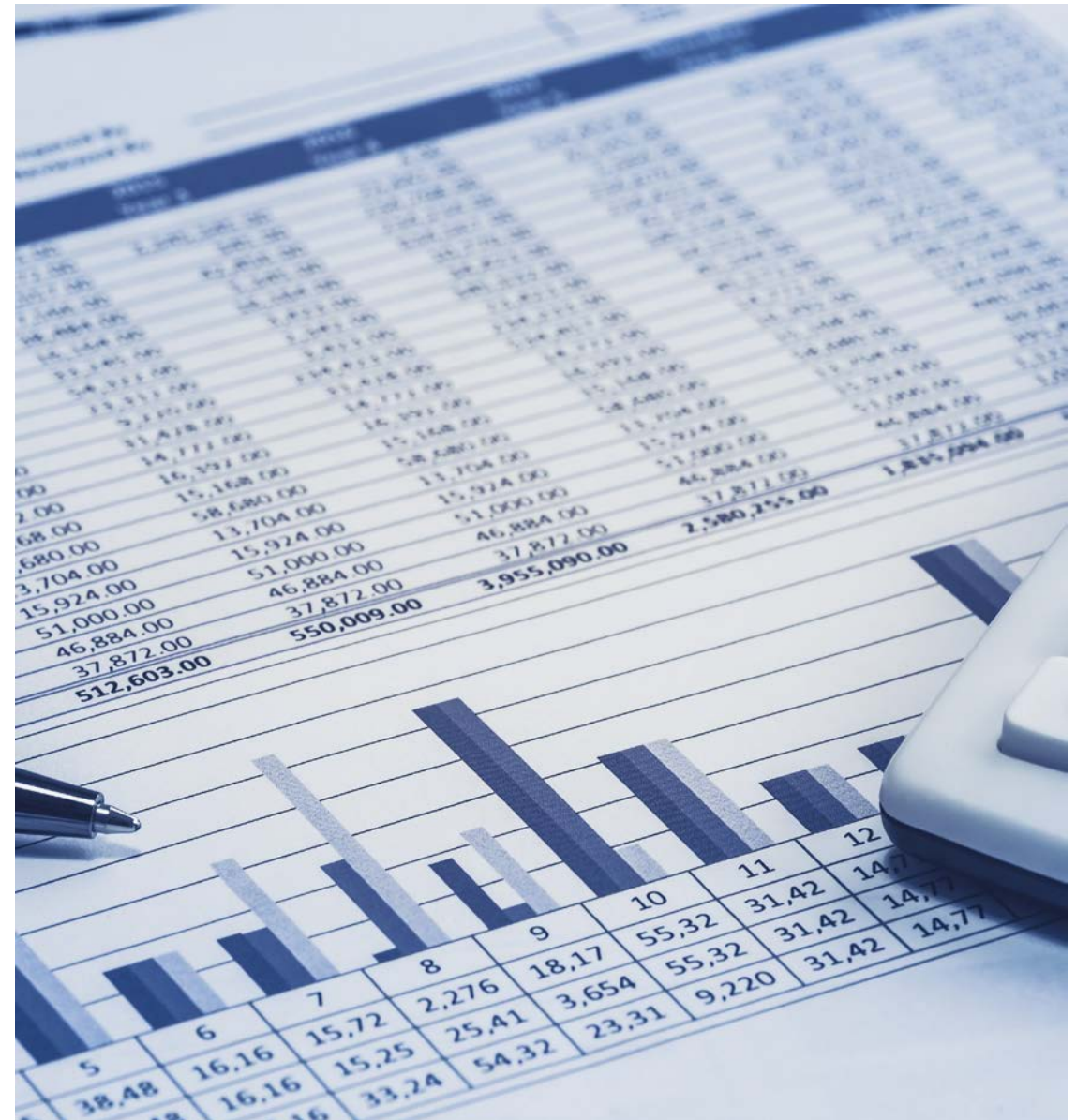
- The Trustee further claims Tom and Bobbi-Lynn conspired to defeat creditor claims through this scheme
- Tom and Bobbi-Lynn assert that 613 Ltd. was merely a bare trustee for Bobbi-Lynn. However, the Trustee views the bare trust arrangement as a post-fact fabrication intended to shield assets
- The Trustee urged the court to consider all circumstances to determine the legitimacy of the arrangement, referencing case law to support this evaluation

Caplan and Company Ltd. v 6136380 Manitoba Ltd. et al. MBKB File No. CI23-01-40291

- At trial, Tom insisted the cottage was always owned by his company as Bare Trustee for his wife. This evidence was challenged by counsel for the Trustee
- \$1.8 million in cottage sale proceeds: (i) a portion went to the credit union which loaned money to the Standings, which they claimed in trial was a mortgage on the cottage; (ii) the majority of the balance of the net sale proceeds after payment of the loan to the credit union, (approx. \$716,500) was invested by Tom into securities in a Q-Trade account and (iii) approx. \$150,000 was paid to Tom and Bobbi Lynn

Caplan and Company Ltd. v 6136380 Manitoba Ltd. et al. MBKB File No. CI23-01-40291

- Q-Trade account had a value of approximately \$1,300,000 on November 30, 2024, and the value of that same account as of March 31, 2025, was approximately \$650,000. There were no large fund transfers out of the account to Tom or Bobbi-Lynn during that period.
- The trustee has an attaching order for the Q-Trade account, and statements are required to be sent to the Trustee every month. The Trustee also has an attaching order on the Standings' personal residence. The attaching order was received on an application by counsel subsequent to the sale of the cottage.



Caplan and Company Ltd. v 6136380 Manitoba Ltd. et al. MBKB File No. CI23-01-40291

- Justice Bowman reserved his decision on trial on April 25, 2025.



STEWART V. AUCH, 2025 MBKB 26

- Application under Sections 178(1)(d) & (e) and 69.4 of the BIA
- In May 2022, Auch was found personally liable for a \$600,000 loan, plus interest, that Heather Stewart advanced for a business transaction in 2015 to a corporation (6551450 Manitoba Ltd.) of which Ms. Auch's holding company was the majority shareholder
- Within days, Ms. Auch had the money disbursed for uses different than were represented to Ms. Stewart

STEWART V. AUCH, 2025 MBKB 26

- The trial judge described Ms. Auch's actions as "*akin to fraud*"
- After exhausting all appeals, Ms. Auch remained liable for the judgment. Attempts by Ms. Stewart to collect the judgment have proven fruitless. Finally, in August 2024, Ms. Auch made an assignment into bankruptcy under the BIA, and proceedings against her were stayed pursuant to s. 69, including Ms. Stewart's attempt to collect the outstanding judgment (approximately \$1.155 million)

STEWART V. AUCH, 2025 MBKB 26

- Ms. Stewart filed an application under s. 69.4 of the BIA 4 to lift the stay of proceedings, and s.178(1)(d) or (e) to have her debt survive Ms. Auch's anticipated discharge from bankruptcy

STEWART V. AUCH, 2025 MBKB 26

- Heather Anne Stewart owned undeveloped land in Rosser, Manitoba, containing an estimated 25 million tons of limestone
- In October 2012, Stewart entered into a purchase agreement with 655
- The agreement was conditional upon 655 obtaining RM approval to develop the land into a quarry
- 655 failed to obtain RM approval, despite receiving an extension for the approval application from the RM
- To finance the deal, 655 formed a joint venture with Peguis First Nation and Chief Peguis Investment Corporation (CPIC), designating a new company (622) as purchaser

STEWART V. AUCH, 2025 MBKB 26

- The original agreement with 655 was terminated in November 2013, and a new purchase agreement was signed with 622, again subject to RM approval
- Peguis provided \$3.7 million toward the purchase, secured by a first charge mortgage, but the agreement was terminated in March 2015 due to the continued failure to secure RM approval
- Stewart repaid Peguis \$3.885 million in May 2015, and the mortgage was discharged. She later sold the land to a third party

STEWART V. AUCH, 2025 MBKB 26

- Separately, in December 2013, Mr. Campbell requested a \$600,000 loan from Stewart to fund efforts to secure RM approval, which included costly studies and political efforts
- The loan was meant solely for RM approval-related expenses, with 655 agreeing to repay it by April 1, 2015, at 10% interest
- On December 23, 2013, the loan funds were misused, as significant portions were redirected by Susan Auch to pay personal debts and paid to her holding company, rather than being used for RM approval efforts



STEWART V. AUCH, 2025 **MBKB 26**

- The direct effect of the stay of proceedings provisions is to prevent one creditor from gaining an advantage over another creditor
- The BIA establishes mechanisms for this by requiring a collective proceeding; creditors cannot enforce their provable claims individually.

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STEWART V. AUCH, 2025 MBKB 26

However, s. 69.4 and s. 178(1)(e) are two of several limited exceptions, which, if the prerequisites are proven, would allow a creditor to proceed against the bankrupt, albeit in different ways consistent with the particular provision

STEWART V. AUCH, 2025 MBKB 26

- In this case, Justice Martin found that often, proof that “false pretences” or a “fraudulent misrepresentation” were made by the debtor is relatively straightforward; other times, it is not
- The core of either phrase is a deceitful comment(s) or conduct conveying deceit

STEWART V. AUCH, 2025 MBKB 26

To rely on s. 178(1)(e), the claiming creditor must establish three elements (para. 54):

1. False pretences or fraudulent misrepresentation
2. A passing of property or provision of services.
3. A link between the debt or liability and the fraud

STEWART V. AUCH, 2025 MBKB 26

The wording of s. 178(1)(e) does not import a direct victim requirement. Justice Martin stated that the task at hand is to properly characterize whether the original case judgment (the \$600,000 debt and interest) falls within the ambit of s. 178(1)(e), such that it is an exception to Ms. Auch's ultimate discharge from bankruptcy

In this case, the only live issue was the first branch of the test, whether Ms. Auch "made" a false representation to Ms. Stewart

STEWART V. AUCH, 2025 MBKB 26

Conclusion

Ms. Stewart's application was granted under s. 178(1)(e) of the BIA. The debt was properly characterized as a result of a fraudulent misrepresentation participated in, or "made" by Ms. Auch. An order of discharge for Ms. Auch would not relieve her of the \$600,000 debt and interest owed to Ms. Stewart

Q&A

THANK YOU



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