The Legal Eye: Technical Update

May 7, 2026

Receivership Stay of Proceedings on Appeal

***Manulife Bank of Canada v 6393927 Manitoba Ltd.*, 2026 MBCA 18**

Manulife Bank of Canada v 6393927 Manitoba Ltd., 2026 MBCA 18

Overview:

- Motion brought by Manulife to either strike the Notice of Appeal filed in the matter or to cancel the statutory stay of proceedings regarding its Receivership Order.

Manulife Bank of Canada v 6393927 Manitoba Ltd., 2026 MBCA 18 (*cont.)*

Procedural History:

- In August 2025 Manulife obtained a Receivership Order appointing a receiver and manager of certain assets owned by the numbered company ("**639**"), primarily the building and land located at 635 Mulvey Avenue in Winnipeg (the "**Property**").
- Two days later, one of the two shareholders of 639, Mr. Eros, filed a Notice of Appeal from the Receivership Order, purportedly on behalf of 639.
- Under Section 195 of the BIA, an Order is automatically stayed when an appeal therefrom is filed unless the stay has been varied or cancelled.
- Problematic for a few reasons:
  1) Under s. 193 of the BIA leave for appeal required;
  2) The litigation was being advanced by a former director of 639 who did not have the lawful authority to represent 639.

Manulife Bank of Canada v 6393927 Manitoba Ltd., 2026 MBCA 18 (*cont.)*

Manulife's Motion:

- Manulife then filed a motion for:
  - An Order striking out the Notice of Appeal due to 639's failure to apply for leave to appeal under s. 193(e) of the BIA and/or because it was filed by Mr. Eros without the consent of 639 or lawful authority to do so;
  - An Order that 639 does not have standing to appear in the Court of Appeal unless it is represented by qualified legal counsel; and/or
  - An Order cancelling the automatic stay of Receivership Order under s. 195 of the BIA upon filing the Notice of Appeal.

Manulife Bank of Canada v 6393927 Manitoba Ltd., 2026 MBCA 18 (*cont.)*

Court's Decision:

Representation for 639

- Policy dictates that, absent exceptional circumstances, a corporation must be represented by qualified legal counsel in the Court of Appeal.

Striking the Appeal

- Not satisfied that it was appropriate to determine either the leave issues or the validity of the appeal at that time. Neither the other shareholder nor 639's interests had been represented.
- Further, a chambers judge does not have jurisdiction to strike the Appeal.

Manulife Bank of Canada v 6393927 Manitoba Ltd., 2026 MBCA 18 (*cont.)*

Court's Decision:

Cancellation of the Stay of Proceedings

- A judge of the Court of Appeal has jurisdiction under section 195 of the BIA to cancel the stay of the Receivership Order that arose on the filing of the appeal.

  Stay of proceedings on filing of appeal

  195 Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional **execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper**.

Manulife Bank of Canada v 6393927 Manitoba Ltd., 2026 MBCA 18 (*cont.)*

Court's Decision:

- Several factors courts should consider when dealing with a request to lift an automatic stay:
  - The appellant's litigation conduct, including whether the appellant is diligently prosecuting the appeal;
  - The merits of the appeal;
  - The relative prejudice to the parties of cancelling the stay;
  - Generally, all the facts of the case, and the interests of justice generally.

Manulife Bank of Canada v 6393927 Manitoba Ltd., 2026 MBCA 18 (*cont.)*

Court's Decision:

- The factors weighed heavily in favour of cancelling the stay in its entirety. The Court found, among other things:
  - It was the intention of Mr. Eros not to proceed with the substance of the appeal rather his strategy was to seek a series of adjournments in order to try and refinance the Manulife loans and redeem the property;
  - The Notice of Appeal he filed did not set out any legal grounds to challenge the validity of the Receivership Order;
  - All stakeholders were being prejudiced by the continuation of the stay, which prevented the Receiver from selling the property;
  - Neither 639 nor Mr. Eros would be prejudiced by the cancellation of the stay.
- The Court cancelled the statutory stay of proceedings, which permitted the Receiver to carry out its duties.

Court Discretion to Dismiss or Stay a Bankruptcy Application

***Sensible Capital Corp. v Galton Corporation*, 2025 MBCA 107**

Sensible Capital Corp. v Galton Corporation, 2025 MBCA 107

Overview:

- The appeal of a bankruptcy order by the bankrupt Galton Corporation ("**Galton**"), which challenged the lower court judge's discretionary decisions.

Sensible Capital Corp. v Galton Corporation, 2025 MBCA 107 (cont.)

Procedural History:

- The respondent Sensible Capital Corp. ("**Sensible**") obtained a judgment against Galton in the amount of $500,000 plus interest and costs and Galton committed an act of bankruptcy within 6 months of the Application for a bankruptcy order.
- Galton had no assets to satisfy its outstanding debts, and its only asset was shares held in Precision Weather Solutions Inc. ("**Precision**").

Sensible Capital Corp. v Galton Corporation, 2025 MBCA 107 (cont.)

Galton's Argument:

1) The Application Judge erred in not exercising his discretion to dismiss the Application for a bankruptcy order pursuant to section 43(7) of the BIA;
2) Alternatively, the Application Judge erred in not exercising his discretion under section 43(11) of the BIA to stay the bankruptcy order pending the determination or resolution of litigation by a related company, Precision, against Farmers Edge Inc. and other entities (the "**Farmers Edge litigation**").

Sensible Capital Corp. v Galton Corporation, 2025 MBCA 107 (cont.)

Legal Principles:

- The Application Judge's refusal to dismiss the Application for a bankruptcy order or grant a stay are **discretionary decisions** that are afforded a high degree of deference on appeal.
- Section 43(7) of the BIA provides that a court "shall dismiss" a bankruptcy application where it is satisfied that "for **other sufficient cause** no order ought to be made".
- The main thrust of Galton's submission was that granting a bankruptcy order does not promote the equitable distribution of assets nor enhance recovery for creditors in this case. Further, Sensible stood to gain no meaningful benefit from the bankruptcy.

Sensible Capital Corp. v Galton Corporation, 2025 MBCA 107 (cont.)

Court's Decision:

- No errors made by the Application Judge.
- The only asset of value was Galton's direct interest in Precision and the ability to recover a judgment in the Farmers Edge litigation.
- It was open to the Application Judge on the facts before him to find that the bankruptcy order would not impede the Farmers Edge litigation.
- Similarly, it was open to the Application Judge to exercise his discretion to stay the Application on certain conditions. However, he made no palpable and overriding error in refusing to do so.
- Court of Appeal said Galton was essentially asking them to re-weigh the evidence and give them a new decision.
- Staying the bankruptcy application would not advance the objectives of the BIA.

Secured Creditor Rights – Claims of Bad Faith in Enforcing Security

SM Industries Ltd. et al. v Casera Credit Union Limited, 2025 MBKB 152

SM Industries Ltd. et al. v Casera Credit Union Limited, 2025 MBKB 152

Overview:

- An action brought by four plaintiffs (two corporate defendants and two individuals) against Casera Credit Union ("**Casera**") (now Access Credit Union) primarily alleging bad faith against Casera as a result of the manner in which it enforced its security after the corporate defendants defaulted on the repayment obligations under two loans.
- Casera ultimately brought a motion for summary judgment to have the claim dismissed and was successful.

SM Industries Ltd. et al. v Casera Credit Union Limited, 2025 MBKB 152 (cont.)

Factual Background:

- SM Industries had a demand line of credit operating facility from Casera with a limit of $150,000 (the "**Operating Facility**") and a limit of $100,000 for a demand line of credit payroll facility (the "**Payroll Facility**").
- SM Industries provided Casera with general security over all its present and after-acquired property as security for its present and future obligations to Casera.
- In January 2019, Casera also allowed a temporary increase in the Operating Facility to an authorized limit of $500,000.
- In connection, SM Ventures provided an unlimited guarantee of SM Industries' obligations to Casera which was supported by a General Security Agreement over all of SM Ventures' present and after acquired personal property.

SM Industries Ltd. et al. v Casera Credit Union Limited, 2025 MBKB 152 (cont.)

Factual Background:

- By the terms of the General Security Agreements, the SM Companies agreed explicitly to the following term with respect to their accounts receivable:

  Notwithstanding any other section or provision of this agreement, the Credit Union may collect, realize, sell or otherwise deal with the receivables or any part thereof in such a manner, upon such terms and conditions and at such time or times, whether before or after default, as may seem advisable and without notice to the Debtor…

SM Industries Ltd. et al. v Casera Credit Union Limited, 2025 MBKB 152 (cont.)

Factual Background:

- SM Industries defaulted on its repayment obligations.
- Casera provided a demand letter advising the companies that the facilities would need to be paid out by end of October 2019.
- In February 2020 upon receipt of a large receivable, payment was made by SM Industries to Casera, reducing the Demand Facilities, but SM Industries remained indebted to Casera in excess of $90,000.
- In March 2020, Casera made a demand on the companies and concurrently delivered Notices of Intention to Enforce Security.
- Casera took steps to enforce its security and in May 2020 sent letters to a number of known customers of the SM Companies and directed that any receivables payable to the SM Companies be paid directly to Casera (the "**Receivables Letters**").

SM Industries Ltd. et al. v Casera Credit Union Limited, 2025 MBKB 152 (cont.)

Plaintiffs' Argument:

- Plaintiffs alleged that Casera acted in bad faith in exercising its discretion to enforce its security and should have given notice of its decision to send out the Receivables Letters.
- It argued that the defendant had a variety of remedies to enforce its security and should have chosen to pursue seizure and sale of some of the corporate equipment.

SM Industries Ltd. et al. v Casera Credit Union Limited, 2025 MBKB 152 (cont.)

Legal Principles:

- Summary Judgment Motion

  Granting Summary Judgment

  20.03(1) The judge must grant summary judgment if he or she is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

- No dispute that the governing loan agreements, the guarantees and the security agreements were valid. No dispute that the SM Companies were in default. Further, the plaintiffs agreed that any demand pursuant to its security made by the defendant was valid and the notice provided to the plaintiffs was reasonable.

- Canadian law recognizes an **organizing principle of good faith** in contractual relationships:

- ... [T]o determine whether a party failed in its duty to exercise discretionary power in good faith, one must ask the following question: **was the exercise of contractual discretion unconnected to the purpose for which the contract granted discretion?** If so, the party has not exercised the contractual power in good faith.

SM Industries Ltd. et al. v Casera Credit Union Limited, 2025 MBKB 152 (cont.)

Court's Decision:

- All of the steps taken by Casera were pursuant to its contractual rights and exercised in relation to the purpose for which those rights were granted – the recovery of a debt.
- Plaintiffs were not entitled to insist Casera realize on its security in a specific manner when they had contractually granted Casera the right to realize on its security in the manner it chose.
- No bad faith.

Preferential Payments to Creditors Pre-Bankruptcy

RPG Receivables Purchase Group Inc. v American Pacific Corporation, 2025 ONCA 371

RPG Receivables Purchase Group Inc. v American Pacific Corporation, 2025 ONCA 371

Overview:

- An appeal dealing with the validity of a payment made by an insolvent debtor to a creditor in the month preceding the debtor's assignment into bankruptcy.

RPG Receivables Purchase Group Inc. v American Pacific Corporation, 2025 ONCA 371 (*cont.)*

Factual Background:

- Specialty Chemical Industries ("**Specialty**") was a bulk chemical purchasing broker.
- It had one customer, Autoliv, an automotive safety product supplier.
- Specialty had three major chemical suppliers, one of which was the respondent American Pacific Corporation ("**AmPac**").
- Starting in early 2018, Specialty became persistently delinquent in the payment of AmPac's invoices.

RPG Receivables Purchase Group Inc. v American Pacific Corporation, 2025 ONCA 371 (*cont.)*

Factual Background:

- On June 6, 2018, Specialty made payments totaling USD $400,000 to AmPac.
- After making the payments to AmPac, Specialty had less than $35,000 left in its bank account and had $11 million of unpaid liabilities due and owing to its creditors, including $5.6 million to its two other major chemical suppliers.
- Just over one month later, on July 25, 2018, Specialty made a voluntary assignment into bankruptcy.
- Specialty was insolvent when it made the payments and the effect of the payments was to give AmPac a preference over the other unpaid creditors.

RPG Receivables Purchase Group Inc. v American Pacific Corporation, 2025 ONCA 371 (*cont.)*

Lower Court Decision:

- Specialty's trustee in bankruptcy brought a claim against AmPac to recover the amount of the payments to AmPac, however, was unsuccessful.
- The bankruptcy judge found that Specialty's intention, in making payments of past indebtedness to AmPac while leaving other creditors unpaid, was to be able to buy more product from AmPac to supply to its only customer, and thus to preserve that relationship and continue in business.
- In the bankruptcy judge's view, this rebutted the presumption that the payments were made with a view to giving AmPac a preference over other creditors.

RPG Receivables Purchase Group Inc. v American Pacific Corporation, 2025 ONCA 371 (*cont.)*

Arguments on Appeal:

- The Appellant, as assignee of the trustee's right of action, challenged the bankruptcy judge's conclusion on two bases:
  1. The bankruptcy judge **improperly considered evidence that Specialty was under pressure** to make the payments when the BIA says that evidence of pressure is inadmissible to support a transaction;
  2. The bankruptcy judge erred in treating **Specialty's intention to preserve a customer relationship and stay in business as sufficient** to rebut the presumption, when there was no objectively reasonable basis for Specialty's desire to stay in business.

RPG Receivables Purchase Group Inc. v American Pacific Corporation, 2025 ONCA 371 (*cont.)*

Legal Principles:

Section 95 of the BIA:

> 95 (1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person
>
> > (a) in favour of a creditor who is dealing at arm's length with the insolvent person, or a person in trust for that creditor, **with a view to giving that creditor a preference over another creditor is void** as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is **three months before the date of the initial bankruptcy** event and ending on the date of the bankruptcy; and […]
>
> (2) If the transfer, charge, payment, obligation or judicial proceeding referred to in paragraph (1)(a) **has the effect of giving the creditor a preference**, it is, in the absence of evidence to the contrary, **presumed to have been made**, incurred, taken or suffered **with a view to giving the creditor the preference** — even if it was made, incurred, taken or suffered, as the case may be, under pressure — and **evidence of pressure is not admissible to support the transaction**.

RPG Receivables Purchase Group Inc. v American Pacific Corporation, 2025 ONCA 371 (*cont.)*

Court's Decision:

(1) Evidence of Pressure

- Section 95(2) of the BIA is not to be viewed as rendering inadmissible **any** evidence that the debtor was put under pressure. What the section prevents is a **particular use** of that pressure.
- It prevents evidence of pressure being used as support – in the sense of justification – for that transaction. When a justification for the transaction is proffered under pressure, evidence that the debtor was under pressure may be considered so that the court has a proper understanding of the entire circumstances.
- As long as evidence is not used to proffer pressure as the justification for a preferential transaction, the restriction in s. 95(2) is respected.

RPG Receivables Purchase Group Inc. v American Pacific Corporation, 2025 ONCA 371 (*cont.)*

Court's Decision:

(2) Intention behind the Preference

- Where the insolvent debtor's actual **intent** in making a preferential payment to one creditor is to continue in business, that will displace the presumption that the payment was made with a view to giving the recipient creditor a preference over others **only where there is a business continuation plan that a reasonable debtor could believe will actually achieve benefits for the creditors generally**.
- Specialty's intention to "try to stay in business" was not enough.

Haunting of Receiverships Past

5448124 Manitoba Ltd. v Grant Thornton Limited - CI 25-01-52688

5448124 Manitoba Ltd. v Grant Thornton Limited

Facts:

- 544 commenced proceedings against its former Receiver
- Leave was required pursuant to Discharge Order:

> "…*no action or other proceeding shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on notice to the Receiver and upon such terms as this Court may direct*"

5448124 Manitoba Ltd. v Grant Thornton Limited (cont.)

Test:

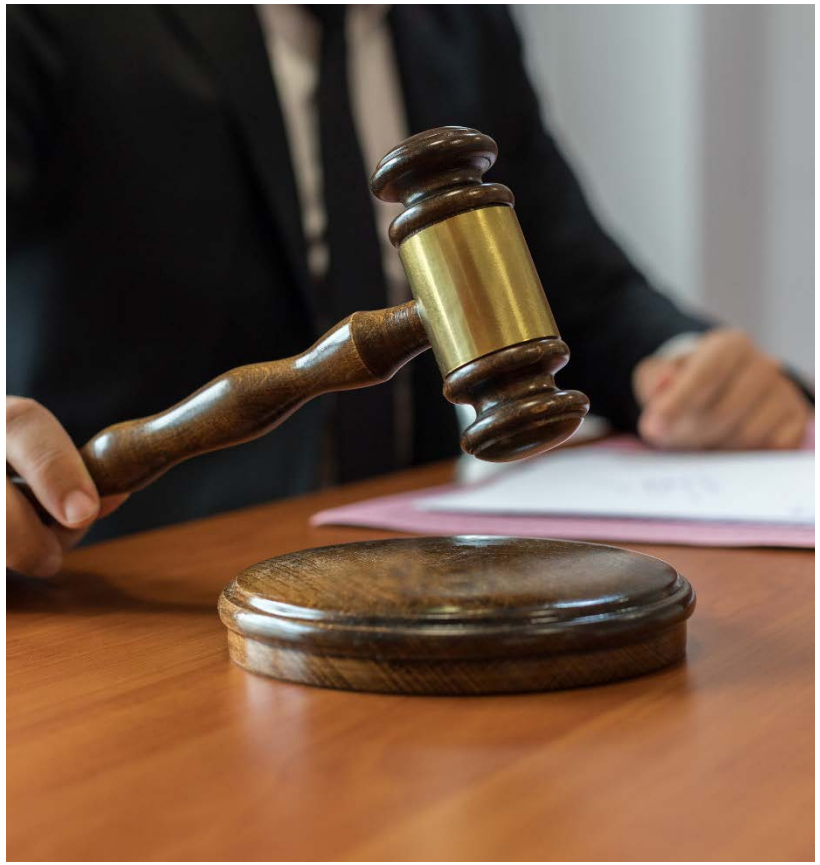
- Where the activities of a Court-appointed receiver have been approved by the Court, an applicant must establish a strong *prima facie* case before leave to commence proceedings against the receiver will be granted.
- *Wolfe et al. v Taylor et al*., 2022 MBCA 48 at para 7:

> "*Granting leave to the respondents to commence a claim against the liquidator that is grounded in actions approved by the Court would render the previous orders of the Court approving those actions meaningless*."

5448124 Manitoba Ltd. v Grant Thornton Limited (cont.)

Conclusion:

- Leave to commence an action against the Receiver was denied by the Court



5448124 Manitoba Ltd. v Grant Thornton Limited (cont.)

Key Takeaways:

- Ensure directors and officers are served. Ensure service is set out in detail in Affidavits of Service - set out who was served, when they were served, how they were served and a confirmation of receipt, if possible.
- Ensure reports are detailed, and that reports and conduct described therein are approved. If conduct is not approved, the test for leave to sue the Court officer is much easier to satisfy.

Stewart v Auch, 2026 MBCA 21

178 (1) An order of discharge does not release the bankrupt from

(e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim

Stewart v Auch, 2026 MBCA 21 (*cont.)*

"*The obtaining of property "by 'deceit', whether by positive act or failure to disclose material facts", is central to either concept as set out in section 178(1)(e) (Poonian at para 61). What is important, however, is there must be a nexus between the deceit and the creation of the debt or liability. Section 178(1)(e) of the BIA applies only to debts or liabilities that have arisen from one or more deceitful statements by the debtor, or for which the debtor is responsible, on the basis of which the debtor obtained services or property. Section 178(1)(e) does not apply to other morally objectionable conduct*."

Stewart v Auch, 2026 MBCA 21 (*cont.)*

"*Given this conclusion, it is unnecessary to comment on the application judge's alternative justification as to how the judgment debt fell within the ambit of section 178(1)(e) of the BIA. We do not endorse or disagree with his conclusion that section 178(1)(e) can be satisfied in a situation of a common venture where the false pretense or fraudulent misrepresentation can be imputed to the debtor based on their active participation in a common venture that gives rise to the debt or liability. We leave that issue for another day*."

Key Takeaways

- The standard of review for decisions relating to the survivability of claims after bankruptcy is palpable and overriding error
- Court of Appeal confirmed debt can survive discharge even where “fraud” was not explicitly pleaded or found
- Court of Appeal confirmed the “nexus” test under section 178(1)(e) of the BIA

Insolvency Themed Dad Joke – Human vs AI

Insolvency Themed Dad Joke – Human vs AI

I tried to open a bakery, but it went insolvent…

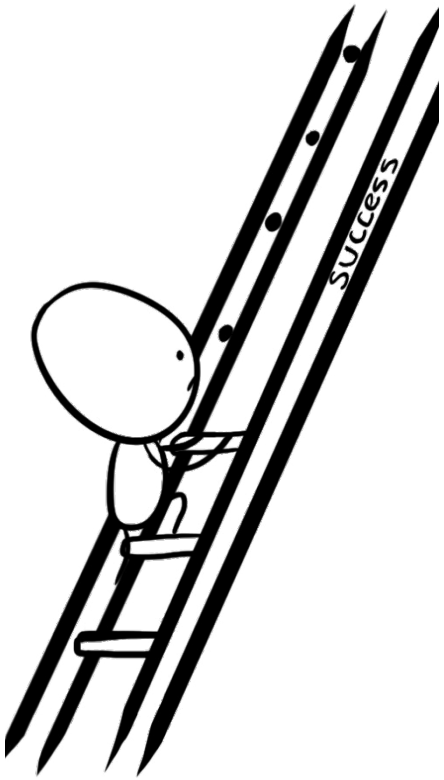
Insolvency Themed Dad Joke – Human vs AI

Turns out I just couldn't make enough *dough* to cover my *liabilities.*

Insolvency Themed Dad Joke – Human vs AI

Why did the insolvent company bring a ladder to court?

Insolvency Themed Dad Joke – Human vs AI



Because it was trying to **climb out of liquidation…**

Insolvency Themed Dad Joke – Human vs AI

Why was the broke guy's girlfriend so happy?

Insolvency Themed Dad Joke – Human vs AI

Because a LIT told her guy to make a proposal…

Values Financial Services Inc. v Imiefoh et al., 2026 MBKB 28

Loan Commitment:

Values Financial Services Inc. (hereinafter referred to as VFSI) is pleased to advise the commitment for your secured loan/security charge on the property described on the following terms and conditions:

Securities: All goods at both Gifted Fingers International, Winnipeg locations (955 St. Mary's Road and 1006 Nairn Avenue) and 300 Eagleview Road, Winnipeg, Manitoba.

Values Financial Services Inc. v Imiefoh et al., 2026 MBKB 28 (*cont.)*

Loan Agreement:

The Borrower [defined elsewhere as the Imiefohs] shall provide to the Lender [defined elsewhere as Values Financial] the following collateral security in support of the within Loan

a) A Promissory Note in the amount of *$83,350*; and *300 Eagleview Rd, Winnipeg, MB and the stocks at 955 St. Mary's Rd and 1006 Nairn Avenue*.

b) A General Security Agreement.

Values Financial Services Inc. v Imiefoh et al., 2026 MBKB 28 (*cont.)*

Analysis:

Two reasonable meanings:

1) conjunctively as granting a security interest in "all goods" of Gifted Fingers located at any of the three addresses listed
2) disjunctively as granting a security interest only in goods located at the Gifted Fingers locations, and in the real property at 300 Eagleview Road.

Values Financial Services Inc. v Imiefoh et al., 2026 MBKB 28 (*cont.)*

Analysis *(cont.)*:

Court applied doctrine of contra proferentem:

Where the contract is ambiguous, the application of the *contra proferentem* rule ensures that the meaning least favourable to the author of the document prevails.

Values Financial Services Inc. v Imiefoh et al., 2026 MBKB 28 (*cont.)*

Conclusion:

The Court found that the language in the agreement was not clear enough to create an equitable mortgage against the home.

Judgment granted for principal owing, but because the contract did not expressly state that interest at 21% continued to apply to the outstanding principal after payment its due date, the judgment would only bear post-judgment interest at the rate provided under *The Court of King's Bench Act*.

Key Takeaways

- Do not rely on informal or loosely drafted language to create security over real property
- Clear drafting is required to establish real property security. Courts will not infer it
- Interest provisions must be clearly drafted to be enforceable on overdue amounts

Jumping off the Bankruptcy Train

Luborsky v Ultracuts Franchises Incorporated - BK 25-01-06720CI

Luborsky v Ultracuts Franchises Incorporated – BK 25-01-06720

- Motion to withdraw a bankruptcy application under section 43(14) of the BIA

  Withdrawing application

  (14) An application shall not be withdrawn without the leave of the court.

Luborsky v Ultracuts Franchises Incorporated – BK 25-01-06720 (*cont.)*

The Test:

1. Is the debtor solvent?
2. Will the withdrawal of the application prejudice other creditors?
3. Will the withdrawal of the application undermine the integrity of the BIA?

Luborsky v Ultracuts Franchises Incorporated – BK 25-01-06720 (*cont.)*

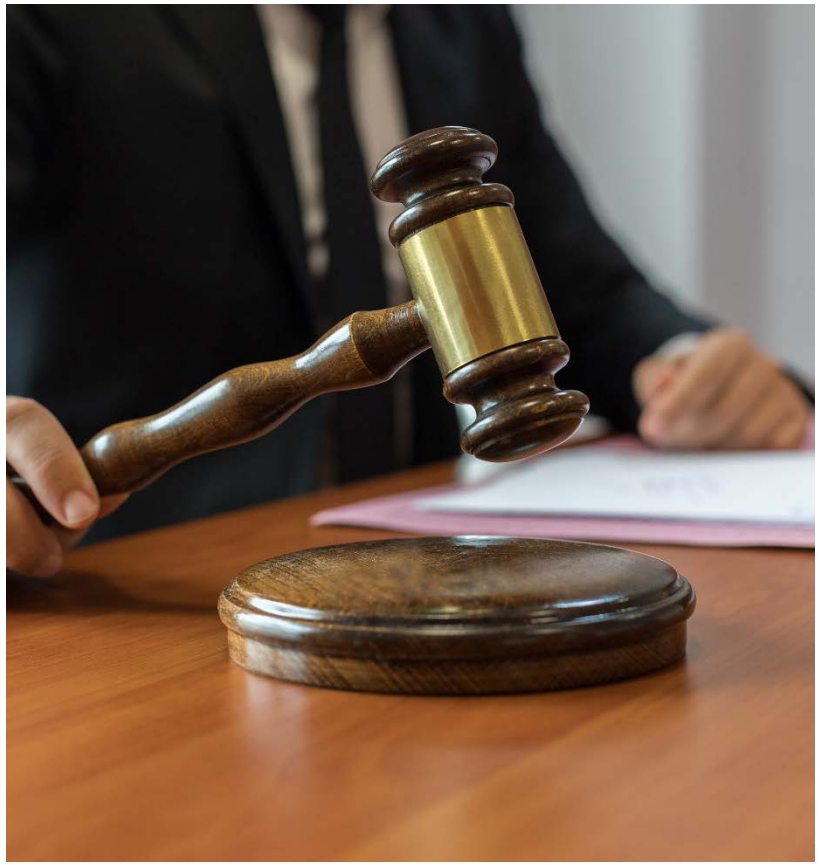
Is the Debtor Solvent?

- "Solvent" isn't defined under the BIA
- Debtor swore an Affidavit of Solvency, confirming it was solvent

Luborsky v Ultracuts Franchises Incorporated – BK 25-01-06720 (*cont.)*

Conclusion:

- Leave to withdraw the bankruptcy application was granted



Luborsky v Ultracuts Franchises Incorporated – BK 25-01-06720 (*cont.)*

Key Takeaways:

- Think carefully before commencing bankruptcy applications. Once the process has been started, it can be hard to stop, especially when there are multiple creditors who are not being paid
- When settling with a debtor against whom a bankruptcy application has been made, ensure to make the settlement conditional on obtaining leave to withdraw the application
- Motion for leave to withdraw should be supported by an Affidavit of Solvency by the debtor

Q & A

Thank you!

Anjali Sandhu
T: 204-957-4760
asandhu@mltaikins.com

Erin Lawlor-Forsyth
T: 204-934-2501
elawlorforsyth@tdslaw.com

IWIRC®

connecting women worldwide