

CANADA / JUDGMENT

Chonchuir v. Jones

2025 BCSC 1632

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Supreme Court of British Columbia

DECIDED

23 July 2025

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2025 BCSC 1632 Chonchuir v. Jones

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chonchuir v. Jones,

2025 BCSC 1632

Date: 20250723

Docket: S245160

Registry: Vancouver

Between:

Nora Patricia Ni Chonchuir

Plaintiff

And

David Lloyd William Jones also known as Cyri Jones also known as David (Cyri) Jones, Zen Maker Lab Inc., Zen Launchpad Network Inc., Zen Digital Inc.,

Biljana Zecevic also known as Biljana Jones, John Doe, Jane Doe and Doe Co.

Defendants

- and -

Docket: B250147

Registry: Vancouver

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy of David Lloyd William Jones

Before: The Honourable Chief Justice Skolrood

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff in action no. S245160 and Nora Patricia Ni Chonchuir, Application Respondent re Notice of Application filed May 16, 2025, in action no. B250147:

C.G. Reedman

Appearing on own behalf (by videoconference):

D.L.W. Jones

Place and Date of Hearing:

Vancouver, B.C.

July 21, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 23, 2025

[1] THE COURT: These are my reasons in respect of the plaintiff's application to lift the current stay in action number 245160.

Application to Lift Stay

[2] This is an application by the plaintiff to lift the automatic stay of proceedings that is in place in connection with the plaintiff's claims against the defendants David Jones and Zen Maker Lab Inc. ("Zen Maker") by reason of the operation of ss. 69.1(1) and 69.3(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (BIA).

[3] The defendants initially opposed the application, however, Mr. Jones has now advised the Court and the plaintiff that he no longer objects to the stay being lifted. Despite that concession, the Court must still be satisfied that the criteria for lifting the stay have been met. Accordingly, I will provide brief reasons setting out my decision on the application.

Background

[4] The plaintiff commenced an action against Mr. Jones and Zen Maker, as well as other defendants on July 31, 2024. A number of the defendants are related parties, specifically corporate entities of which Mr. Jones is the principal.

- [5] Essentially, the plaintiff alleges that she loaned Mr. Jones and Zen Maker approximately \$940,000, which loans remain unpaid and outstanding. While principally a claim of debt, the plaintiff also advances a number of additional causes of action, including fraudulent misrepresentation, breach of fiduciary duty, knowing receipt, knowing assistance, and unjust enrichment. The plaintiff alleges that she was fraudulently induced to make the loans and that the funds were improperly used by the defendants. The Notice of Civil Claim also claim for wrongful dismissal and reimbursement of employment expenses.
- [6] Some steps have been taken in the litigation. For example, Mr. Jones and the Zen Defendants filed a Response to Civil Claim on August 22, 2024. The plaintiff has served a Notice to Admit and her initial list of documents.
- [7] On November 19, 2024, the plaintiff filed a Notice of Application for summary judgment or, alternatively, judgment by way of summary trial on her debt claim. The application was adjourned by consent to December 16, 2024, with the date to be peremptory on the defendants. On December 16, the defendants obtained a further adjournment to a new peremptory date of January 15, 2025.
- [8] Before the January 15 date, Mr. Jones served four applications on the plaintiff, seeking, amongst other things, an order removing a Certificate of Pending Litigation that had been filed against his home and seeking to have the corporate defendants removed from the claim.
- [9] On January 15, the parties appeared in regular chambers before Justice Crossin, who ordered that Mr. Jones produce a list of documents within 14 days. The parties were then referred out to Justice Stephens, who granted a further adjournment due to lack of available court time. By consent, Justice Stephens ordered Mr. Jones to pay the plaintiff \$20,000 on account of her claim for employment expenses. The matter was reset for two days on March 11 and 12, 2025.
- [10] February 27, 2025, Mr. Jones filed a Division 1 proposal to creditors under the BIA. A meeting of creditors was held on March 20, 2025, at which the proposal was rejected, as a result of which Mr. Jones was deemed to have made an assignment into bankruptcy pursuant to s. 57 of the BIA.
- [11] Also on February 27, 2025, Zen Maker made a Division 1 proposal which was approved at a meeting of creditors held on March 20, 2025.

Legal Framework

- [12] Mr. Jones' assignment into bankruptcy and Zen Maker's proposal resulted in an automatic stay of the plaintiff's claims against them, pursuant to ss. 69.1 and 69.3 of the BIA. Pursuant to s. 69.4, the court may make a declaration that the stay does not apply to a particular creditor or person if satisfied that:

- (a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or
 - (b) that it is equitable on other grounds to make such a declaration.
- [13] A number of cases have discussed the principles governing an application to lift the stay, including the oft-cited decision in *Re Advocate Mines Ltd.*, [1984] O.J. No. 2330 (S.C.); *Re Maple Homes Canada Ltd.*, 2000 BCSC 1443; *0731431 B.C. Ltd. v. Panorama Park View Homes Ltd.*, 2016 BCSC 1828; *Burke v. Red Barn at Mattick's Ltd.*, 2019 BCSC 69, and *Save-A-Lot Holdings Corp. v. Christensen*, 2021 BCSC 2546.
- [14] In *Re Advocate Mines*, the Court set out a non-exhaustive list of types of cases in which stays have been lifted, including:
- (a) actions against the bankrupt for a debt to which a discharge would not be a defence;
 - (b) actions in respect of a contingent or unliquidated debt, the proof of which and valuation has a degree of complexity that makes the summary procedure prescribed by the BIA inappropriate;
 - (c) actions in which the bankrupt is a necessary party for complete adjudication of the matters at issue involving the parties;
 - (d) actions brought to establish judgment against the bankrupt to enable the plaintiff to recover under a contract of insurance or indemnity or under compensatory legislation; and
 - (e) any actions that, at the date of the bankruptcy, have progressed to a point where logic dictates that the action be permitted to continue to judgment.
- [15] Again, this is a non-exhaustive list and an applicant need only show that one of the factors is present.
- [16] On an application to lift a stay, the Court does not inquire deeply into the merits of the proposed claim, however, the threshold is higher than that applicable to an application to strike pleadings under Rule 9-5 on the basis that it discloses no reasonable claim, which is generally considered on the basis of the pleadings alone. Rather, there must be some evidence supporting the conclusion that there is a fair issue to be tried: *Re Maple Homes* at paras. 30 and 34.

Discussion

- [17] The plaintiff relies on three of the *Re Advocate Mines* criteria in support of her application to lift the stay: (a) the claim is for a debt to which a discharge would not be a defence pursuant to s. 178 of the BIA; (b) Mr. Jones and Zen Maker are necessary parties for the complete adjudication of the matters at issue in the action, and (c) the action has progressed to a point where logic dictates that it be permitted to continue to judgment. I am satisfied that the first and third of these criteria have been satisfied.

Debt to which a discharge would not be a defence

[18] Section 178(1) of the BIA sets out a number of debts or liabilities that are not released by an order of discharge. Relevant to the plaintiff's claim are:

- (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity ...
- (e) any debt or liability [arising] from obtaining property or services by false pretences or fraudulent misrepresentation ...

And:

- (h) any debt for interest owed in relation to an amount referred to in [section 178-1, including paragraphs (d) and (e)].

[19] In *Poonian v. British Columbia (Securities Commission)*, 2024 SCC 28, the Court noted that the exceptions set out in s. 78 must be interpreted narrowly and applied only in clear cases. Where there is doubt about whether a creditor falls within an exemption, the benefit should go to the bankrupt: (at para. 26 to 27).

[20] The Court in *Poonian* also set out three criteria for a debt or liability to survive bankruptcy pursuant to s. 178(1)(e): (a) false pretences or fraudulent misrepresentation; (b) a passing of property or provision of services, and (c) a link between the debt or liability and the fraud.

[21] The plaintiff submits that all three of these criteria are met. Mr. Jones for his part strenuously denies that there was any fraud or misrepresentation on his part. He notes that the plaintiff received extensive advice from her accountants about the financial status of the various Zen companies, and that she continued to provide money after she joined the companies and had full access to and knowledge of the finances.

[22] As held in the relevant authorities, on an application to lift the stay, the court is not to delve deeply into the merits of the claim. The question, again, is whether there is some evidence of a fair issue to be tried.

[23] This again is principally a claim in debt and certain of the other causes of action pleaded do not appear particularly strong, for example, the claim for breach of fiduciary duty. Nonetheless, given all of the surrounding circumstances, I am satisfied that the plaintiff's claim meets the relatively low threshold of a fair issue to be tried on whether the claim is for debt or liability for which a discharge would not be a defence.

Progress of the Action

- [24] I am also satisfied that the action has progressed to the point where logic dictates that it be permitted to continue to judgment. I note in particular that the plaintiff prepared, filed and served extensive summary judgments / summary trial materials, with hearing dates peremptory on the defendants. Mr. Jones has also participated in the litigation by filing several applications, as well as a counterclaim.
- [25] Given the steps taken to date, particularly the plaintiff's application for judgment on the debt claim, it is fair and reasonable to permit the action to proceed.
- [26] I would add that on Mr. Jones' own submissions, proof and valuation of the plaintiff's claim would be difficult in the summary process contemplated by the BIA. For example, Mr. Jones maintains that the majority of the funds provided by the plaintiff were equity investments rather than loans. Determination of this issue will require an assessment of all of the underlying facts and circumstances.

Conclusion

- [27] In summary, I am satisfied that the stay of proceedings imposed by virtue of the BIA on Mr. Jones and Zen Maker should be lifted. To be clear, the lifting of the stay only operates to permit the action to proceed. In the event that the plaintiff obtains judgment against one or both of Mr. Jones and Zen Maker, the stay will become immediately effective in respect of any execution proceedings.
- [28] Those are my reasons.
- [29] Do you want to address the issue of costs briefly?
- [SUBMISSIONS BY CNSL C. REEDMAN RE COSTS IN ACTION NO. S245160]
- [SUBMISSIONS ON OWN BEHALF BY DAVID JONES RE COSTS IN ACTION NO. S245160]
- [30] THE COURT: All right.
- [31] Costs of this application will be in the cause.
- [32] I am now going to turn to giving reasons on Mr. Jones' application to annul the bankruptcy in action number 250147.

Application to Annul Bankruptcy

- [33] The applicant, Mr. Jones, seeks a number of orders in connection with an assignment into bankruptcy that occurred effective March 20, 2025 by operation of law pursuant to s. 57 of the BIA.

- [34] Briefly, by way of background, Mr. Jones is the principal of a number of related companies, which I will refer to as the "Zen Group", which provide educational and business consulting services.
- [35] On February 27, 2025, Mr. Jones filed a Division 1 proposal to creditors under s. 50 of the BIA. J. Bottom & Associates was appointed a trustee.
- [36] On March 20, 2025, the first meeting of creditors was held. The meeting was chaired by licensed insolvency trustee David Bottom. For the purpose of the meeting, J. Bottom & Associates was appointed as proxy for the Canadian Revenue Agency, one of Mr. Jones' largest creditors. In that role Mr. Bottom put forward a motion on behalf of CRA to adjourn the meeting of creditors. Mr. Bottom as chair asked that the motion be seconded. No other creditor agreed to second the motion, so the motion was not voted on. The meeting then proceeded to a vote on Mr. Jones' proposal, which was rejected by a significant majority. As a result, Mr. Jones was deemed to have made an assignment into bankruptcy.
- [37] The other point of note about the meeting of creditors is that Ms. Nora Chonchuir, through counsel, attended the meeting and voted against the proposal. Ms. Chonchuir had submitted a proof of claim for approximately \$1.1 million, which relates to loans allegedly provided by Ms. Chonchuir to Mr. Jones and one of the Zen Group companies with which she was formerly employed. Ms. Chonchuir's claims against the Zen Group and Mr. Jones are set out in a Notice of Civil Claim filed July 31, 2024 and amended on March 3, 2025 under file number S245160.
- [38] As noted, Mr. Jones seeks a number of orders and he advances numerous arguments in support of the relief sought, however, the issues can be conveniently grouped into two categories. First, Mr. Jones challenges the validity of the creditors' meeting on a variety of grounds, and, second, he challenges the valuation of Ms. Chonchuir's proof of claim. I will address each of these in turn.

Validity of the Creditors' Meeting

- [39] Mr. Jones argues that Mr. Bottom in his role as chair of the creditors' meeting failed to follow proper procedures by requesting that the CRA's adjournment application be seconded when, in fact, there is no such requirement in the BIA. As such, the interest of the largest creditor, CRA, who sought the adjournment, was improperly stymied.
- [40] Respectfully, there is no merit to this ground. The chair of the creditors' meeting has a wide discretion in how to conduct the meeting, which would include dealing with adjournment requests. Further, it is not clear how a denial of the CRA request adversely impacted Mr. Jones' procedural fairness rights.

- [41] I would add that according to Mr. Bottom, he advised the meeting that he would not vote his proxy on the adjournment request and that the intention behind asking for a seconder was to assess whether other creditors would support an adjournment. When no other creditor indicated support, the adjournment motion did not proceed.
- [42] Mr. Jones also argues that there were irregularities in how creditors were notified of the meeting and that, as a result, at least one creditor did not attend. According to Mr. Bottom, normal procedures were followed, which included notice to all creditors. I am not satisfied that any creditors were not properly notified of the meeting or even if they were that their participation would have led to a different result. I note that after the hearing of the application Mr. Jones acknowledged that the specific creditor he had identified as not receiving notice had, in fact, been sent the email by the trustee giving notice of the creditors' meeting.
- [43] Mr. Jones further alleges that the creditor vote rejecting his proposal was improperly influenced by the participation of Mr. John Schaub, who was a related party in that he was a former officer of a company owned by Mr. Jones. Mr. Jones also notes that Mr. Schaub had not filed a valid proof of claim. Mr. Jones also takes issue with the fact that Mr. Schaub was appointed as an inspector in his bankruptcy, which was inappropriate given that he was in a conflict position.
- [44] Mr. Schaub's appointment as an inspector had no bearing on the creditors' meeting and, in any event, he subsequently resigned. Further, as noted by Mr. Bottom, the trustee, Mr. Schaub was entitled to attend the creditors' meeting. I am not satisfied that there was anything unusual or untoward about his participation.
- [45] Mr. Jones submits that Ms. Chonchuir's vote should not have been accepted given that she was not acting in good faith. Specifically, Mr. Jones argues that Ms. Chonchuir was intent on damaging him due to alleged personal issues and also that she was improperly acting in concert with Mr. Schaub.
- [46] As counsel for Ms. Chonchuir notes, Mr. Jones' Notice of Application does not allege bad faith on the part of Ms. Chonchuir; rather, the application focuses on the value of her claim. Regardless, I am not satisfied that unproven allegations of personal animus would warrant the Court interfering with a properly run creditors' meeting.
- [47] Mr. Jones asked the Court to exercise its authority under s. 181 of the BIA to annul a bankruptcy, where, in the Court's opinion, "the bankruptcy order ought not to have been made." The principles governing the analysis under s. 81 were helpfully summarized by Justice Fitzpatrick in *EncoreFX Inc. (Re)*, 2023 BCSC 39:
- [30] An annulment of a bankruptcy is a discretionary remedy and is to be used sparingly, in special circumstances. In exercising its discretion, the court must take into consideration and balance all the interests of all stakeholders, including the creditors, the bankrupt and third parties: *Edell v. Canada Revenue Agency*, 2011 ONSC 1943 at para. 16.

- [31] Circumstances considered by the courts as justifying annulments of both assignments and bankruptcy orders include:
- a) Improper use of the BIA or improper motive: *Mahood v. High Country Holdings Inc.*, 1996 CanLII 3566 (BC SC), [1996] B.C.J. No. 2408 at paras. 87-88 (S.C.); *Tousignant, Re* (2001), 2001 CanLII 7118 (QC CA), 28 C.B.R. (4th) 144 at para. 21 (C.A. Que.), leave to appeal to SCC ref'd, 28521 (20 December 2001); *Hannay v. Hannay*, 2005 SKQB 258 at para. 24;
 - b) Failure to refer the court to all material facts: *American Bullion Minerals Ltd. (Re)*, 2008 BCSC 639 at paras. 84 and 94; *Briggs (Re)*, 2020 NLSC 159 at paras. 28-32;
 - c) Abuse of process, including in relation to matrimonial proceedings: *Wale (Re)*, [1996] O.J. No. 4489 (Gen. Div.); *Stasiuk v. Stasiuk*, [1999] B.C.J. No. 1185 at para. 24 (S.C.); *Hunt v. Hunt*, 2002 BCSC 1327; and
 - d) Lack of notice: *Briggs* at para. 27.
- [32] In *Hervias (Re)*, 2018 BCSC 1579 at paras. 13-24, Justice Matthews considered competing arguments as to whether the court's jurisdiction to annul a bankruptcy under s. 181 of the BIA was limited to certain factual circumstances, such as where the bankrupt was not insolvent at the time, there was abuse of the court's process in seeking BIA protection or a fraud was being committed on the creditors in seeking BIA protection.
- [33] In *Hervias*, the Court concluded that the facts and circumstances that might be considered under s. 181 are not restricted:
- [25] I conclude that none of the cases that adopt the restrictive language consider whether those three circumstances are the only ones that could amount to a situation where an assignment into bankruptcy ought not to have been filed. While judges of this court have set out the language containing those limits, they have not applied the limits rigorously.
- [26] The language of the provision does not by its wording demand absolute limits on its application. It simply says the court must find that the assignment ought not to have been filed. I agree that, restrictive language aside, the jurisprudence demonstrates that courts are cautious in exercising jurisdiction under this provision. The cases make reference to a remedy rarely granted and only in special circumstances. I agree with this approach. I will apply the section to determine whether the assignment ought not to have been filed and if so, whether there are special circumstances that would justify this rare remedy.
- [48] Of particular note is Justice Fitzpatrick's observation that annulment of a bankruptcy is a discretionary remedy to be used sparingly and only in special circumstances. These principles were recently affirmed by Justice Stephens in *Re Locke*, 2023 BCSC 1195, at paras. 7 to 13.

[49] In my respectful view, Mr. Jones has not established any grounds that would support an order annulling the bankruptcy. Such an order would undermine the integrity of the bankruptcy process and would prejudice Mr. Jones' creditors, who overwhelmingly rejected the proposal.

Ms. Chonchuir's Proof of Claim

[50] I will now briefly address Mr. Jones' position on Ms. Chonchuir's proof of claim. In his Notice of Application, he seeks an order valuing the claim at \$30,000, which is actually \$35,000, based on what is allegedly the only documented loan transaction. I note that during his submissions Mr. Jones did not press this point, hence the need for me to only address it briefly.

[51] Mr. Jones submits that there were irregularities in the valuation of Ms. Chonchuir's claim. Specifically he alleges that Mr. Bottom told him on at least two occasions before the creditors' meeting that Ms. Chonchuir's claim would be valued at only \$30,000. He says he only learned that the proof of claim had been accepted at approximately \$1.1 million after the date of the creditors' meeting and as such he had no opportunity to object. He also alleges that Mr. Bottom told him that he had been under pressure from Ms. Chonchuir's lawyers.

[52] According to Mr. Bottom, any discussions he had with Mr. Jones about the value of the claim occurred before he received her proof of claim, which was submitted very shortly before the creditors' meeting. Mr. Bottom notes that Ms. Chonchuir was eligible to vote regardless of whether her claim was valued at \$35,000 or \$1 million.

[53] In my view, it is the proper role of the licensed insolvency trustee to value the claims submitted, which is what occurred here. While the Court has jurisdiction under s. 135 of the BIA to expunge or reduce a proof of claim, that jurisdiction is triggered by a refusal of the trustee to interfere. As Justice Willcock held in *Eggertson v. Cascade Steel Rolling Mills Inc.*, 2024 BCCA 349 at para. 50, a clear refusal on the part of the trustee to interfere is a prerequisite, indeed the sole prerequisite, to the Court's authority to act under s. 35. There is no evidence of any such refusal on the part of the trustee here and, in my view, there is no basis for the Court to interfere with the valuation of Ms. Chonchuir's proof of claim.

Conclusion

[54] In conclusion, I am not satisfied that there are any unusual or special circumstances that would warrant this Court interfering in the conduct and results of the meeting of Mr. Jones' creditors. The meeting was conducted by a well-qualified licensed insolvency trustee in accordance with the principles governing the conduct of trustees, most notably the requirement to act independently and objectively. Mr. Jones' application is, therefore, dismissed in its entirety.

[55] Now, at the hearing, Mr. Reedman, you made some submissions on costs. I do not need to hear you further on that.

[56] Any submissions on costs on your part, Mr. Jones?

[57] DAVID JONES: I'm not totally sure what that means, sorry.

[58] THE COURT: Well, normally the successful party in an application is entitled to some order for costs. Mr. Reedman at the conclusion of the hearing the other day made a submission that his client is entitled to costs on this application, and I am just giving you an opportunity to address that as well.

[SUBMISSIONS ON OWN BEHALF BY DAVID JONES RE COSTS IN ACTION NO. B250147]

[59] THE COURT: All right. Thank you.

[60] I think the plaintiff was the successful party here. I am going to order ordinary costs at Scale B --

[61] CNSL C. REEDMAN: Yes.

[62] THE COURT: -- on this application.

[63] CNSL C. REEDMAN: And may I just very briefly. Because this is under the Bankruptcy and Insolvency Act, the BIA has its own set of a different tariff. So, costs are fine. And then so costs at Scale B to be assessed?

[64] THE COURT: Yes.

[65] CNSL C. REEDMAN: Yes.

[66] THE COURT: All right. Anything else? Thank you all.

"Chief Justice Skolrood"

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