

CANADA / JUDGMENT

Curtis Gordon Quigley (Re)

2020 BCSC 875

COURT

Supreme Court of British Columbia

DECIDED

1 June 2020

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2020 BCSC 875 Curtis Gordon Quigley (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Curtis Gordon Quigley (Re),

2020 BCSC 875

Date: 20200601

Docket: B56447

Estate No.: 11-254234

Registry: Vernon

In the Matter of the Bankruptcy of

Curtis Gordon Quigley

Before: The Honourable Madam Justice Fitzpatrick

Oral Ruling Re Application Seeking a Bankruptcy Order

In Chambers

Counsel for the Applicant, Stephanie Rottacker:

G. Dabbs

Counsel for Curtis Gordon Quigley:

D. Patzer

Place and Date of Hearing:

Vernon, B.C.

June 1, 2020

Place and Date of Ruling:

Vernon, B.C.

June 1, 2020

- [1] THE COURT: This is an application brought by Stephanie Rottacker pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the "BIA").
- [2] On April 8, 2020, Ms. Rottacker filed her application seeking a bankruptcy order with respect to Curtis Gordon Quigley. Ms. Rottacker initially filed her Affidavit #1 sworn April 3, 2020 in support, referencing that she had advanced a series of unsecured loans to Mr. Quigley. Ms. Rottacker contended that, as of March 31, 2020, Mr. Quigley was indebted to her in the approximate amount of \$1.59 million. She alleged that Mr. Quigley has committed an act of bankruptcy, namely that he has ceased to meet his liabilities generally as they become due.
- [3] In response, Mr. Quigley filed his Affidavit #1 sworn April 27, 2020. I have reviewed his affidavit. I do not consider that Mr. Quigley's evidence satisfactorily challenges Ms. Rottacker's contention that she is owed at least \$1.5 million, clearly meeting the minimum requirement under the BIA.
- [4] On April 27, 2020, this matter initially came before Master Cameron. It was apparent at that time that Mr. Quigley intended to oppose the application. Master Cameron was then unable to proceed on jurisdictional grounds. The matter was then reset before me, as required by the BIA. In addition, at the time of the hearing, Master Cameron ordered a schedule with respect to the filing of further materials, as seems to have been anticipated given Mr. Quigley's stated opposition.
- [5] Subsequently, Mr. Quigley failed to file any further materials by the stated deadline of May 11, 2020. Ms. Rottacker did otherwise by her deadline of May 22, 2020. She filed her Affidavit #2 sworn May 22, 2020 responding to Mr. Quigley's earlier affidavit. She also filed further affidavits of Shane and Shannon Styles and Thomas Allan Norgaard, who all indicated that Mr. Quigley also owed substantial moneys to them.
- [6] At this hearing, Mr. Quigley appeared with counsel; in addition, he made direct representations to the Court on this phone application. He confirmed that he has never contested that he owes monies to Ms. Rottacker, notwithstanding what might have been taken as contrary suggestions in his affidavit. Mr. Quigley's proposal as to an appropriate disposition of this hearing, as presented by his counsel, is that the bankruptcy order should be issued, but also then "suspended" such that it would only become effective seven days hence.

- [7] Both Mr. Patzer and Mr. Dabbs, on behalf of Ms. Rottacker, refer to (albeit without supporting evidence) recent actions that have taken against Mr. Quigley by at least one creditor in Alberta. I am told that a Mr. Williams obtained an attachment order last Thursday, which is intended to attach to various investment accounts, bank accounts and personal property of Mr. Quigley.
- [8] Mr. Quigley now suggests that the seven-day "suspension" of any bankruptcy order is appropriate to allow him to "pay out these debts".
- [9] As Mr. Dabbs points out, there is no evidence before me as to what is actually happening with Mr. Quigley. His one and only affidavit does not include a descriptions to any degree about his business activities, other than some reference to an investment program regarding the purchase of houses. I have no information before me about what assets he owns. I have no information about what liquid assets he has in terms of paying any creditors. Essentially, all I have before me is Mr. Quigley's bare assertion that he intends to pay everyone.
- [10] Mr. Dabbs points out that, with other creditors starting to take action against Mr. Quigley, Ms. Rottacker could potentially suffer prejudice. Stabilizing matters is usually an objective in granting a bankruptcy order or a stay of proceedings in the context of restructuring proceedings. The intention is to bring some calm or order to a situation so that there may be a proper investigation and determination as to what assets are available and what debts are being advanced with respect to those assets.
- [11] Mr. Patzer submits that Mr. Quigley faces significant prejudice if the bankruptcy order is granted. I accept that as evident. There are significant consequences arising from the granting of a bankruptcy order, and there are consequences to Mr. Quigley's circumstances even if all of his debts are repaid at the end of the day.
- [12] Mr. Patzer also suggests that Mr. Quigley's proposal does not result in any prejudice to Ms. Rottacker. I do not accept that statement.
- [13] Mr. Dabbs rightly points out that there is potential prejudice to creditors, even possibly his own client, who might be paid their debts by Mr. Quigley in the circumstances. While it is true that Ms. Rottacker might be the beneficiary of a payment by Mr. Quigley in this seven-day period, it is also true that she might face the prospect of litigation by others, including any future trustee in bankruptcy. Such payments could be subject to a potential claw back from a trustee in bankruptcy or perhaps another creditor in the event that they are not on the receiving end of Mr. Quigley's repayment program.
- [14] I do not accept Mr. Patzer's comments to the effect that, even if repayment is required, Ms. Rottacker is simply put back in the same position. Litigation is expensive and time consuming and in and of itself poses prejudice to Ms. Rottacker. Needless to say, if any other creditors receive payment in that period of time, they would be exposed to same prejudice.

- [15] There are other means of potentially addressing Ms. Quigley's financial difficulties. I have already mentioned to counsel that he has the ability, even when bankrupt, to make the proposal to his creditors leading to an annulment of the bankruptcy (BIA, s. 61). In light of his oral submissions to me today, this might include offering payment to his creditors on terms as to time and amount. I acknowledge that that this option still means that he is within these BIA insolvency proceedings in the meantime, with the negative consequences that entails.
- [16] I have also raised with counsel the possibility of appointing an interim receiver pursuant to s. 46 of the BIA. Neither counsel mentioned such an option. However, even in that event, I would have been authorizing the interim receiver to take immediate possession of Mr. Quigley's property. This is essentially the same practical result, since a trustee in bankruptcy would take possession upon a bankruptcy order being granted, consistent with the property vesting in that trustee in bankruptcy (unlike an interim receiver).
- [17] The main difficulty here is that Mr. Quigley has not proffered any evidence to support the conclusion that there is some reasonable basis upon which I might further delay the matter. That is unfortunate. However, as Mr. Dabbs points out, this matter has been outstanding since April 8, 2020, some almost two months ago, when the application was filed. Master Cameron's hearing was conducted over one month ago. Mr. Quigley suggests that he had reasons for this delay, but again, there is no evidence to support those reasons and I am unable to give it any credence in this hearing.
- [18] I have considered all of the circumstances. Mr. Quigley concedes that Ms. Rottacker is owed at least \$1,000 and that he has ceased to meet a number of liabilities, namely generally as they become due (BIA, s. 43(1)). It is clear that the statutory requirements under the BIA for a bankruptcy order have been met. I have no evidentiary basis upon which I might exercise my discretion to delay the matter - even assuming that I have the discretion to grant the type of order sought by Mr. Patzer, and frankly, I am not sure that I do.
- [19] This outcome does not leave Ms. Quigley without options. If his intention is to repay his creditors, he is still free to pursue that course of action as quickly as he possibly can.
- [20] Accordingly, I grant the bankruptcy order with respect to Mr. Quigley on the terms sought.
- (SUBMISSIONS ON COSTS)
- [21] THE COURT: I award Ms. Rottacker her solicitor-and-client costs with respect to this application. It is my view that her efforts have brought about some benefits in bringing some order to Mr. Quigley's financial circumstances, the benefit of which will be enjoyed by all creditors. The costs awarded will be subject to taxation in the usual course.

"Fitzpatrick, J."

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