

CANADA / JUDGMENT

IE CA 3 Holdings Ltd. (Re)

2025 BCSC 1123

COURT

Supreme Court of British Columbia

DECIDED

13 June 2025

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2025 BCSC 1123 IE CA 3 Holdings Ltd. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

IE CA 3 Holdings Ltd. (Re),

2025 BCSC 1123

Date: 20250613

Estate File No. 11-2959932

Docket: B230284

Registry: Vancouver

In the Matter of the Bankruptcy of

IE CA 3 Holdings Ltd. and IE CA 4 Holdings Ltd.

- and -

Estate File No. 11-2959909

Docket: B230298

Registry: Vancouver

In the Matter of the Bankruptcy of

IE CA 3 Holdings Ltd. and IE CA 4 Holdings Ltd.

Before: The Honourable Mr. Justice Milman

Oral Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.

June 11, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 13, 2025

I. Introduction

- [1] Before the Court are two applications brought in these bankruptcy proceedings by the two bankrupt companies, their parent company, and two of those companies' principals. The applicants seek an order to restrain the trustee in bankruptcy from carrying out a series of examinations currently scheduled to begin next week in Australia. They argue that, in pursuing those examinations as it has, the trustee is in breach of my earlier order in this proceeding insofar as it required the trustee to seek directions from this court before pursuing any further examinations beyond those I permitted at that time.
- [2] The trustee opposes the applications, arguing that nothing in my earlier order prevented it from pursuing the additional examinations as it has.
- [3] In the decision that follows, I will begin with the background facts. I will then summarise the parties' arguments in more detail before turning to my analysis and conclusion.

II. Background Facts

- [4] On December 1, 2023, I granted an order in these proceedings allowing the trustee, PricewaterhouseCoopers Inc. (the "Trustee"), to conduct examinations under s. 163 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA], of four individuals on certain terms.
- [5] The Trustee had originally sought an order permitting it to examine a total of six individuals. It needed such an order because the proposed examinees reside in Australia, beyond the territorial jurisdiction of this court and, with one exception, were refusing to submit to the proposed examinations.
- [6] The Trustee's application was opposed by the two debtor companies, known as IE CA 3 Holdings Ltd. and IE CA 4 Holdings Ltd. (collectively, the "Debtors"), their Australian parent company, then known as Iris Energy Limited, but now known as IREN Limited ("IREN") and the proposed examinees themselves. They argued that the court lacked the jurisdiction to grant such an order and that the proposed examinations, beyond that of the one proposed examinee who had consented to be examined, would be unnecessary and abusive.
- [7] In my reasons for judgment explaining my decision to allow the application in part (now indexed as IE CA 3 Holdings Ltd. (Re), 2023 BCSC 2120), I found, among other things, that the court had the requisite in personam jurisdiction to grant the relief sought. I also found that the Trustee had shown that examinations of at least four of the proposed examinees were justified as part of its ongoing effort to investigate the circumstances that led to the insolvency of the Debtors. However, I set limits on the examinations that I was permitting at that time. In particular, I refused to allow the Trustee to examine two of the proposed examinees at that time. I also limited the duration of the examinations that were to occur pursuant to my order. Finally, I granted the parties leave to seek further directions, following the completion of those examinations, if they were unable to agree on whether further examinations were required.
- [8] After the permitted examinations occurred between January and March 2024, the Trustee was of the view that its questions had still not been satisfactorily answered and consequently that further examinations would be required. Instead of coming back to this court for directions, as contemplated by my order, the Trustee, on September 17, 2024, commenced foreign recognition proceedings in the Federal Court of Australia pursuant to Article 17 of the UNCITRAL Model Law on Cross-Border Insolvency (the "Model Law"). By operation of Part XIII of the BIA and s. 6 of the Cross-Border Insolvency Act 2008 (Cth) (Australia), the Model Law has been incorporated into the domestic laws of Canada and Australia, respectively.

- [9] In its originating filings in Australia, the Trustee explained that it was seeking to proceed in Australia to have these proceedings recognised there as a foreign main proceeding, for two main reasons. First, it believed that it was unlikely to see further recovery of the assets of the Debtors in Canada, whereas the prospects for further recovery of the Debtors' assets in Australia appeared to be better. Second, the Trustee indicated that it wished to pursue additional examinations and all of the intended new examinees reside in Australia.
- [10] On October 9, 2024, IREN obtained leave to intervene so that it could oppose the Trustee's application. When the matter came on for hearing on the merits later that same day, IREN argued, among other things, that if the Trustee wished to pursue further examinations, the proper way to do so was to return to this court for directions, as contemplated by my order. In IREN's submission, the Trustee was abusing the Australian court's process with a view to circumventing my order.
- [11] In its decision of October 18, 2024 (*PricewaterhouseCoopers Inc in its Capacity as Foreign Representative of IE CA 3 Holdings Ltd v IE CA Holdings Ltd* [2024] FCA 1208 (Markovic J)), the Australian court rejected IREN's arguments, finding that any examinations conducted by the Trustee in the Australian proceedings would be in the nature of co-operation with, and assistance to, the proceedings in this court. In the result, the Australian court granted the orders sought by the Trustee and appointed two local representatives, each with all the powers of a corporate liquidator under Australian law.
- [12] On November 1, 2024, IREN filed an application seeking leave to appeal that order and an interim stay. Those applications were refused by an appellate division of the Australian court on November 11, 2024 and April 11, 2025, respectively (*Iris Energy Ltd v PricewaterhouseCoopers Inc in its capacity as foreign representative of IE CA 3 Holdings Ltd* [2024] FCA 1297 (Stewart J) and *IREN Ltd v PricewaterhouseCoopers Inc in its capacity as foreign representative of IE CA 3 Holdings Ltd* [2025] FCAFC 52 (Sarah C Derrington, Stewart and Feutrill JJ)).
- [13] As contemplated by the recognition order, the Australian local representatives appointed by the recognition order applied for, and, on April 11, 2025, were granted an order permitting them to issue summonses for the examination of six individuals resident in Australia, namely, William Roberts, Daniel Roberts, Lindsay Ward, Joanna Brand, Jason Conroy and Anne Hayes. My order of December 1, 2023 permitted the Trustee to examine William Roberts, but not Daniel Roberts. The Trustee had not previously sought to examine the other four individuals in these proceedings.
- [14] All of those proposed examinees, other than Ms. Hayes, were served with a summons between April 29 and May 6, 2025. I am told that efforts to serve Ms. Hayes are still underway.

- [15] On May 6, 2025, Daniel Roberts and William Roberts filed applications with the Australian court to have the summonses they received set aside. Those applications were heard in Australia earlier this week and, I was just this morning provided with the decision of Shariff J., of today's date, dismissing those applications (McGrath, in the matter of IE CA 3 Holdings Ltd [2025] FCA 635), which I have had the chance to review, if only briefly.

III. The Present Applications and the Trustee's Response

- [16] On June 9, 2025, the Debtors and IREN, on the one hand, and William and Daniel Roberts, on the other, each filed an application in this court, the applications now before me today, seeking an order restraining the Trustee from conducting any further examinations, regardless of any order of the Australian court. They argue, as they did before the Australian court, that the Trustee is abusing the process of that court and acting in breach of my order. They seek to have me invoke both the inherent jurisdiction of this court to control its own process, the basis for my order of December 1, 2023, and s. 37 of the BIA, which confers a broad discretionary power on the court to confirm, reverse, or modify an act or decision of a trustee in order to do justice, having regard to all the circumstances. The applicants had also sought interim relief in the event that the hearing could not occur before me when it did, but I understand that relief is no longer being pursued given that the applications have now been heard, and, with my decision today, are now being resolved, in advance of the proposed examinations.
- [17] The Trustee opposes the applications, arguing that it is the applicants who are abusing this court's process, because they are merely attempting to relitigate questions already resolved by the Australian court, with a view to further delaying the Trustee's investigation and collection efforts. It contends that, as the Australian court found, my order was permissive, not restrictive, and nothing that it has done or proposes to do in Australia contravenes its terms.
- [18] Both sides accuse the other of manufacturing the urgency that now attends these applications. The applicants say that the Trustee unreasonably refused to postpone the examinations so that the hearing before me could proceed within the ordinary timelines. The Trustee responds that it is the applicants who have chosen to wait until the eleventh hour to bring these applications, despite having notice of the pending examinations since at least May 5, 2025.
- [19] Further, both sides accuse the other of forum shopping. The applicants argue that it is the Trustee who successfully applied, over their objections, to engage this court's inherent jurisdiction when I granted it part of the relief it was seeking on December 1, 2023, but now seeks to avoid this court's oversight by proceeding with further examinations in Australia, without seeking the requisite directions from this court before doing so. The Trustee responds that the applicants could have come to this court in response to the litigation in Australia, but elected instead to litigate the matter in Australia and, as I indicated earlier, according to the Trustee, they are merely seeking to relitigate the same issue here, having

now been repeatedly unsuccessful in Australia.

IV. Discussion

- [20] It is common ground that, regardless of what has occurred, or may in the future occur in Australia, this court retains its supervisory jurisdiction over its own officer (see, for example, *Garcha v. 690174 B.C. Ltd.*, 2023 BCCA 376). The issue posed today is whether I should exercise that jurisdiction by restraining the Trustee from proceeding with the examinations next week in Australia, with the result that the Trustee will be required to return to this court to litigate the appropriateness of those examinations, regardless of the outcome of the applicants' challenge to that process in Australia.
- [21] In urging me to make such an order, the applicants contend that the Trustee is effectively seeking to circumvent my earlier order of December 1, 2023. I agree with the applicants that my order was restrictive in the sense that I chose to limit the number and duration of the examinations then being requested, based on the evidentiary record that was then before me, relying on cases like *Chiang (Re)*, 2008 CanLII 25717 (O.N.S.C.), which I cited at para. 36 of my earlier reasons for judgment. I therefore disagree with the Trustee's argument that by granting leave in para. 53 of my reasons for judgment, and para. 3 of my order, for the parties to return for directions should they be unable to agree on the need for further examinations, I was merely permitting but not requiring that such directions be sought before additional examinations proceeded.
- [22] However, the applicants' complaint about what has occurred since then is one of form over substance. The substance of my concern was that the evidentiary record before me at the time did not, I concluded, justify relief beyond that which I granted. In its recognition application to the court in Australia, the Trustee adduced new evidence explaining why it needed to conduct further examinations, in view of the result of the examinations I did permit. The substance of the concern that gave rise to the restrictions in my order has since been addressed by the Australian court's assessment of the merits of the Trustee's case for conducting further examinations, having been made aware of and considered my reasons for imposing those restrictions.
- [23] I am not persuaded by the applicants' argument that the judicial vetting called for by my order had, of necessity, to be undertaken by this court and no other. The Model Law is designed, among other things, to promote cooperation between domestic and foreign courts in multi-jurisdictional bankruptcy cases like this one. As the Australian court found, at both levels, the Trustee went to that court to obtain such assistance and not to circumvent my order or for some other improper purpose. I see no reason for me to come to a different conclusion on these applications.
- [24] Finally, the applicants chose, by bringing successive applications in Australia, to contest, in Australia, the adequacy of the new evidence put forward by the Trustee and the process that the Trustee has pursued in procuring those additional examinations. Having done so, and

failed at every turn, it is not properly open to the applicants to return to this court now seeking a different result. I note that I left it open to both sides to return to this court to seek directions should they be unable to agree on the need for further examinations. Neither side chose to do so until after the applicants' challenge to the process in Australia had already unfolded as it did.

[25] I agree with the Trustee that, in these circumstances, the order that the applicants seek today would, if granted, offend the principal of judicial comity, as described in cases such as *Litecubes, L.L.C. v. Northern Light Products Inc.*, 2009 BCSC 181.

[26] For all of those reasons, I have concluded that the applications should be refused, and I so order.

V. Disposition

[27] The applications are refused, with costs payable to the Trustee.

"Milman J."

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