

CANADA / JUDGMENT

Poonian (Re)

2021 BCSC 222

COURT

Supreme Court of British Columbia

DECIDED

14 January 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 222 Poonian (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Poonian (Re),

2021 BCSC 222

Date: 20210114

Docket: B180757

Registry: Vancouver

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy of

Thalbinder Singh Poonian and Shailu Poonian

Before: The Honourable Mr. Justice Thompson

On appeal from: an order of a master sitting as a registrar in bankruptcy,

dated April 8, 2020 (Re Poonian, 2020 BCSC 547)

Oral Reasons for Judgment

Counsel for the Appellants,

T.S. Poonian and S. Poonian:

C. Reedman

Counsel for the Respondent,

British Columbia Securities Commission:

L. Bevan

W. Roberts

Counsel for the Respondent,

Her Majesty the Queen in right of Canada:

C. Matthews

Place and Date of Hearing

(by videoconference):

Vancouver, B.C.

January 8, 2021

Place and Date of Judgment:

Vancouver, B.C.

January 14, 2021

- [1] THE COURT: Thalbinder Singh Poonian and Shailu Poonian are husband and wife. They made a joint assignment into bankruptcy in April 2018. In February 2020, they applied for discharge. The master, sitting as a registrar in bankruptcy, dismissed the application. On appeal, the Poonians seek an order of absolute discharge or, in the alternative, a conditional discharge order -- the condition sought is that each bankrupt pay \$10,000 at the rate of \$300 per month.
- [2] The proven liabilities of the Poonians total \$25,184,694. The trustee in bankruptcy has realized a paltry \$3189 from the Poonians' assets. The respondents on this appeal are the major creditors. The Poonians owe the respondent British Columbia Securities Commission (the "Securities Commission") a total of \$19,095,362 (plus interest) for administrative penalties and disgorgement orders. These obligations to pay have been registered in this Court as a judgment. The sanctions imposed by the Securities Commission arise out of the Poonians' market manipulation scheme which preyed upon a large pool of vulnerable and generally unsophisticated investors. As a result of income tax audits by Canada Revenue Agency, the Poonians owe the respondent Minister of National Revenue a total of \$4,335,253.
- [3] The Poonians are in middle age and are first-time bankrupts. They maintain that they have complied with their duties under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA]. They submit that the master made errors of principle in the course of exercising his discretion under the BIA. They say they ought to have been regarded as honest but unfortunate debtors. They argue that the Securities Commission was given unjustified preferential treatment as a creditor. The submission is that these errors of principle led to the master putting too much weight on the interests of the creditors and the integrity of the bankruptcy system, and too little weight on the rehabilitation of the bankrupts.

- [4] Relatedly, the Poonians point to other cases where a discharge was granted notwithstanding serious pre-bankruptcy misbehaviour. The Poonians submit, in effect, that the master must have lost sight of the principle that an outright refusal of discharge is a harsh outcome and is not ordered lightly or commonly made.

Standard of Review

- [5] In applying the discharge provisions of the BIA, a registrar finds facts and is called upon to exercise a discretion based on those facts as found. The parties agree that this appeal from a master sitting as a registrar in bankruptcy is a "true appeal" and not a hearing de novo.
- [6] It is also common ground that deference is owed to the master's findings of fact, and that an appellate court ought not to interfere with the exercise of discretion unless it was based on wrong principles such as importing irrelevant considerations into the analysis or affording no or insufficient weight to relevant considerations.

The Master's Reasons for Judgment

- [7] After an introduction, the master's reasons for judgment outline the Poonians' active and extensive involvement in the market manipulation scheme, the consequent sanctions imposed by the Securities Commission, and the provenance of the Poonians' large pre-bankruptcy tax liabilities. The master quoted extensively from Justice Fitzpatrick's reasons in *Re Montalban*, 2013 BCSC 683, during his exposition of the purpose of the BIA discharge provisions.
- [8] Before the master, the Poonians sought an absolute discharge. In the alternative, they urged a discharge suspension in the range of three to six months. The master found that the value of the Poonians' assets was not equal to 50 cents on the dollar of their unsecured liabilities. And, he held that it was impossible to conclude on the facts of this case that the shortfall arose from circumstances for which the Poonians cannot be held justly responsible. These s. 173(1)(a) BIA findings ruled out an absolute discharge (by operation of s. 172(2)); the remaining available outcomes were a refusal of discharge, a conditional discharge, or a suspension of discharge with or without conditions: s. 172.
- [9] The master carried on to consider whether it was appropriate to suspend rather than make an order of outright refusal of discharge. During this part of his analysis, the master noted that the Poonians did not seek a conditional discharge "for the simple reason that they are unable to pay an amount of any significance and could not comply with the anticipated conditions of their discharge" (para. 56).

- [10] The master instructed himself that a discharge should only be refused outright "in extreme cases or where the conduct of the debtor has been particularly reprehensible" (para. 54). At the same time, a suspended discharge should only be granted if the order is consistent with the two purposes of "rehabilitating the bankrupt and upholding the integrity of the bankruptcy system" (para. 58).
- [11] The master found that it would be contrary to the public interest to grant a suspended discharge in light of the Poonians' serious misconduct -- egregious manipulation of the sort that damages the integrity of capital markets and conduct that in this case caused substantial injury to financially distressed investors (para. 60).
- [12] The master expressed considerable doubt that the Poonians have been rehabilitated. He had regard to their evidence, but held that "it demonstrates that the Poonians refuse to take responsibility for their actions or the consequences of those actions for others" (para. 64). The master referred to the Poonians' attribution of their lack of assets or surplus income to the Securities Commission's enforcement actions, their unimpressive efforts to maintain suitable employment while in bankruptcy, and their failure to pay any contribution toward reducing their debts.
- [13] The master concluded that a suspended discharge would "do little to advance the twin principles of rehabilitating the bankrupt and upholding the integrity of the bankruptcy system" (para. 68). He concluded that "the circumstances of this case are extreme and that the pre-bankruptcy conduct of the Poonians requires the court to distance itself from their effort to use the bankruptcy process to absolve themselves of the financial consequences of their actions" (para. 69), and that "a suspended discharge would not adequately respond to the public interest and rehabilitation concerns raised by the Commission and the Minister given the Poonians' refusal to take responsibility for their actions" (para. 70).

Grounds of Appeal

- [14] There are three grounds of appeal set out in the Poonians' statement of argument. Having read the statement of argument and heard oral argument, I would divide these grounds into four and restate the issues on appeal as follows:
1. Whether the master erred in concluding that the appellants were not "honest but unfortunate debtors" -- persons of the sort that the BIA was intended to aid;
 2. Whether the master treated the debt to the Securities Commission as facts under s. 173(1) of the BIA that justify a refusal of discharge from bankruptcy;
 3. Whether the master erred in finding that financial sanctions imposed by the Securities Commission ought not to be discharged or erred in his application of the principles governing rehabilitation of debtors; and
 4. Whether the master erred by ordering the application dismissed.

- [15] The Poonians submit that the first three of these alleged errors, either alone or in combination, led to the outright refusal of their application for discharge. The fourth ground is more technical: the Poonians argue that there is jurisdiction to "refuse" their application for discharge, but no jurisdiction to "dismiss" their application.

Are the Poonians "honest but unfortunate debtors"?

- [16] The master quoted this passage from *Re Montalban*:

- [25] Many bankrupts are what can be described as the "honest but unfortunate debtor" who is most certainly entitled to the benefit of the discharge provisions under the BIA. Generally speaking, for a first-time bankrupt whose insolvency arose from circumstances for which he cannot be held responsible and who has complied with his duties under the BIA, the BIA provides for an automatic discharge after nine months, subject to any other objections being raised by the Trustee or the creditors: ss. 168.1 and 168.2.
- [26] For others, such as rogues who are clearly guilty of transgressions before the bankruptcy or who have clearly not complied with their duties under the BIA, their discharge may be refused even when they bother to attempt to have an application heard by the court in the first place. In those cases, the court will be reluctant to release the bankrupt from this "financial purgatory" where either the rehabilitation of the bankrupt and the protection of the public remain issues or where the trustee still requires the bankrupt's assistance in investigating transactions and potential assets. Bankrupts who are guilty of fraudulent activities, either before or after the bankruptcy, or both, certainly fall within this category.
- [27] Somewhere between these two extremes are bankrupts whose actions have attracted the opposition of the trustee, the creditors, or both, arising from a lesser degree of blameworthiness relating to their activities before the bankruptcy or their performance of their duties under the BIA. In that case, a conditional order or a suspended discharge order, or both, may be appropriate: s. 172.
- [17] The Poonians regard themselves as debtors that fall into the "honest but unfortunate" category. The master plainly found each of them occupy the other pole, i.e., "rogues who are clearly guilty of transgressions before the bankruptcy." No error -- manifest, palpable or otherwise -- has been demonstrated in this conclusion of fact. It is amply supported by the evidence.

Treating the Securities Commission's financial sanctions as s. 173(1) BIA facts

- [18] The short answer to this argument is that the master did not treat the Commission's financial sanctions as s. 173(1) facts. The master did conclude that s. 173(1)(a) applied, finding that (1) the Poonians' assets were not a value equal to 50 cents on the dollar on the amount of their unsecured liabilities, and (2) this shortfall had not been shown by the Poonians to arise from circumstances for which they cannot justly be held responsible. The master gave cogent reasons for these findings, and his reasons are unassailable.

The errors of principle alleged in relation to the Securities Commission debt and rehabilitation of debtors

- [19] The master found it would be contrary to the public interest to grant a suspended discharge in light of the Poonians' serious misconduct. In this context, the master said:
- [60] As a result of the prohibitions imposed by the Commission, the Poonians may no longer pose a risk to the public in terms of market manipulation. But it would be contrary to the public interest, in my view, to grant them a suspended discharge from bankruptcy. One of the purposes of the Commission's enforcement powers, as found by the Court of Appeal in this case, is deterrence. That purpose would be frustrated if a person having been ordered by the Commission to make a substantial payment could declare bankruptcy and then wait a prescribed period of time and be free of the financial consequences of his or her actions.
- [61] In this regard, the Commission stands in a different position from other creditors. The Commission is not in a position to compromise payments that would ultimately be collected in the public interest and for the benefit of investors.
- [62] It is no answer to these concerns to say the Poonians generally complied with their obligations under the BIA or that they provided full disclosure to the trustee and the receiver. As observed by Madam Justice Fitzpatrick in *Re Montalban*, the BIA is not intended to be a "fiscal car wash". Nor is the BIA intended to cleanse those who contravene the Securities Act of the fiscal consequences of their actions.
- [20] As I understand the argument, the Poonians submit that this passage from the master's reasons disclose the error of giving special significance to the debt owed to the Securities Commission such that this creditor was effectively given a veto at the discharge hearing. Further, they argue that the master confused the principles applicable to whether the Securities Commission debt would survive bankruptcy under s. 178 with the principles applicable to discharge for bankruptcy. With respect to the latter assertion, I see no indication in the master's reasons of this asserted irrelevant consideration being inserted into the reasoning process, and I will say no more on this subject.
- [21] The argument asserting error by according special significance of the debt to the Securities Commission draws on what the master said at paras. 60-62 of his reasons. The Poonians argue that the master's characterization of the nature of the debt to the Securities Commission overwhelmed his analysis resulting in the failure to properly engage in weighing all of the proper considerations, including the rehabilitation of the bankrupts. The submission is that the proper exercise of discretion was swamped by the master according the Securities Commission special status as a creditor.
- [22] I cannot agree. Viewed in isolation, the language used by the master in these three paragraphs appears to support the appellants' argument. However, in the course of his reasons, the master made clear his understanding that the integrity of the bankruptcy system involves the public interest, described in the authorities as including the promotion

of "commercial morality." He also understood that the rehabilitation of the bankrupts must be weighed in the balance. I interpret paras. 60-62 of the master's reasons, read in the context of the entirety of his reasons, as saying that an order that would have the effect of cleansing the debt owed to the Securities Commission would be contrary to the public interest and that this is a factor that weighs in the balance against discharge. I do not interpret the master's reasons as concluding that the fact of the debt to the Securities Commission ends the analysis and bars a discharge.

- [23] The Poonians referred to other cases of serious misconduct where the result was other than outright refusal of discharge. However, the master plainly understood that an outright refusal is rarely the appropriate result. The master cited the passage in *Industrial Acceptance Corp. v. Lalonde*, [1952] 2 S.C.R. 109 at 120, where it was said that while discharge was not a matter of right, "the absolute refusal of discharge ought to be imposed only in cases where the conduct of the debtor has been particularly reprehensible, or in what have been described as extreme cases."
- [24] The determination of whether misconduct fits the category of being particularly reprehensible or extreme is a fact intensive exercise. It does not avail the appellants to point to other cases where the court has found that conduct ought not to be characterized in this way. In the case at bar, the master found the Poonians to have engaged in such extreme misconduct and this finding is entitled to deference.

The technical ground related to dismissal of the application

- [25] This ground was not pursued with vigour at the hearing of the appeal. Because it was not abandoned, I will briefly address it. The Poonians maintain that s. 172 does not provide for dismissal of their application for discharge. They submit that once the master decided discharge would be refused, the only available options were to refuse discharge or adjourn the application. I see nothing in this technical point. It is apparent from para. 38 of the master's reasons that he understood the available options. He plainly chose to refuse discharge. Having made this decision, he stated the consequent outcome of the Poonians' application for discharge: i.e., that their application was dismissed.

Conclusion

- [26] Having determined that the master did not make any of the errors alleged by the appellants, there is no basis for interference with his order. The appeal is dismissed.
- [27] Anything for clarification, counsel?
- [28] MS. BEVAN: Not from me, thank you, My Lord.
- [29] MR. REEDMAN: No, nothing from the appellants. Thank you.
- [30] MS. MATTHEWS: Nothing from me, My Lord.

[31] THE COURT: Anything further, then, counsel?

[32] MS. BEVAN: No, thank you, My Lord.

[33] MR. REEDMAN: My Lord, one last matter, if you don't mind. I note that the B.C. Securities Commission does have an application to seek a declaration that the Securities Commission debt survives the discharge scheduled for next Friday. I just want to clarify if Your Lordship is seized of this matter or would be seized of this matter, given your familiarity? If not, that is fine. I just simply wanted to raise that there is a subsequent application. I have received instructions to seek an adjournment of that application as well, but I did want to draw that to Your Lordship's attention.

[34] THE COURT: Yes, my home county is Nanaimo. I do not think there is any good reason why I ought to be seized of that further application. Does anyone want to suggest that there is any reason I ought to be?

[35] MS. BEVAN: Nothing from me, My Lord.

[36] THE COURT: Very well, I am not seized of that application.

"Thompson J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/02/2021BCSC0222.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/poonian-re-2021-bcsc-222>

Prepared on 29 October 2026 · Esheria