

CANADA / JUDGMENT

# Poonian v. British Columbia (Securities Commission)

2021 BCCA 224

## COURT

British Columbia Court of Appeal

## DECIDED

26 May 2021

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2021 BCCA 224 Poonian v. British Columbia (Securities Commission) COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Poonian v. British Columbia (Securities Commission), 2021 BCCA 224 Date: 20210526 Docket: CA47364 Between: Thalbinder Singh Poonian and Shailu Poonian Appellants And British Columbia Securities Commission Respondent Before: The Honourable Mr. Justice Grauer (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated March 26, 2021 (Poonian (Re), 2021 BCSC 555, Vancouver Docket B180757). Oral Reasons for Judgment Counsel for the Appellants (via teleconference): C.G. Reedman F. Ahmed, Articled Student Counsel for the Respondent (via teleconference): L.L. Bevan S.B. Hannigan Place and Date of Hearing: Vancouver, British Columbia May 26, 2021 Place and Date of Judgment: Vancouver, British Columbia May 26, 2021 Summary: The applicants apply for leave to appeal the order below, which excluded the debt owed by the applicants from being released by any order or discharge, pursuant to section 178(1) of the Bankruptcy and Insolvency Act, RSC 1985, c B-3. The applicants submit, and the respondent Commission agrees, that pursuant to section 193 of the Bankruptcy and Insolvency Act, leave to appeal is not required. The respondent Commissions argues, however, that the grounds of appeal should be limited. Held: The application for leave to appeal shall stand as a notice of appeal. The proposed appeal qualifies as one that may be brought as of right under any of sections 193(a), (b) and (c). Having concluded that the proposed appeal may be brought as of right, it is not appropriate to make an order limiting the grounds of appeal, which is an issue for the division hearing the appeal.

[1] GRAUER J.A.: In this bankruptcy matter, the bankrupts apply for leave to appeal from the order of Mr. Justice Crerar pronounced March 26, 2021.

[2] By way of background, the respondent British Columbia Securities Commission had made orders by way of administrative penalties and disgorgement orders that required the bankrupts to pay the Commission a sum in excess of \$19,000,000. The Commission then sought an order in the court below pursuant to section 178(1) of the Bankruptcy and Insolvency Act, RSC 1985, c B-3 [BIA], excluding that debt from being released by any order or discharge granted to the bankrupts.

- [3] The judge granted the order requested. His reasons are indexed at 2021 BCSC 555. The background, as the judge noted, has been protracted and multi-pronged, and I do not propose to review it in detail.
- [4] The bankrupts' first position, with which the respondent Commission agrees, is that leave to appeal is not, in fact, required in this case. This, they say, arises from section 193 of the BIA: 193 Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:
- (a) if the point at issue involves future rights;
  - (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
  - (c) if the property involved in the appeal exceeds in value ten thousand dollars;
  - (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
  - (e) in any other case by leave of a judge of the Court of Appeal.
- [5] In the submission of the parties, the proposed appeal qualifies as one that may be brought as of right under any of subparagraphs (a), (b) and (c). I agree.
- [6] The Ontario Court of Appeal in *Shaver-Kudell Manufacturing Inc v Knight Manufacturing Inc*, 2021 ONCA 202, determined that an appeal made under section 178 of the BIA is an appeal as of right under section 193(c), where the debts and liabilities that will survive discharge exceed \$10,000, and also under section 193(a) since it involves the future rights of the bankrupt.
- [7] Looking at section 193(b), it is noteworthy that the decision below is, I am informed, the first reported decision in British Columbia where it has been ordered that the Commission's administrative fines and disgorgement orders shall survive a discharge from bankruptcy. That subsection would appear to apply as well.
- [8] It follows, in my view, that leave is not necessary.
- [9] The Commission does, however, assert that the scope of the appeal should be limited by excluding consideration of one of the grounds of appeal raised by the bankrupts, namely that: The chambers judge erred in law by ordering the administrative penalties and disgorgement order to survive any order or discharge from bankruptcy, which was arbitrary, oppressive, overly broad, disproportionate and contrary to section 7 and 12 of the Charter, not in the public interest and contrary to the principles of fundamental justice.

- [10] In the Commission's submission, the bankrupts did not raise any constitutional issues in the court below, and led no evidence relevant to such an issue. Nor have they issued any notice of constitutional question. Accordingly, the Commission contends, they ought not to be able to pursue it on appeal.
- [11] In my view, having concluded that the bankrupts' proposed appeal may be brought as of right, it is not appropriate on this application to make an order limiting the grounds of appeal. It is not yet entirely clear to me what the bankrupts propose to make of this argument; whether, for instance, it is a matter of statutory interpretation in accordance with constitutional principles. I, therefore, consider it more appropriate that the division hearing the appeal make the determination of whether the bankrupts should be allowed to pursue this aspect of their argument, within the context of the appeal as positioned before them and in light of the record that they can then consider as a whole.
- [12] In conclusion, leave to appeal is granted. The application for leave to appeal shall stand as notice of appeal with all relevant timelines to commence running today. "The Honourable Mr. Justice Grauer"

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