

CANADA / JUDGMENT

Thrush (Re)

2023 BCSC 413

COURT

Supreme Court of British Columbia

DECIDED

20 March 2023

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

2023 BCSC 413 Thrush (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Thrush (Re),

2023 BCSC 413

Date: 20230320

Docket: B052096

Estate No. 11-786446

Registry: Vancouver

In the Supreme Court of British Columbia

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy of

Bruce Gordon Junior Thrush

Before: Registrar Gaily

Reasons for Decision

Counsel for the Applicant,

Bruce Gordon Junior Thrush:

C.G. Reedman

Counsel for the Respondent, His Majesty the King in Right of the Province of Ontario:

O.J. Kowarsky

P.Y. Yeh

Place and Date of Hearing:

Vancouver, B.C.

February 23, 2023

Place and Date of Judgment:

Vancouver, B.C.

March 20, 2023

Table of Contents

INTRODUCTION.. 3

FACTUAL BACKGROUND.. 3

ANALYSIS.. 7

INTRODUCTION

- [1] This is an application by Bruce Gordon Junior Thrush for a discharge from bankruptcy pursuant to s. 172 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA]. Mr. Thrush asks that I grant his discharge, but suspend it for 30-days. In the alternative, Mr. Thrush seeks a conditional discharge on terms and conditions as this Court deems fit. Mr. Thrush's discharge application is opposed by His Majesty the King in Right of the Province of Ontario ("Ontario").
- [2] The evidence before me at the hearing consisted of Mr. Thrush's affidavit made June 24, 2022, and the first, second and third affidavits of Jacqueline Kirzner, a paralegal with the firm representing Mr. Thrush, made August 2, 2022, February 10 and 17, 2023 respectively. Mr. Thrush attended the hearing remotely and testified on his own behalf and he was cross-examined by Ontario.
- [3] Ontario tendered the affidavit of Lorna Bottos, a finance administrative assistant with the Student Financial Assistance Branch of the Ontario Ministry of Colleges and Universities ("MCU"), made February 7, 2023, and the first and second affidavits of Angie Amorgianos, a program assistant with the Ontario MCU, both made August 3, 2022.
- [4] For the reasons that follow, I am granting Mr. Thrush's application for discharge, but ordering that it is suspended for 30 days from the date of this decision.

FACTUAL BACKGROUND

- [5] Mr. Thrush is currently 47 years old. He lives in Sudbury, Ontario, and is employed full-time as a transport driver.

- [6] Mr. Thrush received Ontario student loans for the 1996-1997 academic year to pursue a welding program at Cambrian College in Sudbury, Ontario. He did not complete the welding program, but switched to an appliance servicing program also offered at Cambrian College, for which he incurred further student loans (Bottos Affidavit, paras. 3-4; see also Thrush Affidavit, paras. 11-13).
- [7] Mr. Thrush withdrew from studies March 13, 1998 (Bottos Affidavit, para. 4). At that time, Mr. Thrush's student loans totalled \$5,590 (Bottos Affidavit, para. 5). Ontario's evidence is that Mr. Thrush did not apply for any of the government run relief programs available to student loan debtors (Bottos Affidavit, para. 10).
- [8] Mr. Thrush moved to the lower mainland of BC where he ran his own business.
- [9] On March 30, 2005, Mr. Thrush made a voluntary assignment into bankruptcy with E. Sands & Associates as his trustee (the "Trustee"). Mr. Thrush's evidence is that the reason for his bankruptcy was "due to the taxes [he] owed from 2000, amounting to approximately \$45,000"; he attests that he "had been working as a sub-contractor and paying employees from [his] own pay as [he] did not know better", which "resulted in an inflated number for [his] reported income" and he was "soon overwhelmed by the taxes owed" (Thrush Affidavit, paras. 7(a)-(b)).
- [10] In the Form 79, Statement of Affairs (Non-Business Bankruptcy), completed March 29, 2005 (the "Form 79"), Mr. Thrush indicated that he was indebted to the Canada Revenue Agency ("CRA") for \$42,652 and his total unsecured debt was \$45,628.13 (Thrush Affidavit, Ex. A, pp. 3-4). However, the Form 79 does not include any reference to Mr. Thrush's student loan debt and at the hearing, Mr. Thrush's evidence was that he "forgot" about his student loan debt when he filed for bankruptcy.
- [11] In the Form 82, Report of Trustee on Bankrupt's Application for Discharge, dated November 28, 2005 (the "Form 82"), the Trustee indicated that the cause of Mr. Thrush's bankruptcy was that, "as a result of failure to comply with the provisions of the Income Tax Act, [Mr. Thrush] was unable to fulfil his financial obligations as they became due" (Thrush Affidavit, para. 6, Ex. B, p. 8).
- [12] In 2005, payments totalling \$173.50 towards the student loans were deducted from Mr. Thrush's income tax refunds effective June 16 and September 21, 2005 (Bottos Affidavit, para. 11; Amorgianos Affidavit, para. 9).
- [13] The Trustee opposed Mr. Thrush's automatic discharge within the 9-month period contemplated under subsection 168.1(1)(a)(i) of the BIA, as evidenced in the Form 80, Notice of Opposition, dated November 28, 2005 (the "Form 80") (Thrush Affidavit, paras. 8-9, Ex. C). The Trustee opposed his discharge because Mr. Thrush failed to submit monthly income and expenses statements, failed to remit payment as agreed upon at the date of bankruptcy, failed to complete his second counselling session and failed to provide information requested by a creditor (Ex. C, p. 11). On the Form 80, the Trustee also opposed the

discharge on the basis that the Trustee was of the opinion that Mr. Thrush "can be justly held responsible for the fact that his assets are not of a value equal to fifty cents on the dollar" because of Mr. Thrush's failure to comply with the provisions of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), (Ex. C, p. 11).

- [14] As a result of the Trustee's opposition to the discharge, on January 11, 2006, Mr. Thrush's application for discharge was adjourned sine die; the order adjourning his discharge sine die was entered January 26, 2006.
- [15] In 2007, Mr. Thrush moved back to Sudbury, where he continues to live. Mr. Thrush attests that he sought assistance from a trustee in Sudbury and that they contacted the Trustee in 2008 hoping to "seek a release" from his bankruptcy, but that his request was not granted because he "could not pay the full amount requested for a discharge" from the Trustee (Thrush Affidavit, paras. 7(e)-(f)).
- [16] Mr. Thrush tendered in evidence a certificate dated January 16, 2010, signed by both Mr. Thrush and the Sudbury trustee, Mary Elizabeth Maynard, confirming that he complied with the terms of section 8 of the Office of the Superintendent of Bankruptcy's Counselling Directive (Kirzner Affidavit #3, Ex. A).
- [17] The Trustee was discharged in 2010. Mr. Thrush exhibited to his affidavit a copy of the Form 13, Trustee's Final Statement of Receipts and Disbursements, dated July 30, 2010 and entered September 30, 2010 (the Form 13) (Ex. F). The Form 13 indicates that as at July 30, 2010, Mr. Thrush's proven claims amounted to \$53,395.88, but there was a \$0 dividend (Ex. F, p. 25). On the Form 13, the Trustee notes that Mr. Thrush "completed his second counselling session with another Trustee in Bankruptcy". In the Trustee's dividend statement dated July 28, 2010, Mr. Thrush's student loan debt is included in the total of proven claims, but it is clear from this statement that at that time (2010), Mr. Thrush had made no payments to the debt (Thrush Affidavit, Ex. H, p. 54).
- [18] Mr. Thrush made further payments towards his student loan debts totalling \$1,645 between July 11, 2011 and August 24, 2018, but has made no further payments since August 24, 2018 (Bottos Affidavit, para. 11; Amorgianos Affidavit, para. 10). As of July 13, 2022, the total amount owing to Ontario student loans by Mr. Thrush was \$6,507.02 (including interest) (Bottos Affidavit, para. 13; Amorgianos Affidavit, para. 11). Under cross-examination by Ontario, Mr. Thrush admitted he has not made payments toward his student loan debt since 2018, which is when his wages were garnished by Canada Revenue Agency ("CRA").
- [19] Mr. Thrush attests that from 2018 to 2022, the CRA garnished his wages for outstanding tax debt for the years 2005 through 2007 (the year in which he filed for bankruptcy and the two subsequent); as of April 2022 Mr. Thrush attests that he "completed [his] garnishment for the years 2005, 2006 and 2007 and for all current taxes owed post-bankruptcy [and that all] of [his] current taxes have also been filed and paid in full" (Thrush Affidavit, para. 28). Mr. Thrush exhibited to his affidavit a copy of a CRA account summary dated April 20, 2022 showing a \$0 balance owing (Ex. G, p. 27), as well as a summary of post-bankruptcy

payments to CRA for taxes owed up to February 24, 2022 (Ex. I, pp. 56-59).

- [20] Mr. Thrush also attests that in April 2022, he received a letter from the CRA "asking for \$106,000 for bankruptcy taxes owed plus interest to date" (Thrush Affidavit, para. 29). This letter was not exhibited to Mr. Thrush's affidavit, although Mr. Thrush testified that he had sent a copy of the letter to his counsel for the purposes of this application. Mr. Thrush testified that he assumes the amount reflects his earlier tax liabilities plus interest, which had caused his bankruptcy.
- [21] Mr. Thrush exhibited to his affidavit monthly budget statements he prepared for the months of February, March and April 2022 (Thrush Affidavit, Ex. E, pp. 15-23). Mr. Thrush's income and expense sheets for the months of October, November and December 2022 are exhibited to Ms. Kirzner's 2nd affidavit (Ex. A). Mr. Thrush's pay stubs from his employer are attached to these income and expense sheets, and copies of cheques he receives for child benefits, and copies of the e-transfers of the monthly child support he pays to the mother of one of his children were also attached to the sheets exhibited to Ms. Kirzner's affidavit.
- [22] Mr. Thrush's evidence is that he lives with his mother in a house she owns. He testified that he does not own a vehicle, but drives one owned by his mother. Mr. Thrush testified that he has two minor children, and that one of his children lives with him "more full-time than not" and the other lives with him 50% of the time.
- [23] The income and expenses sheets from late 2022 indicate that Mr. Thrush earns approximately \$4,000 per month and receives \$138.88 per month in child benefits. He pays child support of \$238 per month. Each month, his rent is \$600 and he estimates he spends between \$1200-\$1300 for groceries and restaurant meals, as well as \$600 for gas. In November, he spent \$651.28 on winter boots and clothing for his work and in December he spent \$192.08 on unspecified clothing. He spends approximately \$340 each month on entertainment, liquor and cigarettes and he pays \$340 each month for his own cell phone, as well as the cell phones of his children. Mr. Thrush has several expenses related to his children. In October, he spent \$1035.33 on winter boots for his children and winter clothing, as well as \$1658.19 for fees for figure skating, skates and helmet. In November, he spent \$568.66 for hockey fees and hockey tournament accommodation and in December, he spent \$2114.94 on basketball academy fees, as well as Christmas presents.

ANALYSIS

- [24] Subsection 172(1) of the BIA provides that on an application of a bankrupt for a discharge, the court may do any of the following:

Court may grant or refuse discharge

172 (1)

- (a) grant or refuse an absolute order of discharge;

- (b) suspend the operation of an absolute order of discharge for a specified time; or
 - (c) grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards become due to the bankrupt or with respect to the bankrupt's after-acquired property.
- [25] Mr. Thrush does not seek an automatic absolute discharge, but asks that the discharge be suspended for a period of 30 days from the date of this decision, pursuant to subsection 172(1)(b). In the event that I refuse to grant Mr. Thrush the discharge from bankruptcy he seeks, he asks in the alternative that I grant a conditional discharge pursuant to subsection 172(1)(c).
- [26] In the notice of motion filed on this application on July 4, 2022, Mr. Thrush sought an order pursuant to subsection 178(1.1) of the BIA that subsection 178(1)(g) no longer applies to Mr. Thrush's student loan debt, such that the student debt is released on discharge. He devoted his argument in the application to the subs. 178(1.1) test. However, as Ontario pointed out in its response, subsection 178(1.1) does not arise in this case as Mr. Thrush filed for bankruptcy on March 30, 2005, which is more than seven years after he ceased being a full or part-time student on March 13, 1998.
- [27] At the hearing, Mr. Thrush's counsel confirmed that Mr. Thrush's former Trustee was notified of the application, but takes no position on it. Mr. Thrush's counsel also confirmed at the hearing that although served with notice of the application (Kirzner Affidavit #1, Ex B), the CRA did not oppose Mr. Thrush's application or state a position on the application.
- [28] Ontario opposes Mr. Thrush's discharge on the basis that Mr. Thrush has not established that he is unable to pay his outstanding debts. Ontario acknowledges that Mr. Thrush's bankruptcy occurred more than seven years after he ceased to be a full- or part-time student, but submits I should consider the sacrosanct nature of student loan debts and exercise caution in discharging him.
- [29] Ontario also noted that the Trustee originally objected to Mr. Thrush's automatic discharge because the Trustee was of the opinion that Mr. Thrush could be found responsible for the fact that his assets were not of a value equal to fifty cents on the dollar because of his failure to comply with the Income Tax Act, one of the facts set out under subsection 173(1) of the BIA for which, if established, discharge must be refused, suspended or granted conditionally under subsection 172(2) of the BIA. Although Ontario agrees that the onus is on Ontario (or another of Mr. Thrush's creditors) to establish one of the facts identified in subsection 173(1), Ontario argues that Mr. Thrush's lack of disclosure makes it difficult for a creditor to establish one of these facts.
- [30] If I were to grant Mr. Thrush the discharge that he seeks, all of his dischargeable debts, which includes his student loans, are expunged. Ontario's position is that Mr. Thrush has not provided satisfactory evidence to support his application for an absolute discharge, or to determine whether a conditional discharge is appropriate. Ontario asks that I either refuse

the application, or adjourn it and order that it remain adjourned until Mr. Thrush has provided further and better information about his current situation to his creditors, namely, Ontario.

- [31] An order granting an absolute order of discharge under subsection 172(1) of the BIA is discretionary and the BIA provides no specific direction or guidance for the exercise of this discretion. The court may exercise its discretion in the particular circumstances of each case in light of the legitimate objectives of the BIA (See *Montalban (Re)*, 2013 BCSC 683, para. 24, citing *Re Crowley* (1984), 54 C.B.R. (N.S.) 303 at 306 and 309, [1984] N.S.J. No. 52 (S.C.T.D.)).
- [32] Canadian courts have repeatedly held that an overarching purpose of the BIA is to enable debtors to seek discharge from their debts so that the debtor can make a fresh start (see *Montalban (Re)*, para. 13).
- [33] Mr. Thrush has been an undischarged bankrupt for over 17 years--he has been in a state of "financial purgatory" since the date of his bankruptcy in 2005 (*Montalban (Re)*, para. 16). This was his first bankruptcy, and he admits that did not attend to it because he was involved in family proceedings with the mother of one of his children in the early 2010s, and then the CRA garnished his wages.
- [34] The courts will consider the following factors on applications for discharge:
- a) The interest of the rehabilitation of the bankrupt;
 - b) The interest of the creditors in being paid; and
 - c) The integrity of the bankruptcy process and the public's perception of it.
- (*Gwizd (Re)*, 2017 BCSC 1975, para. 24, citing *Nelson (Re)*, [1995] S.J. No. 384 (Q.B.))
- [35] The courts regard an application for a discharge by a first-time bankrupt with more leniency than that of an individual who has filed for bankruptcy on one or more prior occasions.
- [36] I disagree with Ontario that Mr. Thrush has not provided enough information on this, his first application for discharge, for me to reach a decision.
- [37] Mr. Thrush acknowledges that at the time he filed for bankruptcy in 2005, he did not meet his obligations under the BIA and he understands why the Trustee opposed his automatic discharge. Mr. Thrush's evidence is that he feels like he made stupid mistakes when he was younger and he has matured and wants to move on and put the bankruptcy behind him.
- [38] Mr. Thrush is employed full-time earning approximately \$4,000 per month, but he tends to spend all of his monthly income (and sometimes more) on his expenses. He is a father to two children, one of whom lives with him full-time and the other part-time. They all live with Mr. Thrush's mother in her house and Mr. Thrush drives a car owned by his mother. Based on the evidence in his income and expenses statements, I find that Mr. Thrush does not lead an extravagant lifestyle and the highest monthly expenses are for his children's

activities and clothing. While those expenses may fluctuate, I do not think Mr. Thrush is making unnecessary payments. Mr. Thrush testified that he feels "financially crippled" by his undischarged bankruptcy and his debt, and wants to get on with his life and be able to get a loan to buy his own car, among other things.

- [39] Mr. Thrush admits that he has not made any payments towards his student loan debt since 2018, when his wages were garnished by CRA for his tax debt, and that prior to 2018, his payments to the student loan were sporadic and amount to approximately \$2,000. However, Mr. Thrush's student loan debt is not large (approximately \$6,500) and he incurred the debt almost 25 years ago. In the circumstances of this case, I do not find that Mr. Thrush's treatment of his student loan debt is such that I should refuse his discharge on the basis that such loan is sacrosanct.
- [40] On the evidence before me, Mr. Thrush's largest debt at the time his Trustee was discharged in 2010 was his tax liability, which was then approximately \$45,000. Mr. Thrush is now in compliance with this income tax filings, but admits that the debt that led him to file for bankruptcy is still outstanding, and clearly has grown larger through the accumulation of interest and the imposition of penalties.
- [41] Although there were problems with compliance in the first year of his bankruptcy, I accept Mr. Thrush's evidence that he is now gainfully employed and attending to his obligations, such as child support.
- [42] I am satisfied that Mr. Thrush, a first time bankrupt, is entitled to be discharged from his bankruptcy, which he filed in March 2005. I accept his submission that his discharge should be suspended for 30 days, and I so order.

"Registrar Gaily"

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/23/04/2023BCSC0413.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/thrush-re-2023>

Prepared on 29 October 2026 · Esheria