

CANADA / JUDGMENT

## Young (Re)

2022 BCCA 434

COURT

British Columbia Court of Appeal

DECIDED

21 December 2022

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

2022 BCCA 434 Young (Re)

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Young (Re),

2022 BCCA 434

Date: 20221221

Dockets: CA48293; CA48294

Docket: CA48293

In the Matter of the Bankruptcy of Benson Young

Between:

Benson Young

Appellant

(Respondent)

And

C.E. Craig and Associates Inc.

Respondent

(Applicant)

- and -

Docket: CA48294

In the Matter of the Bankruptcy of Alana Diane Young

Between:

Alana Diane Young

Appellant

(Respondent)

And

C.E. Craig and Associates Inc.

Respondent

(Applicant)

Before:

The Honourable Madam Justice Mackenzie

The Honourable Madam Justice Fisher

The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated  
May 10, 2022 (Young (Re), 2022 BCSC 1126, Victoria Dockets B494896 and B201627).

Counsel for the Appellant:

E. Clausen

Counsel for the Respondent:

S. Andersen

Place and Date of Hearing:

Victoria, British Columbia

November 30, 2022

Place and Date of Judgment:

Vancouver, British Columbia

December 21, 2022

Written Reasons by:

The Honourable Madam Justice Fisher

Concurred in by:

The Honourable Madam Justice Mackenzie

The Honourable Mr. Justice Abrioux

Summary:

After the appellants were absolutely discharged from bankruptcy, the Trustee learned that they had failed to disclose their 57% interest in a residential property. The Trustee was reappointed in the bankruptcies and subsequently obtained orders annulling the discharges. Between the date of the discharges and the date of the annulment orders, the appellants purchased a further 43% interest in the property. On appeal, they sought to supplement the orders by having this Court add terms or conditions that would effectively permit only a 57% interest in the property to vest in the Trustee. Held: Appeal dismissed. A discharge that is annulled has no legal effect. Therefore, on the discharge orders being annulled, the appellants became undischarged bankrupts and the 43% interest they acquired in the property vested in the Trustee as after-acquired property. Section 180(3) protects all parties to a transaction completed by a bankrupt prior to an annulment order by limiting the trustee's recovery to what the bankrupt received from the transaction. It does not protect the bankrupt's interest in property acquired during this period.

Reasons for Judgment of the Honourable Madam Justice Fisher:

- [1] These appeals are from orders annulling absolute discharges from bankruptcy on the basis that the bankrupts failed to disclose a substantial asset.
- [2] The appellants, Benson Young and Alana Young, made assignments into personal bankruptcy on August 6, 2013. Their financial difficulties were the result of real estate investments that suffered from the market recession in 2008 and 2009. The investments were made through corporate vehicles but the appellants had signed personal guarantees. The corporate entities were assigned into bankruptcy in 2009 and completed in 2010. It was after the creditors commenced actions to enforce the personal guarantees that the appellants made voluntary assignments into bankruptcy. The proven unsecured claims in the estates amounted to \$2,426,420.34.
- [3] The appellants were automatically discharged from bankruptcy, Alana Young on May 7, 2014 and Benson Young on May 12, 2015. At the time of their respective discharges, the net receipts in Benson Young's estate were \$7,864.45 and in Alana Young's estate, \$1,792.72. The only dividend paid to the unsecured creditors came out of Benson Young's estate in the amount of \$2,826.68.
- [4] During their bankruptcies, the appellants failed to disclose their interest in a residential property on Monterey Avenue in Victoria (the Monterey Avenue property). The trustee, C.E. Craig and Associates Inc. (the Trustee), became aware of this in early 2020 and obtained orders reappointing her Trustee of each appellant's estate. In March 2022, the Trustee applied for orders that the discharges granted to the appellants be annulled under s. 180 of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 [the BIA]. On May 10, 2022, those orders were granted and the discharges were annulled.

[5] The appellants challenge the orders annulling their discharges to the extent of seeking to have conditions added to the orders that would prevent the Trustee from realizing on a 43% interest in the Monterey Avenue property. They do so on the basis that this interest did not vest in the Trustee because it was acquired after their discharges.

[6] For the reasons that follow, I would dismiss the appeal.

### Background facts

[7] The facts are not in dispute. Before their assignments into bankruptcy, the appellants owned a townhouse in North Vancouver. In 2009, Alana Young's mother, Judith MacKenzie, advanced to them \$113,000, most of which was applied to their existing mortgage, and they granted Ms. MacKenzie a third mortgage.

[8] The appellants then decided to move to Victoria with Ms. MacKenzie. In July 2010, they sold the North Vancouver townhouse and directed all the net proceeds of sale, \$256,544.35, to be paid to Ms. MacKenzie. In affidavits sworn March 25, 2022, each of the appellants explained why the proceeds were deposited in this way:

The proceeds of \$256,544.35 from the sale were deposited into Judith's account at Judith's insistence because of her fears about my corporate bankruptcy. I did this to avoid Judith causing problems within the family and to avoid arguments

[9] In November 2010, the appellants and Ms. MacKenzie used the proceeds for a down payment on the purchase of the Monterey Avenue property. That purchase closed in January 2011 and the appellants and Ms. MacKenzie moved into the house. Title to the property and a mortgage were registered in Ms. MacKenzie's name and the mortgage was guaranteed by Benson Young. On January 20, 2011, Benson Young and Ms. MacKenzie signed a document that stated in part:

Although Ms. Judith MacKenzie is the sole registered name on title, ownership of the property is clearly the responsibility of Benson Young. He manages all financial affairs and maintenance with regards to the property. Both Judith MacKenzie and Benson Young are co-mortgagees on the above property.

At some future date, with the agreement of all parties, Ms. Judith MacKenzie will transfer title to Alana Young and Benson Young.

[10] As noted, the appellants made assignments into bankruptcy on August 6, 2013. Neither declared their beneficial interest in the Monterey Avenue property to the Trustee. In their initial affidavits, they explained that they failed to declare this interest "because of poor decisions" on their part and because of pressure exerted by Ms. MacKenzie to protect her interest in the property. In a subsequent affidavit, Benson Young stated that the Trustee did not provide instructions or guidance about "the types of property" they were required to disclose. He also stated that he had informed the Trustee that the proceeds from the sale of the townhouse comprised some of their money but the Trustee never questioned or sought

clarification of what they did with the proceeds. This evidence was disputed by the Trustee, who stated, in part, that Benson Young advised her there were "no net proceeds" payable to him from that sale and she was not aware of the relationship between Ms. MacKenzie and the appellants.

- [11] After the appellants were discharged from bankruptcy in 2014 and 2015, their relationship with Ms. MacKenzie deteriorated to the point where, in February 2017, they commenced an action against her in relation to the Monterey Avenue property. In that action, the appellants claimed a beneficial interest in the Monterey Avenue property and sought an order vesting title in their names. They asserted that they had paid \$152,000 and Ms. MacKenzie had paid \$113,000 towards the purchase price and it was the intention of all three that Ms. MacKenzie held the property in trust for them.
- [12] The action was settled on May 2, 2019, on the basis that the appellants held a 57% interest in the Monterey Avenue property and Ms. MacKenzie held a 43% interest. The settlement also provided for the appellants to purchase Ms. MacKenzie's 43% interest for \$375,000. They subsequently did so by refinancing the mortgage on the Monterey Avenue property.
- [13] It was after the Trustee learned of this action that she was reappointed in the bankruptcies of the appellants. On February 2, 2022, the Trustee obtained an order requiring the appellants to provide transcripts of their examinations for discovery and the documents produced in the action. In those discoveries, the appellants stated that Ms. MacKenzie told them they were "owners from the outset" and she would take title but transfer it back to them when they were more stable financially.
- [14] On March 16, 2022, the Trustee applied for orders that the absolute discharges of each of the appellants be annulled. The appellants opposed the application on the basis that [t]he effect of annulment of the application respondent's discharge would be to place the application respondent back into bankruptcy and would severely negatively affect the application respondent's financial rehabilitation while providing a minimal return to the creditors or society. The punitive effect outweighs any benefit to society where arrangements, other than annulment of the application respondent's discharge, can be made.
- [15] Their position was that remedies other than annulment were available to the Trustee and they proposed that the court make an order requiring them to pay to the Trustee a certain amount by a certain date.

## Property and duties of a bankrupt

- [16] The BIA sets out what property of a bankrupt is divisible among the creditors and the consequences of that property vesting in the trustee. Section 67(1)(c) provides that the property of a bankrupt (other than property described in ss. 67(1)(a)-(b.3)) shall comprise "all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge", the latter known as after-

acquired property. A bankrupt's interest in their property vests in the trustee under s. 71 on being ordered or assigned into bankruptcy:

71 On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment

[17] A bankrupt is subject to the duties set out in s. 158(a)-(p). These duties include making discovery of and delivering all property under the bankrupt's possession or control to the trustee (s. 158(a)); preparing a statement of affairs verified by affidavit showing the particulars of the bankrupt's assets and liabilities (s. 158(d)); and assisting the trustee to make an inventory of their assets (s. 158(e)).

[18] The BIA, in s. 172, gives the Supreme Court of British Columbia the authority to make orders of discharge:

172 (1) On the hearing of an application of a bankrupt for a discharge, other than a bankrupt referred to in section 172.1, the court may

- (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.

[19] Discharge orders may be annulled under s. 180:

180 (1) Where a bankrupt after his discharge fails to perform the duties imposed on him by this Act, the court may, on application, annul his discharge.

- (2) Where it appears to the court that the discharge of a bankrupt was obtained by fraud, the court may, on application, annul his discharge.
- (3) An order revoking or annulling the discharge of a bankrupt does not prejudice the validity of a sale, disposition of property, payment made or thing duly done before the revocation or annulment of the discharge.

## The decision below

[20] The Trustee relied on both ss. 180(1) and (2) to justify an order annulling the discharges on the basis of the appellants' non-disclosure. The chambers judge reviewed numerous authorities that considered the application of these sections in comparable circumstances, including *Faust (Re)*, 2005 ABQB 447; *Lannigan (Re)*, 2008 NSSC 348; *Carlson v. Carlson*, 2012 ABCA 173; *Briant (Re)*, 2016 BCSC 1575 and *Bankruptcy of Walls*, 2005 BCSC 1775. The appellants relied on *Bankruptcy of Walls* to support their submission for an order other than

annulment.

- [21] The judge concluded that there had been "significant non-disclosure" and a clear breach of the duty imposed by s. 158(a) of the BIA by each of the appellants, as their admissions on discovery and the provisions of the settlement agreement consistently reflected "an intention that they had an ownership interest" in the Monterey Avenue property: at paras. 81-83.
- [22] Following the comments of Griffin J. (as she then was) at paras. 82-83 of *Briant (Re)*, the judge held that s. 180(1) can apply in circumstances when a pre-discharge breach of the BIA is discovered post-discharge, and concluded the conditions for the application of s. 180(1) had been made out: at paras. 84-85. He found it unnecessary to determine if the evidence was sufficient to support a finding of fraud under s. 180(2).
- [23] On the question of remedy, the judge noted a significant difference between the appellants' situation and that in *Bankruptcy of Walls*, where there was no issue of non-disclosure. He concluded that an order annulling the discharge of each of the appellants was appropriate for these reasons:
- [89] In my view, the failure of the Youngs to disclose their interest in the Victoria Property and the funds used to acquire it - being by far the major asset of either of them - is greatly to the prejudice of their creditors and brings into play serious concerns about the integrity of the bankruptcy process. Given the nature of the non-disclosure and the amounts in issue, it is my view that the course of action followed in *Walls* is neither adequate nor appropriate. In my view, the appropriate order in the circumstances of this case is to order that the discharge of each of the Youngs from bankruptcy be annulled pursuant to s. 180(1).
- [90] I recognize that there is a certain harshness in this result given that the Youngs have presumably made regular mortgage payments of principal and interest, property values have increased and their equity in the Victoria Property is likely substantially more than it would have been had their interest been dealt with in the course of the bankruptcy in 2015. Ultimately, however, this is the unfortunate result of their own failure to make proper disclosure to the Trustee.
- [24] He also made an order for party and party costs.

## On appeal

- [25] This appeal is unusual because the appellants do not seek to set aside the orders annulling their respective discharges, but to supplement the orders by having this Court add terms or conditions. Their submission is based on the proposition that the effect of the annulment order is to improperly vest in the Trustee an interest in their property that was acquired after discharge and protected by s. 180(3) of the BIA. They contend that the orders provide a windfall to the creditors of the 43% interest in the Monterey Avenue property held by Ms. MacKenzie at the time of their bankruptcies. They say the orders are unduly severe so they

seek the addition of conditions that would effectively permit only a 57% interest in the Monterey Avenue property to vest in the Trustee.

- [26] The appellants' proposition relies on two arguments: (1) a prospective interpretation of the meaning of "annul" in s. 180 of the BIA such that property acquired between discharge and annulment is not after-acquired property; and (2) s. 180(3) protects new property the bankrupt acquires after discharge but before an annulment.
- [27] In the submission of the Trustee: (1) an order of discharge that is subsequently annulled is of no force and effect and as a matter of law, the bankrupt remains undischarged and subject to the provisions of the BIA; (2) all property acquired after the assignment into bankruptcy and prior to discharge vests in the Trustee as after-acquired property; and (3) s. 180(3) protects only third parties who receive property from the bankrupt prior to the discharge order being annulled.
- [28] It must be noted that all of the appellants' arguments are being advanced for the first time on appeal. This Court is cautious in allowing new arguments to be advanced for several reasons, one being unfairness to an opposing party where evidence might have been adduced on the issue in the court below: *Kakavelakis v. Boutsakis*, 2017 BCCA 396 at para. 47. For this reason, the Trustee objects only to this Court considering the imposition of conditions on the annulment orders. The remaining arguments, being entirely questions of law, have been fully addressed in the factums.
- [29] As I explain below, it is not necessary to consider the new argument regarding conditions being imposed on the annulment orders other than to briefly address an argument that the orders are unduly severe. My reasons will address the question of the legal effect of an order annulling a discharge from bankruptcy under the BIA and what flows from that in the circumstances here. In this context, the deferential standard of review of the judge's exercise of discretion in granting the orders below has little relevance.

## Analysis

- [30] The issues raised by the appellants require this Court to interpret the meaning of "annul" in s. 180(1) and (2) and the applicability of s. 180(3) of the BIA. We are to do so in accordance with the well-established principles of statutory interpretation, originally described by Elmer Driedger in *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) and endorsed by the Supreme Court of Canada in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, 1998 CanLII 837 (S.C.C.) at para. 21:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[31] Also important is s. 12 of the Interpretation Act, R.S.C. 1985, c. I-21, which deems every enactment to be remedial and directs a "fair, large and liberal construction and interpretation as best ensures the attainment of its objects", as well as the presumption of coherence, described by Ruth Sullivan in *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis Canada, 2022):

§11.01 It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal.

The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain contradictions or inconsistencies, that each provision is capable of operating without coming into conflict with any other.

[32] It has long been held that the purpose and object of the BIA is "to equitably distribute the assets of the debtor and to permit of his rehabilitation as a citizen, unfettered by past debts": *Industrial Acceptance Corp. v. Lalonde*, [1952] S.C.R. 109, 1952 CanLII 2 (S.C.C.) at 120. Consistent with this is the description of the legislation provided by Justice Fitzpatrick in *Montalban (Re)*, 2013 BCSC 683, which I endorse and summarize as follows:

- The BIA is "social policy legislation in a commercial context" that allows an insolvent person who is overburdened by debt "to employ a process by which he or she can shed those debts and obtain a 'fresh start'". It is not intended to allow debtors to simply clear off their debts as in a "fiscal car wash" (at paras. 13, 17);
- The BIA includes a regime by which the bankrupt's assets are to be realized upon and ultimately distributed as dividends to the creditors in accordance with rules of priority, and within this regime, disclosure by the bankrupt is a fundamental aspect of the process (at para. 14);
- Between the date of bankruptcy and the date of discharge, the bankrupt is subject to the numerous duties imposed in s. 158 that require the bankrupt to assist the trustee in collecting assets for the benefit of the creditors (at paras. 16, 18);
- A failure to comply with these duties is a serious matter (at para. 18);
- The discharge process is an integral part of achieving the goals of the BIA, where both the rehabilitation of the bankrupt and the integrity of the bankruptcy system are important principles. In assessing applications for discharge, the court must balance the interests of the bankrupt, the creditors and the public (at para. 20).

[33] The importance of a bankrupt's duties to disclose assets and assist the trustee is reflected in the powers given to the court to refuse, suspend or annul a discharge. Relevant to this appeal are the provisions that allow the court to suspend or refuse to order a discharge

where the bankrupt has been guilty of "any fraud" or has failed to perform the duties imposed under the BIA (s. 173(1)(k), (o)). Similarly, the court may annul a discharge where a breach of statutory duty or fraud is discovered after the discharge has been granted (s. 180(1), (2)).

1. Annulment

- [34] It is beyond dispute that upon an assignment into bankruptcy, the trustee steps into the bankrupt's shoes to claim only the property to which the bankrupt is entitled: see *Telecom Leasing Canada (TLC) v. Giffen (Trustee)*, 16 B.C.L.R. (3d) 29, 1996 CanLII 1429 (C.A.) at paras. 31-33, 56. This includes property held by the bankrupt at the date of the bankruptcy as well as after-acquired property (acquired after the bankruptcy and before discharge): s. 67(1)(c); *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, 1997 CanLII 332 (S.C.C.) at paras. 40, 58. Upon assignment into bankruptcy, the bankrupt relinquishes the ability to deal with both existing and after-acquired property, all which vest in the trustee: *Wallace* at para. 43.
- [35] It is also beyond dispute that property acquired by the debtor after an absolute discharge is not property of the bankrupt as after-acquired property: see, for example, *Deloitte, Haskins & Sells Ltd. v. Zemlack (Bankrupt)*, [1987] 6 W.W.R. 114, 1987 CanLII 4662 (S.K.C.A.) at para. 20.
- [36] The appellants seek to establish another category of property that does not comprise the property of a bankrupt: property acquired after a discharge but before an annulment. This submission is based on the premise that the effect of an order that annuls a discharge operates prospectively only. I am unable to accept this submission as it would allow bankrupts who had breached their duties or committed fraud during their bankruptcy to retain the benefit of a discharge to which they were not entitled.
- [37] By itself, the word "annul" may be interpreted as making something void retrospectively or prospectively (see *Henry Campbell Black et al.*, *Black's Law Dictionary*, 6th ed. (Minnesota: West Publishing Co., 1990) at 90). However, the word must be considered in the context of the BIA, which (as discussed) establishes a comprehensive scheme of collecting the assets of a bankrupt and equitably distributing them among the creditors, after which the bankrupt may be permitted to rehabilitate and obtain a fresh start through a discharge. A discharge may be absolute or subject to conditions, it may be suspended for a specified period of time, and it may be annulled: BIA, ss. 172, 180. The fundamental duty of disclosure being central to the bankruptcy system, a bankrupt who fails to disclose assets is not entitled to a discharge. Where that failure is discovered after a discharge order has been made, the bankrupt is to be put back into bankruptcy as if no discharge had occurred. The scheme does not contemplate more than one discharge order being operative in respect of a bankrupt, nor does it contemplate a discharge being effective after it is annulled.

- [38] The legal consequences of an annulment order clearly flow from the BIA. I agree with the Trustee's submission that when a discharge is annulled, it simply falls away and has no legal effect. Any other interpretation would create a gap in the legislative scheme that in my view would be inconsistent with the scheme and object of the BIA and the intention of Parliament.
- [39] Accordingly, on the discharge orders being annulled, the appellants became undischarged bankrupts and the 43% interest they acquired in the Monterey Avenue property became after-acquired property, title to which vested in the Trustee.
2. Section 180(3)
- [40] The appellants also rely on s. 180(3) of the BIA as protecting their purchase of the 43% interest in the Monterey Avenue property as a "thing duly done" after the making of the order of discharge and before the making of the order of annulment. The Trustee submits that s. 180(3) protects only third parties who receive property from a bankrupt in the period between the discharge and the annulment.
- [41] It appears that the legal effect of s. 180(3) has not been judicially considered. For ease of reference, I reproduce it here:
- (3) An order revoking or annulling the discharge of a bankrupt does not prejudice the validity of a sale, disposition of property, payment made or thing duly done before the revocation or annulment of the discharge.
- [42] In the Trustee's submission, s. 180(3) must be considered not only in relation to the scheme and object of the BIA but also in relation to other provisions, notably s. 99(1). Section 99(1) protects third parties who deal with an undischarged bankrupt in good faith and for value:
- 99(1) All transactions by a bankrupt with any person dealing with the bankrupt in good faith and for value in respect of property acquired by the bankrupt after the bankruptcy, if completed before any intervention by the trustee, are valid against the trustee, and any estate, or interest or right, in the property that by virtue of this Act is vested in the trustee shall determine and pass in any manner and to any extent that may be required for giving effect to any such transaction.
- [43] In *Wallace*, the Court addressed the question of whether an undischarged bankrupt could bring an action for wrongful dismissal. Justice Iacobucci, writing for the majority, held that a bankrupt generally will not be able to deal with his or her property outside the circumstances in s. 99(1) of the BIA, and he interpreted this provision as one that provided a shield for the benefit of third parties who had purchased from a bankrupt in good faith and for value: at paras. 51, 58. He also held that a bankrupt's ability to deal with after-acquired property is restricted to "situations involving good faith third-party transactions for value with an undischarged bankrupt": at para. 53.

[44] The Trustee submits that s. 180(3) mirrors the protection afforded in s. 99(1) to third parties who deal in good faith with an undischarged bankrupt and provides similar protection to third parties who deal with a discharged bankrupt before the discharge is annulled. In the context of the object of the BIA as a whole and how the scheme is intended to function, the Trustee says that the clear intent of s. 180(3) is:

to protect third parties to whom the bankrupt sold property, disposed of property or made a payment. Third parties do not have to return that property to the trustee. The trustee is limited to recovering whatever the bankrupt received out of the transaction (and consequently the bankrupt cannot invoke the protection of that subsection).

[45] The Trustee further submits that the interpretation of s. 180(3) put forward by the appellants would have the effect of nullifying the clear expression and purpose of s. 67(1)(c) and must be rejected as contrary to the presumption of coherence. The Trustee describes the appellants' assertion that their 43% purchase is protected by s. 180(3) as "an affront to the integrity of the bankruptcy process".

[46] In the appellants' submission, the remedial nature of the BIA and the absence of language in s. 180(3) excluding a discharged bankrupt or suggesting retrospective operation supports a broader interpretation. They say that the narrow interpretation put forward by the Trustee would create an absurdity where, upon an annulment, anything duly done between the date of discharge and annulment would never be protected.

[47] In my opinion, s. 180(3) protects all parties to a transaction completed by a bankrupt prior to an annulment order by limiting the trustee's recovery to what the bankrupt received from the transaction. It does not, and cannot, protect the bankrupt's interest in property acquired during this period because any such property vests in the trustee as after-acquired property, as discussed above. To interpret this provision otherwise would run contrary to the scheme of the BIA and its objects. Rehabilitation of a bankrupt is premised on the bankrupt having complied with the obligations imposed in s. 158.

[48] The effect, then, of s. 180(3) is that the appellants' purchase of Ms. MacKenzie's interest in the Monterey Avenue property remained valid such that the Trustee cannot seek to recover the \$375,000 payment they made to her. Nor can the Trustee challenge the mortgage that was granted to the appellants and registered against the Monterey Avenue property. The Trustee is entitled only to whatever equity the appellants now hold in the property.

### 3. Conditions

[49] In this case, the appellants borrowed against undisclosed property that had vested in the Trustee to fund their purchase of an additional 43% interest in the same property. This undisclosed asset was their only asset of any substantial value. The amount the Trustee was able to realize on the appellants' assets was very small in relation to debts over \$2 million.

- [50] The chambers judge considered the appellants' non-disclosure to be significant and greatly prejudicial to their creditors to the extent that it raised serious concerns about the integrity of the bankruptcy process: at para. 89. The appellants do not challenge these findings.
- [51] In these circumstances, there is no basis to suggest that the orders annulling the appellants' respective discharges were unduly severe. Even in the absence of any submissions seeking conditions, the chambers judge recognized that there was a "certain harshness" in the result given that the appellants had presumably maintained their mortgage payments and the value of the Monterey Avenue property had increased since the discharges. However, he attributed this to their own failure to make proper disclosure to the Trustee and did not consider an order short of annulment to be adequate in light of the non-disclosure. The judge appropriately distinguished Bankruptcy of Walls, where there was no non-disclosure but rather a series of errors regarding the trustee's failure to recover RSP funds. I note that even in that case, an annulment order was made, but it was to take effect only if the bankrupt failed to repay the amount owing to the estate within a specified period.
- [52] It is true that the annulment of a discharge from bankruptcy can have serious effects, as any property acquired by the bankrupt between the date of discharge and the date of annulment becomes after-acquired property that vests in the Trustee. Whether there may be remedies for unfairness in a particular case will depend on the circumstances. Nothing more need be said here on this point.
- [53] One final comment is in order. The appellants contend the Trustee has not acted in a neutral manner but rather with a "punitive animus" against them in "attempting to re-administer" their bankruptcy estates anew. This contention is based in part on their position that the Trustee was not entitled to the additional 43% interest in the Monterey Avenue property, a position I have not accepted. In any event, such an allegation is not warranted on the record here as it is evident the Trustee was simply carrying out her duties under the BIA to fairly administer the appellants' estates.

## Disposition

- [54] As there is no basis for this Court to intervene, I would dismiss the appeal.

"The Honourable Madam Justice Fisher"

I AGREE:

"The Honourable Madam Justice Mackenzie"

I AGREE:

"The Honourable Mr. Justice Abrioux"

## 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/ca/22/04/2022BCCA0434.htm>

**CASE PAGE**              <https://chat.esheria.ai/case-law/canada/young-re-2022>

Prepared on 25 October 2026 · Esheria