

- [5] On or about April 7, 2012, the Applicant provided Redragon a further loan of \$250,000CDN.
- [6] The Applicant was provided a promissory note and letter of commitment for each of the loans, which provided for a 12% annual interest rate from the date of payment, that the loans would be returned on 15 days written demand, and that the Defendants would personally guarantee the loans.
- [7] On or about March 31, 2014, the Applicant received two cheques based upon his written demand for repayment. However, after those cheques were delivered, a stop payment order was issued for both cheques.
- [8] A partial payment was made on the April 7 loan in the amount of \$7,500 on or about November 18, 2014. No further payments were made and the loans went into default.
- [9] The Applicant commenced an action against the Respondents and Redgraon on December 22, 2014. A Statement of Defence was filed on January 29, 2015.
- [10] The Applicant moved for summary judgment in the Action. That motion was subsequently settled by way of Minutes of Settlement entered into on April 10, 2015. The Minutes were secured by a Consent to Judgment, which was to be held in escrow pending a default. The settlement provided for the Respondents to jointly and severally with Redragon pay to the Applicant liquidated amounts owing as set out in the Judgment plus costs. Neither the Minutes of Settlement nor the Consent to Judgment contained any factual allegations against or admissions by the Respondents in relation to allegations of fraud or deceit.
- [11] Ultimately the Respondents defaulted on the terms of settlement and the Applicant brought a motion for judgment in the Action relying on the Minutes of Settlement. Judgment was signed on December 16, 2016 in accordance with the terms set out in Consent to Judgment.
- [12] Both Respondents made assignments in bankruptcy on February 8, 2017. The Applicant did not file a proof of claim in either Respondents' bankruptcy nor participate in or oppose either of the Respondents' bankruptcies.
- [13] The Respondents were discharged from bankruptcy on November 9, 2017.
- [14] The Applicant reported allegations of fraud to the police early in 2021 which resulted in the Respondent Prakash being charged in or about February 2021 with one count of fraud over \$5,000 and one count of possession of proceeds of crime. Both charges were ultimately withdrawn at the request of the Crown.

Analysis

- [15] The relevant sections of the *BIA* are as follows:

178(1) An order of discharge does not release the bankrupt from

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;

(e) any debt or liability resulting from obtaining property or services by false pretenses or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim.

[16] The parties agree that no new evidence can be considered in making the determination as to whether 178(1)(d) or (e) are applicable in this case. Fraud, false pretenses and/or fraudulent misrepresentation must be supported by the evidence before the judge who issued the original order from which the debt arises or must be supported by the pleadings in the original cause of action.¹

Fraud, Embezzlement, Misappropriate or Defalcation while acting in a fiduciary capacity

[17] In order to make out a finding under subsection (d), there must be evidence of fraud, embezzlement, misappropriate or defalcation *while the Respondents were acting in a fiduciary capacity*.

[18] The Applicant argued that putting a stop payment on a cheque already delivered is the equivalent to passing a bad cheque, which is fraud. I disagree. Passing a bad cheque involves a person knowingly writing and delivering a cheque for which they have no authority to sign or for an amount that they know in advance cannot be honoured given the funds available. Neither of those were the situation here. There is no evidence that the Respondents did not have the authority to write the cheques that were delivered to the Applicant, nor is there any evidence that the Respondents knowingly delivered cheques they knew at the time of authoring could not be honoured.

[19] Although this is not a criminal proceeding and therefore the criminal burden of proof does not apply, even an allegation of civil fraud is subject to a more stringent standard of proof than a balance of probabilities. In this case, I am not satisfied that even on a balance of probabilities an allegation of civil fraud is made out by a stop payment order being put on a cheque delivered to satisfy a loan repayment demand.

[20] Even if fraud were made out in the evidence or the pleadings, subsection (d) is conjunctive and requires evidence of fraud by the debtor while acting in a fiduciary capacity. There is no evidence nor even any suggestion that Mr. Hodgson or Mr. Venkataraman was acting in a fiduciary capacity in their dealings with Mr. Suleiman. The claim under this subsection therefore cannot succeed.

¹ *Lawyers' Professional Indemnity Co. v. Rodriguez*, 2018 ONCA 171

Obtaining property or services by false pretense or fraudulent misrepresentation

- [21] A declaration pursuant to subsection (e) requires evidence that the debt created by the December 16, 2016 Judgment was obtained by false pretenses or fraudulent misrepresentation. There must be a nexus between the property or services obtained and the false pretenses or fraudulent misrepresentation.
- [22] Much, if not all, of the evidence of false pretenses and/or fraudulent misrepresentation relied upon by the Applicant was neither plead in the original statement of claim nor included in the Minutes of Settlement and Consent to Judgment. In the Statement of Claim at paragraph 12, it is merely noted that the Defendants put a stop payment order on a cheque delivered to satisfy the loan demand without any other reference to fraud, false pretenses or fraudulent misrepresentation. As I have already explained, I am not satisfied that merely putting a stop payment order on a cheque amounts to fraud. There is also nothing in the recitals of the December 16, 2016 Judgment that refers to false pretenses or fraudulent misrepresentations of the Defendants.
- [23] In order for the Applicant to be successful, there must be evidence upon which I can find that the Respondent used false pretenses to get the Applicant to loan them money, or that money was loaned based on fraudulent misrepresentation. There is not even a reasonable inference to be drawn based on the pleadings that either the Respondent used false pretenses to obtain the loan or that the money was loaned based on fraudulent misrepresentation.
- [24] This was strictly a breach of contract. Money was loaned and not paid back. Then the Respondent consented to a settlement, defaulted on that settlement and then declared bankruptcy. Only after the Respondents having declared bankruptcy is the Applicant is now claiming fraud, false pretenses and/or fraudulent misrepresentation. The Applicant is attempting to rewrite history to fit his claim within the provisions of the *BIA* that exempt the judgment he obtained from the Respondents' bankruptcy.

Conclusion

- [25] There is no evidence upon which I can find that the debt created by the December 16, 2016 Judgment survives the bankruptcy of either of the Respondents. The Application will therefore be dismissed.
- [26] Submissions on costs made by made as follows:
1. The Respondents submissions on costs, no longer than 3 pages in length, double-spaced, 12-point font, exclusive of Costs Outlines and Offer(s) to Settle on or before August 19, 2024.
 2. The Applicant's submissions on costs, no longer than 3 pages in length, double-spaced, 12-point font, exclusive of Costs Outlines and Offer(s) to Settle on or before August 26, 2024.

3. Reply by the Respondents, no longer than 2 pages in length, double-spaced, 12-point font, on or before September 3, 2024.

[27] Order to go:

1. The Application is dismissed.

A.D. Hilliard

Released: August 9, 2024

CITATION: Suleiman v. Venkataraman et al, 2024 ONSC 4441
COURT FILE NO.: CV-23-60
DATE: 2024/08/09

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Khaled Suleiman

Applicant

– and –

Prakash Venkataraman aka Prakash Venkatraman, and
Paul J. Hodgson

Respondents

REASONS FOR JUDGMENT

A.D. Hilliard, J.

Released: August 9, 2024