

Court of King's Bench of Alberta

Citation: Anderson v Westmount Projects Inc, 2023 ABKB 619

Date: 20231103
Docket: BK01 095382
Registry: Calgary

Between:

Gordon D. Anderson, Anderson & Associates Financial Corp, and Bindal Corp

Applicants/Cross-Respondents

- and -

Westmount Projects Inc.

Respondent/Cross-Applicant

**Reasons for Decision
of the
Honourable Justice Colin C.J. Feasby**

Introduction

[1] The Applicants apply pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 for a bankruptcy order against the Respondent. The Applicants seek to have Deloitte Restructuring appointed as bankruptcy trustee so that an orderly liquidation of the Respondent's business may follow. The issues on this application are whether the Respondent owes the Applicants more than \$1,000 and whether the Respondent has committed an act of bankruptcy. The Respondent denies that it owes the Applicants more than \$1,000 on the basis that it has set-off claims against the Applicants. The Respondent denies the alleged acts of bankruptcy.

[2] The Respondent makes a cross-application to strike certain paragraphs and exhibits from the Affidavit of Gordon Anderson sworn September 25, 2023 and to modify the terms of the Order of Justice Little dated September 8, 2023 to permit Westmount to complete real estate

transactions and pay secured creditors, other than the Applicants, holding valid mortgages. The Respondent further seeks to have the Applicants' mortgages discharged.

[3] The following Reasons explain that the Applicants meet the *BIA* s 43(1) requirements for a bankruptcy order to be made. Quite apart from the formal requirements of the *BIA*, this is a case that calls out for the intervention of a bankruptcy trustee. The Respondent and its subsidiaries are party to approximately 20 foreclosure and receivership actions in this Court. The record shows that the Respondent no longer has a viable business and the conflict between the key stakeholders makes any consensual wind-up of the business without court intervention impossible. An orderly wind-up of the business of the Respondent by an experienced insolvency firm under the supervision of the Court is the only practical solution that can preserve any value for creditors.

[4] The evidential record before the Court on this application is excessive for a one-day application. The parties raised many issues that were only marginally relevant to the questions before the Court and adduced a significant volume of conflicting evidence on these points. These Reasons deal only with the issues required to be decided to determine whether the relief sought in the Application and Cross-Application should be granted.

Background

Procedural History

[5] This Application was originally scheduled for September 8, 2023 before Mr. Justice Little. The Respondent sought an adjournment to file its own evidence and question on the affidavits filed by the Applicants. Justice Little granted the adjournment and set a litigation schedule.

[6] The Applicants sought and were granted, as a condition of the adjournment, an injunction preventing Westmount from transferring any properties or assets without the permission of the Court. The Respondent in its written brief submitted that the injunction was improvidently granted and should be rescinded. I am satisfied that Justice Little acted prudently in granting the injunction given, as I find later in these Reasons, there is *prima facie* evidence of fraudulent preferences which is indicative of a genuine risk of dissipation of assets. At the conclusion of the hearing of the present application, I extended the injunction pending the completion of these Reasons.

[7] The parties filed 21 affidavits. Some of the affidavits are lengthy and attach extensive records showing the financial dealings between the parties over several years. The parties also filed questioning transcripts and answers to undertakings. Both parties filed written argument.

[8] Counsel for Westmount at the oral hearing expressed concern that he had not had the opportunity to question on several of the Applicants' affidavits sworn on October 15, 2023. I asked him whether he sought an adjournment so that he could question on the affidavits or whether he sought another remedy such as striking the affidavits. He declined to request an adjournment or any other remedy, so the hearing proceeded.

Business of Westmount Projects Inc.

[9] Westmount is a property developer that owns many residential properties in Calgary. Westmount also owned properties in Medicine Hat through its wholly-owned subsidiaries,

2218923 Alberta Ltd. and 1975847 Alberta Ltd., until March 29, 2023 when the shares in the subsidiaries were transferred to the Westmount Family Trust.

[10] Most of Westmount's properties are subject to foreclosure or receivership proceedings brought by secured creditors. The Medicine Hat properties owned by 2218923 Alberta Ltd. and 1975847 Alberta Ltd. are both subject to receivership proceedings.

[11] Westmount also owns 75% of 2295889 Alberta Ltd. which, in turn, owns two Calgary properties.

[12] Westmount has a side business of renting tanks used in the oil and gas business that are commonly called frac tanks. Westmount's frac tank business is operated through a subsidiary called Ironclad Projects Ltd.

[13] The principal of Westmount is Farhan Sattar. For reasons that are not clear to the Court, Mr. Sattar was unable to secure financing for his real estate development business. Accordingly, he partnered with Gordon Anderson. Mr. Anderson became the nominal sole shareholder, director, and President of Westmount. He held the shares of Westmount in trust for Mr. Sattar. Mr. Sattar ran the day-to-day business of Westmount and Mr. Anderson provided personal guarantees for the mortgages and loans required by Westmount to conduct the real estate development business. Westmount paid fees to Mr. Anderson and his corporation Anderson & Associates Financial Corp (AAFC) to compensate him for the risk that he was taking on for the benefit of Westmount.

[14] Mr. Anderson and Mr. Sattar had a falling out that started in mid-2022 when Mr. Anderson ceased to provide new guarantees to facilitate Westmount's ongoing borrowing. He resigned as a director in either July or December 2022 depending on whose account is believed. Mr. Anderson also filed mortgages against certain of Westmount's properties. This latter action is alleged by Westmount to be improper and the cause of some of Westmount's financial difficulties.

[15] Mr. Anderson and AAFC commenced two actions against Westmount seeking to enforce mortgages and recover money on indemnities. Westmount has defended the actions alleging that the mortgages are invalid, that Westmount did not indemnify Anderson and AAFC, and Anderson breached his fiduciary obligations to Westmount. Westmount counterclaimed against Anderson and AAFC asserting various causes of action including, amongst others, oppression and conspiracy. Westmount claims that the amounts sought in the counterclaim should be set-off against any amounts found to be owing in the main actions brought by Anderson and AAFC.

[16] The remaining Applicant, Bindal Corp, advanced money to Westmount that its principal, Manish Bindal, deposes has not been repaid. Westmount disputes this allegation saying that all monies advanced by Bindal have been repaid.

Analysis

Legal Framework

[17] *BIA* s 43(1) provides that a bankruptcy order may be granted where a creditor demonstrates:

- (a) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and

- (b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

[18] The applicant creditor's debt must be a liquidated sum: *Re Down*, 2000 BCSC 1148 at para 88-89 aff'd *Re Down*, 2000 BCCA 637. See also, *LG&E Natural Canada Inc. v Alberta Resources Inc.*, 1997 CarswellAlta 1244 (QB). Though the debt must be liquidated, a creditor is not required to establish the value of the debt with absolute precision so long as it is clear on the evidence that the debt exceeds \$1,000: *Home Hardware Stores Ltd. v R Home Supply Centre Ltd.*, 2015 BCCA 500 at paras 28 and 34-37.

[19] *BIA* s 42(1) sets out various acts of bankruptcy. The acts of bankruptcy listed in *BIA* s 42(1) that are alleged in the present case are:

...

- (b) if in Canada or elsewhere the debtor makes a fraudulent gift, delivery or transfer of the debtor's property or of any part of it;
- (c) if in Canada or elsewhere the debtor makes any transfer of the debtor's property or any part of it, or creates any charge on it, that would under this Act be void or, in the Province of Quebec, null as a fraudulent preference;

...

- (e) if the debtor permits any execution or other process issued against the debtor under which any of the debtor's property is seized...

...

- (g) if he assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his property with intent to defraud, defeat or delay his creditors or any of them;

...

- (j) if he ceases to meet his liabilities generally as they become due.

[20] For the purposes of the analysis that follows *BIA* s 42(1)(b), (c), and (g) which all deal with actions that fall under the general category that may be described as fraudulent preference will be considered together. The subtle differences between the subsections are not relevant to the present case.

[21] The Respondent submitted that the Applicants must satisfy the summary judgment standard set forth in Rule 7.3 of the *Rules of Court* and *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49. The Applicants did not address the standard to be applied by the Court when considering whether to grant a bankruptcy order.

[22] The standard to be applied on an application for a bankruptcy order is the civil standard, proof on a balance of probabilities: *Re Project Management and Development Limited*, 2016 NLCA 31 at para 4 *per* Rowe JA, as he then was. Though the civil standard of proof applies, Lloyd Houlden, Geoffrey B. Morawetz, & Janis Sarra, *The 2021-2022 Annotated Bankruptcy and Insolvency Act*, (Toronto: Thomson Reuters, 2021) at D§17(1) explain that “[b]ankruptcy is for clear-cut situations where the liabilities on which the application is founded and the act of bankruptcy are clearly established by sound and convincing evidence.”

Debt over \$1,000

[23] Mr. Anderson's role in respect of Westmount was to provide guarantees and other financial backing to permit Mr. Sattar to run the business. This extended to credit cards and a line of credit in Mr. Anderson's name that were used by Mr. Sattar for the purposes of the Westmount business. The whole premise of the arrangement between Mr. Anderson and Westmount was that Mr. Anderson took on contractual and debt obligations on behalf of Westmount in exchange for fees to facilitate the operation of the Westmount business.

[24] Mr. Anderson and AAFC assert six categories of debts owed by Westmount which are set out in the table below.

Creditor	Debtor	Description	Amount
AAFC	Westmount	Loan Advances	\$281,276
Gordon Anderson	Westmount	Credit Cards/LOC	\$362,533
Gordon Anderson	Westmount	Unpaid Guarantee Fees	\$157,500
Gordon Anderson	Westmount	Legal Fees (Indemnity)	\$200,000
Gordon Anderson	Westmount	Guarantees of Westmount Mortgages	\$13,745,000
Gordon Anderson	Westmount	Guarantees of 2218923 Alberta Ltd. 1975847 Alberta Ltd. Ironclad	\$9,590,000
Total			\$24,336,309

[25] AAFC, by way of affidavits sworn by Mr. Anderson August 31, 2023 and October 15, 2023, provided bank statements and Westmount General Ledger entries to substantiate the claimed advances to Westmount. Similarly, Mr. Anderson, by way of affidavits sworn August 31 2023 and October 15, 2023, provided credit card statements and statements for the line of credit. Mr. Sattar denies the debts are owing, but Westmount has adduced no evidence to contradict the evidence adduced by Mr. Anderson. Mr. Sattar's affidavits are silent on the issue of the credit card and line of credit debts.

[26] Mr. Anderson claims for 14-months of unpaid guarantee fees. He says that Westmount agreed to continue paying guarantee fees in the amount of \$11,250 per month until no guarantees were outstanding. Westmount consistently paid fees to Mr. Anderson during the latter half of 2021 and first half of 2022. Some guarantees made by Mr. Anderson and AAFC for the benefit

of Westmount remain outstanding today. The last guarantee payment by Westmount was made on August 3, 2022.

[27] Mr. Sattar deposed that “[n]o additional funds were paid by Westmount to Gordon or his company Anderson & Associates Financial Corp after he resigned as director. Certainly, Gordon would not be entitled to receive trustee fees or directors fees when he was no longer in that position as of July 1, 2022.” Leaving aside that the date of Mr. Anderson’s resignation as a director of Westmount is disputed, the issue between the parties appears to be the characterization of the fees and, by extension, entitlement to the fees after Mr. Anderson resigned as director. I conclude that Mr. Anderson’s entitlement to the guarantee fees (or director’s fees) is not sufficiently clear on the evidence before me to satisfy the requirements of *BIA* s 43(1)(a).

[28] Mr. Anderson and AAFC claim that they have a right to be indemnified by Westmount in the amount of \$200,000 for legal fees incurred to defend actions on the guarantees and to enforce their rights under certain mortgages. Mr. Anderson and AAFC did not provide any evidence of their right to the indemnity for legal fees, any authorities to support a common law or equitable right to indemnification, nor did they provide any evidence of legal fees incurred. Mr. Anderson and AAFC’s claim for \$200,000 for legal fees does not meet the requirements of *BIA* s 43(1)(a).

[29] More than \$23 million of the over \$24 million in debt claimed is in the form of Mr. Anderson’s personal guarantees of Westmount real property mortgages, Westmount chattel mortgages, and the obligations of Westmount subsidiaries. Mr. Anderson says that Westmount must indemnify him in respect of the liability that he has undertaken as guarantor. Westmount responded by pleading, “[Westmount] denies there was any verbal or written agreement between Mr. Anderson and [Westmount] whereby [Westmount] agreed to indemnify and hold Mr. Anderson harmless for any debts Mr. Anderson might be liable for as a result of Mr. Anderson executing guarantees....” This pleading, whether factually accurate or not, is irrelevant in law. The right of a guarantor or surety to recover money from the principal debtor is rooted in equity or restitution and exists independent of any contract: Kevin McGuiness, *The Law of Guarantee*, 3d ed, (LexisNexis: Markham, ON, 2013) at §10.89. See also, *George Wimpey Canada Ltd. v Northland Bank*, [1985] A.J. No. 563 (QB) *per* McFadyen J, as she then was, quoting David G.M. Marks & Gabriel S. Moss, *Rowlatt on Principal and Surety*, 4th ed., (London: Sweet & Maxwell, 1982) at 134: “A surety who has paid the debt can recover against the principal debtor for money paid to his use. This is based upon the common law action for money paid and is based upon an implied promise.”

[30] The Applicants argue that a guarantor may seek relief against a principal even before paying the creditor: McGuiness, *The Law of Guarantee*, at §10.89 citing *Milne v Yorkshire Guarantee and Securities Corp.*, [1906] 37 SCR 331. While this is true, that does not mean that Mr. Anderson’s rights of indemnity in respect of the guarantees given to lenders for the benefit of Westmount are debts that satisfy the requirements of *BIA* s 43(1)(a). The guarantees relate mainly to real property owned by Westmount and its subsidiaries, most of which is subject to foreclosure and receivership proceedings. It is reasonable to expect that value will be realized through the foreclosure and receivership proceedings that will reduce Mr. Anderson’s exposure on the guarantees, perhaps materially. Mr. Anderson’s indemnity claims in respect of the guarantees are not, based on the evidence before me, liquidated as required by *BIA* s 43(1)(a) though that may change shortly as I understand from the representations of counsel that

applications to approve sale transactions are expected to be made soon in some of the receivership proceedings.

[31] I am satisfied that Westmount owes more than \$1,000 to Mr. Anderson and AAFC based on the credit card statements, bank statements, line of credit statements, and ledger entries and that those amounts are liquidated as required by *BIA* s 43(1)(a). Though amounts may also be owing in respect of indemnities for amounts paid pursuant to guarantees, unpaid guarantee fees, and indemnities for legal fees, none of those amounts are liquidated as required by *BIA* s 43(1)(a).

[32] Westmount relies on its counterclaim for set-off to establish that the debt that it owes to Mr. Anderson and AAFC is less than \$1,000. Westmount's position is that the bankruptcy application should be dismissed and it should be allowed to pursue its counterclaim. The difficulty with this position is that liability for the matters set out in the counterclaim is disputed and damages are not quantified.

[33] The present case bears some resemblance to *Re Sather Ranch Ltd.*, 2019 BCSC 677 where Weatherill J declined to grant a bankruptcy order because, in his view, the matter was really a dispute between the two shareholders in the corporation. He concluded at para 47 that the parties were better off to "continue with their lawsuits against each other." An important distinction between the present case and *Re Sather Ranch Ltd.* is that in the latter case it was unclear whether the alleged debts were legitimate whereas here I have found that some of the alleged Westmount debts are liquidated. In *Re Sather Ranch Ltd.* the defence and counterclaim contested liability as opposed to the present case where Westmount does not contest some of the debts and seeks set-off in respect of unquantified amounts claimed for other alleged wrongs.

[34] The finding that more than \$1,000 in liquidated debt exists does not mean that the counterclaims made by Westmount are defeated. The claims that Westmount has made against Mr. Anderson are an asset of the corporation. Pursuant to *BIA* s 30(1)(d) a bankruptcy trustee may continue an action: *BDO Canada Limited v Dorais*, 2015 ABCA 137. Westmount's bankruptcy trustee will assess the viability of the claims and, with the permission of the inspectors, the bankruptcy trustee may continue the counterclaims.

[35] There is common ground between Mr. Bindal and Westmount that Bindal Corp advanced significant funds to Westmount. Mr. Sattar, however, disputes the alleged debts to Bindal Corp in his Affidavit sworn September 25, 2023. Mr. Sattar asserts the funds are not outstanding because Bindal Corp was repaid and that some of the alleged debts relate to secret fee arrangements between Mr. Anderson and Bindal Corp that were not authorized by Westmount or Mr. Sattar. The question of whether money is owed by Westmount to Bindal Corp is not clear on the evidence before the Court. Accordingly, the alleged debt to Bindal Corp, does not meet the requirements of *BIA* s 43(1)(a).

Alleged Acts of Bankruptcy

(i) Fraudulent Preference

[36] The shares of two wholly-owned subsidiaries of Westmount, 2218923 Alberta Ltd. and 1975847 Alberta Ltd., were transferred to an entity called the Westmount Family Trust on March 29, 2023. The Westmount Family Trust is an entity controlled by Mr. Sattar or his father, Abdul Sattar. There is no evidence that any consideration was paid in respect of the share transfers.

[37] Justice D.B. Nixon, citing a line of authority that extends back to *Koop v Smith*, (1915) 25 DLR 355, explained in *Lay v Lay*, 2023 ABKB 354 at para 58 that “[w]hen parties to a transaction are related and there are suspicious circumstances (such as other badges of fraud), a *prima facie* case is often made out and the ‘burden of explanation’ then falls on the related parties.” He explained that the shift of burden is not automatic because “the Court has discretion to require corroboration.” I am satisfied that in the present case the burden of explanation appropriately falls on Westmount.

[38] Mr. Sattar was the sole shareholder of Westmount at the time of the share transfers and controlled all aspects of the Westmount business. Despite the Applicants putting the appropriateness of the share transfers squarely in issue in their Notice of Application and providing an affidavit attaching corporate search reports demonstrating the share transfers, the allegation that the share transfer was for no consideration to a related entity was not disputed by Westmount in its Notice of Dispute of Debtor. Mr. Sattar also provided no explanation concerning the share transfers in his two affidavits. During questioning, Mr. Sattar was asked what consideration was paid to Westmount. He was also asked to provide any written agreements between Westmount and the Westmount Family Trust with respect to the transfers and records showing what consideration had been paid to Westmount. He refused to answer the questions or provide any records.

[39] Westmount, by refusing to answer questions concerning the impugned share transfers, has failed to meet its burden of explanation. I draw an adverse inference against Westmount and conclude that the share transfers to the Westmount Family Trust were gratuitous. Accordingly, I find that the share transfers are *prima facie* fraudulent preferences contrary to *BIA* s 42(b), (c), and (g).

(ii) Permitted Seizure of Property

[40] Mr. Sattar deposed in his September 25, 2023 Affidavit that earlier in 2023 Westmount owed Canadian Western Bank (CWB) approximately \$700,000. Mr. Anderson guaranteed Westmount’s obligations to CWB and CWB held a General Security Agreement over Westmount property, including vehicles and other chattels. On April 28, 2023, CWB issued demand letters giving Westmount 10 days to repay the loans.

[41] Mr. Sattar describes a transaction that took place in May 2023 between Westmount and 1389885 Alberta Ltd., a company owned by Mr. Abdul Sattar, whereby certain vehicles subject to CWB’s security interest were sold to House of Cars and then sold to 1389885 Alberta Ltd. with \$323,325.98 flowing back to CWB.

[42] Canadian Western Bank (CWB) obtained an order from Applications Judge Schlosser on August 25, 2023 requiring Westmount to deliver certain chattels to an auction house to be sold, to the civil enforcement agent, or to allow the civil enforcement agent to seize the chattels. None of the affidavits or questioning transcripts provide any information to indicate what has happened in this proceeding since the Schlosser Order.

[43] Given the lack of evidence as to what happened following the Schlosser Order, I am unable to conclude that Westmount permitted seizure of its property or allowed its property to be sold as required by *BIA* s 42(1)(e). However, Mr. Sattar’s acknowledgement of the debt to CWB together with the Schlosser Order support the conclusion in the following section of these Reasons that Westmount has ceased to meet its liabilities generally as they become due.

(iii) Ceases to Meet Liabilities Generally as they Become Due

[44] As noted earlier in these Reasons, Westmount and its subsidiaries are party to approximately 20 foreclosure and receivership proceedings in this Court. These actions are brought by creditors that range from Canada's largest banks to alternative lenders. In addition to the actions concerning real property, there is the CWB proceeding discussed in the previous section of these Reasons that seeks to seize and sell chattels owned by Westmount. These actions are *prima facie* evidence that Westmount is not meeting its obligations as they become due. Mr. Anderson has also provided evidence that other creditors have made demands for payment.

[45] Justice Marchand writing for the Court in *Braich v Clarke*, 2023 BCCA 305 at para 37 explained: "once an applicant establishes that the debtor has ceased meeting their liabilities as they become due, the onus shifts to the debtor under s. 43(7) to prove by 'clear and independent' evidence that they are solvent. Typically, that involves providing a full and transparent outline of the financial position of the debtor supported by such things as financial accounts, financial statements, and/or information regarding the debtor's total indebtedness, revenues, profits, assets, liabilities and/or cash flow." See also, *Re Medcap Real Estate Holdings Inc.*, 2022 ONCA 318 at paras 14-15 and *Re 484030 Ontario Ltd.*, (1992) 8 OR (3d) 243 (Gen. Div.) at para 38.

[46] Mr. Sattar asserts that Westmount is not insolvent and is meeting its liabilities generally as they become due. He deposed that "Westmount has paid various bills since January, 2023 including those used to maintain and operate properties owned by Westmount. These payments include Enmax, Direct Energy, Shaw Communications (no Rogers), Coinomatic, BluPlanet Waste and Recycling, insurance premiums, various construction invoices, City of Calgary for property tax for 1705 Westmount Rd NW..." Mr. Sattar further produced a table in his affidavit showing amounts debited and credited to Westmount's Bank of Montreal (BMO) account from January 2020 to September 2022.

[47] The evidence provided by Mr. Sattar to support his assertion that Westmount is meeting its liabilities as they become due is far short of what the law requires. The fact that Westmount has paid its utility bills, insurance, and taxes means little when there is a long line of secured creditors enforcing their rights through court actions. Further, there are no documents to corroborate that those bills are being paid; the only evidence is Mr. Sattar's assertion. More troubling, however, is that Westmount did not provide a full and transparent picture of its financial condition in Mr. Sattar's evidence or otherwise. None of the information identified in *Braich v Clarke* has been supplied. Mr. Sattar only provided amounts credited and debited from one account with BMO for a limited period which ended more than a year ago. The financial information about Westmount presented by Mr. Sattar says nothing about Westmount's financial condition today. Westmount has not met its onus to show that it meets its liabilities as they become due.

Cross-Application – Validity of Anderson Mortgages

[48] Mr. Anderson deposed in his Affidavit sworn August 31, 2023 that he agreed to transfer the shares of Westmount that he held in trust for Mr. Sattar to Mr. Sattar on the condition that Westmount provided him and AAFC with mortgages to secure his indemnities arising from guarantees given for the benefit of Westmount. He proceeded to register the mortgages against

various Westmount properties. Mr. Anderson has commenced proceedings against Westmount in respect of the mortgage on 1705 Westmount Road NW and the mortgages on other properties are one of the subjects of an action commenced by Mr. Anderson against Westmount seeking to recover on the indemnities that he claims in respect of the guarantees that he provided for the benefit of Westmount.

[49] Mr. Sattar denies that there was any agreement granting Mr. Anderson and AAFC mortgages over certain Westmount properties. Westmount has counterclaimed in the actions commenced by Mr. Anderson on the grounds that the mortgages were improperly registered against the Westmount properties and have caused harm to Westmount's business.

[50] The existence of the alleged oral agreement turns on the credibility of Mr. Sattar and Mr. Anderson. Though there is a substantial documentary record before the Court, it is of no assistance in assessing the existence of the oral agreement. This is a situation where the Court requires *viva voce* evidence to decide.

[51] The validity of the mortgages registered by Mr. Anderson and AAFC is best left to the bankruptcy trustee. Mr. Anderson's evidence indicates that the mortgages in question rank behind other mortgages, so it is not clear that the question of entitlement to proceeds of any sale of the encumbered properties will arise. The bankruptcy trustee will be best placed to determine whether action should be taken in respect of the mortgages and, as noted earlier in these Reasons, whether Westmount's counterclaims against Mr. Anderson should be pursued.

Conclusion

[52] The Application to declare Westmount bankrupt is granted. Deloitte Restructuring is appointed trustee in bankruptcy for Westmount. Except as modified by these Reasons, the terms of the order proposed by the Applicants are accepted.

[53] Westmount's Cross-Application to modify the terms of Justice Little's Order and have Mr. Anderson and AAFC's mortgages discharged is dismissed. Westmount's Cross-Application to have certain paragraphs and exhibits in Mr. Anderson's Affidavit sworn September 25, 2023, which was consented to by the Applicants, is granted.

[54] The Applicants are entitled to 45% of their actual costs pursuant to *McAllister v Calgary (City)*, 2021 ABCA 25. The costs of the Applicants shall be paid out of the estate of Westmount.

Heard on the 27th day of October, 2023.

Dated at the City of Calgary, Alberta this 3rd day of November, 2023.

Colin C.J. Feasby
J.C.K.B.A.

Appearances:

Gregory J. Leia, Wolff Leia, Barristers & Solicitors
for the Applicants

Norman D. Anderson, Anderson Morin LLP
for the Respondent