IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Melanson v. Melanson,*
2024 BCSC 1943

Date: 20240829
Docket: 80775
Registry: Nanaimo

Between:

David Melanson and Dream Weavers Day Care Ltd.

Plaintiffs

And:

Stephen Anthony Melanson and Lisa Marie Melanson

Defendants

And:

David Melanson and Dream Weavers Day Care Ltd.

Defendants by Counterclaim

- and -

Docket: 94465
Registry: Nanaimo

Between:

SDA Contracting Ltd.

Plaintiff

And:

David Melanson

Defendant

Before: The Honourable Justice Wolfe

Oral Reasons for Judgment

Plaintiff / Defendant, on their own behalf in person August 12, 2024; via MS Teams August 13, 2024:	D. Melanson
Counsel for Defendants / Plaintiff via MS Teams:	J. Aiyadurai
Place and Date of Hearing:	Nanaimo, B.C. August 12-13, 2024
Place and Date of Judgment:	Nanaimo, B.C. August 29, 2024

Table of Contents

[1] These oral reasons for judgment have been edited for publication.

Introduction and background

[2] In early November 2022, Justice Baird heard a three-day trial in two related lawsuits, Action No. 80775 (the "Melanson Action") and what is now Action No. 94465 (the "SDA Action"). Both matters concern a dispute between a father, David Melanson ("David"), and his son, Stephen Melanson ("Stephen"). The dispute arose because of an oral contract (the "Oral Contract") between David in his personal capacity and the plaintiff, SDA Contracting Ltd. ("SDA"), a company Stephen and David initially incorporated as equal shareholders. Under the Oral Contract, David hired SDA to construct a building on property owned by Stephen and his wife, Lisa Melanson ("Lisa"); David agreed to pay all of the construction costs. As the parties have the same last name, I use their first names without meaning any disrespect.

[3] David and Stephen estimated the project would cost $300,000. David funded approximately the first $200,000 but then ceased providing SDA with the funds required to complete the project. Stephen and Lisa ended up financing both its completion and SDA's operating accounts. David filed the Melanson Action against Stephen and Lisa seeking damages for breach of the Oral Contract. Stephen and Lisa filed a counterclaim. With leave, Stephen filed the SDA Action as a derivative action on behalf of SDA, seeking recovery against David for the balance of the agreed price of the Oral Contract. The actions were tried together.

[4] While the reasons may be disputed, it is common factual ground that David attended the commencement of trial, but left the courtroom before the end of the first day and did not return. On the evening of the second day of trial, David filed for and became a bankrupt, within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*]. Stephen did not become aware of David's bankruptcy until around November 8, 2023, after the trial had concluded.

[5] On March 27, 2023, Baird J. rendered reasons for judgment in *Melanson v. Melanson*, indexed at 2023 BCSC 459 (the "Reasons"). The Reasons articulate the

key background facts to these matters; I rely on that summary and will not repeat the facts in this judgment except where required for my analysis.

[6] In the SDA Action, Baird J. granted judgment against David in the amount of $105,997.43 for breach of the Oral Contract. The award reflects the amount borrowed to complete the project. In the Melanson Action, Baird J. had previously struck David's pleadings, leaving only Stephen and Lisa's counterclaim. Baird J. granted the counterclaim in part, entering judgment against David in the cumulative amount of $53,790.60 for wrongful removal of tools and equipment from Stephen and SDA. Baird J. also granted court-ordered interest payable on both judgments from May 15, 2015 to March 27, 2023, and ordered David to pay regular costs at Scale B in both actions. Baird J. expressly declined to award special costs.

[7] The challenge for Stephen and Lisa (the "Defendants") and SDA is that when David became a bankrupt, by operation of s. 69.3 of the *BIA*, all proceedings against him were stayed. Unless the Court effectively "lifts" the stay, the Defendants and SDA cannot enter or enforce the judgments against David. As a result, the Defendants and SDA apply in parallel to this Court, relying on ss. 69.4 and 178(1) of the *BIA*, for declarations that the stays of proceedings and stays of execution of judgment against David are no longer operative, and the court-ordered awards (including costs) are not discharged by David's bankruptcy. If granted, the relief sought will permit the Defendants and SDA to enter the order from trial and consider next steps with respect to enforcement.

[8] David did not file a response to either notice of application, but did file an affidavit in each action, both dated June 28, 2024, which were included in the application records before me. The affidavits appear to be identical. In essence, the affidavits state David's position that the stay of proceedings should not be lifted, and the judgment debts should not be able to be enforced, by reason of his bankruptcy. To the extent the affidavits also speak to David's concerns with the Reasons or the trial process, and his request for return of certain property, I advised him those matters were not properly before me.

[9] As I heard the two applications together in mid-August 2024, beginning at the tail end of one chambers day and concluding at the start of the second day, that addresses the relief sought at Part 1, paragraph 1 of the notices of application in both actions. During the hearing, counsel for the Defendants and SDA confirmed that the relief sought at Part 1, paragraphs 4 and 5 of the notice of application filed in the Melanson Action (which related to release of certain funds held as security for costs) was previously dealt with by Baird J. in December 2023 by consent.

[10] After discussion with counsel, I also adjourned generally the relief sought at Part 1, paragraph 4 of the notice of application filed in the SDA Action. That paragraph sought indemnity costs under s. 233(4) of the *Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*], in favour of Stephen for prosecuting the entire SDA Action and the present application, as well as a declaration that such an award is not discharged by the bankruptcy. As noted, Baird J. expressly declined to award special costs in either action (Reasons at para. 29). While counsel submitted indemnity costs under the *BCA* are different than special costs, in my view, the question of indemnity costs, particularly when sought for the whole of the SDA Action rather than just this application, was a matter that ought properly to have been addressed before Baird J. as the trial judge. I therefore adjourned generally that aspect of the relief sought, with counsel at liberty to request to appear before Baird J. if that relief continues to be sought.

Issues

[11] The main issue on these applications is whether this Court should grant declarations that the stays of proceedings are no longer operative in respect of the Melanson Action and the SDA Action generally, and in respect of the monetary and costs judgments awarded in each of them. Embedded in that issue is the question of whether the judgment debts, including costs, are debts from which David would not be released by an order discharging his bankruptcy.

[12] If the judgment debts in the SDA Action are ones that would not be released by a discharge, Stephen also seeks leave to enforce those awards on behalf of

SDA. The Defendants also seek costs of the application in the Melanson Action, and a declaration that such an award is not discharged by the bankruptcy.

The legal framework

[13] The *BIA* governs bankruptcies. One of the main purposes of the *BIA* is to "encourage the rehabilitation of an honest but unfortunate debtor and to permit [their] re-integration into society" by insulating the debtor from past debts: *Cruise Connections Canada v. Szeto*, 2015 BCCA 363 at para. 13, citing *Simone v. Daley*, 1999 CanLII 3208 at para. 27. Section 69.3 of the *BIA* is one mechanism by which the regime achieves that purpose. Once a legal person becomes a bankrupt, s. 69.3(1) operates to stay all proceedings against that person for recovery of a claim provable in bankruptcy. This prohibits new claims from being filed, existing claims from being pursued and judgments from being executed or enforced.

[14] While the stay is automatic, a creditor or other person affected by a stay can apply to the Court, under s. 69.4 of the *BIA*, for an order that effectively "lifts" the stay. Section 69.4 provides:

> A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied
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> (a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or
>
> (b) that it is equitable on other grounds to make such a declaration.

[15] There must be "compelling reasons" to lift a stay. An applicant bears the burden to show either that they will suffer material prejudice if the stay is continued, or that it is equitable on other grounds to lift the stay: *Re Maple Homes Canada Ltd.*, 2000 BCSC 1443 at para. 33. A court may find material prejudice where the claim against the bankrupt is for a debt that would not be released by an order of discharge: *Poonian (Re)*, 2021 BCSC 555 at para. 98. Courts have also lifted a stay in circumstances where an action has progressed to the point where logic dictates it

should be permitted to continue to judgment: *Zheng v. Anderson Square Holdings Ltd.*, 2023 BCSC 2215 at para. 17. It is sufficient if the Court is satisfied on one ground that the stay should be lifted: *Save-A-Lot Holdings Corp. v. Christensen*, 2021 BCSC 2546 at para. 19.

[16] Section 178(1) of the *BIA* lists the categories of debts for which a discharge is not a defence. For present purposes, the following subsections are relevant:

> 178(1) An order of discharge does not release the bankrupt from
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> […]
>
> (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity…
>
> (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;

[17] If an applicant for an exemption can fit their claim within one of the categories listed in s. 178(1), the Court may be satisfied that material prejudice would result from the continuation of the stay, and may therefore grant a declaration under s. 69.4 of the *BIA* lifting the stay.

[18] When considering if a debt or liability established through a previous legal proceeding falls under s. 178(1) of the *BIA,* the British Columbia Court of Appeal has confirmed it is not reasonable to expect that a plaintiff would have pleaded their case using the wording of s. 178(1) to cover the possibility of a future bankruptcy: *H.Y. Louie Co. v. Bowick*, 2015 BCCA 256 at para. 44. In *Cruise Connections*, the Court of Appeal held:

> [21] *Valastiak v. Valastiak*, 2010 BCCA 71, held that a judge did not need to make an express order that the necessary preconditions for the application of any of the subsections in s. 178(1) are satisfied in order for a subsequent application judge to make such a finding. In doing so, the subsequent application judge may consider the reasons given in the original judgment in order to determine whether they disclose that the liability was, in fact, a result of property being obtained through such deceitful conduct.
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> [22] In *Valastiak*, the issue on appeal was whether a compensation order made under s. 66(2) of the *Family Relations Act*, R.S.B.C. 1996, c. 128, survived the defendant's voluntary assignment into bankruptcy pursuant to

> s. 178(1)(d) of the *BIA*, which required the defendant to have been acting in a fiduciary capacity.
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> [23] In *Valastiak*, the trial judge who made the original compensation order did not expressly find that the defendant had been acting in a fiduciary relationship at the time. This was because such a finding was not at issue in the divorce proceedings. For that reason, the subsequent chambers judge refused to make a declaration under s. 178(1)(d).
>
> [24] On appeal, this Court found that it was not necessary for an express finding of the existence of a fiduciary relationship to have been made in the original judgment in order for a court to later make such a finding for the purposes of s.178.
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> […]
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> [29] *H.Y. Louie* expressly confirms a court's ability to characterize a previous judgment in a s. 178 application based on "the pleadings available to the court that made the judgment and the proceedings before it": at para. 82 [emphasis added]. A court can therefore look to the entire context of the proceedings in the Original Action to determine whether the judgment debt can be characterized as one falling within s. 178(1).

[19] In other words, the trial judge may well have made findings that engage s. 178(1), despite the lack of pleadings or findings in relation to the specific conduct set out in s. 178(1).

Analysis

Would the judgment debts survive discharge such that the stays should be lifted?

[20] Given how ss. 69.4 and 178(1) of the *BIA* interact in the jurisprudence, I will deal first with the question of whether the judgment debts at issue can be characterized as falling within s. 178(1), such that David would not be released from them by an order of discharge. If yes, it follows that the Defendants and SDA would be materially prejudiced by continued operation of the stays, and they should be lifted.

SDA Action

[21] In the SDA Action, Baird J. awarded $105,997.43 to SDA as a result of David's breach of the Oral Contract. Specifically, Baird J. found David in his personal capacity failed to perform his contractual obligations "by cutting off funding for the project before it was completed" (Reasons at para. 13). In this application, SDA says

that debt is not one that is dischargeable in bankruptcy because, under s. 178(1)(d) of the *BIA*, it is a debt arising out of "defalcation while acting in a fiduciary capacity". In particular, SDA says David, as a director of SDA, failed to take any steps to collect the monies owed to SDA (by David in his personal capacity) in relation to the project, and also purchased materials and hired subcontractors for the project, causing SDA to incur more debt.

[22] In evidence before me is a copy of a demand sent by SDA's counsel to David's then counsel in June 2017, requesting that David fulfil his fiduciary obligations to SDA by commencing a court proceeding to recover the debt owed to the company. It is not disputed that David, as director, did not take the requested steps.

[23] For his part, David says that as a director himself, Stephen also failed in his fiduciary obligations to SDA. Although it was not clear on the materials before me when Stephen ceased being a director of SDA, David's position ignores the steps Stephen did take to support SDA, such as finding new financing for SDA's operations when David ceased paying (Reasons at para. 12), making the demand to David and then commencing the derivative action.

[24] The circumstances are slightly unusual, in that David was both a director of SDA and its customer. However, as SDA says, it is trite law that a director owes a fiduciary duty to the company. SDA also submits, relying on *Valastiak v. Valastiak*, 2010 BCCA 71, that the concept of "defalcation while acting in a fiduciary capacity" under s. 178(1)(d) of the *BIA*, does not require a dishonest or wrongful act; rather "it is sufficient if there is a failure to meet an obligation by a fiduciary": *Valastiak* at paras. 24-25, citing *Smith v. Henderson* (1992), 64 B.C.L.R. (2d) 144 (C.A.) at pp. 148-149.

[25] The SDA Action was advanced as a breach of contract claim against David in his personal capacity, and as a result, the Reasons do not expressly address David's role as a director. But as confirmed in *Cruise Connections*, it is open to me

to look to the underlying pleadings and proceedings to decide if the judgment debt arises from David's defalcation while acting in a fiduciary capacity.

[26] In this regard, David's response to civil claim in the SDA Action references his status as a director of SDA, and his financial contributions to its incorporation and its operations. The response to civil claim also alleges David was owed more money by SDA than he owed to it. Further, David does not dispute that a demand was made to him in his fiduciary capacity as a director of SDA, and he did not take steps to collect on the debts owed to SDA. In the circumstances, I am satisfied that the judgment debt Baird J. found owing to SDA arose from David's failure as a director to collect on debts SDA was owed. I therefore find the judgment debt in the SDA Action falls within s. 178(1)(d) and would survive David's discharge from bankruptcy.

Melanson Action

[27] In the Melanson Action, it was only necessary for Baird J. to address the counterclaim. Baird J. awarded the Defendants damages of $20,518 as compensation for what he found to be David's wrongful removal of tools from the Defendants' property and failure to return them. Baird J. described David's removal of the tools in different ways, including "theft" (Reasons at para. 15) and "stealing" (Reasons at para. 16). Baird J. also awarded the Defendants damages of $33,272.60 as compensation for costs and expenses they incurred to put various accounts in order after David wrongfully removed equipment leased by or on behalf of SDA (which Stephen had personally guaranteed) from the Defendants' property (Reasons at paras. 16-17).

[28] The Defendants say the judgment debt in relation to the removal of the tools falls within s. 178(1)(e) of the *BIA*, in that the tools were obtained under false pretenses, and the judgment debt in relation to the equipment falls within s. 178(1)(d) of the *BIA*, as either misappropriation or defalcation or both. The Defendants rely on an additional affidavit from Stephen to attempt to establish any additional facts necessary to find false pretenses.

[29] For his part, David attempted to argue the tools were in fact his, and disputed Baird J's characterization of his conduct as "theft". I clarified that the question of who owned the tools was addressed and determined at trial and could only be addressed through an appeal.

[30] In *Cruise Connections,* the Court of Appeal considered the language of s. 178(1)(e) and held:

> [13] The essential test for both "false pretences" and "fraudulent misrepresentation" under s. 178(1)(e) has been described simply as determining whether the bankrupt was "deceitful" in obtaining the property: [citations omitted]
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> […]
>
> [15] An order pursuant to s. 178(1)(e) is therefore a moral sanction against the bankrupt for obtaining property through deceitful means. It ensures that a deceitful wrongdoer will not be able to use the court system and the state's bankruptcy provisions as a mechanism for avoiding the consequence of his or her actions.

[31] As noted, I may consider the Reasons, the pleadings and the context of the proceeding as a whole to determine if the debt falls within s. 178(1). It is not necessary for the Defendants to have pleaded or tried their counterclaim specifically on the basis of "false pretenses", "fraudulent misrepresentation", "misappropriation" or "defalcation".

[32] The counterclaim pleads that David's removal of the tools was wrongful and constituted theft. It also pleads, among other things, that David's removal of the equipment was inconsistent with his fiduciary obligations as a director of SDA.

[33] In my view, the Reasons are clear that David's removal of the tools from the Defendants' property constitutes conduct giving rise to a debt that falls within s. 178(1)(e) of the *BIA*. At paragraph 15 of the Reasons, Baird J. finds "[t]here is no evidence to suggest that any of the items in question belonged to SDA or that David had any right to take them" [emphasis added]. Section 178(1)(e) is designed to exempt from discharge the kind of conduct that is not acceptable to society. While the Reasons do not expressly use the language of deceit, I do not consider it necessary to go beyond the Reasons to be satisfied that a finding of a wrongful

removal of tools without any right to take them – whether characterized as theft or stealing or something else – is the kind of morally blameworthy conduct in obtaining property that s. 178(1)(e) is designed to address.

[34] With respect to the debt arising from removal of the equipment, the Court of Appeal in *Valastiak* considered misappropriation to involve the concept of "turning [something] to a wrong purpose", which, unlike defalcation, does require an element of dishonesty, wrongdoing or misconduct (at paras. 27-31). Consistent with the pleadings in the counterclaim, Baird J. accepted that David's conduct in removing equipment leased by or on behalf of SDA, and personally guaranteed by Stephen, involved wrongdoing that justified an order to pay compensation (Reasons at para. 16). I am satisfied David's liability in relation to the equipment removal results from his misappropriation of the leased equipment. As it is not necessary for me to find liability on more than one basis under s. 178(1)(d), I will not address the defalcation arguments respecting David's removal of the equipment and the resulting debt.

Costs awards in both actions

[35] The Defendants and SDA also say the costs awards made in both actions should equally survive a discharge. They rely on the decision of *Yanic Dufresne Excavation Inc. v. Saint Joseph Developments Ltd. et al.*, 2022 ONSC 2638 for the proposition that costs incurred to prove a debt that survives a bankruptcy should also survive the bankruptcy. I note that the costs at issue in *Yanic* appear to be both costs of the original action to prove the debt as well as costs of the application to prove that the debt survived the bankruptcy.

[36] The *Yanic* case does not appear to have been followed in British Columbia, nor has the 2018 ONSC case it references. In fact, I was not directed to any British Columbia authorities which have expressly addressed the question of whether costs incurred to prove a debt that is subsequently found to survive a bankruptcy should also survive. I was able to locate several cases where that is what the Court ordered: see e.g. *Bankruptcy of Murray Clarke*, 2002 BCSC 809 at para. 6. I was

not directed to British Columbia cases that found it would be an error to order that costs survive. The dearth of caselaw addressing this may be, in part, because, in many cases, applications under ss. 69.4 and/or 178(1) of the *BIA* are brought in advance of a trial concluding, before the debt or liability has been proven. In those cases, costs to prove the debt *per se* have not yet crystallized, and the issue of costs for the application itself appears to be left for the trial proper: see *Zheng* at para. 35; *Save-A-Lot* at para. 36.

[37] At the lower court level of *Cruise Connections*, as here, the application for a declaration under s. 178(1) was brought after the trial determining liability for the debt had concluded. The applicant sought to have the costs award from trial included as part of the declaration of what would survive discharge (2014 BCSC 1563 at para. 1). As Justice Pearlman did not grant the declaration under s. 178(1), the costs issue was not addressed. While the Court of Appeal allowed the appeal and granted the declaration under s. 178(1)(e) of the *BIA*, the judgment was silent as to costs, and in particular, whether costs incurred to prove the debt at first instance would also survive.

[38] There is some logic to what appears to underlie the Ontario approach. If costs are incurred to prove a debt and an award of costs is granted, and then the debt is subsequently declared to survive the bankruptcy, it would seem inequitable for the costs award related to the debt to not also survive the bankruptcy. To hold otherwise would deprive the successful litigant of part of their entitlement from the trial process. It is not clear on what basis that could be rationalized.

[39] In the circumstances, I am satisfied that the costs awards made by Baird J. should be considered an intrinsic part of the judgment. Since I have concluded that the judgment debts survive discharge of bankruptcy, the costs awards must also survive.

Conclusion on judgment debts and lifting of stays in relation to them

[40] I have concluded that the judgment debts pronounced in the Reasons all fall within various subsections of s. 178(1) of the *BIA*. I therefore grant the requested

declarations under s. 178 of the *BIA* that the judgment debts, including the costs awards, are not debts that would be released by an order discharging David from bankruptcy.

[41] Given that conclusion, I am satisfied that the Defendants and SDA are likely to be materially prejudiced by the continued operation of the stays in relation to the judgment debts. Accordingly, I grant declarations pursuant to s. 69.4 of the *BIA* that the s. 69.3 stays no longer operate in respect of the judgment debts awarded to the Defendants and SDA in both actions.

Should the stays be lifted in respect of the actions generally and a *nunc pro tunc* declaration granted?

[42] As noted, David became a bankrupt on November 2, 2022, in the middle of the trial. As a result, by operation of s. 69.3 of the *BIA,* the proceedings against David were technically stayed. For that reason, the order made after trial cannot be entered. To remedy this, the Defendants and SDA seek a declaration under s. 69.4 of the *BIA* that the stays are no longer operative with respect to the Melanson Action and the SDA Action. To be effective, those declarations are sought *nunc pro tunc*, such that they will operate from a previous point in time – namely, the point in the trial process when David became a bankrupt.

[43] I will deal with the question of whether the stays should be lifted and if so, on a *nunc pro tunc* basis, simultaneously.

[44] In *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60, Justice Côté enumerated a number of factors that courts may consider when deciding if an order should be granted *nunc pro tunc*. The factors relevant to my consideration on these applications include the following:

a) The opposing party will not be prejudiced by the order;

b) The order would have been granted had it been sought at the appropriate time, such that the timing of the order is merely an irregularity;

c) The irregularity is not intentional; and

d) The order will effectively achieve the relief sought or cure the irregularity.

[45] The Defendants and SDA rely primarily on the second factor listed above. They say that had Baird J. been made aware during the trial that David had become a bankrupt, he would have granted declarations at that time lifting the stay. However, since formal notice was not provided until November 8, 2022, several days after the trial had concluded, there was no opportunity to address it. Accordingly, the timing for seeking the declarations *nunc pro tunc* was an irregularity and not an intentional one. I note in this regard that there were efforts in early May 2023, after the Reasons were delivered, to have the stays addressed, and the Defendants and SDA filed these notices of application in December 2023. I was advised during the hearing that the parties had been unable to be heard in chambers on several different occasions.

[46] The Defendants and SDA say Baird J. would have lifted the stays during the trial for two reasons. First, they say again that the debts or liabilities they were seeking to prove at trial were not ones that would be released by an order of discharge. Second, they say the litigation had progressed to a point that would have weighed heavily in favour of lifting the stays. As they seek the declarations on a *nunc pro tunc* basis, the same rationales apply to my consideration of whether to lift the stays now.

[47] On the basis of the analysis set out above, which I will not repeat, I agree the debts and liabilities the Defendants and SDA were seeking to prove at trial ended up being ones that are not dischargeable in bankruptcy. Baird J. had considerable pre-trial experience with these matters, so he may have felt comfortable lifting the stays on that basis. Given my conclusions above, I agree that this is a basis which currently weighs in favour of lifting the stays, as the Defendants and SDA will be materially prejudiced by the continuation of the stays.

[48] However, in my view, the more persuasive reason to believe the stays would have been lifted mid-trial is the stage the proceedings were at when David became a bankrupt. It remains an equally persuasive basis for lifting them now.

[49] In *Zheng,* the application to lift the stay was made several days after the trial had commenced. Justice Loo found the stage of the proceedings and the progress to date weighed heavily in favour of lifting the stay and allowing the proceeding to continue to judgment (para. 14). He referenced the decision in *Save-A-Lot*, where Justice Fitzpatrick found it relevant to her decision to lift a stay that the parties had made substantial progress in terms of pleadings, document discovery and retention of experts. In *Zheng,* Justice Loo noted that matters in his case were much farther along, including because the lengthy trial had already begun (at paras. 16-17).

[50] The present matters were at a similar position to those in *Zheng* when David became a bankrupt. The claims were filed in 2017, so were already quite dated. There had been multiple pre-trial applications, the parties had completed their preparations and the trial was already two-thirds completed. In the circumstances, I anticipate the stage of the proceedings would have weighed very heavily in favour of the stays being lifted had the Defendants and SDA been in a position to seek them during trial. On that same basis, I am satisfied on these applications that the proceedings were at a stage where logic dictates they ought to have been permitted to proceed to judgment. It follows that I am granting an order under s. 69.4 lifting the stays.

[51] I recognize that granting the declarations *nunc pro tunc* so that they operate from the date David became a bankrupt will cause David some prejudice. But in my view, that prejudice does not outweigh the material prejudice to the Defendants and SDA of allowing the stays to continue in the circumstances of this case.

[52] Accordingly, I grant the requested declarations, *nunc pro tunc*, under s. 69.4 that the stays of proceedings under s. 69.3 of the *BIA* are no longer operative with respect to the SDA Action and the Melanson Action.

Conclusion

[53] The notices of application brought by the Defendants and SDA are granted to the extent I was asked to and agreed to address them. The Defendants and SDA are entitled to regular costs of these applications. For the same reasons stated above, I grant a declaration that the costs of these applications also survive a discharge of bankruptcy.

[54] The final matter is whether Stephen has leave to enforce this judgment on behalf of SDA and in my view, that is appropriate given the circumstances of this case, and I so order.

[55] Subject to any questions arising, those are my reasons.

[DISCUSSION WITH COUNSEL RE: TERMS OF ORDER]

[56] THE COURT: I am prepared to grant an order dispensing with the signature of David Melanson on the order, but I will ask you, Mr. Aiyadurai, to draft the form of order, provide it to Mr. Melanson by email and give him five days to provide any comments on the draft order before you finalize and submit it to the Registry.

Summary of orders made:

1. The notice of application filed December 4, 2023 in Nanaimo Registry No. S94465 (the “SDA Action”) be heard at the same time as the notice of application filed December 4, 2023 in Nanaimo Registry No. S80775 (the “Melanson Action”).

2. The relief sought at Part 1, paragraph 4, of the notice of application filed December 4, 2023 in the SDA Action be adjourned generally, with leave to counsel to request to appear before Baird J. if that relief continues to be sought.

3. A declaration, pursuant to s. 178(1) of the *BIA*, that the judgment debt and the cost award in the SDA Action are not debts that would be released by an order discharging David Melanson from bankruptcy.

4. A declaration, pursuant to s. 178(1) of the *BIA*, that the judgment debts and the cost award in the Melanson Action are not debts that would be released by an order discharging David Melanson from bankruptcy.

5. A declaration, pursuant to s. 69.4 of the *BIA,* that the stay of proceedings under s. 69.3 of the *BIA* is no longer operative with respect to SDA's execution on the judgment debt and costs award in the SDA Action.

6. A declaration, pursuant to s. 69.4 of the *BIA,* that the stay of proceedings under s. 69.3 of the *BIA* is no longer operative with respect to the Defendants' execution on the judgment debts and costs award in the Melanson Action.

7. A declaration, *nunc pro tunc*, pursuant to s. 69.4 of the *BIA*, that the stay of proceedings under s. 69.3 of the *BIA* is no longer operative with respect to the SDA Action.

8. A declaration, *nunc pro tunc*, pursuant to s. 69.4 of the *BIA* that the stay of proceedings under s. 69.3 of the *BIA* is no longer operative with respect to the Melanson Action.

9. The Defendants and SDA are each granted their regular costs for their respective applications.

10. Stephen Melanson has leave to enforce the judgment debt and costs awards in the SDA Action on behalf of SDA.

11. Mr. Aiyadurai is to draft the form of order and send a copy of the draft form of order to David Melanson by email and permit him five days to provide any comments on the form of order.

12. David Melanson's signature on the form of order is dispensed with.

"K. Wolfe J."