

CITATION: SF SQUARE GP CORP v. BDO, 2025 ONSC 4215
COURT FILE NO.: BK-25-03230607-0035
DATE: 20250716

**SUPERIOR COURT OF JUSTICE – ONTARIO
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3,
AS AMENDED**

**IN THE MATTER OF THE BANKRUPTCY OF SF SQUARE GP CORP. OF THE CITY
OF GUELPH, IN THE PROVINCE OF ONTARIO**

BEFORE: Justice Spencer Nicholson

COUNSEL: C. Fell and J. Wuthmann for BDO Canada Limited, in its capacity as Trustee in
Bankruptcy

M. Mazzuca and H. Manis for Level 3 Capital Management Inc., Andrew Long,
Kent McDonell and 2796068 Ontario Inc.

L. Williams and S. Srikaruna for Robson Carpenter LLP

HEARD: July 4, 2025

REASONS

NICHOLSON J.:

[1] The Ontario Superior Court of Justice has jurisdiction under the *Bankruptcy and Insolvency Act*, RSC, 1985, c. B.3, as amended, (“*BIA*”) to preside over bankruptcy cases. The bankrupt in the within case filed for bankruptcy in Waterloo and was assigned an estate number for the District of Ontario, Division No. 08. Bankruptcy matters in the division of Waterloo are properly heard before the Bankruptcy Court in London.

[2] There are two motions before me.

[3] First, the Trustee in Bankruptcy, BDO, seeks an order staying an application commenced in the Superior Court of Justice in Guelph by Level 3 Capital Management Inc., Andrew Long, Kent McDonell and 2796068 Ontario Inc. (“the Level 3 Applicants”) as against SF Square LP, by its general partner SF Square GP Corp., and Robson Carpenter LLP.

[4] Robson Carpenter LLP seeks an Interpleader order permitting it to pay \$4.7 million that it is currently holding in trust to BDO, or alternatively, into court.

[5] The Level 3 Applicants resist both motions, arguing that the court in Guelph has jurisdiction and their application ought not to be stayed. In the alternative, the Level 3 Applicants argue that I should lift the stay pursuant to s. 69.4 so that the Guelph proceeding can continue.

[6] The bankrupt in this case is Sherwood Forest Square Ltd (“Sherwood Corp”), a real estate developer. Sherwood Corp is the sole shareholder of the General Partner, SF Square GP Corp. (“GP”), which acts as the sole general partner of SF Square LP (“LP”). SF Square LP is a limited partnership. RHH Rental Properties (“RHH”) is the parent company of Sherwood Corp.

[7] SF Square LP held beneficial title to a student residence in London, Ontario known as “the W”. In the fall of 2024, SF Square LP was attempting to sell that property. It entered into an Agreement of Purchase and Sale on November 12, 2024 for \$100 million. Robson Carpenter LLP acted as real estate counsel to SF Square LP in connection with the property.

[8] Prior to the closing of the sale of the property, the GP for and on behalf of the LP executed an Irrevocable Direction to Pay dated January 10, 2025. The Irrevocable Direction to Pay is to William Thompson, a partner with the law firm of Robson Carpenter LLP and to Rousseau Mazzuca LLP. It is from “SF Square LP, by its General Partner, SF Square GP. Corp”. The Irrevocable Direction to Pay “irrevocably authorizes and directs Robson to disburse” \$4,700,000 which is stated to represent the partial repayment of investments and advances made by each of Andrew Long, Kent McDonell, 2796068 Ontario Inc. and Level 3 Capital Management Inc. to Rousseau Mazzuca in Trust. Those funds would be disbursed in priority to the claims of any other party other than amounts owing to the federal or provincial government and amounts owing to arm’s length parties with secured charges on the property.

[9] Each of the Level 3 Applicants had advanced monies to RHH evidenced by promissory notes. Under the promissory notes, Sherwood Corp. guaranteed the obligations of RHH. The promissory notes were not guaranteed by Square LP or Square GP. Thus, the Trustee is of the understanding that only RHH and Sherwood Corp. are indebted to the Level 3 Applicants.

[10] Accordingly, the Trustee in Bankruptcy, BDO, questions the validity of the Irrevocable Direction to Pay because Square GP and Square LP did not have any indebtedness towards the Level 3 Applicants. Furthermore, even if the Irrevocable Direction is valid, the Trustee raises the possibility that the payment through the irrevocable direction would constitute a preference contrary to s. 95 of the *BIA*, or a transfer under value contrary to s. 96 of the *BIA*.

Chronology:

[11] As noted, the Agreement of Purchase and Sale for “the W” is dated November 12, 2024.

[12] The Irrevocable Direction to Pay is dated January 10, 2025.

[13] The closing date for the sale of the property was May 9, 2025.

[14] Prior to the closing date, on April 24, 2025, Kessab Investments Inc. and 554498 Ontario Inc., secured creditors of Sherwood Corp., brought an application for the appointment of a receiver in respect of Sherwood.

[15] On May 5, 2025 Kessab wrote a letter to Robson Carpenter LLP asserting a competing claim to the funds held in trust and subject to the Irrevocable Direction. In fact, Kessab required that Robson Carpenter LLP not pay out the funds following the closing absent a court order or written agreement from all parties who “have a claim to the SF Proceeds”.

[16] On May 14, 2025, Robson Carpenter LLP wrote to the parties and confirmed its intention to seek an interpleader order.

[17] The next day, May 15, 2025, the Level 3 Applicants commenced their application against Square LP by its general partner SF Square GP Corp, and Robson Carpenter LLP, in the Superior Court in Guelph.

[18] On May 20, 2025, BDO was appointed as receiver over Sherwood Corp. pursuant to s. 243 (1) of the *BIA* by the Order of Lemon J.

[19] On May 30, 2025, SF Square GP Corp commenced bankruptcy proceedings by filing an assignment in bankruptcy. BDO was appointed as trustee of the estate of the bankrupt by the official receiver. Pursuant to s. 71 of the *BIA*, as of that time, the bankrupt ceased to have any capacity to dispose of or otherwise deal with its property which passed to and vested in the trustee.

[20] Pursuant to s. 69.3 of the *BIA*, on the filing for bankruptcy, no creditor has any remedy against the debtor or the debtor’s property or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy. Accordingly, as of May 30, 2025 civil proceedings as against the bankrupt were automatically stayed. It is important to understand that there was no need for a formal declaration for the stay to apply. It is an automatic stay.

[21] To the contrary, the *BIA* requires that a creditor apply to the court for an order lifting the automatic stay under s. 69.4. That has never been done in this case, although the Level 3 Applicants make that request before me.

[22] On June 9, 2025, a case conference was held in respect of the Guelph application for the purpose of scheduling, before Lemon J. At that time, BDO advised Justice Lemon that the application was automatically stayed as a result of s. 69.3 and that the Level 3 Applicants were required to seek leave to lift the stay in the London bankruptcy court.

[23] According to BDO’s counsel, Justice Lemon declined to rule on the merits of that submission given that the purpose of the case conference was only scheduling. In his endorsement, Lemon J. stated as follows:

“[1] Further to my amended endorsement of May 29, 2025, the parties dispute the impact of the bankruptcy of SF Square. In order to resolve that dispute, the next steps are as follows.

...”

[24] Lemon J. then set out a schedule for the delivery of material and scheduled the motion to be heard for one hour on July 22, 2025.

[25] Despite the submissions of BDO, the endorsement, in my view, indicates that Lemon J. contemplated a hearing with respect to whether or not the application was stayed as a result of the bankruptcy. However, it is also apparent that he did not make any substantive determinations of any of the issues. He was only providing a mechanism to resolve the dispute in a timely fashion.

[26] On June 19, 2025, Sherwood’s parent company, RHH commenced bankruptcy proceedings by filing an assignment in bankruptcy. BDO was also appointed as trustee of the estate of the bankrupt.

Analysis:

Should the Guelph Application be Stayed:

[27] S. 69.3 of the *BIA* reads as follows:

69.3(1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

[28] “Claim provable in bankruptcy” is broadly defined in s. 2 of the *BIA* to include any claim or liability provable in proceedings under this Act by a creditor.

[29] S. 121 (1) of the *BIA* provides as follows:

“All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt’s discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

[30] Pursuant to subsections 121(2) and 135 (1.1), the trustee is empowered to determine whether any contingent claim or unliquidated claim is a provable claim.

[31] There are three essential elements for a claim provable in bankruptcy:

- (a) There must be a debt, liability or obligation to a creditor;
- (b) The debt, liability or obligation must be incurred before the date of bankruptcy; and

(c) It must be possible to attach a monetary value to the debt, liability or obligation.

(see: *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, [2012] 3 SCR 443 at para. 26)

[32] The single proceeding model is a key component of the Canadian bankruptcy regime and requires that a bankruptcy proceeding be a single, collective process that supersedes the usual civil processes available to creditors to enforce their claims. The automatic stay of proceeding operates to prevent creditors from racing each other to court to secure an advantage over a bankrupt's assets. It ensures that all creditors are treated equally and avoids the inefficiency and chaos of creditors continuing multiple actions against a debtor (see: *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 SCR at para. 22) .

[33] The Ontario Court of Appeal recognized the importance of the single proceeding model and the automatic stay of proceedings under s. 69.3 of the *BIA* in *Walchuk v. Houghton*, 2016 ONCA 643 and in *Mundo Media Ltd. (Re)*, 2022 ONCA 607.

[34] Section 49 (3) of the *BIA*, requires that an assignment in bankruptcy is to be filed in the "locality of the debtor". The phrase "locality of the debtor" is defined in s. 2 of the *BIA* as:

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (d) In cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.

[35] In this case, the debtor carried on business in Guelph. The locality of the debtor is therefore Division No. 08—Waterloo and the London Bankruptcy Court has jurisdiction over those matters.

[36] In *Sam Levy & Associates Inc. v. Azco Mining Inc.*, 2001 SCC 92, [2001] 3 SCR 978, the Supreme Court of Canada stated as follows at paras. 26-27:

[26] The trustees will often (and perhaps increasingly) have to deal with debtors and creditors residing in different parts of the country. They cannot do that efficiently, to borrow the phrase of Idington J. in *Stewart v. LePage* (1916), 1916 CanLII 626 (SCC), 53 S.C.R. 337, at p. 345, "if everyone is to be at liberty to interfere and pursue his own notions of his rights of litigation". *Stewart* dealt with the winding up of a federally incorporated trust company in British Columbia. As a result of the winding up, a client in Prince Edward Island instituted a proceeding in the superior court of that province for a declaration that certain monies held by the bankrupt trust company were held in trust and that the bankrupt trust company should be removed as trustee. This Court held that the dispute, despite its strong connection to Prince Edward Island, could not be brought before the court of that

province without leave of the Supreme Court of British Columbia. Anglin J. commented at p. 349:

No doubt some inconvenience will be involved in such exceptional cases as this where the winding up of the company is conducted in a province of the Dominion far distant from that in which persons interested as creditors or claimants may reside. But Parliament probably thought it necessary in the interest of prudent and economical winding-up that the court charged with that duty should have control not only of the assets and property found in the hands or possession of the company in liquidation, but also of all litigation in which it might be involved. The great balance of convenience is probably in favour of such single control though it may work hardship in some few cases.

[27] *Stewart* was, as stated, a winding-up case, but the legislative policy in favour of “single control” applies as well to bankruptcy. There is the same public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse. Section 188 (1) ensures that orders made by a bankruptcy court sitting in one province can and will be enforced across the country.

[37] The Level 3 Applicants take the position that the \$4.7 million represent trust funds and are not the bankrupt’s property and therefore, the monies do not vest in the trustee in bankruptcy. They rely upon *A. Farber & Partners Inc. v. First Chemical Management Inc.*, 1999 CanLII 1669 (ON CA). In that case, prior to bankruptcy, the bankrupt made rental payments into a trust account held by a law firm pending determination as to whether the bankrupt or the appellant was the owner of the property. The Court of Appeal held that those funds did not constitute property of the bankrupt and were therefore not accessible to the trustee in bankruptcy.

[38] However, in that case, the Court of Appeal held that the bankrupt was a contingent beneficiary of the trust. The exemption under s. 67(1)(d) of the *BIA* applies to funds “held by the bankrupt in trust for any other person”. The trustee could not attach to the bankrupt’s contingent interest.

[39] In *Kemeny v. Callidus Capital Corporation*, 2023 ONCA 76, Mr. Kemeny helped arrange a loan between Callidus and a third party, Esco. Esco agreed to pay Mr. Kemeny a consulting fee for his services in arranging the loan. Callidus executed an irrevocable direction directing Callidus to pay Mr. Kemeny’s fee directly to him from the first advance of the loan to Esco. When the loan advanced, Callidus did not pay the fee. Kemeny sued Callidus on the Irrevocable Direction.

[40] A distinguishing characteristic in that case was that the irrevocable direction was signed on behalf of Callidus. Upon review of the trial judge’s Reasons, upheld by the Court of Appeal, it is clear that she considered that Callidus had entered into a binding agreement through its principal. The Irrevocable Direction that the Level 3 Applicants rely upon in this case was not executed or acknowledged in writing by anyone on behalf of Robson Carpenter LLP.

[41] In *Bridgepoint Financial Services Limited Partnership I v. Galamini*, 2021 ONSC 6979, a lawyer was given an irrevocable direction from his client to pay proceeds of any settlement funds

received by the client to repay a loan advanced by Bridgepoint. The lawyer received settlement funds in his trust account and without regard to the irrevocable direction that he had “received, acknowledged and covenanted to honour”, he paid the money directly to his client. Dunphy J. found that the lawyer was liable to Bridgepoint for failing to honour the direction.

[42] Again, it is noteworthy that, in *Bridgepoint*, the lawyer had signed an acknowledgement in which he covenanted to abide by the client’s direction. Otherwise, Dunphy J. took pains to note that the irrevocable direction did not make the lawyer a guarantor.

[43] My concern here is that the Level 3 Applicants are seeking to disrupt the scheme created under the *BIA* to deal with a bankrupt’s property. Parties are not free to contract out of bankruptcy laws.

[44] The arguments by the Level 3 Applicants may well carry the day and, in my view, it is an issue to be determined later in these proceedings with the full involvement of any and all interested creditors. There are distinctions between those cases and the case at bar. I have considered the argument only on the basis of whether it was so obvious to the court that the disputed funds would not constitute property of the bankrupt that the stay ought not to apply.

[45] If ultimately, the funds are not property of the bankrupt, the Level 3 Applicants will be determined to have a valid claim to those funds. It is simply not so clear cut to justify ignoring the Bankruptcy Court’s jurisdiction over the issue.

[46] I am persuaded from the review of the provisions of the *BIA* and the case law noted above, that the single proceeding model applies to these bankruptcy proceedings and mandates that the Application scheduled to proceed before Lemon J. on July 22, 2025 was automatically stayed when the assignment in bankruptcy was made. I recognize that Lemon J. appears to have been prepared to adjudicate this very issue but also recognizing that in no way am I contradicting a substantive decision made by my colleague in Guelph. Rather, his approach was a practical way of dealing with the dispute, in the event that the trustee did not apply to the bankruptcy court that, in my respectful view, has jurisdiction.

[47] The automatic stay would apply to a proceeding mid-trial if it was not lifted. I see no reason why it should not apply to an application that has been timetabled to be heard.

[48] In reaching this determination, I am not making any final determination as to whether the funds are the property of the bankrupt, or constitute a transfer undervalue or a fraudulent preference. Rather, like in *Medcap Real Estate Holdings Inc., (Re)*, 2023 ONSC 6009, I am merely ensuring that all issues of this bankruptcy are dealt with in one court—being the Bankruptcy Court that has jurisdiction in this matter.

[49] I have considered *Retail Merchants Association v. Melissa Derek Inc.*(2002), 60 O.R. (3d) 547, [2002] O.J. No. 3237. In that case, Henderson J. determined that he had the jurisdiction as a Superior Court Justice, but not sitting in Bankruptcy Court, to hear a motion regarding the lifting of the automatic stay under s. 69.4 of the *BIA*. As I have indicated, I am not questioning that Lemon J. has jurisdiction, but rather whether the Bankruptcy Court should give way in the

circumstances where he has not dealt with the case substantively. It is clear that Henderson J. would have deferred to the Bankruptcy Court as he stated: “[i]f there was no other need to deal with interim relief, I would have no hesitation in requiring the plaintiff to bring the motion in Bankruptcy Court.” He had two motions before him, only one of which should have been in Bankruptcy Court.

[50] In the case before the court, it is clear that there is a dispute over the funds that were subject to the Irrevocable Direction to Pay, and that the outcome of that dispute will have a significant impact on the creditors. That dispute should be resolved in a proceeding that puts all of the creditors on an even footing. At this stage, although Lemon J. timetabled the hearing of the Application, he has not yet heard the arguments nor received all of the material. While there has been some inefficiency, there will be little duplication between the two courts if the automatic stay is respected and the matter proceeds in Bankruptcy Court.

[51] Accordingly, it is my view that Court File CV-25-00000214-0000 was stayed by the assignment in bankruptcy and that the Guelph application should not proceed in the circumstances.

Should the Stay be Lifted:

[52] The Level 3 Applicants, in the alternative to arguing that the disputed funds are not the property of the bankrupt and therefore there is no automatic stay, argue that if there is a stay, I should exercise my discretion to lift the stay under s. 69.4 of the *BIA*.

[53] I decline to do so.

[54] It is my opinion that lifting the stay would interfere with the proper administration of the bankrupt estate. The chronology demonstrates that Kessab sought a receiver prior to the closing date and informed Robson Carpenter LLP of their claim to any proceeds from the sale prior to the closing. The Application was commenced after Robson Carpenter LLP signalled its intention to interplead the disputed funds.

[55] Accordingly, I have a real concern that the Application by the Level 3 Applicants was exactly the concern that the *BIA* is designed to prevent, creditors racing to the courthouse to secure an advantage over other creditors. I cannot conclude that the Level 3 Applicants are likely to be prejudiced if they are dealt with fairly by these bankruptcy proceedings. Again, if the funds are ultimately found to be beyond the reach of the trustee, then the Level 3 Applicants’ rights are preserved.

Interpleader:

[56] Pursuant to Rule 43.02 of the *Rules of Civil Procedure*, a person may seek an interpleader order in respect of property if,

- (a) Two or more other persons have made adverse claims in respect of the property; and

(b) The first-named person,

- (i) Claims no beneficial interest in the property, other than a lien for costs, fees or expenses, and
- (ii) Is willing to deposit the money with the court or dispose of it as the court directs.

[57] The three requirements have been met in this case.

[58] Robson Carpenter LLP finds itself caught between the Level 3 Applicants and the creditors of the bankrupt in a dispute over which of those two groups is entitled to the disputed funds. It claims no beneficial interest other than a lien for costs, fees and expenses and it is willing to deposit the funds with the trustee in bankruptcy pending determination of how those funds should be distributed.

[59] The Level 3 Applicants, of course, allege substantial wrongdoing on the part of Robson Carpenter LLP for not complying with the Irrevocable Direction to Pay. Again, I note that there are distinctions between the Irrevocable Direction to Pay in this case, and the directions in *Bridgepoint* and *Kemeny*, where there were clearly signed acknowledgements.

[60] Furthermore, the chronology makes clear that Robson Carpenter LLP was put on notice of the competing claim prior to closing, which is when the Irrevocable Direction to Pay would have otherwise been triggered. The law firm was in an untenable position prior to the closing.

[61] The purpose of the interpleader rule is to permit an “uninterested” person who has possession of property that is the subject matter of dispute between two or more persons to extricate themselves from the dispute so that they do not have to incur potential liability or legal fees in order to avoid that liability (see: *2823373 Ontario inc. et al v. Dar et al*, 2024 ONSC 4313 at para. 102).

[62] I find that the requirements of Rule 43.02 are met. Robson Carpenter LLP does not assert any beneficial interest in the funds. They are a disinterested stakeholder in the outcome of this dispute. Further, there is not only a real foundation to demonstrate competing claims, but they have clearly emerged. I order that the disputed funds be paid to BDO in trust pending the resolution of the dispute with respect to those funds.

[63] With respect to whether Robson Carpenter LLP’s liability should be extinguished, they argue that the funds will be available to whoever ultimately prevails with respect to the dispute. If the funds ultimately are determined to belong to the Level 3 Applicants, they will have suffered no loss. If the funds are properly part of the bankrupt’s estate, then the Level 3 Applicants are no worse off than any other creditor.

[64] In *Canadian Imperial Bank of Commerce v. Costodian Inc. et al*, 2018 ONSC 6680, Hainey J. granted the interpleader order but denied the request to extinguish the applicant bank’s liability. He stated at para. 37 that interpleader relief should not be used to extricate the applicant from its own possible liability.

[65] I make the same order in this case. While I have noted the distinctions between the present case and both Bridgepoint and Kemeny, I have not gone so far as to rule out the possibility that Robson Carpenter LLP could be liable in the event that the Level 3 Applicants cannot rely upon the Irrevocable Direction and the disputed funds are beyond their grasp. I am also cognizant of the role that Robson Carpenter LLP allegedly had in drafting the Irrevocable Direction.

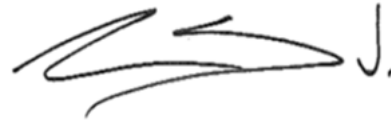
[66] I am not prepared to extinguish the liability of Robson Carpenter LLP.

[67] For the same reason, the issue of Robson Carpenter LLP's legal costs should be deferred. Those fees may have been incurred due to their own actions.

Costs:

[68] The parties had expressed optimism that they could resolve the issue of costs. Should that not prove to be the case, BDO may file and serve written submissions with respect to costs no longer than 3 pages double spaced, by email to Rebecca.Nagy@ontario.ca, by August 1, 2025. Robson Carpenter LLP's costs submissions, within the same parameters, are to be delivered no later than August 8, 2025 and the Level 3 Applicant's written submissions by August 15, 2025.

Order accordingly.



Justice Spencer Nicholson

Date: July 16, 2025

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ONTARIO

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IN THE MATTER OF THE BANKRUPTCY OF SF
SQUARE GP CORP. OF THE CITY OF GUELPH, IN
THE PROVINCE OF ONTARIO

REASONS

Released: July 16, 2025

Nicholson J.