

CITATION: Noormohamed v. Steven Richman et. al., 2019 ONSC 4734
COURT FILE NO.: 84879/13
DATE: 20190809

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Arif Noormohamed,, Plaintiff /Responding Party on Motion

AND:

Steven Richman, Pearl Richman, SDR Sales Agency Inc., Defendants/ Moving Parties

BEFORE: H.K. O'Connell, J.

COUNSEL: Mr. Howard Winkler and Ms. Erin Pond for the Defendants, Pearl Richman and SDR

Mr. Stephen Brunswick for the Defendant, Steven Richman

Mr. Kyle Armagon for the Plaintiff/ Responding Party, Mr. Noormohamed

HEARD: February 21, 2019

ENDORSEMENT

OVERVIEW

[1] This is a motion for summary judgment brought by the defendants S. Richman, Pearl Richman and SDR Sales.

[2] Mr. Winkler, and Ms. Pond, and Mr. Brunswick relied upon their joint factum.

[3] Their argument is that the claim of the plaintiff relies entirely on a debt previously owed by Mr. Steven Richman pursuant to a consent judgment dated July 20, 2011.

[4] Subsequent to that date, Mr. Richman was deemed a bankrupt on January 26, 2015.

[5] He received an absolute discharge from bankruptcy on April 13, 2018.

[6] The moving parties assert that the underlying judgment was based solely on a breach of contract claim made by the plaintiff against Steven Richman. This claim cannot survive an absolute discharge from bankruptcy.

[7] The debt is therefore extinguished, and the claims of the plaintiff cannot succeed as there can no longer be any claim over Richman's assets, or over anyone who know has interest in his assets.

[8] Furthermore, the plaintiff was aware of the bankruptcy proceedings and submitted a proof of claim over Steven Richman's assets and received some distribution from the trustee.¹

[9] It would be a collateral attack on the order of discharge and an abuse of process to permit the continuation of the action given the absolute discharge of the bankrupt, Mr. Steven Richman.

[10] The plaintiff has not put his best foot forward to respond to this motion for summary judgment. Nothing filed on this motion speaks to the issue of the effect of the bankruptcy on Mr. Noormohamed's initial claim.

[11] For his client Mr. Armagon sets out the history of the original claim and the sequence of events that led to bankruptcy. His factum contains assertions that counsel advises, and did so in his oral submissions as well, that make the claim not ripe for summary judgment.

[12] Counsel notes that the argument of the moving parties' hinges on the fact that Steven Richman received an absolute discharge in bankruptcy,

[13] Case-law is cited that speaks to allegations of fraud in the context of an absolute discharge from bankruptcy. The law allows for the looking behind the face of a prior judgment to determine if the criteria in section 178 of the *Bankruptcy and Insolvency Act* are met.

[14] Given the purported fraudulent conduct of the Richman's, the issue of the survivability of the claim of the plaintiff is not determinable on a summary judgment motion. The matter should and must proceed to trial.

Ruling

[15] The judgment that was agreed to on consent references the consolidated and amended statement of claim, at paragraphs 111-116. There is nothing therein that speaks to fraudulent conveyance(s).

[16] The basis of the amounts claimed is tied directly to the underlying judgment that deals with Steven Richman and the plaintiff.

[17] There is nothing in the claim that deals with particulars of a fraudulent conveyance or conspiracy and fraud. Nor is there any evidence proffered to substantiate such a claim, on this motion.

¹ Further to a question of mine at the hearing of the motion, Mr. Armagon advised that his client did receive some proceeds but that payout was a pittance of the total amount owing.

[18] The bankruptcy proceedings were regular. Nothing in that proceeding suggests an overture by the plaintiff to the trustee in bankruptcy to institute proceedings based on a fraudulent conveyance or that there was refusal by the trustee to do so.

[19] Furthermore, the plaintiff never sought the permission of the court to institute proceedings in the plaintiff's name and at his risk pursuant to section 38 of the *Bankruptcy and Insolvency Act* ("BIA")

[20] Furthermore, the plaintiff waited more than 2 years post the underlying judgment and as noted provided no particulars of the alleged fraudulent conveyance. The trial itself only came to be set down on the prospect of an administrative dismissal, which in turn triggered the motion for summary judgment.

[21] It is important to remember that section 70(1) of the *Act* makes every bankruptcy order and assignment in bankruptcy of first precedence over judgments and remedies to enforce judgments.

[22] Under this section a creditor no longer has rights. As the foundation of this action relates to debt owing under the judgment the plaintiff is now, on this record, deprived of standing to enforce that judgment, once Mr. Richman made an assignment into bankruptcy.

[23] That protection is now complete with the absolute discharge from bankruptcy in 2018. Any liability under the judgment is now extinguished.

[24] There is therefore no longer any debt owing, and the plaintiff is no longer a creditor of Mr. Richman. There is no ability for the plaintiff to assert any claim as against Richman, on this record.

[25] Furthermore, there is no evidence that the defendants Pearl Richman and SDR hold any assets *on behalf of* Mr. Richman. I therefore concur with the argument of Mr. Brunswick for his clients, that summary judgment is likewise appropriate.

[26] Finally, under section 69.3(1) of the BIA an automatic stay is imposed on any pending civil proceedings.

[27] The plaintiff was required to have moved to set aside the transfer of assets via an application to the Court in the bankruptcy proceedings to declare that the automatic stay imposed by this section no longer operates against the plaintiff. That never happened.

[28] The plaintiff could also have moved under section 38 of the *BIA* to authorize the advancing of a fraudulent conveyance claim but he did not take that route.

[29] Having regard to the lack of an evidentiary record to establish the "when, what, by whom and to whom of the relevant circumstances" that could establish a showing of a fraudulent conveyance, fraud or conspiracy, there is no basis for this court to allow this claim to advance further.

[30] In this respect I agree with the moving parties that alleging that the circumstance are solely within the knowledge of the defendants, is not sufficient. Material facts must be plead, not raw ungrounded assertions at a summary judgment proceeding.

[31] I do not doubt that the plaintiff feels he has been wronged, but that is not a proxy to allow, in the circumstances of this motion, for the court not to employ the tools for considering summary judgment in the context of the history of this claim, the subsequent bankruptcy proceedings, and the absolute discharge of the bankrupt, and having reviewed the record on this motion.

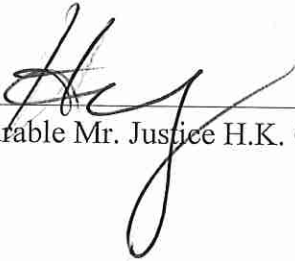
[32] This is, I find, a case that can be fairly resolved “in line with the goal of proportionate, cost-effective and timely dispute resolution”: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 67.

[33] As a consequence, the defendants Steven Richman, Pearl Richman and SDR Sales Agency Inc. are entitled to summary judgment.

[34] I am hopeful that the parties can agree on costs, given the narrow nature of the motion.

[35] If not the moving parties are to serve and file submissions on costs of no more than 3 pages, exclusive of any offer(s) to settle, or bill of costs, by August 23, 2019 with the responding party on the motion to reply within 10 days of receipt of the moving parties cost materials.

[36] Submissions to be filed at the Oshawa courthouse to my attention.


The Honourable Mr. Justice H.K. O'Connell

Date: August 09, 2019