

# The Canadian Abridgment eDigests -- Bankruptcy and Insolvency

2013-38  
September 16, 2013

BKY.VI.5

**Subject Title: Bankruptcy and insolvency**

**Classification Number: VI.5**

**Proposal -- Annulment of approved proposal**

Revival -- Debtors defaulted on payments required by consumer proposal after immediate family member became seriously ill -- Debtors failed to meet filing deadlines for automatic revival of proposal -- Administrator brought application for order reviving consumer proposal -- Application dismissed -- Leave to file new consumer proposal granted -- Although debtors could meet proposed monthly payments, they were unable to bring payments up to date -- Proposal would be annulled again if it was revived without amending default provisions.

*Birns, Re* ([2013](#)), [2013 SKQB 164](#), [2013 CarswellSask 464](#), C. Elaine Thompson Reg. (Sask. Q.B.)  
[Saskatchewan]

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BKY.VIII.2.b

**Subject Title: Bankruptcy and insolvency**

**Classification Number: VIII.2.b**

**Property of bankrupt -- Choses in action -- Debts owing to bankrupt**

In November 2009, plaintiff made assignment into bankruptcy -- In October 2011, trustee in bankruptcy demanded payment of debt owed by defendant company M -- In February 2012, plaintiff was granted judgment against M for \$357,202 -- From January 1st to August 30, 2012, \$680,026 payable to M Ltd. was deposited to accounts in name of company G -- \$120,363 of that money was transferred to SB -- SB was sole director, officer and shareholder of both M and G -- Activities undermined plaintiff's ability to enforce judgment against M -- Diversion of funds from M to G was declared to be fraudulent preference or conveyance and void as against plaintiff -- Plaintiff was found to be entitled to judgment against G -- Plaintiff's trustee sought judgment against SB on basis of role as sole director, officer and shareholder -- SB claimed plaintiff's founder, DM, was directing mind of M and G, and that funds were diverted at DM's request in order to keep M operating -- SB sought to be added as party and have matter referred to trial in order to fully explore issue of intent -- Trustee brought application for judgment against SB -- Application granted -- There was no question that SB was directing mind of both M and G -- Whether SB diverted funds in good faith or not, only relevant question of intent was whether transfers were effected in order to put funds out of reach of judgment creditor -- Transfers were clearly intended to do so -- Trial was unnecessary -- SB was personally liable for own tortious acts -- SB was jointly and severally liable with M and G for balance outstanding on judgment.

439288 *B.C. Ltd. v. Marmon Financial Management Co.* (2013), 2013 CarswellBC 1734, 2013 BCSC 1034, M. Gropper J., In Chambers (B.C. S.C.) [British Columbia]

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BKY.XV.13.h

**Subject Title: Bankruptcy and insolvency**

**Classification Number: XV.13.h**

**Discharge of bankrupt -- Practice and procedure -- Miscellaneous**

Mandatory mediation -- Bankrupt filed assignment in bankruptcy -- At time of his assignment, trustee concluded that bankrupt would be eligible for automatic discharge after 21 months -- After approximately 20 months, trustee objected to automatic discharge and filed notice of intended opposition to discharge -- Bankrupt opposed trustee's proposed conditions -- Bankrupt brought application for discharge from bankruptcy -- Application adjourned -- Dispute required parties to go through mandatory mediation process -- Discharge application was premature until mediation process complete.

*Fiessel, Re* (2013), 2013 SKQB 124, 2013 CarswellSask 466, C. Elaine Thompson Reg. (Sask. Q.B.) [Saskatchewan]

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BKY.XVII.1

**Subject Title: Bankruptcy and insolvency**

**Classification Number: XVII.1**

**Practice and procedure in courts -- On application for directions**

Immediately prior to bankruptcy, bankrupt sold property -- Purchase price was intended to pay off outstanding property taxes, mortgage, legal costs and two writs -- Bankrupt required additional \$3,000 to cover writ, which purchaser paid subject to condition that any surplus be returned to purchaser -- Bankrupt owed money to law firm that had processed real estate deal -- Trustee was currently in possession of surplus from sale -- Trustee brought motion for directions regarding distribution of proceeds from sale -- Motion granted -- Trustee was ordered to file necessary documentation with Land Titles Office to remove certificates of judgment, use discretion regarding payment of funds to bankrupt's lawyer, and to remit \$3,000 to purchaser -- Certificates of judgment were not yet discharged from title did not bind or hold funds from being paid to trustee -- Legal fees incurred prior to bankruptcy were lost subject to ability of firm to file proof of loss for same -- Expected legal fees after bankruptcy were dependent on establishment of professional relationship between trustee and law firm -- \$3,000 advanced by purchaser constituted trust money.

*Deleurme Estate v. Juris Management Ltd.* (2013), 2013 MBQB 192, 2013 CarswellMan 411, Harrison Reg. (Man. Q.B.) [Manitoba]

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BKY.XVII.4

**Subject Title: Bankruptcy and insolvency**

**Classification Number: XVII.4**

**Practice and procedure in courts -- Stay of proceedings**

Bankrupt was land use consulting company -- Property owners engaged bankrupt to provide services concerning proposed redevelopment -- Owners contended bankrupt provided negligent advice that caused them losses -- Owners commenced action against bankrupt in May 2010 for damages for negligence -- Successful claim would be covered by insurance policy held by bankrupt -- Bankrupt assigned itself into bankruptcy in July 2012 -- Owners' action was consequently stayed pursuant to s. 69.3 of Bankruptcy and Insolvency Act -- Owners brought motion for order lifting stay of proceedings flowing from bankruptcy -- Motion granted on terms; stay lifted with expectation that owners would amend claim from one of damages to one of declaration that bankrupt was trustee of chose in action represented by insurance policy for benefit of owners -- Unless good reason was established to contrary, rights of bankrupt under insurance policy were to be assigned to owners by trustee in bankruptcy on notice to other creditors, and only owners could pursue those rights -- Owners ought to be placed in position to endeavour to prove their entitlement to insurance that was purchased by bankrupt specifically to provide recovery in event of proven negligent act -- This approach was in keeping with expectation of parties prior to bankruptcy -- This approach was also consistent with approach taken in other provinces -- Commercial reality and justice dictated that refusing to lift stay would be contrary to principles of equity.

*Iplan Corp., Re* ([2013](#)), [2013 CarswellOnt 8977](#), [2013 ONSC 5945](#), D.E. Short Reg. (Ont. S.C.J.) [Ontario]

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BKY.XIX.1.e.i

**Subject Title: Bankruptcy and insolvency**

**Classification Number: XIX.1.e.i**

**Companies' Creditors Arrangement Act -- General principles -- Jurisdiction -- Court**

Debtors were four related mining companies -- Debtors C. Ltd. and A. Ltd. were involved in joint venture with M. Ltd. in Ghana -- M. Ltd. was to acquire 50 per cent interest in A. Ltd. -- C. Ltd. and A. Ltd. commenced action, apparently in Ontario, against M. Ltd. for damages for breach of shareholders' agreement -- M. Ltd. commenced action in Ghana against C. Ltd. and A. Ltd. for specific performance, injunctive relief, and accounting -- Debtors successfully applied for protection under Companies' Creditors Arrangement Act -- M. Ltd. brought motion for order removing debtor A. Ltd. from creditor protection proceedings and requiring dispute involving A. Ltd. to be resolved in Ghana -- Motion dismissed -- There had been no failure to make material disclosure when debtors applied for protection under Act -- Dispute with M. Ltd. had been quite apparent in pleadings that had been exhibits to affidavit -- A. Ltd. was properly classified as debtor under control of C. Ltd. -- Removal of A. Ltd. from creditor protection proceedings would be prejudicial to restructuring -- M. Ltd. did not satisfy requirements for injunctive relief pending resolution of dispute -- Ontario had jurisdiction over all issues in dispute and was more appropriate forum than Ghana.

*Ghana Gold Corp., Re* ([2013](#)), [2013 CarswellOnt 7793](#), [2013 ONSC 3284](#), Newbould J. (Ont. S.C.J. [Commercial List]) [Ontario]

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