**CITATION:** Ernst & Young Inc. v. Aquino, 2025 ONSC 3101
**COURT FILE NO.:** CV-19-630908-00CL and BK-25-00208753-OT31
**DATE:** 20250603

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

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|---|---|
| **BETWEEN:** | |
| ERNST & YOUNG INC., in its capacity as Court-Appointed Monitor of Bondfield Construction Company Limited<br><br>Applicant | *Alan Merskey and Evan Cobb*, for the Monitor |
| **– and –** | |
| JOHN AQUINO, MARCO CARUSO, GIUSEPPE ANASTASIO a.k.a. JOE ANA, LUCIA COCCIA a.k.a. LUCIA CANDERLE, THE ESTATE OF MICHAEL SOLANO, GIOVANNI ANTHONY SIRACUSA a.k.a. JOHN SIRACUSA, 2483251 ONTARIO CORP. a.k.a. CLEARWAY HAULAGE, 2420595 ONTARIO LTD. a.k.a. STRADA HAULAGE, 2304288 ONTARIO INC., 2466601 ONTARIO INC. a.k.a. MMC CONTRACTING, 2420570 ONTARIO LTD. a.k.a. MTEC CONSTRUCTION, TIME PASSION, INC. and RCO GENERAL CONTRACTING LTD.<br><br>Respondents | *Terry Corsianos, George Corsianos, David Ullmann and Stephen Gaudreau*, for John Aquino<br><br>*Jeremy Opolsky and Alex Bogach*, for KSV Restructuring Inc.<br><br>*Tanya Pagliaroli,* for Ralph Aquino<br><br>*Domenico Magisano and Chelsea McKee*, for Crowe Soberman Inc. |
| | **HEARD:** May 23, 2025 |

**CONWAY J.**

## REASONS FOR DECISION

[1] Ernst & Young Inc. in its capacity as Monitor of Bondfield Construction Company Limited (the "**Monitor**") brings an application to assign John Aquino ("**John**") into bankruptcy. It further seeks to continue an existing *Mareva* order against him.

[2] John disputes the bankruptcy application and asks that it be dismissed or stayed. He brings a cross-motion to declare that the *Mareva* order is no longer in effect. He asks the court to schedule the trial of the action between John and his father Ralph Aquino ("**Ralph**").

[3] For the reasons that follow, I grant the bankruptcy application and continue the *Mareva* order. John's cross motion is dismissed. I decline to schedule the trial at this time.

## Background Facts

[4] The background facts may be summarized briefly.

The TUV Judgments

[5] The Monitor commenced an application against John, the former President of Bondfield Construction Company Limited ("**Bondfield**"), in 2019. The Monitor alleged that John conducted a false invoicing scheme at Bondfield that resulted in transfers at undervalue from Bondfield exceeding $20 million.

[6] In 2020, KSV Restructuring Inc., as trustee in bankruptcy of 1033803 Ontario Inc., an affiliate of Bondfield (the "**Formacon Trustee**") brought a corresponding application. It alleged that John conducted a similar scheme that resulted in transfers at undervalue exceeding $11 million.

[7] The two applications are referred to as the "**TUV Applications**".

[8] The Monitor was concerned about John's dealings with his assets. In particular, it says that shortly after the commencement of the Bondfield TUV Application, John transferred his registered interest in his family home to his wife for consideration of $2. The Monitor obtained *Mareva* orders in December 2019 and February 2020 (the "***Mareva* Order**").

[9] The TUV Applications were heard by Justice B. Dietrich of this court. In March 2021, she granted judgment to the Monitor for $21,807,693 and to the Formacon Trustee for $11,366,890, in each case plus interest and costs (the "**TUV Judgments**"). She found that there was a pattern of intent by John to "defraud, defeat or delay" the creditors of those companies. She awarded substantial indemnity costs in light of the "looting of Bondfield…to the tune of tens of millions of dollars".

[10] John appealed the TUV Judgments, unsuccessfuly. The Court of Appeal dismissed John's appeal in March 2022. The Supreme Court of Canada dismissed his appeal in October 2024. The Supreme Court of Canada dismissed his request for a rehearing in November 2024 and issued its dismissal order on December 16, 2024.

John's Financial Position

[11] The TUV Judgments are now final. As a result of the TUV Judgments, and related cost awards and post-judgment interest, and after adjusting for remaining *Mareva* funds, John Aquino

is indebted to the Monitor and the Formacon Trustee in an aggregate amount of not less than $37,088,577.69 (the "**Net Judgment Debt**").

[12] John's other potential creditors include Zurich Insurance Company ("**Zurich**"), with contingent claims of over $240 million, and various Bondfield contract counterparties.[1]

[13] As described below, John claims that he owns 50% of the shares of four companies that own real property in Ontario with significant value. This 50% share ownership is disputed in the litigation with Ralph. John further says he has an indirect 8.33% ownership interest in the lands referred to as the "Anderson property".

[14] At his examination on April 28, 2025, John said that he has no funds to pay the Net Judgment Debt and that he cannot get insurance, cannot get credit, and cannot get a job. He admitted that he does not have the funds under his control to pay the Net Judgment Debt now. He says that he will pay the Net Judgment Debt if the properties are sold but that he is not in control of them now.

The Litigation with Ralph

[15] John and Ralph are in litigation (the "**Aquino Action**"). John and Ralph are each shown as 50% registered owners of the four corporations (the "**Companies**") that own substantial real estate holdings (the "**Properties**"). In his statement of claim dated March 6, 2020, John seeks a declaration confirming that he is a 50% shareholder of the Companies and seeks the wind-up of those Companies to monetize the assets and distribute the proceeds.

[16] Ralph disputes John's ownership of the Companies. In his statement of defence and counterclaim, Ralph says that he provided the funding to acquire the Properties and that it was always intended that Ralph would be the sole legal and beneficial owner of the Companies and indirectly the Properties. He alleges that John caused 50% of the shares of those Companies to be issued to himself, without due consideration and without Ralph's knowledge or consent. Ralph counterclaims for rectification of the share registers and damages. Pending the outcome of the litigation, Crowe Soberman Inc. was appointed as receiver over the Properties.

[17] John's position is that he is solvent. He submits that he will be successful in the litigation and confirmed to be a 50% shareholder of the Companies. He says that his share of the value of the Properties is more than sufficient to cover the Net Judgment Debt.

[18] On November 19, 2024, John sought to schedule a summary judgment motion in the Aquino Action. I declined to schedule the motion, stating that there were numerous issues surrounding the share ownership of the Companies and the circumstances in which the

[1] Zurich has an indemnity claim against John of over $200 million. Zurich is also the assignee of Bridging Finance Limited's guarantee claim against John of over $40 million.

shareholdings were obtained. I noted that there were credibility issues at play. I directed that the action proceed to trial. John says that the Aquino Action is ready to be set down for trial.

**Bankruptcy Application**

Preliminary Issues

[19] Before considering the bankruptcy application, I address three preliminary issues that John raises in response to the application.

[20] First, he says that the Monitor lacks authority to bring the bankruptcy application. He submits that the Monitor is the "eyes and ears of the court" and that when stepping outside that role, the Monitor must first obtain court authorization. I reject that submission. The Monitor had authority under s. 36.1 of the *Companies Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("**CCAA**") to bring the TUV Application. It obtained the TUV Judgment. The Monitor is a judgment creditor and is bringing this application in that capacity. In my view, this is incidental to the rights of the Monitor with respect to the TUV Judgment. No further court authorization is required and, if it is, I grant authorization to the Monitor.

[21] Second, John submits that the Monitor, in seeking to "pass the baton" to a trustee in bankruptcy, is abrogating its duties as an officer of the court. I disagree. There is no suggestion that the Monitor will not continue to realize on the TUV Judgment for the benefit of Bondfield stakeholders by filing a proof of claim through the bankruptcy process.

[22] Third, John argues that the appointment of a trustee in bankruptcy is redundant to the Monitor's role. That argument fails to recognize the different roles played by the Monitor and the trustee in bankruptcy. The Monitor is the court-appointed officer overseeing the Bondfield CCAA proceedings to protect the interests of the Bondfield stakeholders. A trustee in bankruptcy of John's estate is appointed to take control of his assets for the benefit of his creditors.

The Bankruptcy Application

[23] Section 43(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 ("**BIA**") states that a creditor may file an application for a bankruptcy order against a debtor if it is alleged in the application that:

> (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.

[24] The application must be verified by affidavit of the applicant or by someone duly authorized on their behalf having personal knowledge of the facts alleged in the application.

[25] The Monitor filed the application and the supporting affidavit on February 20, 2025. It alleges that John is indebted to the Monitor in the amount of CDN$27,434,659.59 plus interest

accruing after January 31, 2025. The application alleges that John committed two acts of bankruptcy within the previous six months: (a) he ceased to meet his liabilities generally as they become due, under s. 42(1)(j) of the BIA; and (b) writs of execution have been outstanding for more than 15 days after written demand for payment without seizure, levy or taking in execution or satisfaction by payment, under s. 42(1)(e) of the BIA.

[26] The Monitor proposes that B. Riley Farber Inc. be appointed as John's trustee in bankruptcy. Paragraph 5 of the application states that this is acceptable to both the Monitor (unsecured debt of CDN$27,434,659.59) and the Formacon Trustee (unsecured debt of CDN$13,348,340.60).

[27] Proceedings under the BIA are quasi-criminal in nature. The acts of bankruptcy and all allegations set out in the application must be proven on sufficient evidence: *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 6.

[28] In this case, there is no question that John owes the Monitor at least $1,000. Further, I am satisfied that he has committed an act of bankruptcy under s. 42(1)(j) of the BIA within six months prior to the application.

[29] Section 42(1)(j) states that it is an act of bankruptcy "if a debtor ceases to meet his liabilities generally as they become due." In *Howard Paul Ivany (Re)*, 2012 ONSC 7058, at para. 12, the court articulated the test for determining when a debtor has failed to meet his liabilities generally as they become due. The applicant creditor must furnish evidence (i) of the outstanding debt owed to the applicant; and (ii) that the debtor has ceased to meet his liabilities to its creditors in general.

[30] In this case, there are two TUV Judgments giving rise to two debts to two creditors. One is to the Monitor and the other one is to the Formacon Trustee. John has not paid the TUV Judgments. He has admitted that he cannot pay them now. He has admitted that he has no liquid assets. He has admitted that he has no sources of income. He has admitted that he has no access to credit. He has therefore ceased to meet his liabilities generally as they become due.

[31] John's position is that he owns 50% of the shares of the Companies that own the Properties. He submits that he will be successful in the Aquino Action and can then liquidate the Properties, which will be sufficient to pay the TUV Judgments. He says that the court should dismiss the application pursuant to s. 43(7) of the BIA:

> If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[32] Although the language of s. 43(7) is mandatory, the decision to dismiss the application is a discretionary one: *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318, 468 D.L.R. (4th) 253, at para. 9. The discretion should not be exercised lightly but on the basis of sound judicial reasoning, credible evidence, according to common sense and in a manner that does not cause an injustice: *Immeubles Zenda ltée/Zenda Realties Ltd. et A. Schuster Holdings Inc.*, 2020 QCCS

3450, at para. 31, citing *Goulakos (Syndic de),* 2016 QCCS 84, at para. 41. See also, *Suitor v. Fuller Landau Group*, 2025 ONSC 1686, at para. 69.

[33] John submits that the court should exercise its residual discretion to dismiss the application under s. 43(7) because he will be able to pay his debts when the Properties are sold.

[34] He relies on the case of *Ashton v. Moody* (1997), 158 Sask R 78, in which the court said that a bankruptcy court shall dismiss the petition where it finds that the debtor is able to pay his debts: at para. 3. In that case, the court made an express finding that the debtor was able to pay his debts but had simply chosen not to.

[35] That is distinguishable from this case where John says he will be able to pay his debts if he is successful in the Aquino Action. John will first have to succeed in his assertion that he is a 50% shareholder of the Companies. If he succeeds, he will then have to liquidate the Properties and recover sufficient proceeds to pay his creditors. Those are future events, not the current situation.

[36] Accordingly, I do not accept that he is able to pay his debts. Under s. 43(7), it is John's onus to prove to the court that he is able to pay his debts. He has not done so. There is no basis for me to exercise my residual discretion to dismiss the application under s. 43(7).

[37] John further argues that this court should stay the bankruptcy application under s. 43(10):

> If the debtor appears at the hearing of the application and denies the truth of the facts alleged in the application, the court may, instead of dismissing the application, stay all proceedings on the application on any terms that it may see fit to impose on the applicant as to costs or on the debtor to prevent alienation of the debtor's property and for any period of time that may be required for trial of the issue relating to the disputed facts.

[38] John says that there are facts in dispute. He submits that the bankruptcy application should be stayed pending the trial of an issue, namely whether the value of the Properties held by the Companies is sufficient to cover repayment of the Net Judgment Debt. He proposes that if the value is sufficient, the court should then order the trial of the Aquino Action to determine his ownership stake in the Companies. He says that the two issues could alternatively proceed in parallel.

[39] I reject these submissions. Section 43(10) requires that there be a *bona fide* dispute between the parties for the application to be stayed. As Osborne J. noted in *1719108 Ontario Inc. c.o.b. as Zoren Industries*, 2024 ONSC 909, this section does not mean that any time a defendant denies a claim the bankruptcy application must be stayed until there has been a full trial in the ordinary civil courts to resolve the issue: at para. 101.

[40] In *Re Bearcat Exploration Ltd. (Bankrupt)*, 2003 ABCA 365, 339 A.R. 376, at para. 15, the Alberta Court of Appeal stated that when there is a *bona fide* dispute between the petitioner and the debtor with respect to the debt, the matter must be decided in the ordinary courts, rather than in the bankruptcy court. In *Goldlund Mines Ltd., Re* (1986), 58 C.B.R. (N.S.) 255 (Ont. S.C.), the court granted a stay of a bankruptcy application where the debtor (and its shareholders) had a

*bona fide* claim of a substantial nature against the petitioning creditor with respect to its management of the debtor's mining property.

[41] Those cases are distinguishable as the disputes were between the debtor and the petitioning creditor. Here, no *bona fide* dispute between the parties exists. John does not dispute the existence of the TUV Judgments. He does not dispute that the TUV Judgments are unpaid and owing. He does not dispute the amount of the Net Judgment Debt. He has not asserted a claim against the Monitor. Rather, his claim is against his father, Ralph. In my view, there is no *bona fide* dispute between the parties.

[42] In *Re Axler* (1985), 56 C.B.R. (N.S.) 255 (Ont. S.C.), the debtor alleged that if he succeeded in his pending lawsuits, he would be able to pay his creditors. The court concluded that the lawsuits were complex and there was no assessment of the time required to have them determined. The court declined to stay the application and held that a stay should only be done in clear cases. It held that in view of the clearly established act of bankruptcy and the delay and uncertainty involved in the pending action, it would be inappropriate for the court to exercise its discretion to stay the application, and that it was preferable to leave the matter up to the creditors and the trustee as to whether they wish to pursue the claims.

[43] In *Tsoukalis (Re)* (1996), 38 C.B.R. (3d) 253, the debtor had outstanding actions against his solicitor and former partner. He said that if he was successful, he could pay off his outstanding liabilities. The court rejected his request for a stay, stating that it was impossible to assess the merits of his actions, that they were complex, and the prospects of success could not be assessed at that stage.

[44] In this case, as in *Axler* and *Tsoukalis*, I cannot assess the merits or strength of John's position in the Aquino Action. The issues in the action include allegations of deceit, misrepresentation, and breach of fiduciary obligations. The circumstances in which John acquired the shareholdings are in issue. Credibility is at play. I simply cannot say whether John will prevail at trial. Balancing the delay and uncertain outcome of the Aquino Action against the clearly established act of bankruptcy, I decline to exercise my discretion to stay the application under s. 43(10).

Collateral Purpose

[45] Even if the test for bankruptcy is met, the court retains the discretion to dismiss the application where it is found to be an abuse of process: *Bankruptcy of the Jewish Foundation of Greater Toronto,* 2022 ONSC 2120, at para. 30. Such a finding may be made where the court is persuaded that the application is brought for a collateral purpose. Examples of a collateral purpose are using the bankruptcy as a collection device, resolving disputes between the petitioning creditor and debtor, or bullying or harassing the debtor: *Jewish Foundation*, at paras. 31-32.

[46] John seeks to dismiss the bankruptcy application on the basis that it has been brought for the collateral purpose of foreclosing or compromising his claim against Ralph in the Aquino Action. His concerns are based on the role that Zurich plays in the various proceedings.

[47] Zurich is a secured creditor of Bondfield and has provided DIP financing in the CCAA proceedings. Zurich has also provided an indemnity for the fees of John's trustee in bankruptcy, to the extent that they are not paid out of recoveries.

[48] Zurich sued Ralph and his son Steve Aquino and entered into a settlement agreement with them. In that settlement, it was agreed that if Ralph is successful in the Aquino Action, Zurich will receive 50% of the proceeds of sale attributed to John's alleged interest in the Companies. John understands that the settlement has now collapsed, and Zurich has brought a claim against Ralph for $400 million in damages.

[49] John's concern is that either under the Zurich settlement with Ralph or under its new claim, Zurich has a vested interest in Ralph's success in the Aquino Action. John says that Zurich is therefore in a conflict of interest. He fears that Zurich will exert pressure on John's trustee in bankruptcy to abandon the Aquino Action or to settle on improvident terms.

[50] John has adduced no evidence that Zurich has or can dictate whether the trustee in bankruptcy pursues the Aquino Action. His concerns are speculative. The trustee is required to act in the best interest of all John's creditors. It must make its own assessment as to whether it is worthwhile to pursue the litigation. It has its obligations and duties as a licensed trustee under the BIA. It is also open to a creditor to pursue the litigation under s. 38 of the BIA if the trustee elects not to do so.

[51] The Monitor is an independent court-appointed officer. There is no evidence that the Monitor is bringing this application for an improper purpose. Indeed, the Formacon Trustee, which has coordinated its efforts with the Monitor pursuant to a court-approved protocol, supports the Monitor's application. The Formacon Trustee has no concerns about the Monitor acting improperly and submits that if it did, as a court officer it would have to bring such concerns to the court's attention.

[52] John has not established that this application was brought for a collateral purpose.

## ***Mareva* Order**

[53] The Monitor seeks an order confirming that the *Mareva* Order remains in effect. John's position is that the *Mareva* Order merged with the TUV Judgment of Justice B. Dietrich on March 19, 2021, and was of no further effect since that date.

[54] The Monitor disagrees that the *Mareva* Order merged with the TUV Judgment but in any event seeks to continue the order as a post-judgment *Mareva* order in aid of execution.

[55] There is a five-part test for the court to consider when determining whether to continue a *Mareva* injunction post-judgment in aid of execution:

(a) the plaintiff must make full and frank disclosure of all material facts within his/her knowledge;

(b) the plaintiff must give particulars of the claim against the defendant, stating the grounds of the claim and the amount thereof, and the points that could be fairly made against it by the defendant;

(c) the plaintiff must give grounds for believing that the defendant has assets in the jurisdiction;

(d) the plaintiff must give grounds for believing that there is a real risk of the assets being removed out of the jurisdiction, or disposed of within the jurisdiction, or otherwise dealt with so that the plaintiff will be unable to satisfy a judgment; and

(e) the plaintiff must give an undertaking as to damages.

See *Tabrizi v. Majesty Development Group Inc. et. Al*., 2022 ONSC 2665, at para. 20, citing, *Lamont v. Kent*, [1999] O.J. No. 277 (Ont. Gen. Div.).

[56] It is not necessary for me to address the issue of whether the *Mareva* Order merged with the TUV Judgment. I am satisfied that it should be continued as a post-judgment order. I accept the Monitor's submission that the *Mareva* Order and the rights afforded to the Monitor as a judgment creditor are complementary to the powers afforded to John's trustee in bankruptcy.

[57] The Monitor has satisfied the first three parts of the test. It has made full and frank disclosure, it has given full particulars of the TUV Judgment, and it has already provided grounds for believing that John had assets in the jurisdiction.

[58] With respect to (d), the Monitor has established that there are grounds for believing that there is a real risk of dissipation. One of the original reasons for the Monitor seeking a *Mareva* order was John's transfer of his family home for consideration of $2 shortly after the Monitor brought the TUV Application. He has been uncooperative with the Monitor when examined about his assets or his sources of his income to pay for litigation and other expenses. The TUV Judgment speaks for itself on John's role in the false invoicing scheme and the Bondfield looting.

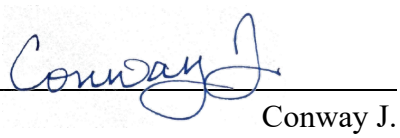
[59] Finally, there is no need for the Monitor to provide an undertaking as to damages. This requirement was not imposed when the Monitor obtained the original *Mareva* Order. More important, I cannot see how John can claim damages from the continuation of the *Mareva* Order where the TUV Judgment has been upheld by the Supreme Court of Canada and remains unpaid.

**Decision**

[60] The bankruptcy application is granted. The *Mareva* Order is continued in effect as a post-judgment order in aid of execution.

[61] John's cross-motion is dismissed. In light of the bankruptcy order, it will be up to John's trustee in bankruptcy to set the Aquino Action down for trial. I therefore decline John's request to schedule the trial.

[62] If the parties are unable to agree on costs, they shall arrange a scheduling appointment with me through the Commercial List office to address the process for making cost submissions.



Conway J.

**Released:** June 3, 2025

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Respondents

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**REASONS FOR DECISION**

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Conway J.

**Released:** June 3, 2025