

COURT OF APPEAL FOR ONTARIO

CITATION: Aquino (Re), 2026 ONCA 132

DATE: 20260225

DOCKET: COA-25-CV-0767

Gillese, Zarnett and Coroza JJ.A.

In the Matter of the Bankruptcy of John Aquino, located at the City of Toronto, in  
the Province of Ontario

BETWEEN:

Ernst & Young Inc., in its capacity as Court-Appointed Monitor of Bondfield  
Construction Company Limited

Applicant (Respondent)

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 Inc. a.k.a. MTEC Construction, Time  
Passion, Inc. and RCO General Contracting Ltd.

Respondents (Appellant\*)

David Ullman, Stephen Gaudreau, George Corsianos and Terry Corsianos, for the  
appellant, John Aquino

Alan Merskey, Laura Cloutier and Evan Cobb, for the respondent Ernst & Young  
Inc. in its capacity as Court-Appointed Monitor of Bondfield Construction Company  
Limited

Alex Bogach for the respondent, KSV Restructuring Inc, in its capacity as trustee  
in bankruptcy of 1033803 Ontario Inc.

Heard: February 10, 2026

On appeal from orders of Justice Barbara Conway of the Superior Court of Justice, dated June 3, 2025 with reasons reported at 2025 ONSC 3101.

**Zarnett J.A.:**

## **Introduction**

[1] The appellant, John Aquino, appeals two orders made by Conway J. (the “bankruptcy judge”). The first is an order adjudging the appellant bankrupt and appointing B. Riley Farber Inc. as trustee of his bankrupt estate (the “Bankruptcy Order”). The second, made immediately following the Bankruptcy Order, is an order determining that a pre-existing Mareva injunction, granted in litigation that resulted in a substantial judgment against the appellant (the “TUV litigation”), remained and continued in full effect until further order of the court (the “Mareva Order”).

[2] Both orders were made at the request of the respondent Ernst & Young Inc. in its capacity as court appointed monitor (the “Monitor”) of Bondfield Construction Company Limited (“Bondfield”). The Monitor is a creditor of the appellant, having obtained the judgment against him in the TUV litigation.

[3] Before the bankruptcy judge, the appellant resisted both orders on a number of grounds, some which he described as purely legal, and some which asked the bankruptcy judge to exercise discretionary powers. He appeals both orders on the

premise that he may do so to this court as of right. His arguments on appeal raise largely the same issues as he asserted before the bankruptcy judge.

[4] For the reasons that follow, I conclude that the Bankruptcy Order is appealable as of right to this court under s. 193(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“*BIA*”). In the unusual circumstances of this case, the Mareva Order is properly viewed as final and appealable as of right pursuant to s. 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“*CJA*”).

[5] I also conclude, for the reasons that follow, that the appellant has not shown that the bankruptcy judge made any error of law, nor any reversible error that would justify appellate interference with the bankruptcy judge’s exercise of discretion. Accordingly, I would dismiss the appeal.

## **Background**

[6] In April 2019, Bondfield was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“*CCAA*”), and the Monitor was appointed.

[7] The appellant was the former president and a directing mind of Bondfield.

[8] In 2019, the Monitor commenced the TUV litigation against the appellant, alleging that he conducted a false invoicing scheme resulting in transfers of over \$20 million from Bondfield to him and his associates for services never provided. These transfers constituted transfers at undervalue as described in s. 2 of the *BIA*,

which defines a transfer at undervalue as including a disposition of property by a debtor for which the consideration it receives is conspicuously less than fair market value. Section 96 of the *BIA*, made applicable to a monitor by s. 36.1 of the *CCAA*, provides a remedy to claim reimbursement for certain transfers at undervalue.

[9] The appellant was also the president and a directing mind of a Bondfield affiliate, 1033803 Ontario Inc. (“Forma-Con”). It became bankrupt in December 2019 and the respondent KSV Restructuring Inc. was appointed its trustee in bankruptcy (the “Forma-Con Trustee”). In 2020, the Forma-Con Trustee brought an application alleging similar conduct to that alleged in the TUV litigation resulting in transfers at undervalue exceeding \$11 million from Forma-Con to the appellant and his associates.

[10] The Monitor obtained a Mareva injunction in the TUV litigation against the appellant, dated February 25, 2020, to prevent any dissipation by the appellant of his assets (the “General Mareva Order”).

[11] In 2021, judgments were granted in the TUV litigation and the Forma-Con Trustee’s application by which the appellant was ordered to pay the Monitor over \$21.8 million and the Forma-Con Trustee over \$11.3 million together with interest and costs: *Ernst & Young Inc. v. Aquino*, 2021 ONSC 527, 88 C.B.R. (6th) 60. In 2022, the appellant’s appeals from those judgments to this court were dismissed: *Ernst & Young Inc. v. Aquino*, 2022 ONCA 202, 160 O.R. (3d) 284. In 2024, the

appellant's further appeals to the Supreme Court of Canada were dismissed: *Aquino v. Bondfield Construction Co.*, 2024 SCC 31, 496 D.L.R. (4th) 613.

[12] In upholding the judgments, Jamal J. provided the following description of the scheme that gave rise to the transfer at undervalue claims (*Aquino* SCC, at para. 12):

The [M]onitor and [Forma-Con Trustee's] investigations revealed that, for years, Mr. Aquino and several other appellants had been fraudulently taking tens of millions of dollars from Bondfield and Forma-Con through a false invoicing scheme. The scheme was simple. Mr. Aquino and his accomplices made up false invoices from certain suppliers — including Mr. Aquino's holding company — for services that were never provided. Bondfield and Forma-Con then paid the false invoices promptly, often within a few days, at the direction of Mr. Aquino or other appellants. Bondfield paid more than \$21.8 million and Forma-Con paid more than \$11.3 million towards false invoices in the five years before the commencement of insolvency proceedings, the period within which alleged transfers at undervalue to non-arm's length parties are reviewable.

### **The Bankruptcy Judge's Decision**

[13] In 2025, the Monitor applied for a bankruptcy order against the appellant, and sought an order confirming that the General Mareva Order remained in effect.

[14] The bankruptcy judge rejected three preliminary objections raised by the appellant: 1) that the Monitor lacked authority to bring an application for a bankruptcy order, 2) that a bankruptcy order would improperly transfer obligations

of the Monitor to a bankruptcy trustee, and 3) that a bankruptcy would be redundant.

[15] The grounds for making a bankruptcy order against the appellant were found to have been established. The application judge referred to s. 43(1) of the *BIA*, under which a creditor may apply for a bankruptcy order if: a) the debtor has debts owing to it of at least \$1,000 and b) the debtor has committed an act of bankruptcy within six months preceding the filing of the application. She accepted the Monitor's evidence that it was owed at that time more than \$27.4 million by the appellant, and that the appellant had committed an act of bankruptcy within six months preceding the application by ceasing to meet his liabilities as they become due within the meaning of s. 42(1)(j) of the *BIA*. She noted that the judgment debts owing to the Monitor and the Forma-Con Trustee had not been paid, and that the appellant had admitted he could not pay them now, that he has no liquid assets, no access to credit, and no sources of income.

[16] The bankruptcy judge refused to exercise the discretion granted by s. 43(7) of the *BIA*, which permits a judge to dismiss a bankruptcy application when the debtor shows they are able to pay their debts. She found the appellant had no present ability to do so. The appellant claimed that he would be able to do so after the successful conclusion of litigation with his father over the validity of his registered shareholding interest in certain property-owning corporations and the subsequent sale of the corporate properties. However, the bankruptcy judge found

that this was not evidence that he is able to pay his debts, now, as contemplated by s. 43(7). She also refused to exercise her discretion under s. 43(10) of the *BIA* to adjourn the application for further evidence about the value of the corporate properties or to await the resolution of the litigation between the appellant and his father.

[17] The appellant's assertion that the bankruptcy application should be dismissed because it had a collateral purpose was rejected by the bankruptcy judge. That alleged purpose was to benefit Zurich Insurance Company, a party with claims against both the appellant and his father. According to the appellant, Zurich stood to benefit if the appellant's father prevailed in their litigation. The appellant alleged that Zurich could influence the bankruptcy trustee's approach to that litigation since it was guaranteeing payment of the trustee's fees, just as it could influence the Monitor's decision to bring the bankruptcy application, as it had provided financing in the *CCAA* proceedings. The bankruptcy judge found there was no evidence to support such concerns about the conduct of independent court officers, terming them "speculative".

[18] Turning to the request for the Mareva Order, the application judge noted the appellant's argument that the General Mareva Order had "merged" in the trial level judgment granted in the *TUV* litigation in 2021 and had no effect after that date. She considered it unnecessary to decide that point, as she held that the grounds to continue the terms of the General Mareva Order post-judgment were

established, including a real risk of dissipation of assets. Among other matters, she referred to the finding in the TUV litigation concerning “[the appellant’s] role in the false invoicing scheme and the Bondfield looting”.

## **Analysis**

### **1. The Bankruptcy Order is Appealable as of Right**

[19] At the request of the court, the appellant and the Monitor addressed the question of whether there was an appeal as of right from the Bankruptcy Order. Both made helpful submissions.

[20] The appellant relies on *Royal Bank v. Bodanis*, 2020 ONCA 185, 78 C.B.R. (6th) 165, which held that a bankruptcy order was appealable as of right under s. 193(c) of the *BIA*. That section provides for an appeal as of right “if the property involved in the appeal exceeds in value ten thousand dollars”. Nordheimer J.A., sitting as a single judge, contrasted a bankruptcy order with an order appointing a receiver over the property of a debtor, which can only be appealed with leave. He pointed to differences in the power of a bankruptcy trustee, compared to a receiver, to dispose of the bankrupt’s property without court approval: at paras. 5 to 6.

[21] The Monitor submits that a bankruptcy order is not appealable without leave. It submits that *Bodanis* was incorrectly decided and has been indirectly overturned by *North House Foods Ltd. (Re)*, 2025 ONCA 563. Although *North House* does not

deal with a bankruptcy order<sup>1</sup> nor does it mention, let alone question, the correctness of *Bodanis*, the Monitor stresses the restrictive approach applied in *North House* to the interpretation of what constitutes an appeal as of right under s. 193(c). The Monitor says the restrictive approach is inconsistent with the result in *Bodanis*.

[22] I disagree with the Monitor's position that the restrictive approach, properly understood, undermines the correctness of the conclusion in *Bodanis*. The restrictive approach referred to in *North House* is not new. Rather, and as noted in *North House*, it has long been part of our court's jurisprudence: see *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225, 347 O.A.C. 226, at para. 53; *First National Financial GP Corporation v. Golden Dragon HO 10 Inc.*, 2019 ONCA 873, 74 C.B.R. (6th) 1, at para. 15 (both cases predate *Bodanis*). The restrictive approach was noted in *Bodanis*, but did not entail the conclusion that the bankruptcy order was not appealable as of right. In *Bernard v. Laurentian Bank of Canada*, 2025 QCCA 1145, the Quebec Court of Appeal declined to decide whether it would follow the restrictive approach. But it held that even if the restrictive approach is followed, an appeal from the grant of a bankruptcy order was as of right under s. 193(c): at para. 8.

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<sup>1</sup> The order in issue in *North House* was one that denied the request of a creditor to amend the proposed assessed value of its security and to be treated as a secured creditor for the full amount of its claim in the debtor's bankruptcy proposal.

[23] The conclusion that the Bankruptcy Order is appealable as of right under s. 193(c) of the *BIA* follows from a consideration of the text, context and purpose of s. 193(c), which are the touchstones of statutory interpretation: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 11; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 118.

[24] The purpose of the *BIA* has led this court to endorse the restrictive approach to s. 193(c). Appeals as of right attract an automatic stay of proceedings, and there is a need to address bankruptcy proceedings expeditiously wherever possible. Accordingly, an appellant must meet three criteria to fit under s. 193(c). The appeal must be more than procedural in nature, involve the value of the debtor's property, and result in a loss to the appellant: *North House*, at paras. 21, 28, citing *Bending Lake* at para. 53.

[25] The *BIA* specifies the effect of the Bankruptcy Order. Section 71 of the *BIA* states: "On a bankruptcy order being made ...a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order...".<sup>2</sup>

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<sup>2</sup> This legal effect is unlike one appointing a receiver over certain properties, which has been held not to be appealable as of right because it simply preserves the assets of the debtor and permits their monetization subject to court approval: see *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 17.

[26] Bearing in mind that effect, the appeal of the Bankruptcy Order, which seeks to reverse its effect, fits within the plain wording of the text of s. 193(c) of the *BIA* read in in light of its context and the factors made relevant by a consideration of purpose. The Bankruptcy Order stripped the appellant of any capacity to dispose of or deal with any or all of his property, and it vested that property in B. Riley Farber Inc. as trustee of his bankrupt estate. It was clearly more than a procedural order. It directly brought into play the value of the appellant's property, and it caused a loss to the appellant by vesting the property in someone else. No one disputes that the property involved, which the Bankruptcy Order vested out of the appellant's ownership in favour of the bankruptcy trustee, exceeds \$10,000 in value.

[27] Another element of the context supports this interpretation. Section 193(d) provides that any decision granting or refusing to grant a discharge from bankruptcy is appealable as of right if the unpaid claims of creditors exceed \$500. It would be strange if an order placing someone in bankruptcy required leave to appeal, while orders about exiting bankruptcy are appealable as of right.

[28] Accordingly, I conclude that the Bankruptcy Order is appealable as of right.

## **2. The Bankruptcy Judge Did Not Err in Making the Bankruptcy Order**

### **i. The Bankruptcy Judge Did Not Err in Rejecting the Appellant's Preliminary Objections**

[29] The bankruptcy judge rejected the appellant's submission that the Monitor lacked authority to commence a bankruptcy application. She stated:

The Monitor had authority under s. 36.1 of [the CCAA] to bring the TUV [Litigation]. 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.

[30] No error has been demonstrated in that approach. Despite the appellant's argument that the authority of the Monitor to bring the TUV litigation and obtain judgment in it could not flow from s. 36.1 of the CCAA, the Supreme Court of Canada expressly held that it did: *Aquino SCC*, at paras. 3 and 13. Moreover, the appellant concedes that the Monitor was otherwise authorized to bring the TUV litigation. Whatever the source of the authority, the bankruptcy judge's reasoning that authority to commence litigation and obtain a judgment implicitly extends to taking steps as a judgment creditor, including commencing a bankruptcy application in that capacity, is unassailable.

[31] Nor was there any error in the rejection of the appellant's two other preliminary objections, that (i) a bankruptcy application against him was inconsistent with the Monitor's duties as a court officer, because it would transfer

duties of the Monitor to a bankruptcy trustee, and (ii) the appointment of a trustee in bankruptcy would be redundant to the Monitor's role. Each objection misconceives the separate roles of the Monitor, a court officer with functions directed to the assets of and stakeholders in Bondfield, and the bankruptcy trustee, a court officer charged with administering assets formerly owned by the appellant for the benefit of his creditors, one of whom is the Monitor.

**ii. The Bankruptcy Judge Did Not Err in Rejecting the Argument that the Bankruptcy Application had a Collateral Purpose**

[32] A judge has a discretion to dismiss a bankruptcy application if it is brought for a collateral purpose: *Bankruptcy of Jewish Foundation of Greater Toronto*, 2022 ONSC 2120, 99 C.B.R. (6th) 261, at para. 30. A collateral purpose is one other than the rateable distribution of the bankrupt's property among its creditors, such as bullying or harassing the debtor, using the bankruptcy court to resolve disputes with the petitioning creditor for which there is a more suitable forum (such as a civil action), or putting pressure on the debtor to make payments of amounts that are not debts: *Jewish Foundation*, at paras. 31 to 35.

[33] The appellant's contention of a collateral purpose was not premised on any such allegations. It involved factual assertions: that the Monitor was doing the bidding of Zurich in bringing the bankruptcy application, that Zurich was incentivized to compromise the appellant's dispute with his father on terms

favorable to the father, and that a bankruptcy trustee would also do Zurich's bidding, consciously or unconsciously.

[34] The motion judge found there was no evidence to support these assertions:

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.

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.

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

[35] These factual determinations are entitled to deference in this court. The appellant has not shown a basis to interfere with them. This is fatal to the appellant's attempt to have this court revisit the bankruptcy judge's exercise of discretion. In the absence of a palpable and overriding error of fact, an appellate court must defer to an exercise of discretion unless the application judge made an

error in principle or if the exercise of discretion results in an order that is plainly wrong: *Cowper-Smith v. Morgan*, 2017 SCC 61, [2017] 2 S.C.R. 754, at para. 46.

[36] I would therefore reject this ground of appeal.

**iii. The Bankruptcy Judge Did Not Err in the Exercise of Her Discretion Not to Dismiss or Stay the Bankruptcy Application**

[37] The appellant argues that the bankruptcy judge should have exercised her discretion to dismiss the application under s. 43(7) of the *BIA*<sup>3</sup>. Section 43(7) provides:

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.

[38] Alternatively, he argues that the application should have been stayed under s. 43(10) which provided:

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.

[39] The bases on which the bankruptcy judge was asked to exercise her discretion under these provisions overlapped.

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<sup>3</sup> Despite its language, the power under s. 43(7) is discretionary: *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318, 468 D.L.R. (4th) 253, at para. 9.

[40] The appellant contended that the application should be dismissed under s. 43(7) because he owns 50% of the shares of corporations that own valuable real estate. Although the validity of his shares was in issue in the litigation with his father, he submitted that he would be successful in that litigation and then could liquidate the corporate properties and realize sufficient funds to pay the Monitor's judgment and the judgment held by the Forma-Con Trustee.

[41] The uncontested facts were that the appellant had no present ability to pay either judgment debt, which together totalled over \$30 million. The bankruptcy judge concluded that the appellant did not satisfy his onus of showing that he "is able to pay [his] debts" within the meaning of s. 43(7). His contention that he will be able to do so at some point in the future, if he won his litigation with his father and then was able to liquidate the corporate properties, was insufficient. The bankruptcy judge did not err in principle or reach an unreasonable result in so concluding.

[42] I do not accept the appellant's argument that the bankruptcy judge failed to give appropriate consideration to the fact that he is the registered holder of the shares in corporations that are subject to the litigation with his father. The appellant argues that any uncertainty in ownership is created by an unproven counterclaim by the appellant's father. However, for the purposes of s. 43(7), which places an onus on the debtor to prove a present ability to pay their debts, the more pertinent consideration is that the ownership of the shares was subject to litigation that had

to be determined at a yet to be scheduled trial, making the fate of the shares, and, crucially, the appellant's ability to monetize and benefit from corporate assets, future and uncertain events.

[43] I also do not accept the appellant's argument that he is a solvent person who should not have been subject to a bankruptcy order, and the bankruptcy judge's discretion should have been exercised to avoid that result. The *BIA* defines an insolvent person as

a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due

[44] The appellant was admittedly insolvent under prongs (a) and (b) of that definition. Given that he had no current ability to realize on corporate assets he may as well have been insolvent under prong (c). But that is beside the point in this case. A bankruptcy order is to be granted where the debtor has committed an act of bankruptcy: *BIA*, s. 43(1). An act of bankruptcy unquestionably occurred by the appellant's failure to pay his debts as they generally became due: s. 42(j). Nothing in s. 43(7) requires that a bankruptcy application predicated on a person's

act of bankruptcy should be dismissed because their assets might, in an uncertain future, be realized on.

[45] Alternatively, the appellant contended that the application should be stayed under s. 43(10) so that he would have time to obtain further evidence of the value of the corporate properties, and/or to await the completion of his litigation with his father.

[46] To stay a bankruptcy application under s. 43(10), a *bona fide* dispute is required: *1719108 Ontario Inc. c.o.b. as Zoren Industries*, 2024 ONSC 909, 11 C.B.R. (7th) 365, at para. 101. There was no dispute as to the facts that underlay the bankruptcy application. As the bankruptcy judge noted:

[The appellant] does not dispute the existence of the [judgments in favour of the Monitor and the Forma-Con Trustee]. He does not dispute that the...[judgments] are unpaid and owing. He does not dispute the amount of the [judgment debts]. 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.

[47] The appellant suggests that a stay of the bankruptcy application could have permitted more evidence about the value of the corporate properties. But such further evidence could not have made a difference. The problem for the appellant in resisting the bankruptcy application was not the value of the corporate properties, but his current inability to access this value. This inability extends into the future with an uncertain end-date. As the bankruptcy judge noted, the

appellant's litigation with his father, on which that ability turned, involved serious allegations, and she was not in a position to predict its outcome.

[48] No reversible error in the bankruptcy judge's discretionary decisions to refuse to dismiss or stay the bankruptcy application has been shown. I would reject this ground of appeal.

### **3. The Mareva Order**

[49] The Mareva Order, styled as having been made in the TUV litigation, by its terms enjoins the appellant for an indefinite period of time as a form of post judgment execution. It does not operate pending the determination of claims or defences in the TUV litigation; those have already been determined. Although pre-trial Mareva injunctions are interlocutory orders, it is difficult to fit this order into that category. In some situations, a post judgment order that finally determines a party's access to funds is final for the purpose of appeal: *B&M Handelman Investments Ltd. v. Curreri*, 2011 ONCA 395, 278 O.A.C. 199, at para. 16. This order has an analogous character. Moreover, the order was made after the Bankruptcy Order, the effect of which is to remove the capacity of the appellant with respect to his property, including (once the stay of the Bankruptcy Order terminates by the disposition of the appeal from it) any right to challenge the Mareva Order. In these circumstances, the Mareva Order is final and is appealable as of right pursuant to s. 6(1)(b) of the *CJA*.

[50] The appellant's principal argument concerning the propriety of granting the Mareva Order is that the bankruptcy judge failed to address, head on, his assertion that the General Mareva Order, which the bankruptcy judge's order continued, merged in the judgment in the TUV litigation, and ceased to be in effect. He points to authorities that Mareva injunctions are generally thought of as a pre-trial remedy, and the need to specify in them the exact terms on which they cease to apply. He argues that the General Mareva Order ended when judgment in the TUV Litigation was first given.

[51] I reject this submission. The General Mareva Order specifically stated its termination date. It stated that it remained in effect until varied by further order of the court. It was not varied until addressed, and extended by, the Mareva Order made by the Bankruptcy Judge.

[52] The appellant also submits that the Mareva Order creates uncertainty given the bankruptcy. I do not accept that argument.

[53] Ordinarily, upon the making of a bankruptcy order, a judgment creditor would not be permitted to ask for further post judgment relief against the debtor to assist in execution of its judgment, since s. 69.3(1) of the *BIA* provides:

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.

[54] However, the court has the power to declare that the stay does not apply to a particular step by a particular creditor: s. 69.4. Although she did not put it in those terms, the bankruptcy judge effectively exercised that power as she stated that she was satisfied that making the Mareva Order was “complementary to the powers afforded to [the appellant’s] trustee in bankruptcy”.

[55] I see no reversible error in that exercise of discretion. It was appropriate to prevent any purported dealings with or dissipation of assets by the appellant while the bankruptcy trustee was readying itself to seek out and take control of the assets legally vested in it. The stay of the Bankruptcy Order resulting from the appellant’s appeal of it confirms the wisdom of keeping the restraints on dissipation of assets in place.

[56] Accordingly, I would dismiss the appeal from the Mareva Order.

## **CONCLUSION**

[57] I would dismiss the appeal.

[58] As agreed, the appellant shall pay costs of the appeal to the Monitor in the amount of \$65,000 and to the Forma-Con Trustee in the amount of \$5,000. Both amounts are inclusive of disbursements and applicable taxes.

Released: February 25, 2026 *MS*

*B. Burnett v. A*

*Agree. Release of*

*I agree. Gloria J.A.*