

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE BANKRUPTCY OF GUO LI CHUN**

**FACTUM OF THE LICENSED INSOLVENCY TRUSTEE OF GUO LI CHUN  
(Re: Amendments to Bankruptcy Order)**

November 2, 2020

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor LSO#: 39932E**  
Tel: (416) 869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson LSO#: 66412I**  
Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Ben Muller LSO#: 80842N**  
Tel: (416) 869-5543  
Email: [bmuller@stikeman.com](mailto:bmuller@stikeman.com)

**Lawyers for the Trustee**

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**PART I - OVERVIEW**

1. Guo Li Chun (the “**Bankrupt**”) was petitioned into bankruptcy by a group of lenders (the “**Lenders**”) on October 29, 2020 (the “**Bankruptcy Order**”).
2. Pursuant to the Bankruptcy Order, KSV Restructuring Inc. (“**KSV**”) was appointed licensed insolvency trustee (the “**Trustee**”) of the Bankrupt’s Estate.
3. The Trustee seeks an amended Bankruptcy Order from this Court that is required to (a) correct the name of the Trustee from KSV Kofman Inc. to KSV Restructuring Inc.; and (b) clarify the given name and surname of the Bankrupt.
4. The Trustee also does not have contact information for the Bankrupt. However, the Trustee needs to contact the Bankrupt in order for the Trustee to perform its duties, ensure the Bankrupt is advised of her duties, and facilitate the orderly administration of these proceedings.
5. Therefore, the Trustee seeks to amend the Bankruptcy Order to direct the Bankrupt’s counsel to provide the Bankrupt’s contact information to the Trustee.

**PART II - THE FACTS**

6. The facts with respect to this motion are more fully set out in the First Report to Court of KSV Restructuring Inc., as Licensed Insolvency Trustee of Guo Li Chun (the “**First Trustee Report**”).

7. As mentioned in the First Trustee Report, the information related to the events leading to the application for the Bankruptcy Order is not relevant to this motion and will not be repeated herein. That information can be found in the materials filed by the Lenders.

First Trustee Report at para 2(2).

8. The Bankruptcy Order refers to the appointment of “KSV Kofman Inc.” as the Trustee. However, on August 31, 2020, “KSV Kofman Inc.” changed its name to “KSV Restructuring Inc.” The Bankruptcy Order names Guo Li Chun as the Bankrupt. However, it would be helpful to clarify that “Guo” is the Bankrupt’s surname and “Li Chun” is her given name.

First Trustee Report at paras 2(3)-(4).

9. At the application for the Bankruptcy Order, Cassels, Brock & Blackwell LLP (“**Cassels**”) represented the Bankrupt.

First Trustee Report at para 3(2).

10. On October 29, 2020, the Trustee emailed Mr. Birch of Cassels requesting he provide the Trustee with the Bankrupt’s contact information. The Trustee explained the reasons for its request and provided reasonable alternatives, such as coordinating a meeting with the Bankrupt instead.

First Trustee Report at para 3(2).

11. On October 30, 2020, Mr. Birch responded to the Trustee, but declined to provide the Trustee with the Bankrupt’s contact information, referring to his duty of confidentiality.

First Trustee Report at para 3(2).

### **PART III - ISSUES**

12. The issue on this motion is whether this Court should amend the Bankruptcy Order as requested, including directing Cassels to provide the Trustee with the Bankrupt's contact information.

### **PART IV - THE LAW**

#### **A. Amending the Bankruptcy Order**

13. The Trustee seeks an order correcting the name of the Trustee and clarifying the name of the Bankrupt.

14. The Court's jurisdiction to amend the Bankruptcy Order is found in s. 187(5), s. 187(9)—the BIA's curative provision, and r. 3 of the *Bankruptcy and Insolvency General Rules*, C.R.C. 1978, c. 368.

15. Section 187(5) of the BIA provides that "[e]very court may review, rescind or vary any order made by it under its bankruptcy jurisdiction." A purpose of s. 187(5) is "to permit the court to rectify an order or judgment that fails to correctly state what the court actually decided or intended". Varying the Bankruptcy Order to reflect the Trustee's correct name and clarify the Bankrupt's name is consistent with the purpose of s. 187(5).

*HOJ National Leasing Corp. Re*, 2008 ONCA 390 at para 32 ([CanLII](#)).

#### **B. Provision of the Bankrupt's contact information**

16. The Trustee also seeks an order requiring Cassels to provide the Bankrupt's contact information to the Trustee. Such contact information should include the Bankrupt's current address, telephone number, and email address.

17. Section 164 of the BIA authorizes the Trustee to require third parties to produce documents:

164. (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

(2) Where a person fails to produce a book, document or paper or to deliver property as required by this section within five days after being required to do so, the trustee may, without an order, examine the person before the registrar of the court or other authorized person concerning the property, book, document or paper that the person is supposed to possess.

(3) Any person referred to in subsection (1) may be compelled to attend and testify, and to produce on his examination any book, document or paper that under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as would apply to a bankrupt.

18. The Trustee understands that Cassels possesses the Bankrupt's contact information. Stored emails and records of phone communications has been held to constitute "any book, document or paper" for purposes of s. 164 of the BIA. Therefore, Cassels is required to provide the Bankrupt's contact information in its possession to the Trustee.

*2046272 Ontario Inc. Re*, 2013 ONSC 2180, per Brown J. (as he then was) ([CanLII](#)); see also, subsequent reasons in 2013 ONSC 6702 ([CanLII](#)).

19. In *2046272 Ontario Inc. Re*, the Court ordered that a third party disclose certain contact information of someone alleged to be connected to the bankrupt.

*2046272 Ontario Inc. Re*, 2013 ONSC 2180 at para 23, per Brown J. (as he then was) ([CanLII](#)); see also, subsequent reasons in 2013 ONSC 6702 ([CanLII](#)).

20. A bankrupt's solicitors are not exempt from the requirement to turn over to the trustee all information relating to the bankrupt. On the contrary, courts have required solicitors to make significant disclosure to trustees. For example, solicitors were required to make disclosure of information relating to a bankrupt in *Luu*, *Chilcott*, and *Koenigs*. That information included accounting information and trust ledgers, and information regarding the bankrupt's affairs, transactions and whereabouts of the bankrupt's property.

*Wong v. Luu*, 2015 BCCA 159 [*Luu*] at para 34 ([CanLII](#)).

*Clarkson Co. v. Chilcott* (1984), 13 D.L.R. (4th) 481 [*Chilcott*] at para 12 (Ont. C.A.) ([CanLII](#)).

*Koenigs, Re* (2002), 36 C.B.R. (4th) 255 at para 1 [*Koenigs*] (Ont. S.C.J.).

21. Cassels is only exempt from providing privileged information. This exception does not extend to confidential information—Cassels is required to provide otherwise confidential information related to the Bankrupt. Cassels has only ever suggested that the Bankrupt's contact information in its possession is confidential, never that it is privileged.

*Wong v. Luu*, 2015 BCCA 159 at para 34 ([CanLII](#)).

*Clark v. Law Society (Alberta)*, 2000 ABCA 242 at para. 23 ([CanLII](#)).

22. In conclusion, the Trustee requires the Bankrupt's contact information in order to comply with its duties and administer the Bankrupt's estate in accordance with the BIA. Trustees can require disclosure of what would otherwise be confidential information. The Trustee seeks the Bankrupt's contact information in order to ensure the orderly administration of these proceedings.

## **PART V - ORDER SOUGHT**

23. The Trustee respectfully requests that this Court grant the amended Bankruptcy Order requested by the Trustee.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 2<sup>nd</sup> day of November, 2020.



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**Stikeman Elliott LLP**  
Lawyers for the Applicants

**SCHEDULE “A”  
LIST OF AUTHORITIES**

**Cases**

1. *HOJ National Leasing Corp. Re*, 2008 ONCA 390 at para 32 ([CanLII](#))
2. *2046272 Ontario Inc. Re*, 2013 ONSC 2180 ([CanLII](#))
3. *Wong v. Luu*, 2015 BCCA 159 ([CanLII](#))
4. *Clarkson Co. v. Chilcott* (1984), 13 D.L.R. (4th) 481 (Ont. C.A.) ([CanLII](#))
5. *Koenigs, Re* (2002), 36 C.B.R. (4th) 255 (Ont. S.C.J.)
6. *Clark v. Law Society (Alberta)*, 2000 ABCA 242 ([CanLII](#))

**SCHEDULE “B”  
RELEVANT STATUTES**

***Bankruptcy and Insolvency Act, RSC 1985, c B-3***

**Trustee may require books and property of bankrupt to be produced**

164 (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

**Examination on failure to produce**

(2) Where a person fails to produce a book, document or paper or to deliver property as required by this section within five days after being required to do so, the trustee may, without an order, examine the person before the registrar of the court or other authorized person concerning the property, book, document or paper that the person is supposed to possess.

**Compelling attendance**

(3) Any person referred to in subsection (1) may be compelled to attend and testify, and to produce on his examination any book, document or paper that under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as would apply to a bankrupt.

**Authority of the Courts**

**Court may review, etc.**

[187] (5) Every court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

**Formal defect not to invalidate proceedings**

[187] (9) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

***Bankruptcy and Insolvency General Rules, C.R.C. 1978, c. 368***

**General**

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**FACTUM OF THE TRUSTEE  
(RETURNABLE NOVEMBER 2, 2020)**

**STIKEMAN ELLIOTT LLP**

Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor LSO#: 39932E**

Tel: (416) 869-5236

Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson LSO #66412I**

Tel: (416) 869-5604

Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Ben Muller LSO#: 80842N**

Tel: (416) 869-5543

Email: [bmuller@stikeman.com](mailto:bmuller@stikeman.com)

**Lawyers for the Trustee**