SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: *Rizzato (Re)*, 2020 NSSC 63

Date: 20200224
Docket: No. 42673
Registry: Halifax
Estate Number: 51-2367650

In the Matter of: The bankruptcy of Michael Evan Rizzato

Judge:	Raffi A. Balmanoukian, Registrar
Heard:	November 15, 2019, in Halifax, Nova Scotia
Final Written Submissions:	December 12, 2019
Counsel:	Jonathan J. Saumier, for the objecting creditor, Bank of Montreal Edward A. MacDonald, for the Trustee, Grant Thornton Limited Michael Evan Rizzato, appearing personally

Balmanoukian, Registrar:

[1] Michael Evan Rizzato is a knave and a convicted fraudster.

[2] What I have to deal with is the civil fallout from one of his acts, for which he did not face criminal sanction.

[3] In 2012, Mr. Rizzato purchased a new 2013 Ford Explorer. It was financed by Bank of Montreal ("BMO" or "the Bank"). The *Personal Property Security Act*, SNS 1995-6, c. 13, as amended (the "PPSA") requires the financing statement for securitizations on "serial numbered goods," such as this motor vehicle, to be described by both serial number and by debtor name.

[4] Prior to 2014, Mr. Rizzato was involved with a company called MER Investments Limited. In his sworn testimony at the discharge hearing, Mr. Rizzato described his former business associates in the most unflattering terms.

[5] No doubt the feeling is mutual. Mr. Rizzato testified to actions taken against him and his family, by persons nebulous and nefarious.

[6] In any event, at some point in 2014 Rizzato and associates parted ways and Mr. Rizzato was de-listed as a company director – an act Mr. Rizzato claims was

unauthorized and on which he claims his signature was forged (I note the change of director form did not require Mr. Rizzato's purported signature).

[7] Harold Sharpe's affidavit says that he, Sharpe, "took over" MER in October 2014.

[8] Somehow, in circumstances both unclear and unsatisfactory, Mr. Rizzato still had or obtained access to an MER Investments cheque, with a branch of account at the Sydney Credit Union. He attended at Bank of Montreal on or about January 29, 2016 and, with that cheque, purported to pay out the vehicle loan. The affidavit of Bernadette Wlosik, a BMO Special Accounts manager, deposes that the cheque's corporate signature appears to be that of Mr. Rizzato (based on a comparison with a signature on another BMO form).

[9] The Credit Union account was closed at the time, and the cheque accordingly returned. Mr. Sharpe swore that Mr. Rizzato neither had signing authority nor other capacity to bind the corporation at the time. Mr. Rizzato testified that, for some reason, he "thought" the account was still open, and by implication could access funds as he saw fit – although he further testified that he "didn't recall" the specific cheque.

[10] This strains credulity, falling somewhere between the reply churlish and the reproof valiant. Had I been required to make credibility findings, Mr. Rizzato's evidence would be circumspect in various places. However, ultimately I do not believe I need do so.

[11] For reasons inexplicable, BMO proceeded immediately to order the discharge of the applicable financing statement, without waiting for the cheque to clear.

[12] The PPSA discharge was not in fact done until June 17, 2016, by which time the cheque had long been returned. Counsel was unable to provide the Court with any reason why BMO did not cancel that discharge requisition. In fact, until the eve of hearing, BMO's opposition was based upon an alleged wrongful disposition of a completely different vehicle, a 2010 Dodge van which had (according to Mr. Rizzato) been sold for scrap. As a result, at an earlier hearing, the Court inquired about the actual value of the security of which the Bank had allegedly been deprived. Only at the last minute did the proverbial penny drop with the Bank that it should be talking about the 2013 Explorer.

[13] Some time in 2015 or 2016 – he could not or chose not to recall – Mr. Rizzato sold the Explorer for $15,000. This was on a liquidation basis. He did not

contest that its fair market value would have been higher, in the $20,000 range. I note that his Statement of Affairs says that he disposed of it in 2015, which would be before the impugned "payout."

[14] I note it had been purchased in late 2012 for $47,378.91, inclusive of taxes and fees. The affidavit of Ian Cousins (another BMO officer) sets out "black book" values in February 2015 of $24,200 to $29,850. The same resource disclosed values in October 2019 of $12,400 to $18,050. I therefore find that $20,000 in the 2015-2016 period is more than fair to Mr. Rizzato, and he did not dispute that when presented with that figure at the discharge hearing.

[15] On February 1, 2018, BMO sued Mr. Rizzato in debt and obtained default judgment on February 28, 2018 for $34,596.02. On April 18, 2018, he made the present assignment in bankruptcy. His first.

[16] He said he used the proceeds towards his house, and makes the argument that since the house was sold and proceeds used to pay creditors, he got nothing out of his venture.

[17] At the discharge hearing, I had no difficulty finding that various acts and omissions in Section 173 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA") applied.

[18] Strictly speaking, I do not need to make a finding of civil fraud (s. 173(1)(k)) to make a conditional order in this case, although I have that jurisdiction when it is clearly established to the requisite civil standard: *Re Gushue*, 2014 NSSC 64; *Re Scaife*, SH 201067, B-25852 (Nova Scotia Supreme Court, unreported). I have no hesitation so finding here.

[19] I can also point to other provisions in Section 173 as a basis on which to make a conditional or other non-absolute order – namely 173(1)(a) (the "fifty cents on the dollar" provision); 173(1)(d) (failure to account for loss of assets); and 173(1)(o) (failure to comply with duties).

[20] At the conclusion of the discharge hearing, I ordered that Mr. Rizzato pay $20,000 into his estate as a condition of his discharge, being the approximate fair value of the asset disposed of, at the time of disposition. I reserved decision on who would receive these proceeds.

[21] The Bank, predictably, says it was sucker punched and that its security would have been in place and valid but for Mr. Rizzato's actions. The Trustee in first instance agreed in principle, but made later submissions that the proceeds should be payable into the estate for the benefit of creditors generally, for reasons to which I shall return in due course.

[22] The validity of the security, but for the circumspect discharge, is important. If the security was invalid as against the trustee *dehors* that discharge, the underlying asset would be an estate asset and the $20,000 distributable amongst unsecured creditors. If the financing statement was valid, then the Bank has been deprived of that value and it is entitled to the $20,000 value, subject to any equities that may arise by virtue of its negligence in ordering (and then failing to cancel) the discharge.

[23] It is therefore necessary for me to analyze the validity of the security, and then, if valid at the time of security discharge, to consider if any equities change the scheme of distribution of the $20,000 conditional order.

The PPSA Filing

[24] The Bank filed its financing statement on December 12, 2012. It entered the serial number correctly. It entered the name of the debtor as "Michael E Rizzato."

[25] This debtor name runs afoul of the *Personal Property Security Act General Regulations*, NS Reg 129/97 as amended (the "*PPSA General Regulations*"). Section 20(1) of those Regulations provide that:

> Where the debtor is an individual, the registrant shall enter the last name followed by the first name <u>followed by the middle name</u>, if any, of the debtor.

[emphasis added]

[26] In Nova Scotia, in first instance both the serial number (in the case of serial numbered goods) and the name of the debtor (in accordance with the Regulation quoted above) must be correct for the financing statement to be perfected by registration. Simply getting one or the other right is not sufficient, with respect to that serial numbered good.

[27] Subsection 44(8A) of the PPSA reads:

> Subject to subsections (10) and (10A), a registration is invalid if a search of the records of the Registry by serial number, as prescribed, for collateral that is consumer goods of a kind that are prescribed as serial numbered goods does not disclose the registration.
>
> [emphases added]

[28] Subsections (10) and (10A) are saving provisions with respect to collateral other than the impugned serial numbered good. They are not applicable here.

[29] I note that in 2003, the Legislature added Section 2(asa) to the PPSA to provide what is included in a "seriously misleading defect, irregularity, omission or error" with respect to serial numbers. I need not consider that further here; the serial number of the 2013 Explorer is correct in the financing statement.

[30] As for a defect in the name of the debtor, Subsection 44(8) is roughly parallel. It reads:

> A registration is invalid if a search of the records of the Registry using the name, as prescribed, of any of the debtors required to be included in the financing statement other than a debtor who does not own or have rights in the collateral does not disclose the registration.
>
> [emphases added]

[31] 44(7), in turn, provides:

> Except as otherwise provided in this Section, the validity of the registration of a financing statement is not affected by any defect, irregularity, omission or error in the financing statement unless the defect, irregularity, omission or error is seriously misleading.
>
> [emphases added]

[32] Thus, the Court is called upon to analyze the following: First, does a name search "using the name as prescribed" disclose the registration? If it does not (or if the serial number is wrong and "seriously misleading"), the inquiry is at an end as the saving provision of 44(7) is subject to the specific invalidation provisions of 44(8) and (8A).

[33] If entering a name search "using the name as prescribed" turns up the financing statement (and the serial number is correct or not "seriously misleading," in the instance of serial numbered goods), as a "close match," but the debtor name is not in conformity with Section 20 of the *PPSA General Regulations*, is that name "seriously misleading?"

[34] "Close matches" are capable of being generated, printed, and analyzed pursuant to *PPSA General Regulation* 11(7). There is no additional search cost for

this functionality; the added resources needed to look at these are simply the application of relevant principles and time by the inquirer.

[35] A "close match" does not in itself make the registration valid: PPSA 44(8B); however, it also does not mean it is *ipso facto* invalid. The question remains whether the name defect renders it "seriously misleading." This, in turn, does not require anyone actually in fact to have been misled: PPSA 44(9).

[36] So does the fact that we have "Michael E Rizzato" versus "Michael Rizzato" or "Michael Evan Rizzato" change the validity of the financing statement?

[37] In *Robie Street Financial v. PricewaterhouseCoopers Inc*, 2009 NSSC 397, Registrar Cregan concluded that the *omission* of a middle name in a financing statement was "seriously misleading," as a correct search would not reveal the financing statement.

[38] Here, we have a middle initial, but not the full first middle name.

[39] In Nova Scotia, if one submits the name "John Macdonald" to the Nova Scotia system, only "John Macdonald" results are generated. If, conversely, one submits "John Alexander Macdonald," one gets exact matches (John Alexander Macdonald) as well as close matches (including John A Macdonald and *potentially* near-misses such as John Alex Macdonald, but *not* John Macdonald).

[40] Following on that, BMO submits that a prudent searcher would then make inquiry of the exact and relevant close matches – such as the John A, John Alex, and John Alexander, but likely not something like John Alan, should that appear.

[41] The Trustee submits:

> If the registration had been submitted with a last name Rizzato, first name of Michael E, with the middle name box blank, the DEBTOR INFORMATION section would be as shown on the statement. If the Trustee submitted a proper name search in that situation, a match or near match may not have been produced. Therefore there is no certainty the BMO registration was valid.

[42] This may well be so. However, there is no indication that this is what took place. Whether one entered "Michael E" in the first registration field or Michael in the first registration field and E in the second, the *PPSA General Regulation* 11(7) printout would look the same. This is speculation by the Trustee.

[43] The Trustee's assertion that one may or may not find the financing statement registered to:

1. (first field) Michael E,
2. (second field) blank,
3. (third field) Rizzato

by searching “Michael Evan Rizzato” is neither backed up by evidence nor shown to be relevant here. By all that is before me, the financing statement appears to have been filed as

1. (first field) Michael,
2. (second field) E,
3. (third field) Rizzato.

[44] For clarity, I repeat that our system, and the result generated in *Robie, supra*, would appear to vindicate the view of the Trustee that a search criteria of

First Name

Middle Name

Last Name

may not reveal financing statements lodged as

First Name consisting of a name, a space, and a letter

Middle (blank)

Last Name

There is simply no evidence that this is what happened here, and all evidence is to the contrary (that is, the "E" was a middle field, not part of a first field).

[45] To that end, the Bank submitted evidence that a search of "Michael Evan Rizzato" not only could, but in fact did turn up the Michael E Rizzato filings. The discharged BMO security reads "Rizzato, Michael E" – there is no evidence that the critical "E" is in the same field as "Michael;" or, if it was, that it would not show as a "close match." As improvident as it was to register the financing statement in this fashion, it is speculative to think the registrant was so imprudent as to put a first name, a space, and a middle initial all in the first field and nothing in between that and the surname. Even if it was, the best the Trustee can say is "maybe it would show, maybe it wouldn't."

[46] I therefore conclude, *on the evidence before me*, that a search "using the name, as prescribed" would, on a balance of probabilities, have revealed the BMO security had it not been discharged.

[47] I now turn to whether, in such an instance, the name as revealed is "seriously misleading."

[48] There is an element of circularity to this analysis, as in many instances the answer is "if you found it, how can it be seriously misleading?" To that end, BMO

submits, and I agree with, the following comments in *Re Fauvelle*, 2017 MBQB 179, considering the materially similar provisions (and identical "seriously misleading" criteria) in the Manitoba PPSA:

> [23] The conclusion reached in ***Re Gonzalez*** was that an error in a financing statement in relation to the name of the debtor is seriously misleading if a search using a correct version of the debtor's name fails to disclose an exact or a similar match. The question to be answered here is whether the error is similarly seriously misleading if a similar match is disclosed. As noted earlier in the legislative framework, the Regulations include a section dealing with search results involving close or similar matches, being section 36(3). The PPR is programmed to produce a similar match result if a debtor name is similar to the debtor name specified to be searched. If the disclosure of a similar match result does not trigger an obligation on the part of the searcher to view and determine whether the similar match financing statement is related to the property at issue, I question the purpose of including such search results when a search is performed. It would seem that the inclusion of s. 36(3) in the Regulations is rendered meaningless if a searcher is entitled to simply ignore the similar match results.
>
> [24] It seems clear to me that if a searcher receives a result which includes a similar match to the name searched, that triggers a reasonable obligation on the part of the searcher to view the similar match and determine its relevance. To that extent, if the similar match search result produces the financing statement which is at issue, it is my respectful view that the error in the debtor's name is not seriously misleading for the purposes of section 43(8) of the *PPSA*.
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> [emphases added]

[49] Academic authorities agree. In Cuming, Walsh & Wood, *Personal Property Security Law*, 2nd Ed. (Toronto: Irwin Law, 2012), one finds the following analysis at pp. 364-6 (footnotes omitted):

> In determining what constitutes a seriously (or materially) misleading error, it is not necessary to show that anyone was actually misled, or indeed whether a search was ever conducted by the party challenging the effectiveness of the registration. Rather, the test is an objective one. Is the error seriously misleading from the viewpoint of a hypothetical search of the system?

> …
>
> The issue is not whether the mistake appears to be trivial in the abstract, but whether it caused the registration not to be disclosed on a search of the system using the correct name of the debtor.
>
> …
>
> The other registry systems [outside Ontario] have been programmed to automatically disclose both exact and similar matches of names on a search result. …Nonetheless, not all similar matches are flagged and if the registration is not disclosed on a search using the correct name, the error or omission is ipso facto misleading, however minor it may seem in the abstract. It is not open to the court, in other words, to conclude that the system should have been programmed to disclose the debtor's name as an inexact match; the question is whether it was….Nevertheless, if the effect of the error is to cause the registration not to be disclosed on a search using the correct name of the debtor, it is seriously misleading and will invalidate the registration.
>
> If the registration appears on a search result as a similar match, this does not necessarily mean that the error is not seriously misleading. The further question must then be asked whether an objective searcher can reasonably determine whether the similar match is so closely similar to the correct name of the debtor as to prompt further inquiry.
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> [emphases added]

[50] See also: MacDougall, *Canadian Personal Property Security Law*, 2nd ed. (Toronto: LexisNexis Canada, 2019) at 6-066 and 6-067.

[51] In *KJM Leasing Ltd. v. Granstrand Brothers Inc.*, 1994 CanLii 9153 (ABQB), the financing statement showed the debtor as "Grandstrand Bros. Inc." instead of "Granstrand." Master Funduk stated:

> [12] The Applicant's witness testifies:
>
> "8. Attached hereto as Exhibit 'F to this my Affidavit is a photocopy of a search report from Personal Property Registry as against the name Grandstrand Bros. Inc. which clearly reflects the Applicant's Financing Statement as having been registered against that name."

> [13] That is also irrelevant because it is the wrong question.
>
> [14] What a search under the incorrect name discloses is not the right question. Obviously a search under the incorrect name will disclose the Applicant's security. But it defies logic to say that a search under the incorrect name discloses the disputed security so the error is not seriously misleading. That is a circular argument.
>
> [15] What is relevant is what a search under the right name will disclose. What will a searcher armed with the right name discover?
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> [16] In this case the Bank has put in evidence search results for a search under the right name.
>
> [17] Unfortunately for the Applicant a search under the bankrupt's right name does not disclose the Applicant's financing statement at all, either as an exact match (which of course it could not) or as an inexact match.
>
> [18] There is a very strong presumption that a defective registration is seriously misleading if a search using the correct debtor's name does not disclose a defective registration at all; Cuming and Wood, Alberta Personal Property Security Act Handbook (2nd Ed.) pages 320-321; General **Motors Acceptance Corp. of Canada v. Trans Canada Credit Corp.**, (1994), 147 A.R. 333 (Q.B.).
>
> [19] This is not at all a case like **Alberta Treasury Branches v. Triathlon Vehicle Leasing** (1992), 1992 CanLII 6236 (AB QB), 7 Alta. L.R.(3d) 374 (Q.B.), where a financing statement with an erroneous corporate debtor's name did disclose the financing statement with the wrong name.

[52] I would add that, in Nova Scotia, the "very strong presumption" noted by the learned Master at paragraph 18 has been raised to the level of a legislated conclusion by virtue of PPSA 44(8). The fact it is not, to the layman, seriously misleading in regular text is immaterial – the saving in 44(7) is subject to the deeming provision in 44(8). So, while "Granstrand" and "Grandstrand" may not be seriously misleading in street conversation, if the system doesn't generate it as an exact or close match when the proper name is entered, 44(8) deems that failure

to be fatal. If it DOES generate it as a close match, then and only then does the 44(7) "seriously misleading" analysis come into play.

[53] To the same end, with a different search result, in *PEI Lending Agency v. Island Petroleum Products Ltd.* 1999 CanLii 7231 (PEISCTD), a search for the correct name ("Agway Services Company Ltd.") revealed the incorrect registration ("Agway Services Ltd."); the Court found this was not "seriously misleading" and the relevant security (book debts) was validly perfected.

[54] I note that *KJM Leasing* was followed by Justice Hood in *WBLI v. Maximum Financial Services*, 2003 NSSC 97, a case of mismatched corporate names (Valley Vista Golf Course Limited versus Valley Vista Golf Club Limited) in which a search of the correct name did not reveal the incorrect registration, and was accordingly invalid.

[55] *KJM* is consistent with my analysis. That is, the relevant questions on a "seriously misleading" analysis are first, "did it show up" and if the answer is yes, for the secondary question to be "would a prudent searcher look at it and make further inquiry, or is it so 'seriously misleading' that a prudent searcher would think it to be another party?"

[56] It may be that different nuanced discrepancies in name will turn up or fail to turn up different lists of "close matches" in different jurisdictions. That is not relevant when dealing with this jurisdiction. What matters is what turns up here and whether a prudent searcher is put to her or his inquiry.

[57] In MacDougall, *Canadian Personal Property Security Law*, *supra*, the author comments at 6-076 and 6-077 (footnotes omitted):

> There has been some debate as to the extent to which the computer program of the registry can resolve this issue in respect of errors in the searchable fields. That is to say, there has been some debate as to the extent to which the issue of whether errors or omissions can be said to be seriously misleading can be delimited by the search criteria. The registry in most jurisdictions is designed to give too much information in response to a search. It will give registrations that contain the exact search field, but also similar or related registrations. So, a serial number search will reveal registrations with that exact serial number, but also registrations with close numbers. In B.C., there is conflicting authority as to whether the computer program can be used to resolve this matter. Other jurisdictions have accepted the usefulness of the computer program in this matter. In Manitoba, the statute largely resolves the problem. There, an error in the spelling of any part of the name of the debtor in a financing statement invalidates the registration and destroys the effect of the registration if a search of the registry under the correct name of the debtor would not reveal the registration.
>
> There might be situations, however, where even if a search under the right information reveals the incorrect registration, the error can still be seriously misleading. It is probably going too far, however, to say that an incorrect registration not revealed by a correct version of the criteria must always be seriously misleading, as held in one B.C. case. There should be a presumption that this is so, but it should not be conclusive.
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> [emphases added]

[58] I believe that 44(8B) of our PPSA, which in essence says "the fact you find it as a close match doesn't make it valid in and of itself" codifies the above

comments; to return to my example above, a prudent searcher for John Alexander Macdonald would be well advised to check out the revealed John As, and the John Alexes, but even if s/he sees a John Alan in the close matches, it would likely still be seriously misleading if was the same but incorrectly named debtor.

[59] I add that I respectfully disagree with the learned author's final comment cited above – that it is presumption only that a wrong registration, not revealed by a right name, is only presumptively seriously misleading. As I have said above at paragraph 49, our 44(8) is determinative on that point. If a search of the correct name of John Alexander Macdonald does not turn up Jack Sandy Macdonald, in Nova Scotia the latter is not simply *presumed* to be seriously misleading. It is invalid.

[60] In our situation, I find that a prudent searcher, having found "Michael E Rizzato" on a search for "Michael Evan Rizzato" in the relevant registry, would make further inquiry on this close match and would have found the relevant security, but for its fraudulently-obtained discharge.

[61] The question then becomes whether the Bank, by its failure to wait for the (third party, separate institution) cheque to be honoured before ordering the discharge, or by failing to cancel that order (for some months) after it was clear it

had been bamboozled, is estopped or otherwise precluded from relying on that security in asserting its claim to the $20,000 conditional order. To that I now turn.

The Bank versus the estate and unsecured creditors

[62] There is a Keystone Cops character to the Bank's actions and inactions in this case.

[63] The registration itself was imprudent. Although the bill of sale was to Michael E. Rizzato, I can think of no reason why the Bank did not obtain the full name and use it in its PPSA filing. Our PPSA, one of the last in Canada, has been in place for almost a quarter-century. Its registration criteria should not be arcane to its regular participants. So this saga began, in late 2012.

[64] Then, in early 2016, I cannot understand why it accepted an uncertified third party cheque, drawn on a separate financial institution, and immediately ordered a discharge of security before the cheque was honoured. Blunder number two.

[65] Next, it did nothing for some four and a half months after knowing it had been deceived to stop the discharge process. It did not even sue Mr. Rizzato in debt until the very end of the limitation period (being the time in which it should have been aware of the default, plus two years).

[66] Finally, as a capstone, the Bank's objection to Mr. Rizzato's discharge was founded on the security lost being a 2010 Dodge, which may respectfully be said to have been of more modest intrinsic value than the 2013 Explorer. Only belatedly did the Bank have its "Eureka" moment.

[67] I have no doubt that if a solicitor was engaged to effect this discharge and did so without waiting for the cheque to clear and indeed had lodged the discharge some months after it was clear the payout was bad, that solicitor would have some serious explaining to do to the client. In this case, the discharge was ordered by the Bank of its own accord and through its own modalities.

[68] Should the Bank be penalized for this somnambulism, through losing its priority?

[69] I think it should face repercussions, but not in this way.

[70] In this case, the security (albeit until the last minute purportedly on a different vehicle) had been recognized in first instance by the Trustee. It is questionable why it reached this conclusion, as the Bankrupt's Form 79 (Statement of Affairs) states that "in 2016 I sold my 2010 Dodge Caravan to a junk yard for scrap. A deficiency resulted and it owing [sic] to Carfino." (emphases added). It

is equally mysterious why the Bank, having received this statement of affairs, did not put itself aright.

[71] Mr. Rizzato then goes on to say, "In 2015 I sold my 2013 Ford Explorer for approximately $15,000." Yes, it was sold, but there is no mention of the security. The "vehicle deficiency" to BMO is, however, listed as an unsecured liability. And yet, the Bank persisted in confusing the two vehicles.

[72] The Trustee's s. 170 report dated June 13, 2019 opposed the discharge on unremarkable grounds – not to say these grounds are excusable or "no big deal." The Bankrupt had not, at that time, provided full income and expense information, funded the estate, or provided information sufficient to file relevant tax returns. The report went on to cite that the bankrupt "has been found guilty of fraud or breach of trust" and has "failed to perform the duties imposed under this act or to comply with any order of the court."

[73] The Trustee appended a news article pertaining to Mr. Rizzato's guilty plea to 17 counts of fraud, forgery, and uttering forged documents against his former employer in 2013 and 2014 (to the tune of some $40,000). The Trustee also appended the opposition by Bank of Montreal.

[74] On July 5, 2019, the Trustee issued a memo saying it would support an order as sought by Bank of Montreal (that is, conditional on payment of $34,596.02 or declaring that the debt was not discharged by the bankruptcy).

[75] No other creditor appeared at the hearing.

[76] I have considered carefully the interests at hand.

[77] First, it is just and proper that the Bankrupt, as a condition of his discharge, be compelled to disgorge the value of the asset (not the lower liquidation proceeds) he wrongfully appropriated and disposed of. That is the $20,000 already discussed. I do not accept that he "got nothing out of it" even if I accept that he put the $15,000 into his house and later sold it with net proceeds paid towards debt. He had the benefit of the property in the interim and even if that was not the case, it was not for him to decide that he could deprive one creditor of its security to benefit another or others.

[78] Second, it is appropriate to sanction and censure the conduct of the bankrupt in these circumstances. It is trite to say that a primary object of the BIA is to give a fresh start to the "honest but unfortunate debtor." Unfortunate, he may have been. Honest, he has been anything but.

[79] Third, no matter my distaste for the debtor's conduct, I must remain cognizant that there remains a strong rehabilitative objective in the BIA. I have said before that "this is not a Court of sackcloth and ashes" (*Re Carey*, 2018 NSSC 264, at para. 36). *Carey* involved blameworthy conduct of quite a different nature, but it remains true that the Court must fashion a disposition that is appropriate for all but the most incorrigible debtor with the most culpable conduct. The debtor, subject to appropriate conditions, should regain her or his just place in economic society.

[80] Fourth, having reached the conclusion that the security was valid to the time of its wrongful discharge, I do not believe that other creditors who took no part in the process should receive a windfall as a result of either Mr. Rizzato's acts or the Bank's dereliction.

[81] Fifth, the most difficult question that remains is whether the Bank has disentitled itself to all or any of the $20,000 by reason of that dereliction.

[82] I have had considerable difficulty with this. The security discharge process bordered on farce. It would not be inappropriate, in many cases, for me to decide that having proceeded to such a discharge long after knowing it had been procured under false pretenses, the Bank is precluded or estopped from saying, "we wuz

robbed." It is easy to accept that the Bank should not be in the position they would have been, had they not slept at the switch.

[83] On the present facts, however, I believe the Court can convey that strong message in another way. If I were to find that the $20,000 was part of the general estate, part of this would go to the Trustee for its fees and part to creditors. However sloppy it may previously have been, the heavy lifting in this hearing was borne by BMO. Through that, it incurred significant legal and logistical costs. It also faces the disapproval of its own processes and procedures as expressed in this decision. These temporal and conceptual debits are real.

[84] I have concluded that BMO's financial sanction for having dropped the ball on the security discharge is properly addressed through costs. Although it has been successful in its opposition (to the extent of the value of the security appropriated, not the debt incurred) and in its defence of its pre-discharge PPSA, in my discretion I order that each party bear its own costs.

[85] As well, and perhaps more to the point, it is unfair for other creditors to be deprived of their just share of the estate's other receipts through their allocation to costs. This miasma was in no way of their making.

[86] Mr. Rizzato's enterprise, however contemptable, would not have succeeded but for the Bank's failure to protect its own interests. While I have decided the Bank is not disentitled to the $20,000, I have decided that it has disqualified itself to the costs of establishing that entitlement.

Conclusion

[87] Mr. Rizzato shall, as conditions of his discharge, comply with the foregoing as well as any and all outstanding pro forma duties remaining under the BIA.

[88] To summarize, these are (to the extent not already performed):

1. Provision of remaining outstanding income and expense information and payment of any applicable s. 68 surplus income;
2. Payment of any outstanding costs of administration under any written fee agreement, with the Trustee's fees themselves, as always in summary administration estates, subject to Rule 128;
3. Surrender of any remaining property that is "property of the bankrupt" under s. 67 of the BIA (I note that the Statement of Affairs refers to a parcel of land which was to be surrendered; it is not in evidence before me as to its status; the Trustee is to effect all relevant registrations if the property has not been realized);

4. Provision of information sufficient to file relevant tax returns (and transfer to the Trustee of any refund which is "property of the bankrupt" under s. 67 of the BIA); and

5. Payment of $20,000 to Bank of Montreal.

[89] The Trustee will prepare the appropriate order for my review.

[90] Upon compliance with that order, Mr. Rizzato will have his discharge.

[91] Mr. Rizzato has now had several intersects with the civil and criminal justice system in his young life. I hope the rehabilitative objectives contained within both have not been lost on him.

Balmanoukian, R.