

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Diana M. Cameron
Mr. Justice Christopher J. Mainella

BETWEEN:

<i>HEATHER ANNE STEWART</i>)	<i>J. M. Wheeler</i>
)	<i>for the Appellant</i>
)	
<i>(Applicant) Respondent</i>)	<i>R. Y. Mamucud</i>
)	<i>for the Respondent</i>
- and -)	
)	<i>Appeal heard and</i>
<i>SUSAN MARGARET AUCH</i>)	<i>Decision pronounced:</i>
)	<i>February 24, 2026</i>
<i>(Respondent) Appellant</i>)	
)	<i>Written reasons:</i>
)	<i>March 6, 2026</i>

On appeal from *Stewart v Auch*, 2025 MBKB 26 [*Stewart* 2025]

MAINELLA JA (for the Court):

Introduction

[1] The general rule is that “[a] discharge from bankruptcy releases the bankrupt from pre-bankruptcy debts or liabilities, subject to certain exceptions” (Lloyd W Houlden, Geoffrey B Morawetz & Dr Janis P Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (December 2025) at s 7:197, online: (WL Can) Thomson Reuters Canada).

[2] This appeal is about an exception to this general rule. Section 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [the *BIA*] provides:

Debts not released by order of discharge

178 (1) An order of discharge does not release the bankrupt from

(e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim[.]

L'ordonnance de libération ne libère pas des dettes

178 (1) Une ordonnance de libération ne libère pas le failli :

e) de toute dette ou obligation résultant de l'obtention de biens ou de services par des faux-semblants ou la présentation erronée et frauduleuse des faits, autre qu'une dette ou obligation qui découle d'une réclamation relative à des capitaux propres[.]

[3] As explained in *Houlden*, a debt or liability falling within the ambit of section 178(1)(e) of the *BIA* “remains enforceable against the debtor post-bankruptcy” (at s 7:197).

[4] In the proceeding giving rise to this appeal (see *Stewart 2025*), the application judge granted a declaration that a judgment debt owed by the respondent to the applicant arising from a defaulted commercial loan in the amount of \$600,000 (plus interest) not be released by any order of discharge from bankruptcy pursuant to section 178(1)(e) of the *BIA*.

[5] After hearing the appeal, we dismissed it with reasons to follow. These are those reasons.

Background

[6] The background facts are set out fully in the trial decision giving rise to the judgment debt (see *Stewart v 6551450 Manitoba Ltd et al*, 2022 MBQB 84 [*Stewart* 2022], aff'd 2023 MBCA 72 [*Stewart* 2023], leave to appeal to SCC refused, 40967 (2 May 2024) [40967], 40992 (2 May 2024) [40992]; see also *Stewart* 2025).

[7] In brief, the larger backdrop to the judgment debt is a development project whereby the applicant was selling farmland to a consortium of investors, including a First Nation, who desired to operate a limestone quarry (the quarry) on it (see *Stewart* 2022 at paras 5-36).

[8] On December 20, 2013, the applicant's solicitor advanced \$600,000 to a corporation, 6551450 Manitoba Ltd. (655), of which the respondent's holding company was the majority shareholder. The trial judge concluded this transaction was a "loan" (*ibid* at para 51) to be repaid by March 31, 2015 at an interest rate of ten per cent per annum. The trial judge found that the purpose of the loan to 655 "was to pay expenses going forward" to obtain the approval of the Rural Municipality of Rosser for the development of the quarry (*ibid* at para 41).

[9] Something different occurred.

[10] On December 23, 2013, the respondent directed disbursement of all of the loan monies to pay her personal debts and expenses. None of the \$600,000 was used by 655 to obtain approval for the quarry. The trial judge concluded that the applicant would not have lent the money to 655 had the respondent and her husband "been honest about their intentions" (*ibid* at

para 59). The trial judge found that the respondent used 655 to engage in “improper conduct which [was] akin to fraud” (*ibid* at para 60). He decided that the circumstances warranted piercing the corporate veil of 655 to find the respondent personally liable for the loan (plus interest) (see *ibid* at paras 52-61).

[11] The respondent’s appeal of that judgment was dismissed. This Court stated that “the trial judge made no errors requiring appellate intervention” (*Stewart* 2023 at para 3). As indicated above, leave to appeal to the Supreme Court of Canada was refused (see 40967; 40992).

[12] The applicant’s attempts to collect the judgment debt have been “fruitless” (*Stewart* 2025 at para 2). After the Supreme Court’s decision refusing leave to appeal (see 40967; 40992), the respondent made an assignment into bankruptcy in August 2024. The applicant then filed an application for various forms of relief to pursue collection of the judgment debt, including a declaration under section 178(1)(e) of the *BIA* that the judgment debt of the applicant would survive the respondent’s bankruptcy.

[13] In relation to the applicant’s request for a declaration pursuant to section 178(1)(e) of the *BIA*, the application judge considered the test set out in *Poonian v British Columbia (Securities Commission)*, 2024 SCC 28 [*Poonian*]. He described that his task was to decide whether the judgment debt “[fell] within the ambit of s. 178(1)(e), such that it [was] an exception to [the respondent]’s ultimate discharge from bankruptcy: i.e. [was] it a debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation by [the respondent]?” (*Stewart* 2025 at para 15).

[14] The record before the application judge consisted of the court decisions related to the judgment debt (see *Stewart 2023*; *Stewart 2022*), the pleadings, and affidavit evidence from the applicant, the respondent and the insolvency trustee. The application judge said that, while he was entitled to consider the entire context of the civil action to characterize the debt vis-à-vis section 178(1)(e), he was not entitled to rely on extraneous evidence. He correctly said his function was not to “retry the original case” but only to decide whether the debt, as it was characterized by the trial judge, met the requirements of section 178(1)(e) of the *BIA* (*Stewart 2025* at para 25).

[15] The application judge considered three arguments of the respondent: (i) the respondent made no “representation” to the applicant, her husband spoke to the applicant during negotiations, and the loan was between the applicant and 655; (ii) the statement of claim did not allege fraud—the original civil trial was nothing more than a contract dispute; and (iii) the trial judge’s finding was not that the respondent had committed fraud but that her conduct was only “akin to fraud” (*ibid* at para 27).

[16] The application judge concluded that there was clear and cogent evidence that the judgment debt fell within the ambit of section 178(1)(e) of the *BIA* for two reasons: (i) the trial judge’s findings surrounding piercing of the corporate veil of 655 to find the respondent personally liable for the loan (see *Stewart 2025* at paras 31-33, 41); and (ii) alternatively, the respondent’s common venture with her husband to obtain the loan from the applicant and then immediately use it for unauthorized purposes (see *ibid* at paras 34-40).

Discussion

The Relevant Principles

[17] Section 178(2) of the *BIA* makes clear that, unless a situation falls within the exceptions set out in sections 178(1)(a)-(h), “an order of discharge releases the bankrupt from all claims provable in bankruptcy”. To satisfy one of the objectives of the *BIA* and the financial rehabilitation of the debtor, “[t]he exceptions in s. 178(1)(a) through (h) must be interpreted narrowly and applied only in clear cases” (*Poonian* at para 26).

[18] It is common ground that the only issue in dispute in terms of the applicability of section 178(1)(e) of the *BIA* is whether the judgment debt was obtained because of the respondent’s false pretences or fraudulent misrepresentation (see *Poonian* at paras 58-69).

[19] The obtaining of property “by ‘deceit’, whether by positive act or failure to disclose material facts”, is central to either concept as set out in section 178(1)(e) (*Poonian* at para 61). What is important, however, is there must be a nexus between the deceit and the creation of the debt or liability. Section 178(1)(e) of the *BIA* applies only to debts or liabilities that have arisen from one or more deceitful statements by the debtor, or for which the debtor is responsible, on the basis of which the debtor obtained services or property. Section 178(1)(e) does not apply to other morally objectionable conduct (see *Shaver-Kudell Manufacturing Inc v Knight Manufacturing Inc*, 2021 ONCA 925 at paras 35-36).

[20] The analysis to be followed under section 178(1)(e) of the *BIA* is well described by Roberts JA in *MOS MortgageOne Solutions Ltd v Heidary*, 2022 ONCA 561 at para 15 in the following way:

To obtain a declaration under s. 178(1) of the *BIA* that a judgment survives a bankrupt's discharge, it is unnecessary for the claimant to specifically refer to s. 178 in its pleadings on which the judgment is based: *Lawyers' Professional Indemnity Company v. Rodriguez*, 2018 ONCA 178, 419 D.L.R. (4th) 520, at para. 6. Nor is there any requirement that fraud be specifically pleaded or particularized. As stated, the judge's task is to determine the nature and substance of the debt by examining the pleadings, any reasons that might have been given, and the proceedings that were before the court that granted the judgment. In determining whether a consent judgment falls within the scope of s. 178(1), the court "is concerned not so much with the cause of action that was pleaded but with whether the pleadings as a whole suggest fraudulent or otherwise "unacceptable" conduct": *H.Y. Louie Co. Limited v. Bowick*, 2015 BCCA 256, 386 D.L.R. (4th) 117, at para. 41, per Newbury J.A. (dissenting, but not on this point) (emphasis added). In other words, as stated by Beard J.A. of the Manitoba Court of Appeal in *Bannerman Lumber Ltd. v. Goodman*, 2021 MBCA 13, at para. 48, referencing *Rodriguez*, at para. 6, "The issue, at the end of the day, is whether the evidence, facts and findings in the underlying proceeding are sufficient to make the required finding of fraud or false pretences in the application under section 178(1)(e) [of the *BIA*]."

[emphasis in original]

[21] It is important to highlight that a judicial finding falling under the umbrella of "fraud", in common parlance, cannot be made based on judicial notice or the cursory drawing of the inference; it must be supported by clear and cogent evidence (see *Poonian* at paras 66-68).

[22] At the hearing of the appeal, counsel for the respondent appropriately conceded that the burden of proof remains the balance of

probabilities. Judges are entitled to draw reasonable inferences based on the evidence or its absence. However, “context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences” (*FH v McDougall*, 2008 SCC 53 at para 40). This means that an allegation of deceitful conduct must be carefully scrutinized; such a finding should not be made casually without a proper evidentiary foundation. As *Poonian* makes clear, “[w]here there is doubt as to whether a creditor falls within an exemption [in section 178(1)], the benefit should go to the bankrupt” (at para 27).

Analysis

[23] We disagree with the respondent as to the applicable standard of review in this appeal; it is not correctness. The legal effect of the respondent’s actions under section 178(1)(e) of the *BIA* is a question of mixed fact and law, absent an extricable principle of law (see *Garlicki (Bankrupt), Re*, 2010 MBCA 73 at paras 24-29). In our view, there is no readily extricable question of law in this case; this is a situation about whether a set of facts satisfies the relevant legal standard, nothing more.

[24] We are satisfied that, when the entire context of the civil action over the loan is considered, it was reasonably open to the application judge to conclude that the findings of fact made in the civil action were sufficient to characterize the judgment debt as falling within the ambit of section 178(1)(e) of the *BIA*. We see no palpable and overriding error by the application judge.

[25] As this Court noted in *Stewart 2023*, the trial judge’s decision to pierce the corporate veil of 655 and to hold the respondent personally liable

for the applicant’s loan (see *Stewart* 2022 at paras 58-61) was “based on a finding that the loan itself was entered into improperly by [the respondent and her holding company] using 655 as a shield” (*Stewart* 2023 at para 40). This conclusion—that the respondent’s deceitful conduct gave rise to the judgment debt, as opposed to any morally blameworthy conduct of the respondent—is sufficient to reasonably support the application judge’s decision under section 178(1)(e) of the *BIA* (see *Poonian* at para 55).

[26] Given this conclusion, it is unnecessary to comment on the application judge’s alternative justification as to how the judgment debt fell within the ambit of section 178(1)(e) of the *BIA*. We do not endorse or disagree with his conclusion that section 178(1)(e) can be satisfied in a situation of a common venture where the false pretense or fraudulent misrepresentation can be imputed to the debtor based on their active participation in a common venture that gives rise to the debt or liability. We leave that issue for another day.

Disposition

[27] In the result, the appeal was dismissed with costs.

Mainella JA

Rivoalen CJM

Cameron JA
