SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-22-00208582-OT31 **DATE: July 17, 2024**

NO. ON LIST: 1

TITLE OF PROCEEDING: IN THE MATTER OF THE BANKRUPTCY OF AIDEN PLETERSKI

BEFORE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Leanne Williams Rebekah O'Hare	Counsel for Grant Thornton Limited, Trustee	lwilliams@tgf.ca rohare@tgf.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Micheal Simaan	Counsel for the Bankrupt	msimaan@kramersimaan.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE BLACK:

[1] This hearing concerned the request by the bankrupt, Aiden Pleterski, for a discharge from bankruptcy.

[2] The trustee in bankruptcy Grant Thornton Limited (in this capacity, the "Trustee"), opposes the discharge, as does the Office of the Superintendent of Bankruptcy ("OSB"). Both the Trustee and the OSB delivered Notices of Intended Opposition to Discharge pursuant to section 168.2(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c.B-3 (the "BIA"). The Trustee also filed a Report on the Bankrupt's Application for Discharge dated February 24, 2023 (the "Initial 170 Report"), the Sixth Report of the Trustee and Supplementary Report on the Bankrupt's Application for Discharge dated May 22, 2024

(the “Sixth Report, and together with the Initial 170 Report, the “170 Report”), pursuant to section 170 of the BIA and a Supplement to the Sixth Report dated July 11, 2024.

[3] In an application for discharge, there are essentially three possible outcomes:

1. An absolute discharge;

2. A conditional discharge; or

3. A refusal of a discharge.

[4] The Trustee argues that this court is precluded, given certain evident and admitted categories of conduct by Mr. Pleterski for purposes of section 173(1) of the BIA, from granting an absolute discharge. Counsel for Mr. Pleterski in any event conceded that Mr. Pleterski does not seek an absolute discharge.

[5] Accordingly, the submissions and discussion revolved around whether or not Mr. Pleterski’s discharge application should simply be refused at this stage, or whether it should instead be resolved on the basis of a suspended discharge on conditions.

[6] The Trustee’s first and main position was that the discharge should simply be refused. In the alternative, in the conditional suspension scenario, the Trustee argued that the discharge should be suspended for two years, and that the discharge be conditional on;

(a) Payment to the Trustee in the amount of $4,539,803;

(b) Payment to the Trustee, in addition, of an amount equal to 30% of proven claims in the estate;

(c) Filing all pre-bankruptcy and post-bankruptcy income tax returns and payment of any income tax liabilities resulting from all post-bankruptcy filings;

(d) Providing the Trustee with login credentials for all of his accounts with Steam and Binance and any other on-line asset and trading platforms;

(e) Completing all outstanding income and expense statements;

(f) A permanent prohibition on the Bankrupt applying for, using or obtaining any form of unsecured credit and from soliciting or marketing debt or equity-based investments, of any kind, to any persons, individuals or corporations, or non-institutional lenders, of any kind (the “Credit and Investment Solicitation Ban”); and,

(g) Providing a written undertaking to comply with the Credit and Investment Solicitation Ban.

[7] Mr. Pleterski has attracted a fair bit of notoriety in recent years.

[8] Between May of 2020 (when Mr. Pleterski was still a teenager), and August 9, 2022, he and his company AP Private Equity Limited (“AP, and together with Mr. Pleterski the “Bankrupts”), operated an investment scheme in which they obtained funds from related and third-party investors and purported to invest those funds in cryptocurrency and foreign exchange positions for the benefit of those investors.

[9] On July 7, 2022, certain of the Bankrupts’ investors successfully obtained an ex parte worldwide Mareva injunction against the Bankrupts, demonstrating *prima facie* fraudulent misrepresentation, civil fraud, misappropriation of funds, conversion and unjust enrichment.

[10] On August 9, 2022, on application by certain other investors, this court ordered that Mr. Pleterski and AP be adjudged bankrupt.

[11] Analysis undertaken by the Trustee during the administration of the bankruptcy led the Trustee to conclude that only 1.6% of the funds collected from investors were actually invested by the Bankrupts.

[12] The Trustee also concluded that Mr. Pleterski used money from new investors to pay out existing investors. It also determined that over a period of 2.5 years, Mr. Pleterski spent approximately 38% of the total amount collected from investors to fund his extravagant lifestyle, including the rental of a mansion in Burlington, expensive vacations and an exotic car collection (among other extravagant expenditures, the indulgence in which, and the publicity this extravagance has attracted, have led to Mr. Pleterski's notoriety).

[13] On May 14, 2024, Mr. Pleterski was arrested and charged with fraud exceeding $5,000.00 and money laundering under the *Criminal Code of Canada*, RSC 1985, c.C-46. These charges followed from a 16-month investigation by the Durham Regional Police and the Ontario Securities Commission. On the day of his arrest, Mr. Pleterski was released on bail and required to surrender his passport.

[14] The details of the police investigation and the resulting charges are subject to a publication ban, but the police and OSC have announced that the "size of the alleged fraud was massive and spanned across multiple jurisdictions".

[15] The Trustee says that Mr. Pleterski has failed to meaningfully cooperate with the Trustee throughout his bankruptcy. This conduct is well-documented, and the Trustee has twice had to seek a contempt order against Mr. Pleterski, driving up the costs of the administration of the bankruptcy.

[16] Mr. Pleterski has also consistently failed, again as documented by the Trustee, to comply with his statutory duties under the BIA, including failing to disclose his assets and/or material information to assist the Trustee in realizing on the Bankrupts' assets.

[17] The assets that Mr. Pleterski has failed to provide, or to provide satisfactory evidence of their disposition, include, as laid out in the Trustee's materials, a watch (the "Astronomia"), purchased by Mr. Pleterski for $361,158 and allegedly sold by him in early 2022 for $150,000 in cash, cryptocurrency in the amount of $2,734,506 withdrawn by Mr. Pleterski from his Binance account in 2021, and other significant amounts.

[18] The Trustee also points to some troubling recent events.

[19] That is, on June 6, 2024, I granted an order requiring Mr. Pleterski to provide the Trustee with login credentials for all of his accounts with Team, Binance, and other on-line asset and trading platforms. On that same day, I ordered Steam to provide the Trustee with all information concerning any Steam accounts which may exist and may be maintained by Mr. Pleterski, and directing Steam to freeze those accounts.

[20] On June 10, Mr. Pleterski's counsel provided the Trustee with Mr. Pleterski's login credentials for his Binance account and a "Malakasos33" Steam account (the "Malakasos33 Account").

[21] The Trustee has been unable to access the Binance account using the login credentials provided to it by Mr. Pleterski's counsel.

[22] On June 25, 2024, Steam delivered to the Trustee information relative to Mr. Pleterski's Steam accounts in accordance with my order. The Steam documents show that Mr. Pleterski maintained at least four Steam

accounts in addition to the Malakasos33 Account. Mr. Pleterski had previously disclosed the existence of two of those four accounts, but had never provided the login credentials for them.

[23] The Steam documents reveal that since the date of his bankruptcy, Mr. Pleterski has conducted over 100 trades and disposed of at least 153 Steam Skins valued at approximately $430,312 through his (previously undisclosed) "Tersk32" account (the "Tersk32 Account"). The Steam materials further reveal that on June 6, 2024, the date of my orders, Mr. Pleterski logged into the Tersk32 Account to update the password and to change the email address linked to the account. The Trustee says in its Supplement to the Sixth Report, and it is difficult not to conclude, that Mr. Pleterski's actions on June 6, 2024 were "a further attempt to conceal these assets from disclosure under the Steam Order".

[24] The Trustee argues that the evidence in the record supports several findings relevant to s. 173(1) of the BIA, including that the Bankrupts' assets are not of a value of fifty cents on the dollar relative to his unsecured liabilities; that Mr. Pleterski did not adequately maintain and disclose records concerning his personal and business finances for the three years prior to his assignment in bankruptcy; and that he has failed to account satisfactorily for loss and deficiency of assets. The Trustee also emphasizes that Mr. Pleterski has brought on and contributed to the bankruptcy by "unjustifiable extravagance in living, including driving more than 10 exotic sportscars, spending about $45,000 per month to live in a mansion, and frequently flying on private airplanes."

[25] The Trustee argues, fairly in my view, that the case law governing potential discharges from bankruptcy includes the object that an honest debtor should be able to secure a discharge so that he or she might make a new start.

[26] On the other hand, with respect to bankrupts who are ill-intentioned, dishonest, indifferent or misleading, the purpose of the BIA shifts towards the protection of society, the upholding of the BIA and addressing inappropriate behaviour.

[27] The Trustee points to the decision of the Court of Appeal for Ontario in *Bank of Montreal v. Giannotti* [2000] O.J. No. 4272, in which MacPherson J.A. wrote that "…the integrity of the bankruptcy system requires a bankrupt to cooperate with the trustee". In circumstances quite similar to the case at hand, the Court of Appeal found that the bankrupt had been uncooperative, evasive and untruthful to both the trustee and the bankruptcy judge during the bankruptcy administration, and concluded that the bankrupt's conduct constituted the kind of "extraordinary" or "extreme" circumstances where a refusal of discharge was appropriate. The Court of Appeal held that, given the bankrupt's conduct, a "reasonable member of the public would seriously question the integrity of the BIA" if the bankrupt was granted any form of relief at that juncture. The Court of Appeal allowed an appeal, ordered a refusal of the discharge, and said that the bankrupt was "free to re-apply for a discharge, but must cooperate with the trustee and make full disclosure of the relevant facts".

[28] Counsel for the Bankrupts was in a somewhat difficult position before me today. After delivering a notice of motion on July 8, 2024, he had not filed any responding materials, or delivered a factum, in response to materials and a factum subsequently delivered by the Trustee.

[29] He explained that for the last few days, he has been unable to contact Mr. Pleterski (who was not present in court. He candidly acknowledged that Mr. Pleterski's conduct in relation to my June 6, 2024 order, and his apparent attempt to conceal the Tersk32 Account, are very problematic for Mr. Pleterski and candidly allowed that there is likely no answer to explain that conduct in any satisfactory way.

[30] In general, he argued that Mr. Pleterski was young when he began his investment scheme (and remains young). He acknowledged at least many of the problematic aspects of Mr. Pleterski's conduct, but attributed much of it to youthful immaturity.

[31] He made other submissions purporting to blame the Trustee for certain aspects of Mr. Pleterski's conduct during the bankruptcy, suggesting that Mr. Pleterski legitimately came to distrust the Trustee and its representatives, and that this explained some of Mr. Pleterski's failures to make full disclosure.

[32] He also argued that the conditions sought by the Trustee are so punitive as to be likely to cause Mr. Pleterski never to be able to become a productive member of society, since he will have to spend most of his life attempting to repay the amounts proposed by the Trustee.

[33] Finally, he emphasized that Mr. Pleterski is facing a criminal prosecution which, if it results in a conviction, will likely itself entail considerable punishment.

[34] In response to this submission in particular, I asked both counsel about an outcome in which there would be a flat refusal to discharge the Bankrupts at this time, on the understanding that they could re-apply for discharge once the outcome of the criminal proceedings is known.

[35] This is not to suggest that any discharge of Mr. Pleterski would not include significant conditions. Mr. Pleterski's conduct warrants an emphasis on public protection and accountability. Rather, refusing a discharge absolutely at this stage, pending the result of the criminal prosecution, would allow this court to take into account, in fashioning an appropriate remedy at that point, the outcome of the criminal proceedings.

[36] Both counsel agreed that this kind of result would make sense in the circumstances.

[37] From the Trustee's perspective, it dovetails with the refusal of discharge which the Trustee argued as its preferred outcome.

[38] From Mr. Pleterski's perspective (and that of AP), his counsel acknowledged that it is a sensible approach. Counsel had cautioned in his argument that imposing punitive conditions at this stage risks heaping punishment on top of any punishment arising from the criminal proceedings, and so counsel agreed there would be some benefit in forestalling an ultimate remedy until the criminal results are known.

[39] The only area of debate between the parties was as to whether or not the terms of my adjournment order of June 6, 2024, should continue during the period between now and the outcome of the criminal case.

[40] Those terms are that until the next hearing date:

(a) The bankrupt is prohibited from applying for, using or obtaining any form of unsecured credit and from soliciting or marketing debt or equity-based investments, of any kind, to any persons, individuals or corporations, or non-institutional lenders, of any kind; and

(b) The bankrupt shall provide the Trustee with login credentials for all of his accounts with Steam and Binance and other on-line asset and trading platforms.

[41] Bankrupts' counsel does not dispute (b) (some of which has been performed to this point) nor any part of (a) other than "the bankrupt be prohibited from applying for, using or obtaining any form of unsecured credit."

[42] He argues that in order for Mr. Pleterski to have any chance to make a fresh start, he will need to have access to some form of credit.

[43] In my view, while it may be appropriate to consider a relaxation of that prohibition at some point, it would be premature to do so now. In my view, any accommodation to Mr. Pleterski at this juncture would, to paraphrase MacPherson JA's words in *Giannotti*, cause the public to lose confidence in the bankruptcy regime.

[44] That said, counsel for the Trustee confirmed that the Trustee does not wish to be unreasonable, such that if Mr. Pleterski secures lasting gainful employment, and makes full disclosure in response to the Trustee's requests, it may in those circumstances be prepared to consider Mr. Pleterski accessing credit – presumably on the basis that he does so transparently, advising the Trustee of his application for credit, and advising the potential lender of his past (and these proceedings).

[45] For the current time, however, for the reasons set out above, I am dismissing the Bankrupts' application for discharge. They are at liberty to re-apply for a discharge in future (presumably, given the discussion above, once the outcome of the criminal proceedings is known), and, as the Court of Appeal noted in *Giannotti*, I would expect Mr. Pleterski to cooperate fully with the Trustee going forward, and to make full disclosure of all relevant facts.

W.D. BLACK J.

DATE: July 17, 2024