

CITATION: Re Proex Logistics, 2025 ONSC 51
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24-03014698-0031; BK-24-03014700-0031; BK-24-03014702-0031
DATE: 202501xx

ONTARIO

SUPERIOR COURT OF JUSTICE [Commercial List]

IN THE MATTER OF THE BANKRUPTCY OF PROEX LOGISTICS INC.;
IN THE MATTER OF THE BANKRUPTCY OF GURU LOGISTICS INC.;
IN THE MATTER OF THE BANKRUPTCY OF 1542300 ONTARIO INC.;
IN THE MATTER OF THE BANKRUPTCY OF 2221589 ONTARIO INC.

BEFORE: Justice Jana Steele

COUNSEL: *Natalie Levine, John Picone, I. Jamie Arabi* for KSV Restructuring Inc, Trustee

Aaron Kreaden, Lee Nicholson, Sam Dukesz for Paul Randhawa

Max Starnino, Ryan Shah for Rana Randhawa

Brian Kolenda, Jenah Khalid, Brittney Ketwaroo for Lenczner Slaght LLP

HEARD: November 27, 2024, and December 13, 2024

ENDORSEMENT

[1] The Trustee, KSV Restructuring Inc., brings a motion seeking:

- a. Substantive consolidation of the estates of the three companies that comprise the “Trucking Business,” namely, ProEx Logistics Inc. (“ProEx”), Guru Logistics Inc. (“Guru”), and 1542300 Ontario Inc. (operated as ASR Transportation) (“ASR”);
- b. Authorization for the Trustee to accept the claims by Paul Randhawa (“Paul”) against the Trucking Business as: (i) an unsecured claim of \$117,693.40; and (ii) an equity claim in the amount of \$2,650,000 (the “Wrongful Conduct Claim”) (collectively, “Paul’s Claims”);

- c. Authorization for the Trustee – following substantive consolidation and payment to the creditors in full – to make distributions of any surplus to Paul and Rana Randhawa (“Rana”) who are the only and equal shareholders of the bankrupt entities, subject to the satisfaction of outstanding costs awards and other orders; and
- d. Approval of the Trustee’s reports.

[2] There is no opposition to the Trustee’s requests for substantive consolidation of the estates of ProEx, Guru and ASR, and approval of the Trustee’s reports.

[3] Further, both shareholders (Paul and Rana) agree that all creditors should be paid first.

[4] Unlike most bankruptcy proceedings, after payment to the creditors, RGC (defined below) will have a surplus. Paul and Rana are the only two equity owners in the business with a potential claim to any surplus.

[5] The dispute lies between the two shareholders. The Trustee, which has approved Paul’s Claims, asks the court to step in and authorize its acceptance of Paul’s Claims.

[6] Rana seeks an adjournment so that he may bring an application to challenge the Trustee’s acceptance of Paul’s Claims. Rana recently retained new counsel and advised the Trustee and Paul on November 21, 2024, (six days prior to the motion), that he would be opposing the relief sought by the Trustee. Rana further advised that he was asserting an unsecured claim against RGC.

[7] Lenczner Slight LLP commenced a separate action against Rana in respect of unpaid legal fees of approximately \$250,000. Rana is contesting that claim. Lenczner appeared at the motion for the purposes of making submissions if any funds were to be paid to Rana as a result of the Trustee’s motion.

Background

[8] Paul and Rana are brothers.

[9] Together Paul and Rana built a successful trucking business, comprised of ProEx, Guru, ASR, 222, 2435963 Ontario Inc., Noor Randhawa Corp., Superstar Transport Ltd., R.S. International Carriers Inc., Subeet Carriers Inc., Superstar Logistics Inc., Continental Truck Services Inc., and ASR Transportation Inc. (collectively, “RGC”).

[10] Since 2018, Paul and Rana have been involved in a dispute concerning RGC.

[11] In October 2018, following the commencement of an oppression application by Paul in March 2018, Paul and Rana signed Minutes of Settlement agreeing that the businesses would be sold, and that the proceeds would be split equally.

[12] The trucking business was not sold in a timely manner.

[13] Paul retained a private investigator in 2020.

[14] As a result of the investigation, Paul became concerned that Rana was diverting assets, resources, personnel, and business to another company, Motion Transport Ltd. (“Motion”). Motion is owned by Rana’s son.

[15] Paul brought a motion seeking the appointment of a receiver with a sale and investigation mandate. Rana opposed the proposed investigation mandate. On May 19, 2021, Koehnen J. released a decision, which among other things, provided for the issuance of a receivership order appointing KSV as Receiver over RGC’s assets and empowering KSV to carry out a sale mandate and an investigation. The receivership order was made on May 26, 2021, and amended on June 4, 2021.

[16] On or about May 20, 2021, Rana transferred approximately \$168,000 to each of his two sons. He did not tell the Receiver about these transactions, which were discovered about a year later in the context of a debtor examination.

[17] In July 2021, Rana’s wife took out a \$2.4 million mortgage on her and Rana’s home. Rana claimed to not know what his wife did with the funds, despite being a guarantor on the mortgage and a resident in the home. Koehnen J. found this “not credible.” He further noted that Rana’s response that he did not know what had become of the mortgage proceeds struck him as “a continuation of the lack of transparency that has made this whole matter as costly and time-consuming as it has been.”

[18] As noted in the Trustee’s Second Report, the Receiver “identified conclusive evidence that Rana was working with another trucking company, Motion Transport Ltd. (“Motion”) and transferring RGC’s assets, resources, personnel, and revenues to Motion in contravention of the October Minutes and with the aim of eroding the value of RGC.” A summary of the Receiver’s key findings is set out at para. 4.1 of the Receiver’s Fifth Report:

- a. Rana was actively engaged with the set-up and operation of Motion to the detriment of the efforts to sell the Trucking Business, including:
 - i. Representing or permitting an ASR employee to represent that Motion was a “wholly owned subsidiary of ASR”;
 - ii. Attempting to secure business for Motion from several of RGC’s customers, including Ford Motor Company, which was ASR’s largest customer, and Ventra Plastics, which was ProEx’s largest customer;
 - iii. Causing RGC to transfer 13 vehicles to Motion, 3 of which were subsequently transferred to another company beneficially owned by Rana;

- iv. Permitting ASR vehicles and fuel cards to be used to support Motion's business; and
 - v. Providing material support to Motion through his sons in the form of labour and capital; and
- b. Consistent with the Arbitrator's findings, Rana delayed the sale of the Trucking Business. Based on the findings above, the Receiver believes this was at least in part in an attempt to further his efforts to transfer business to Motion. Had the Trucking Business been sold in the manner contemplated by the Settlement Agreements in 2019, the Receiver believes, consistent with the evidence from Rana and Paul, that the Trucking Business would have been sold as a going concern. Instead, it was sold during the receivership on a liquidation basis, which in all likelihood represents a significant deterioration of value, as discussed further below.

[19] On September 16, 2021, the court granted an order in the receivership proceedings establishing a claims process for RGC's creditors. October 31, 2021 was set as the claims bar date (which expired over three years ago).

[20] On September 21, 2022, the Receiver produced a report, prepared by Grant Thornton LLP, to estimate the value of RGC had it been sold on October 31, 2018, as contemplated in the settlement between Paul and Rana.

[21] Further to an order dated October 23, 2023, granted in the receivership proceedings, KSV was authorized to assign ProEx, Guru, ASR, and 2221589 Ontario Inc. ("222") (collectively, the "Bankrupt Entities") into bankruptcy. The order provides for the procedural consolidation of the estates of the Bankrupt Entities. Subsequently, the Bankrupt Entities were assigned into bankruptcy and KSV was appointed Trustee.

[22] Following the assignment in bankruptcy, the Trustee brought a motion to allow it to use the proofs of claim that had been filed in the receivership proceedings. The court granted the order requested by the Trustee on February 14, 2024.

[23] Paul filed his proof of claim against RGC on or about October 29, 2021, prior to the claims bar date. As set out in sections 4.2 and 4.3 of the Trustee's Second Report, the Trustee has evaluated Paul's Claims and is of the view that Paul's Claims are valid claims. The Trustee confirmed at the proceeding that Paul's Claims have been accepted. With regard to Paul's Claims, the Trustee's Second Report provides:

- a. [In respect of the \$117,693.40 unsecured claim] "[t]he Trustee is of the view that the amounts above are owing as ordinary unsecured claims."

- b. “The Trustee reviewed the Wrongful Conduct Claim¹ and proposed its acceptance as an equity claim. All Inspectors, with the exception of Sam Dukesz, as counsel to Paul, who was excused from the meeting for purposes of the discussion, voted in favour of accepting the claim and authorized a distribution in respect of the same.” “[T]he Trustee is of the view that the maximum allowable claim against the Trucking Business would be \$2,650,000 (the “Equity Claim”).”

[24] Approximately \$4 million is available for distribution to the creditors of the Bankrupt Entities (less any costs).

[25] On November 22, 2024, Rana’s new counsel provided the Trustee with Rana’s late filed proof of claim. The Trustee reviewed the claim and determined that it was unable to accept the proof of claim based on the information provided. The Supplement to the Trustee’s Second Report, dated November 26, 2024, provides the following with regard to Rana’s Claims:

- a. On November 22, 2024, Rana’s new counsel served an affidavit containing a proof of claim in respect of amounts allegedly owed to Rana [...]. The proof of claim was also provided to the Trustee at midnight the night before.
- b. After reviewing the claim, the Trustee is unable to reconcile it with ASR’s records. For example:
 - i. Bank Transactions: The provided cheques do not appear to align with corresponding deposits in ASR’s bank accounts. Additional evidence is required to demonstrate the funds were received by RGC.
 - ii. Salary Payments: The proof of claim lists salary amounts that do not match ASR’s financial records.
 - iii. Distributions: Substantial distributions (\$185,000 in May 2019) were made to Rana. While these may relate to repayment of the claimed amounts, no documentation explains their nature.
- c. The Trustee is unable to accept the proof of claim based on the information provided. Should Rana have additional information, the Trustee will review the same. However, the Trustee notes that the bar date in the Receivership Proceedings (of which Rana had notice) was October 31, 2021.

¹ Under the Wrongful Conduct Claim, Paul seeks damages for the difference between the proceeds from the sale of the Trucking Business he receives and the amount that he would have received had the Trucking Business been sold in the manner required by the Minutes of Settlement entered into between him and Rana.

[26] As a result of the litigation, Rana, who is not a bankrupt, has three outstanding costs awards owing to Paul: 1. An award of the Arbitrator for costs in the amount of \$525,000; 2. A costs award in the amount of \$5,000 made by Kimmel J.; and 3. A partial indemnity costs award made by me in my endorsement dated March 12, 2023, in the amount of \$25,000 (the “Outstanding Costs Awards”).

[27] In addition, I determined that the costs attributable to the Receiver’s investigation mandate were to be paid by Rana. The Receiver determined that approximately 60% of its costs (approx. \$1 million) were attributable to its investigation mandate.

[28] Rana’s total liability to Paul in respect of all the costs orders is approximately \$1.048 million.

[29] In my March 12, 2023 endorsement, I determined that the costs of the Receiver’s sales mandate were to be paid out of the proceeds of the sale of RGC.

Analysis

Should Substantive Consolidation be Ordered?

[30] The Trustee seeks substantive consolidation of the estates of ProEx, Guru, and ASR.

[31] Courts have ordered substantive consolidation under section 183 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “BIA”): *Kitchener Frame Limited (Re)*, 2012 ONSC 234, 86 C.B.R. (5th) 274, at para. 30.

[32] The test for substantive consolidation was set out in *Redstone Investment Corporation (Re)*, 2016 ONSC 4453, 40 C.B.R. (6th) 181 at para. 78:

- i. Are the elements of consolidation present, such as the intertwining of corporate functions and other commonalities across the group?
- ii. Do the benefits of consolidation outweigh the prejudice to particular creditors?
- iii. Is consolidation fair and reasonable in the circumstances?

Elements of Consolidation

[33] In determining whether “elements of consolidation” are present, the court will consider the factors set out in *Northland Properties Ltd. (Re)*, 1988 CanLII 2924 (BCSC), aff’d 34 B.C.L.R. (2d) 122:

- a. Difficulty in segregating assets;
- b. Presence of consolidated financial statements;

- c. Profitability of consolidation at a single location;
- d. Commingling of assets and business functions;
- e. Unity of ownership interests;
- f. Existence of intercorporate loan guarantees;
- g. Transfer of assets without the observance of corporate formalities.

[34] For the reasons set out at para. 35 of the Trustee's factum, I am satisfied that the *Northland* factors are largely present in the instant case.

Benefits of consolidation outweigh any potential prejudice to creditors

[35] In the instant case, all creditors will benefit from substantive consolidation. Absent substantive consolidation, some creditors would suffer a shortfall. With substantive consolidation, all of the creditors will receive payment of their claims in full. No third-party creditor would be prejudiced.

Substantive consolidation is fair and reasonable

[36] In this case, I am satisfied that substantive consolidation is fair and reasonable. Most importantly, creditors will benefit because substantive consolidation will permit payment of all their claims in full.

[37] I am satisfied that the order sought by the Trustee for substantive consolidation should be granted.

Approval of the Trustee's Reports

[38] The Trustee seeks court approval of the reports that have been filed in this proceeding: (i) Preliminary Report of the Trustee dated December 18, 2023; (ii) the First Report of the Trustee dated February 7, 2024; and (iii) the Second Report of the Trustee dated October 18, 2024 (and the Supplement to the Second Report).

[39] As noted above, there is no objection to the Trustee's request for the court to approve its reports.

[40] I am satisfied that the activities of the Trustee were necessary for the administration of the estates of the bankrupt entities, and consistent with the Trustee's duties and powers authorized by this court and the *BIA* and should be approved.

Should Rana have standing in light of the Outstanding Costs Awards?

[41] Paul submits that Rana should not be allowed to assert any positions, including challenging the acceptance by the Trustee of a claim under the *BIA*, as a result of the Outstanding Costs Awards. These costs awards have been entirely outstanding for well over a year.

[42] Paul points to Rules 57.03 of 60.12 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194:

57.03(2) Where a party fails to pay the costs of a motion as required under subrule (1), the court may dismiss or stay the party's proceeding, strike out the party's defence or make such other order as is just.

[...]

60.12 Where a party fails to comply with an interlocutory order, the court may, in addition to any other sanction provided by these rules,

- a. stay the party's proceeding;
- b. dismiss the party's proceeding or strike out the party's defence; or
- c. make such other order as is just.

[43] As set out above, Rana has significant outstanding costs awards.

[44] In *Rana v. Unifund Assurance Company*, 2016 ONSC 2502, 267 A.C.W.S. (3d) 337, at para. 50, Dunphy J. summarized the principles for consideration when the court is asked to exercise its discretion under Rule 57.03 or 60.12:

- a. Where there has been non-compliance with an order of the court, the court should be alive to the possibility that its process is being abused; failing to act may deprive the moving party of justice according to law and risks rendering the court a paper tiger: *Bottan v. Vroom*, at para. 24-25;
- b. The right of access to the courts must be accompanied by the responsibility to abide by the rules of civil procedure and to comply with orders of the court – to exempt impecunious parties from the enforcement of costs orders when made would amount to granting “carte blanche to continue to ignore the rules and orders of the court and take unsupportable steps in the action without fear of consequences” per Master Dash in *Heu v. Forder Estate*, 2011 CanLII 16198 (ON SC) at para. 19-20;

- c. The court ought not to sit in appeal of the prior costs awards – the respondent will have had the opportunity to make submissions about impecuniosity at the prior hearings that resulted in the costs orders and seeking to relieve against prior costs orders constitutes a collateral attack on orders previously made: *Bottan v. Vroom*, at para. 23; *Visic v. University of Windsor*, 2013 ONSC 2063 (CanLII) at para. 36 and 66; *Trewin v. MacDonald*, [2008] O.J. No. 2821 (ONSC) at para. 26;
- d. The court may have regard to a pattern of unnecessary and unreasonable steps taken in the proceeding, including appealing numerous orders without chance of success or knowing the risk thereby imposing costs upon the other party: *Visic v. University of Windsor* at para. 68;
- e. If the orders of the court are “cavalierly ignored” and if a litigant “continuously fails to comply with her obligations as a litigant and then fails to abide by the costs consequences attendant upon that behaviour, the court is justified in bringing some finality to the action” (per Master Dash in *Burrell v. Peel (Regional Municipality) Police Services Board*, 2007 CanLII 46173 (ONSC) at para 63; *aff’d* 2010 ONSC 1387 (CanLII));
- f. Impecuniosity is not a shield for unreasonable conduct of litigation and a dismissal order may be made even if it resolves the matter on procedural rather than substantive grounds: *Baradaran v. Tarion Corp.*, 2014 ONSC 6870 (CanLII);
- g. Self-represented litigants, while entitled to some accommodation and assistance to ensure a fair hearing, are not entitled to abuse the system or the party opposite and failure to enforce orders once made against self-represented parties is unfair to the parties opposite and undermines respect for the court and the civil justice system: per Myers J. in *Baradaran v. Tarion Corp.*, 2015 ONSC 7892 (CanLII); *Bilich v. Toronto (City) Police Services Board*, 2014 ONSC 6765 (CanLII);
- h. “Courts usually talk in terms of prejudice that cannot be compensated for by costs. But, at some point, costs themselves become an inadequate form of compensation for prejudice, especially where the party on whom they are imposed refuses to pay them”: per D.M. Brown J.A. in *Schwilgin v. Szivy*, 2015 ONCA 816 at para. 23.

[45] Paul submits that if the court permits Rana to further delay this matter, it will result in more costs that Paul will be unable to recover from Rana.

[46] The court has discretion under the Rules to prevent a litigant who has flagrantly ignored costs awards from continuing proceedings. The court may intervene to bring “some finality to the action”: *Burrell v. Peel*, at para. 63. In my view, this is a case for finality. We have a situation where Rana has not paid substantial outstanding costs awards to Paul. Although Rana has said he has no money, there is evidence of dissipation of his assets (such as the large gifts of money to his

sons and his purported lack of knowledge of the proceeds from the sale of his residential home) and he continues to retain and pay sophisticated counsel.

[47] The facts of this case demonstrate Rana's disregard for the court's costs awards. Accordingly, in the circumstances I am not prepared to allow this late breaking attempt for Rana to further delay the finality of these proceedings. Koehnen J. referred to how costly and time-consuming this matter has been in his endorsement dated September 16, 2021 – more than 3 years ago. As noted by the Trustee in the Second Report “an efficient resolution is in the best interest of all parties.”

Should the court authorize the acceptance by the Trustee of Paul's Claims?

[48] I am not prepared to authorize the acceptance by the Trustee of Paul's Claims.

[49] The Trustee's notice of motion provides that one of the grounds for its motion is section 34(1) of the *Bankruptcy and Insolvency Act*, which permits a Trustee to bring a motion for advice and directions:

34(1) A Trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the court shall give in writing such directions, if any, as to it appear proper in the circumstances.

[50] The Trustee also relies on section 183 of the *BIA*.

[51] The draft order proposed by the Trustee includes the following language with regard to Paul's Claims:

THIS COURT ORDERS that the Trustee is authorized to accept Paul's Claim against the Trucking Business as follows:

- (a) An unsecured claim in the amount of \$117,693.40; and
- (b) An equity claim in the amount of \$2,650,000.

[52] Following the November 27, 2024 appearance, I asked the parties to reappear on December 13, 2024. At that time, I asked further questions regarding the above proposed language.

[53] The Trustee provided the court with instances where advice and directions have been sought prior to the disallowance of a claim: *Dexior Financial Inc. (Re)*, 2011 BCSC 348.

[54] However, as noted above, the Trustee has already approved Paul's Claims.

[55] Section 135 of the *BIA* sets out the scheme for the allowance and disallowance of proofs of claim and proofs of security:

- (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.
- (1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.
- (2) The trustee may disallow, in whole or in part,
 - a. Any claim;
 - b. Any right to a priority under the applicable order of priority set out in this Act; or
 - c. Any security.
- (3) Where the trustee makes a determination under subsection (1.1) or, pursuant to subsection (2), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall forthwith provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (1.1) or whose claim, right to a priority or security was disallowed under subsection (2), a notice in the prescribed form setting out the reasons for the determination or disallowance.
- (4) A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.
- (5) The court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

[56] Under the *BIA*, the trustee makes the decision regarding whether to allow a particular claim in whole or in part. The *BIA* then sets out the steps that may be taken if someone disagrees with the decision. The *BIA* does not contemplate the court accepting an approval that has already been made by the trustee, nor is it clear how the court could provide advice and directions after the Trustee had already made the decision.

[57] I see no reason to depart from the comprehensive code in the *BIA*. While this may be an acrimonious proceeding as between Paul and Rana, Paul's Claims are ordinary course claims against the estate that the Trustee was required to evaluate and allow or disallow. The Trustee has allowed Paul's Claims.

[58] As noted by the Trustee, Rana has had every opportunity to bring a motion to challenge the allowance of Paul's Claims and has not brought an application. In any event, Rana would not have standing to apply to the court to expunge Paul's Claims under section 135(5) of the *BIA*. The jurisdiction to challenge a claim once it is accepted is found in section 135(5) of the *BIA*, which permits a court to expunge a proof of claim on an "application of a creditor or of the debtor."

[59] Section 135(5) does not give an equity owner standing to challenge a claim under the *BIA*: *YG Limited Partnership and YSL Residences Inc. (Re)*, 2023 ONCA 505, 484 D.L.R. (4th) 486, at para. 16. In *YG Limited Partnership*, the Court of Appeal upheld Osborne J.'s order denying the limited partners standing to appear at a motion brought by a creditor of the partnership under s. 135(4) of the *BIA*. The Court of Appeal stated at paras. 15 and 16:

[...][T]he *BIA* processes, including the process for appealing proof of claim decisions, are "between the trustee, the creditor claimant and the debtor." This not only reflects the relevant direct interests at stake in the material claim it also safeguards the mission of "the *BIA* to provide summary and expeditious procedures to determine the questions that arise in bankruptcy with a minimum cost": *Re McEwen*, 2021 ONCA 566, at para. 1; *Romspen Investments Corporation v. Courtice Auto Wreckers Limited*, 2017 ONCA 301, 138 O.R. (3d) 373, at para. 70, leave to appeal refused, [2018] S.C.C.A. No. 37636; *Canada (A.G.) v. Russell*, 1999 ABCA 232, 237 A.R. 137. If equity owners had automatic rights of standing in creditor claim appeals, it would impose notice requirements and have time implications that are contrary to the interest in the prompt and effective disposition of *BIA* claims.

Second, when the *BIA* is read as a whole, it becomes clear that the right of standing the Limited Partners claim was not intended. Section 135(5), addressing the right of appeal where a proof of claim is allowed, limits the right of appeal to "the creditor or the debtor", in other words, the parties to the debt, which, as the motion judge found, would exclude the Limited Partners. If equity owners of a debtor nonetheless had a right of standing to participate in such appeals, it would be an irrationally fickle right. They could not appeal a trustee's decision approving a creditor's claim because of s. 135(5) but could, fortuitously, join in an appeal by another if that appeal happens to be launched.

[60] I agree with Paul's submission that Rana, as an "equity owner" of the bankrupt entities, is not a creditor and has no standing to challenge the Trustee's decision to accept Paul's Claims. The fact that Rana's economic interests may be negatively affected by the manner in which the assets may be distributed as a result of the acceptance by the Trustee of Paul's Claims does not provide Rana with a right of standing: *YG Limited Partnership*, at para. 12.

[61] Rana argued that the instant case is different because, among other things, Rana is not interceding into an intercreditor dispute. In this case, there is enough money and only two interested parties.

[62] However, the wording of the *BIA* is clear that an application under s. 135(5) may be brought by a creditor or the debtor. Rana is neither.

[63] Rana also asserted that he has standing under section 37 of the *BIA*. However, courts have held that “[s]ection 37 cannot be used in place of [s]ection 135 to appeal a disallowance by the Trustee:” *Re Drummie*, 2004 NBQB 35, 715 A.P.R. 314, at para. 15.

[64] I am satisfied that given, among other things, the significant and longstanding outstanding costs awards, and the inapplicability of s. 135(5) to Rana, there is no further avenue available for Rana to challenge Paul’s Claims at this court, and certainly not through a trial at a future date. This matter has been ongoing for too long and needs to be concluded. Among other things, the claims bar date was more than three years ago.

[65] I am therefore satisfied that the Trustee’s alternate proposal for language in the Order should be accepted. Accordingly, the Order shall contain language that confirms that all appeal rights with respect to Paul’s Claims are expired and any claim against the Trustee for allowance of the claim would be a collateral attack.



Justice Jana Steele

Date: January 3, 2025