

The Canadian Abridgment eDigests -- Bankruptcy and Insolvency

2007-45

November 05, 2007

BKY.V.5

Subject Title: Bankruptcy and insolvency

Classification Number: V.5

Interim receiver -- Miscellaneous issues

Plaintiff was creditor of defendant bankrupt -- Plaintiff obtained ex parte order appointing interim receiver to administer defendant's assets -- Order empowered interim receiver to take possession of defendant's records and to investigate, analyze and report on defendant's affairs -- Defendant frustrated execution of order by refusing to allow interim receiver to take possession of records -- Defendant alleged that interim receiver was in conflict of interest position which should disqualify them from examining records -- Plaintiff and interim receiver brought motion for appointment of interim receiver as permanent receiver and execution of original mandate -- Motions granted -- Appointment of permanent receiver was appropriate remedy -- Appointment of receiver was originally agreed to by defendant as proper remedy in event of default -- Fact that defendant had ceased operations meant appointment of receiver would not interfere with any ongoing business activities -- No evidence existed of lack of impartiality of part of interim receiver -- Defendant's allegations of impartiality were linked to completely unrelated work done by separate and foreign member of interim receiver's franchise -- Court directed timely execution of interim receiver's mandate under original order.

Westernbank Puerto Rico v. Inyx Canada Inc. ([2007](#)), [2007 CarswellOnt 5470](#), Low J. (Ont. S.C.J.)
[Ontario]

BKY.VII.9

Subject Title: Bankruptcy and insolvency

Classification Number: VII.9

Proposal -- Consumer proposals

Plaintiffs, husband and wife, had large student loan debts -- Plaintiffs made consumer proposals in November 2001, which ended in April 2005 -- Consumer proposals did not include guaranteed federal student loans -- Provincial and federal shared risk student loan creditors did not accept consumer proposals -- Plaintiffs brought motions pursuant to s. 178(1.1) of Bankruptcy and Insolvency Act to be relieved of their student loan obligations -- Motions dismissed -- In order to benefit from s. 178(1.1) of Act plaintiffs had to show that they had acted in good faith and that they continued to have financial problems such that they would not be able to pay off student loan debt -- Plaintiffs did not establish that they had acted in good faith with respect to their student loans -- Plaintiffs had collectively paid only \$1,300 of total student loans of \$46,953 in ten years -- Plaintiffs did not take advantage of interest exemption periods over ten years to pay down more substantial portions of capital of student loans -- Actions of plaintiffs since they graduated demonstrated that their only interest in their student loans was avoiding paying them.

Soucy c. Canada (Procureur général) ([2007](#)), [2007 CarswellNB 439](#), [2007 NBBR 297](#), J.A.R. Léger J. (N.B. Q.B.) [New Brunswick]

BKY.XVII.1.c

Subject Title: Bankruptcy and insolvency

Classification Number: XVII.1.c

Effect of bankruptcy on other proceedings -- Proceedings against bankrupt -- After discharge of bankrupt

Bankrupt worked as bookkeeper for plaintiffs -- Plaintiffs' discovered that bankrupt overstated regular payment cheques and wrote unauthorized cheques to cover difference over course of employment -- Plaintiffs brought action against bankrupt for conversion and unjust enrichment -- Bankrupt consented to judgment against herself in amount of \$195,929.64, plus costs -- Bankrupt made assignment into bankruptcy one month after consenting to judgment -- All litigation against bankrupt was stayed, including plaintiffs' action -- Plaintiffs brought motion for declaration that any order of discharge would not release bankrupt from liability under judgment -- Motion granted -- Order of discharge did not release bankrupt from any debt or liability arising out of fraud or embezzlement while acting in fiduciary

capacity -- Bankrupt's actions as employee constituted serious breach of fiduciary obligations -- Plaintiffs had peculiar vulnerability to exercise of discretion and power vested in bankrupt -- Bankrupt was given signing authority which placed her in position to exercise full control over plaintiffs' assets.

South Nahanni Trading Co. v. Gravel ([2007](#)), [2007 CarswellOnt 4923](#), Stinson J. (Ont. S.C.J. [Commercial List]) [Ontario]

BKY.XVII.1.d

Subject Title: Bankruptcy and insolvency

Classification Number: XVII.1.d

Effect of bankruptcy on other proceedings -- Proceedings against bankrupt -- Family law claims

Bankrupt and common law spouse owned residential home as joint tenants -- Parties sold home following separation -- Parties were engaged in ongoing family litigation which led to holding of surplus funds from sale of home in trust -- Net proceeds held in trust totaled \$12,374.33 -- Spouse requested division of property under doctrine of constructive trusts -- Bankrupt made assignment into bankruptcy in following series of improvident financial acts -- Trustee was appointed to administer bankrupt's assets -- Spouse refused to release half of net proceeds from sale to trustee -- Trustee brought application for order declaring half of net proceeds property of bankrupt -- Application dismissed -- Issue of whether constructive trust existed would be determinative of whether trustee did or did not have claim to half of net proceeds -- Monies would remain in trust until determination of constructive trust issue between parties was settled within family litigation.

Garnett (Trustee of) v. Ewart ([2007](#)), [2007 NBQB 279](#), [2007 CarswellNB 394](#), P.S. Glennie J. (N.B. Q. B.) [New Brunswick]



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