



**PUGSLEY, J.A.: (in Chambers)**

Frederick Black, described as an officer of NSC Diesel Power Inc., by amended notice of motion dated October 4th, has applied in Chambers for the following order:

- 1) to nullify the decisions, and any orders flowing therefrom, made by the Honourable Associate Chief Justice Palmeto of the Supreme Court in Bankruptcy on August 8th and August 10th in proceedings in the court, after the court and Associate Chief Justice Palmeto became parties to an Appeal of a purported improper Order dated August 4, 1994, reference to Exhibit "A" attached;
- 2) to change the venue of these proceedings to the Court of Appeal (in Chambers) for the balance of these bankruptcy proceedings; and
- 3) for out-of-pocket costs on the motion and on the motions which are sought to be nullified and dismissed.

**First Issue:**

At the commencement of the application I asked Mr. Black whether it was his intention that the motion should be interpreted as an attempt to appeal the four decisions of Palmeto, A.C.J., granted on August 8th and 10th, and the two orders arising therefrom.

Mr. Black responded that he did not wish, nor should his application be interpreted as, an appeal from the decisions of August 8th and 10th.

While Mr. Black is a layman, my remarks on an earlier application are pertinent:

"Mr. Black is not a lawyer. He has however been directly and intimately involved with the present litigation and predecessor litigation, arising out of allied matters. We were advised on the hearing that Mr. Black has prepared in excess of thirty applications to the Supreme Court in this litigation. He has, as well, appeared in court to advance his submissions on behalf of the appellants on a number of occasions, including these

applications... In this case I am impressed with the level of Mr. Black's knowledge of the issues and **Civil Procedure Rules**. It is appropriate to consider Mr. Black's understanding of procedures and tactics through the written materials submitted and the oral submissions he has advanced. I conclude, on the issue before us, that Mr. Black's lack of formal training should not cause this court to dispose of this appeal in any manner different from that proposed."

**(NsC Corporation and Frederick W.L. Black v. ABN Amro Bank Canada et al. (1993),**  
121 N.S.R. (2d) 104.)

The foregoing conclusion has been reinforced by the written and oral submissions made by Mr. Black in connection with this motion and the other matters, heard on October 20th.

Mr. Black's motion is a request to "nullify the decisions, and any order flowing therefrom, made by the Associate Chief Justice on August 8th and 10th".

After examining the material filed, and hearing submissions from Mr. Black and other counsel, it is my opinion that on the basis of the arguments advanced, I have no authority to grant the relief requested, and I decline to do so.

Mr. Black's also relies on s. 195 of the **Bankruptcy and Insolvency Act (BIA)** which states in part:

"...all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of ..."

Mr. Black acknowledges that "the order or judgment appealed from" is an order of August 3rd of Palmeter, A.C.J., which provides:

"UPON IT APPEARING necessary to determine matters relating to the practice and procedure before this Honourable Court relating to the matter herein.

NOW UPON MOTION of the Court.

IT IS ORDERED that all applications presently before this Court by the bankrupt NsC Diesel Power Incorporated, NsC Consultants Limited and Nova Scotia Commonwealth (NsC) Consultants Limited, or by Frederick W.L. Black as an officer of any of the said companies, be and the same are hereby stayed until such time as NsC Diesel Power Incorporated, NsC Consultants Limited and Nova Scotia Commonwealth (NsC) Consultants Limited, or Frederick W.L. Black as an officer of any of the said companies shall be represented by counsel authorized to carry on the practice of law in the Province of Nova Scotia, or until further order of this Court.

AND IT IS FURTHER ORDERED that all further applications relating to the bankruptcy of NsC Diesel Power Incorporated shall be made to the case management Judge of the Court assigned to this matter,

rather than the Registrar in Bankruptcy, until further order of this Court."

The key question on the first issue therefore is whether or not the decisions of August 8th and 10th of Palmeter, A.C.J., are "proceedings" under the order of August 3rd.

Houlden and Morawetz in their text **Bankruptcy and Insolvency Law of Canada**, 3rd ed. p. 7-57, write:

"It is only proceedings under the order or judgment appealed from that are affected by a stay."

To the same effect are the comments of Noble J. in **Re Claude Resources Inc.** (1994), 22 C.B.R. (3d) 272 at 274.

Only one of the applications heard on August 8th and 10th involves Mr. Black personally. It was advanced by Krupp Mak Diesel who sought the court's approval under s. 38(1) of the **BIA** to enable it to take action against Mr. Black for fraud.

Neither Mr. Black nor any of the three companies named in the August 3rd order had a right to be given notice of Krupp's application, nor did any of them have a right to contest the order sought.

In fact, Mr. Black was present at the time the application was made and was permitted by Palmeter, A.C.J. to make representations "limited to the order in the proceeding".

In my opinion this application was not a proceeding under the August 3rd order and accordingly the decision of the Associate Chief Justice granting approval to Krupp was not stayed because of s. 195.

I further conclude that the remaining three applications considered on August 8th and 10th were not "proceedings" arising under the order of August 3rd for the following reasons:

- 1) All three applications were matters affecting NsC Corporation, the chief shareholder of the bankrupt. In February of 1993 Boudreau J. of the Supreme Court ordered that NsC Corporation must be represented by counsel in any further proceeding. This order was confirmed by the Court of Appeal in June of 1993. Leave to appeal to the Supreme Court of Canada was denied. Hence Mr. Black's failure to attend the applications on August 8th and 10th as a representative of NsC Corporation arose, not as a consequence of Palmeter, A.C.J.'s order of August 3rd, but rather as a consequence of the order of this Court in 1993.
- 2) In December 1993, Palmeter, A.C.J. was appointed case management judge for all matters relating to the bankrupt. By letter of June 2nd, 1994, Palmeter, A.C.J. advised Mr. Black, and other interested parties, that all applications to be considered during the week of August 5th to 12th should be filed with the court no later than July 15th, 1994. This deadline was re-emphasized by a further letter of July 13th.

Mr. Black failed to meet the deadline with respect to the application to be heard on August 10th. His ability to make representations at this meeting on behalf of any party other than NsC Corporation was not affected, therefore, as a consequence of the order of August 3rd, but rather as a consequence of his own failure to meet the reasonable deadline imposed by the case management judge. Mr. Black's submission on the first issue is dismissed.

**Second Issue:**

Mr. Black has applied to change "the venue of these proceedings" to the Court of Appeal (in Chambers) for the balance of the bankruptcy proceedings.

He submits that since he purported to join, prior to August 8th, the Associate Chief Justice as a party to these proceedings, that the latter should not have presided on the applications heard on August 8th and 10th.

Mr. Black argues that since the order of August 3rd was granted on the "motion of the court" and without any notice to him, that the Associate Chief Justice has demonstrated a bias against him personally. There is no other evidence filed in support of this submission.

While this Court has an inherent jurisdiction to deal with matters affecting natural justice there is no evidence before me that there has been any such breach. There is therefore nothing before me to warrant an interference with the original jurisdiction granted to the Supreme Court of Nova Scotia pursuant to s. 183(1)(c) of the **BIA**.

Mr. Black's application on the second issue is therefore dismissed.

Costs in the amount of \$300.00 are awarded to each of the parties that appeared before me with the exception of counsel on behalf of the Superintendent. The costs are to be paid forthwith.

J.A.