

NOVA SCOTIA COURT OF APPEAL

Cite as: Black v.Ernst & Young Inc., 1994 NSCA 172

BETWEEN:

FREDERICK W. L. BLACK
Appellant

- and -

ERNST & YOUNG INC., Trustee of the
Estate of NsC Diesel Power Incorporated

Respondent

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)
) The Appellant appeared
) in person

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)
) Tim Hill
) for the Respondent

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) David G. Coles
) for ABN Amro Bank Canada

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) Robert W. Wright, Q.C.
) for Ernst & Young, Inc.

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)
) D. Bruce Clarke
) for the Superintendent
) in Bankruptcy

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)
) Thomas M. MacDonald
) for Krupp Mak Maschinenbau
) Gmbh and Krupp Mak
) Diesel
) Inc.

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) Application Heard:
) October 20, 1994

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) Judgment Delivered:
) October 31, 1994

**BEFORE THE HONOURABLE JUSTICE RONALD N. PUGSLEY,
IN CHAMBERS**

PUGSLEY, J.A.: (In Chambers)

Mr. Black applied in Chambers on October 20th, for an order directing:

1. that Robert Wright, Q.C. is not the solicitor for the respondent, the trustee of the estate of the bankrupt; and
2. that as a solicitor for Ernst & Young Inc., trustee, counsel for the respondent has not received directions from the inspectors of the estate by the trustee;
3. that Ernst & Young Inc., in its personal capacity does not qualify as an interested party to this bankruptcy proceedings;
4. That there are, in fact, two appeals proceeding under the court file C.A. 107528;
5. Out-of-pocket costs and expenses to be awarded to the respondent, the applicant on this cross-motion against the solicitor, Robert Wright, Q.C. and that Ernst & Young Inc., trustee as the parties making representations on the application for the order.

After examining the material filed by Mr. Black and Mr. Wright, and hearing submissions from each of them, I dismissed Mr. Black's motion with costs in the cause.

I gave brief reasons at the hearing.

Mr. Black has written to me on October 26, 1994 after receipt of other reserved opinions respecting this matter, "in the event that you had not considered issuing this Decision and Order, I respectfully request that the reasons and Order be issued".

In response to that request, I am setting forth a more expanded version of my comments of October 20th.

By notice of motion, Ernst & Young Inc., brought an application for security for costs.

The notice of motion was styled in the same manner as the style of the present cause.

The notice of motion was signed by "Robert W. Wright ... solicitor for the Respondent".

Mr. Black in this cross motion applies for an order directing that "Robert W. Wright, Q.C. is not the solicitor for the Respondent, the trustee of the estate of the bankrupt."

Mr. Wright in response by written memorandum advised

The record will show that the only representation I have ever made to this Honourable Court or the Nova Scotia Supreme Court in Bankruptcy is that I act on behalf of Ernst & Young Inc. in these proceedings strictly in its personal capacity. Mr. Hill continues to act on behalf of Ernst & Young Inc. in its capacity as Trustee of the Bankrupt Estate. I am at loss to understand how Mr. Black can assert otherwise in his cross motion when I have clearly set out in paragraph one of my supporting Affidavit that I bring this Application on behalf of Ernst & Young Inc. in its personal capacity. If he had any uncertainty over this by reason of the fact that Ernst & Young Inc. as Trustee is named as Respondent in the heading of the application (the style of cause having been recently addressed by Chief Justice Clarke by his supplementary Order dated September 13, 1994), he need only have inquired first for any clarification needed. Rather, however, he wrote such a letter of inquiry to me and filed his cross motion all at the same time. The related grounds set out in the cross motion were completely unnecessary.

At the hearing of this Chambers application, Mr. Wright advised that his secretary had inadvertently described him as solicitor for the respondent "i.e Ernst & Young Inc. Trustee of the Estate of NsC Diesel Power Incorporated in Bankrupt".

This is the type of matter that should have been cleared up by means of a telephone call from Mr. Black to Mr. Wright, and the problem, if indeed there is one, would have been corrected immediately.

In response to the request made by Mr. Black for an order directing that Mr. Wright is not the solicitor for the respondent, except for an advertent slip by his secretary, Mr. Wright has never suggested that he acted in that capacity.

I am not prepared to grant an order specifying a matter that is patently clear to all parties.

With respect to the second and fourth matters included in Mr. Black's application of October 20th, these are matters for the case management judge of the

Supreme Court of Nova Scotia. I do not have jurisdiction to deal with either of these matters and I so advised Mr. Black on October 20th.

With respect to the third matter, Chief Justice Clarke recognized Ernst and Young Inc., in its personal capacity, as an interested party in the orders granted on August 4th and September 13, 1994.

Additional reasons are set out in the opinion dated October 26, 1994, respecting the applications brought by counsel for security for costs.

The application is dismissed with costs in the cause.

J.A.