

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *King (Re)*, 2015 NSSC 143

**Date:** May 13, 2015

**Docket:** B-38930

**Registry:** Halifax

District of Nova Scotia

Division 1

Court No. 38930.

Estate No. 51-1896533

In the Matter of Bankruptcy of Kristen Marilyn King

**Decision**

**Registrar:** Richard W. Cregan, Q.C.

**Heard:** May 1, 2015, in Halifax, Nova Scotia

**Present:** Jason Breeze, Trustee with BDO Canada Limited  
Kristen Marilyn King  
Brendan Labelle and Sven Paczels, Objecting Creditors

**By the Court:**

[1] Kristen Marilyn King made an assignment in bankruptcy on July 31, 2014. She now seeks her discharge.

[2] She has four creditors who have proved their claims. They total \$27,954.33. One is the National Student Loan Service for \$13,392.14. There is another of \$10,378.96 made by Brendan Labelle and Sven Paczels, (the Objecting Creditors). The other claims are for small amounts.

[3] The Trustee reports that Ms. King has performed her duties and made the necessary payments to the estate, and recommends that she be given an absolute discharge. However the Objecting Creditors have filed an objection detailed at some length in filed written and photographic material.

[4] Ms. King along with a co-tenant had leased a house owned by the Objecting Creditors. She moved out of the house leaving the co-tenant in possession on the understanding with the co-tenant that the co-tenant would then be responsible for the obligations under the lease. The Objecting Creditors were not party to this understanding. Accordingly Ms. King remained responsible with the co-tenant to them respecting the lease.

[5] The Objecting Creditors pressed a claim for damages to the house against her under the *Residential Tenancy Act, R.S.N.S. 1989, c. 401* and received a judgment of \$10,374.96 against both Ms. King and the co-tenant. A claim for this amount has been accepted in bankruptcy by the Trustee. There is no indication as to whether there has been any effort by the Objecting Creditors to enforce the judgment against the co-tenant nor has Ms. King or her Trustee sought contribution from the co-tenant.

[6] Ms. King's evidence is that, with the exception of a broken window, the damages in issue had all occurred after she had vacated the house. However, she continued to be responsible under the terms of the lease. Thus the judgment debt is a proper claim in the bankruptcy and will be discharged as against Ms. King when she is discharged from bankruptcy.

[7] However, the Objecting Creditors say that she should not be given her discharge without some recognition of this debt.

[8] They refer to Section 198 (1)(b) of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (BIA)* which I quote:

Any bankrupt who

(b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act, ...

is guilty of an offence and is liable, on summary conviction....

[9] This is not a matter for adjudication before the bankruptcy court, but rather the criminal courts, specifically in Nova Scotia, the Provincial Court. They also refer to Section 173 (1) which lists a number of facts which have a bearing on how Section 172 is applied in imposing conditions of discharge. In particular they refer to the following facts listed in this section:

- (k) the bankrupt has been guilty of any fraud or fraudulent breach of trust;
- (l) the bankrupt has committed any offence under this Act or any other statute in connection with the bankrupt's property, the bankruptcy or the proceedings thereunder;
- (n) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness;

[10] As to (k), fraud is something which must be strictly proved. What is before me are their written submissions which strictly are not competent evidence. Even if I did accept them as evidence, they do not show the elements of intent needed to constitute fraud. Ms. King may have been less than responsible but more is needed to prove fraud.

[11] As to (l) there has been no finding of any offence by a competent court.

[12] As to (n), Paragraph 4(6) of the Trustee's Report says that Ms. King could not have made a viable proposal rather than proceed with bankruptcy. Trustees are bound to exercise professional judgment in determining whether such a proposal could be made. I see no reason to question the judgment of the Trustee. Deference is due to trustees on this point.

[13] Thus these facts are not applicable. However, I think fact (a) of Section 173 (1) is applicable, I quote it:

(a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible.

[14] I reviewed this fact in *Byrne (Re)*, 2012 NSSC 23, by commenting on a line of cases. These cases dealt with personal injury claims where the bankrupts had acted irresponsibly. In each case a certain judgment call was required by the court so that irresponsible behaviour is recognized and some price that is not discharged by bankruptcy must be paid.

[15] Ms. King clearly was in breach of the lease with respect to the damage to the house during its term. She admitted that the window was broken during her occupancy, but maintained that the more severe damage occurred after she had vacated the house.

[16] She should have taken steps to assure that the co-tenant was looking after the house as required by the lease. She did not have the right to abandon it with impunity. She was less than responsible in this regard. Following the principles stated above, I think that this fact applies and her discharge is thus governed by Subsection 172 (2). She should have to pay something extra into her estate. I set this amount at \$ 1,000.

[17] As mentioned above, the Trustee has recommended that she receive an absolute discharge. Accordingly, such will be granted on her paying the \$ 1,000.

R.

Halifax, Nova Scotia  
May 13, 2015