SUPREME COURT OF NOVA SCOTIA
Citation: *Scully (Re)*, 2015 NSSC 220

Date: August 6, 2015
Registry: Halifax

District of Nova Scotia
Division No. 1
Court No. 38575
Estate No. 51-1723558

In the Matter of the Bankruptcy of Joanna Lee Scully

D E C I S I O N

Registrar: Richard W. Cregan, Q.C.

Heard: June 19, 2015, in Halifax, Nova Scotia

Present: Joanna Lee Scully, the Applicant
Gregory B. King, counsel for Her Majesty the Queen in Right of Canada as Represented by the Minister of National Revenue
Joseph A. Wilkie, Representing the Trustee, WBLI Incorporated.

By the Court:

[1] Joanna Lee Scully made an assignment in bankruptcy on March 11, 2013. She now asks the court for her discharge.

[2] At the time of bankruptcy her debts totaled $51,917.57. Of this, $25,062.61 related to student loans underwritten by Federal authorities and $14,704 by Provincial authorities.

[3] These loans were used to finance her education first at Saint Mary's University from where she obtained a B.A. and then at a university in Maine from where she obtained in 2006 a B.Ed. with special qualifications in French. She has been teaching in a French immersion elementary school in Halifax.

[4] She has permanent employment status and appears to be an able and respected member of her profession. She is single. She had previously been in a relationship, the breakdown of which had contributed significantly to the bankruptcy.

[5] She paid surplus income over 21 months totalling $13,877.43. Another $1,000 has also been realized.

[6] Her monthly take home pay is $3,335.02. Her regular expenses total $2,142.18, leaving a surplus of $1,192.84. From this she had been making monthly payments of surplus income of $660.

[7] The submission of her Trustee, WBLI Incorporated, is that, as she has discharged all her duties as a bankrupt, including paying surplus income for 21 months, she should be granted an absolute discharge.

[8] The Canada Revenue Agency (CRA), being the responsible agency for collecting the Federal portion of the student loans, objects to her being released without further contributions.

[9] It submits that Ms. Scully's discharge is governed by Section 172 (2) of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3 (*BIA*) as there is a fact under Section 173, specifically:

> (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] In its Section 170 report the Trustee gives a negative answer to the question of whether Ms. Scully could have made a viable proposal rather than proceed with bankruptcy. This issue was also raised in Ms. Scully's cross-examination . She did acknowledge that the possibility of a proposal was raised in her discussion with

the Trustee, but the advice she received was that a proposal was not appropriate. No evidence was given as to the reason behind the Trustee's advice.

[11] Some deference must be given to the advice of a trustee. However, it is nevertheless open to the Court to review the facts and find otherwise. Ms. Scully has been able to pay monthly surplus income of $660 and still have nearly $500 left each month after attending to her reasonable expenses.

[12] She had the resources that could have made a proposal viable. Presumably, CRA, her major creditor, having made this submission, would have been willing to accept a reasonable proposal on her part. I am satisfied that fact (n) has been proved.

[13] Counsel for CRA also has reminded me of what I said in Re: Pyke, 2005 NSSC 33, paragraphs 39-42:

> **39** The following cases, although dealing specifically with discharge applications, indicate the respect which must be accorded student loans.
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> **40** In Re Burke (1992), 14 C.B.R. (3d) 216 (N.S.), Saunders J. asserted that the discharge from the obligation to repay a student loan should not be considered lightly. At page 218 he said:
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> > The responsibility rests with the student to honour that obligation after she or he has completed the education which the taxpayers' benevolence has provided. The obligation is not postponed, or suspended, because of the inconvenience of the fact that other responsibilities have intervened, any more than such protests would excuse other categories of borrowers. While a sluggish economy and poor employment prospects may be mitigating circumstances, they do not in any way constitute or promote a forgiveness of a debt.

> I approve of the approach that such a loan and such an indebtedness ought to be considered as being of a high moral nature and should be ranked accordingly. There should continue to be an obligation upon the bankrupt to repay the Canada Student Loan. Mr. Burke is 28 years of age. He has a long life ahead of him, and, potentially, considerable earning capacity, notwithstanding today's present economic difficulties.

41 Likewise, in Re van Steenes (1992), 13 C.B.R. (3d) 131, MacDonald J. of the British Columbia Supreme Court stated the following at page 136:

> Student loans do have some special characteristics. They are only made on proof of financial need. They are expected to be repaid from future earnings, which will presumably be enhanced by the training they enable. The bankrupt has deliberately embarked on a program of borrowing and later repayment once education is complete. To permit bankruptcy to be used for the sole apparent purpose of avoiding the obligation to repay student loans, without some particular misfortune or other relevant circumstances, would be to endanger the programs themselves.

42 MacDonald J. also listed other factors to be considered when discharging a bankrupt from his or her student loan indebtedness. In summary they are (1) whether the discharge of a bankrupt whose only substantial debt is a student loan will prejudice the program, (2) whether the bankrupt has an ability to pay but has been persistent in not paying, and (3) whether there will be capacity to pay in the future.

[14] This discussion relates to fact (a) of Section 173(1), which I quote.

> the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupts unsecured liabilities, unless the bankrupt's 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.

[15] The concern is whether Ms. Scully can or cannot justly be held responsible for her student loans. The thrust of the cases referred to above is that there is a special responsibility on the part of those who have taken advantage of student loans to obtain a good education and as a result have obtained good, secure

employment. They are expected to address the indebtedness they incurred in obtaining this education.

[16] This education has allowed Ms. Scully to obtain such secure employment. This was the purpose of the loans. I do not think she can prove that she should not be justly held responsible for her assets not being of a value of fifty cents on the dollar. Fact (a) is also proved.

[17] It is thus appropriate that she be required to make further payments to her estate as required by Subsection 172(2) of the *BIA*. There are no simple guide lines as to what that may be. Counsel for CRA submits that she should continue her monthly payment of surplus income of $660 for 15 further months, for a total of $9,900.

[18] Considering Ms. Scully's present circumstances, the benefits she has obtained from her education, and the case law, I think the submissions of Counsel for CRA are fair and reasonable. I therefore direct that Ms. Scully shall be entitled to her discharge upon making another 15 monthly payments of $660 for a total of $9,900. She shall be at liberty to prepay and thereby obtain her discharge once payment in full is made.

[19] CRA also asked for costs relating to Ms. Scully's failure to attend a mediation sessions. It was not pursued at the hearing. It is dismissed.

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