

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** *LaHave Equipment Ltd. v. Royal Bank of Canada*, 2007 NSSC 381

**Date:** 20071119

**Docket:** SH No. 286580A

**Registry:** Halifax

**Between:**

LaHave Equipment Limited

Appellant

v.

Royal Bank of Canada

Respondent

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**Judge:** The Honourable Justice M. Heather Robertson

**Heard:** November 14, 2007, in Halifax, Nova Scotia

**Written Decision:** January 16, 2008 (Orally: November 19, 2007)

**Subject:** Appeal of decision of Registrar of Bankruptcy in issuing a receiving order.

**Summary:** The Registrar issued a receiving order against LaHave Equipment Ltd., a heavy equipment dealership in the forest industry, whose business had suffered financial reversals in the downturn of the forestry industry and with the loss of its dealership agreement in 2001. The Registrar was satisfied that the Bank who petitioned for the receiving order was an unsecured creditor in excess of \$1,000 had committed acts of bankruptcy within the previous six months and was not entitled to a stay of the order in light of pending litigation against the former dealer and supplier Case Credit Ltd.

**Issue:** Appeal of Receiving Order

**Result:** The acceptance by the Registrar of the valuation of the real property asset of LaHave by the petitioner, was not unreasonable in the circumstance,

resulting in the Bank meeting the pre-conditions of s. 43(1) and (2) of the *Bankruptcy and Insolvency Act*. The refusal to grant a stay pursuant to s. 43(7), (10) and (11) because the litigation against Case was too speculative and any advantage arising out of a stay too small, is also a reasonable finding on the evidence and ought not to be interfered with on appellate review.

**Cases cited:**

*Paulin v. Nat. Bank of Can* (1985), 56 C.B.R. (NS) 3 61 N.B.R. (2d) 179, 158, A.P.R. 179 (C.A.); *Banque Nationale de Paris (Canada) v. Opiola* 2001 CarswellAlta (Alta C.A.); *Re Fred Walls & Son Holding Ltd.*, 2003 CarswellBC 451 (B.C.C.A. [in Chambers]); *Re Maple City Ford Sales* (1986), Ltd (1996), 41 C.B.R. (3d) 181, 1996 CarswellOnt 3717 (Ont. C.A.); *484030 Ontario Ltd., Re* (1992), 12 C.B.R. (3d) 302, 8 O.R. (3d) 243, 90 D.L.R. (4<sup>th</sup>) 218 (Ont. Bkcty.); *Columbia Properties Ltd. v. Commonwealth Mortgage Corp.* 1964 CarswellBC 13; *Arland v. Taylor* 1955 CarswellOnt 44; *Cromie v. Fry* 1999 CarswellOnt 3438; *Hutman v. Riverside Chrysler Plymouth (1997) Ltd.* 2001 CarswellOnt 1818; *Wall v. Horn Abbot Ltd.* 2006 Carswell 110; *Zinck v. Allen* 1970 CarswellNS 69; and *Bent v. Nova Scotia (Farm Loan Board)* 1978 CarswellNS 280.

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