

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: McLaughlin (Re), 2005 NSSC 343

Date: 20051215

Docket: B 28660

Registry: Halifax

District of Nova Scotia
Division No. 01 - Halifax
Court No. B 28660
Estate No. 51-121042

In the Matter of the Proposal of Shelley Dawn Faith McLaughlin

DECISION

Registrar:	Richard W. Cregan, Q.C.
Heard:	November 14, 2005
Trustee:	Charlene Hartlen representing PricewaterhouseCoopers Inc.

- [1] This is an application under Subsection 66.22(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended, (the “Act”) for the review of a consumer proposal made by Shelley Dawn Faith McLaughlin, (the “proposal”). The review is requested by one of her creditors, Cavelle Marie Isnor.
- [2] Ms. McLaughlin and Ms. Isnor had been partners in a used bookstore called “Bookworms” which they operated in Lower Sackville. They commenced business early in 2004. It was financed by a line of credit with the Canadian Imperial Bank of Commerce, (“CIBC”). Within months they faced difficulties. This resulted in Ms. Isnor withdrawing from the business and CIBC pressing for payment of the amounts outstanding on the line of credit.
- [3] Ms. Isnor paid the amount claimed against her by CIBC. She then brought an action against Ms. McLaughlin in the Small Claims Court alleging that Ms. McLaughlin should be responsible for all money owing on the line of credit, including what Ms. Isnor was required to pay. Ms. Isnor was successful and obtained a judgment for \$10,160.00.

- [4] On July 14, 2005 Ms. McLaughlin made a consumer proposal. Ms. Isnor filed a proof of claim for \$10,100.00. The proposal was accepted by the other creditors including the CIBC. The vote was 51.94% in favor and 48.06% against. Ms. Isnor was the only creditor voting against it.
- [5] The unsecured liabilities totaled \$23,001.00. The major claims were that of Ms. Isnor for \$10,100.00 and CIBC for \$10,000.00. The remaining claims were each for less than \$1,000.00.
- [6] Subsection 66.22(1) permits an interested party which includes a creditor, as in this case, after a proposal has been accepted to have the administrator apply to the court to have the proposal reviewed.
- [7] Prescribed notices are to be given. The administrator is to prepare a report on the proposal and the conduct of the debtor. The court is directed to consider the report and to hear the official receiver, the administrator, the debtor, and any opposing, objecting or dissenting creditor or other interested party and as well other evidence.

[8] The following subsections of section 66.24 direct the court's disposition:

(2) Where the court is of the opinion that the terms of the consumer proposal are not reasonable or are not fair to the consumer debtor and the creditors, the court shall refuse to approve the consumer proposal, and the court may refuse to approve the consumer proposal whenever it is established that the consumer debtor

(a) has committed any one of the offences mentioned in sections 198 to 200; or

(b) was not eligible to make a consumer proposal when the consumer proposal was filed with the official receiver.

(3) The court shall refuse to approve a consumer proposal if it does not comply with subsections 66.12(5) and (6).

(4) Subject to subsections (1) to (3), the court may either approve or refuse to approve the consumer proposal.

[9] In the circumstances of this case the only question before the court is whether it should be of the opinion that the terms of the proposal are not reasonable or are not fair to the debtor or the creditors, or more particularly to Ms. Isnor. There is a dearth of authority on how "not reasonable" or "not fair" should be interpreted. The cases mentioned in Houlden & Morawetz and the cases found in a Quicklaw search on this section are not on point.

[10] Ms. Isnor says they are not fair nor reasonable. She contends that Ms. McLaughlin could do more for her creditors than this proposal requires.

[11] She thinks that Ms. McLaughlin should pursue an action against the new partner who took over Ms. Isnor's position in the business. If he had signed the loan documents as she thought it was intended, he would have been responsible for the money Ms. Isnor had to pay to CIBC and for which she now has the judgment. She has offered to help Ms. McLaughlin. There was no written agreement respecting the new partner. On what was before me I think the likelihood of success in such an action would be marginal. This was the assessment that Mrs. Charlene Hartlen, the Administrator's representative, gave the court. She thought it would not be a proper claim for the Administrator to pursue. I agree that Ms. McLaughlin should not be faulted for not pursuing this action.

[12] Ms. Isnor also thinks that Ms. McLaughlin should contribute more money to the proposal.

[13] Ms. McLaughlin is separated. She lives with her two children and a friend in Bridgewater. She contributes \$600.00 to the rent plus one half of the utilities and other costs.

- [14] She is a pharmacy technician. She works half time at a hospital in Halifax. She has applied for additional hours in this work. Ideally she would like to have a full time position, but such has not been available to her. Her income is below the Superintendent's Guidelines. I am satisfied that she is making a reasonable effort to find additional income. She has made the proposal to avoid bankruptcy. She is putting money into the proposal. If she had gone bankrupt she would not have surplus income. There would be little, if anything, for her creditors. A pharmacy is probably the best place for her to work. She has qualifications as a technician and is paid accordingly. It is reasonable that at this time she confine her employment seeking efforts to finding more hours in this work.
- [15] She is making a reasonable effort to improve her income. Pursuing an action against the replacement partner would most likely be a waste of her resources. The creditors will benefit from the proposal more than if she were to make an assignment in bankruptcy.
- [16] Ms. Isnor has failed to convince me that the proposal is not reasonable or not fair to the creditors.

[17] Accordingly the court approves the proposal.

[18] The Administrator is entitled to recover \$100.00 in costs against Ms. Isnor.

R.

Halifax, Nova Scotia
December 15, 2005