

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY

Citation: Devooght (Re), 2008 NSSC 291

Date: October 3, 2008

Docket: B 32312

Registry: Halifax

District of Nova Scotia
Division No. 01 - Halifax
Court No. 32312
Estate No. 51-1010414

In the Matter of the Bankruptcy of Bernice Edith Devooght

DECISION

Registrar: Richard W. Cregan, Q.C.

Heard: September 19, 2008

Present: Robert McCuaig representing the Trustee,
McCuaig & Company Incorporated

Bernice Edith Devooght, the Bankrupt,
representing herself

- [1] The application for Bernice Devooght for her discharge was heard by me on September 19, 2008. I thought it appropriate that I give a written decision.
- [2] The recommendation of the Trustee is that she be granted a discharge conditional upon her paying \$17,184.00 within 12 months with minimum monthly payments of \$1,432.00.
- [3] There are two components in this sum. First there is surplus income of \$2,184.00. The appropriateness of this sum is not in question. What is in question is the remaining \$15,000.00.
- [4] The story behind this sum is best stated in the recommendation of the Trustee in paragraph 8(a) of the Trustee's, Subsection 170(1) report dated August 14, 2008, which I quote:

Upon filing for bankruptcy the bankrupt failed to disclose to the Trustee that she had recently been paid \$20,000.00 from Sunlife and as of the date of bankruptcy still had approximately \$15,000.00 remaining in her bank account. The Trustee discovered this at a meeting held May 15, 2008 at which point the funds were depleted. The bankrupt advises that she did not intend to hide the funds from the Trustee but that she was under a lot of

stress and simply did not think about it.

- [5] The money relates to a settlement of a claim for disability insurance relating I understand to a time before her assignment. The money having been received before her assignment, I do not think that Section 68 could apply. It only relates to payments which accrue after the assignment.
- [6] The balance of \$15,000.00 was in Mrs. Devooght's bank account at the time of her assignment. Clearly it then was "property of the bankrupt" described in Section 67 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and should have been turned over to the Trustee in accordance with Section 158(a). In effect her estate is short for her creditors by \$15,000.00. As she is in breach of her duties, in disposing of this application, I am governed by Subsection 172(2), which enables me to order that she as a condition of discharge pay this sum into her estate.
- [7] Ms. Devooght's monthly income is in excess of \$5,000.00. I do not see that there are any mitigating factors which would justify reducing the amount recommended by the Trustee.

[8] Accordingly, the draft order provided at the hearing which requires as the condition of her discharge that she pay the sum of \$17,184.00 within 12 months with minimum monthly payments of \$1,432.00 will be issued.

R.

Halifax, Nova Scotia
October 3, 2008