

**IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY**

Citation: Connors (Re), 2006 NSSC 23

**Date: 20060123
Docket: B28710
Registry: Halifax**

**District of Nova Scotia
Division No. 1 - Halifax
Court No. 28710
Estate No. 51-783211**

In the Matter of the Bankruptcy of Peter Kenneth Connors

D E C I S I O N

Registrar: Richard W. Cregan, Q.C.

Heard: January 13, 2006

Present: Sheryl Harrison representing the Trustee, Deloitte & Touche Inc.

Darrin Ulley representing the Office of the Superintendent of Bankruptcy

Peter Kenneth Connors, Bankrupt, representing himself

[1] This is an application by the bankrupt, Peter Kenneth Connors, for his discharge.

[2] Mr. Connors is 55 years of age. He resides with his wife Margaret who is 52 in an apartment in Cowie Hill, Halifax. He worked as a driver for the Post Office and other employers. However, in 1997 he suffered a stroke and another in 1998. He has not been able to work since then. His only income now is a disability pension from the Canada Pension Plan of \$845 per month and a superannuation payment from the Post Office of \$90 per month. Mrs. Connors had worked for several years with the Royal Bank. However, her employment was terminated during the past year. She is receiving severance pay of \$2000 net of taxes per month. This payment will terminate after July 2006. If she is unemployed then she will be entitled to employment insurance of \$1100, including taxes per month. In 2008 she will be entitled to a pension from the Royal Bank. No evidence was given of the amount of this pension, but it may be assumed that it will be substantially less than the severance payments she is now receiving.

- [3] No evidence was given as to Mrs. Connors' intention or her ability to obtain new employment. However, it is not likely she would be able to obtain anything paying as much as her present income.
- [4] Mr. Connors is clearly not able to work. He suffers from the after effects of the strokes, depression, and diabetes. He is blind in one eye . Sometimes drinking is a problem. In his doctor's opinion "he is prone to making irrational decisions".
- [5] In 1985 Mr. Connors won \$169,000 in the Loto. He invested \$70,000 of this but lost it with the drop in the market. In 2001 or 2002 he borrowed \$80,000 against his home, invested it and lost it. He and his wife owned a home, but it was lost too, in order to pay off debts. At the time of bankruptcy March 11, 2005 he had no assets realizable for his estate. Particulars of Mrs. Connors' affairs are not before the court; however, I presume that she also had little if any assets.
- [6] Mr. Connors' liabilities are \$111,750.59 of which \$95,730.64 are credit card debt. 5% (which is the standard minimum monthly payment required on

credit card accounts) of this is \$4786.53. The monthly family income is slightly less than \$3000. This indebtedness had increased by \$44,774.07 in approximately 6½ months prior to his assignment. Also included in his liabilities is \$11,500 owed to the Canada Revenue Agency.

- [7] The Official Receiver's Report and Mr. Connors' evidence at the hearing show in the period leading up to his assignment substantial money advances from credit cards to his daughter for travel expenses and cash advances on one credit card to make payments on another credit card as well as to cover living expenses. Without going into detail, it is clear that the obligations under the credit cards which may have been as many as a dozen had been for some time completely beyond his ability to service and were rapidly compounding in magnitude toward the time he made the assignment.
- [8] The recommendation of the Trustee is that Mr. Connors be discharged upon paying \$5000 into his estate by minimum monthly payments of \$200 over 25 months. Surplus income has been calculated at \$136.65.
- [9] The Superintendent recommends that during the period remaining that he is

not discharged, he prepare and forward monthly budget statements to the Trustee and that he pay \$200 per month for a total of \$9600, less the \$1675 he has paid to date, that is \$7925. This will result in a total contribution of \$9600 which is 8.59% of his liabilities. Should he pay earlier, his discharge should nevertheless be suspended for a minimum of 24 months.

[10] To require payments greater than the surplus income requires proof of facts mentioned in Section 173 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, the “Act”.

[11] The Trustee and the Superintendent rely on Paragraph (e)

the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt’s business affairs.

[12] The Superintendent also relies on Paragraph (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.

[13] As to Paragraph (e) certainly Mr. Connors has contributed to his bankruptcy. He has taken several advances for his daughter to cover her travel and holiday expenses, something for which he had no responsibility, but more significantly he took these advances and other advances to cover living expenses and to pay debts, and balances on other credit cards which he knew well or should have known he could not repay. The total minimum balances payable monthly far exceeded his family income. Plainly put he was borrowing money which he had no hope of ever being able to repay. This seems to me to be blameworthy and thus culpable neglect on his part.

[14] As to Paragraph (a), can it be said that the extent of his unsecured liabilities have arisen from circumstances for which he cannot be justly held responsible? This is a question which must be determined on the circumstance of each case. The credit card debt incurred after it should have been clear to Mr. Connors that he could not service the debt he already had is very substantial. Put another way, substantial debts were freely incurred shortly before the assignment which he knew or should have known, notwithstanding his mental health, he could not pay. I think he can justly be held responsible for them and thus for his assets being not of a

value equal to fifty cents on the dollar of his unsecured liabilities.

[15] I therefore must follow Subsection 172(2) in the disposition of this application.

[16] The applicable surplus income is \$136.65. Come this summer when Mrs. Connors severance payments terminate there will be no surplus income. It will be difficult for them to cover the expenses of a very modest lifestyle. I therefore see no point in requiring him to make significant payments beyond what the Superintendent's Standards would require. It would not result in any meaningful benefit for the creditors, nor would it serve any rehabilitation purpose. However, the integrity of the law requires some expression of disapproval of what has happened and some measure which would help Mr. Connors rehabilitate. In the circumstances the most that can be required is a modest payment and a lengthy suspension.

[17] Mr. Connors' discharge shall be suspended for three years and conditional on the payment of \$2000.

R.

Halifax, Nova Scotia
January 23, 2006