

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

Citation: Dorey, Re, 2008 NSSC 234

Date: 20080731
Docket: B 31844
Registry: Halifax

District of Nova Scotia
Division No. 1
Court No. 31844
Estate No. 51-933191

In the Matter of the Bankruptcy of Gregory Paul Dorey

IN THE MATTER OF THE APPLICATION OF GENEVA FLORENCE
HEMEON FOR LEAVE TO CONTINUE AN ACTION AGAINST THE
BANKRUPT'S INSURER

- and -

2006

S.K. No. 268782

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

GENEVA FLORENCE HEMEON

PLAINTIFF

- and -

**THE MUNICIPALITY OF THE DISTRICT OF
WEST HANTS, CHERYL LYNN LAWRENCE, JOHN
~~KENNETH LAWRENCE~~ and
GREGORY DEAN DOREY**

DEFENDANTS

LIBRARY HEADING

Registrar: Richard W. Cregan, Q.C.

Heard: May 30, 2008

Written Decision: July 31, 2008

Subject: Whether the applicant should be allowed under Section 69.4 of the *Bankruptcy and Insolvency Act* to proceed with an action against a now discharged bankrupt for damages arising from misrepresentations alleged to have been made before his assignment in bankruptcy in hope of being able to collect under a liability policy held at the time by the bankrupt but where coverage has not been admitted by the insurer.

Summary: The Applicant relied on the *Buchanan* case a recent decision of the Court of Appeal of Nova Scotia which held that although the defendant may be a discharged bankrupt, thereby discharged of responsibility for the debt, the underlying obligation continues and the plaintiff could proceed against the insurer. The bankrupt argued that this case did not apply when the insurer has not admitted coverage.

Held: The insurer cannot rely on a self serving non admission of coverage. Whether it is admitted or not does not affect the continued existence of the underlying liability. The better way to approach the problem is to rely on *Re Ma* and related cases and ask whether in the circumstances the Applicant is being “materially prejudiced” by the stay imposed by the *BIA*. The court was satisfied that she was. She was granted the declaration sought.

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