

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: Vu (Re), 2010 NSSC 119

Date: April 1, 2010

Docket: B-32360

Registry: Halifax

District of Nova Scotia
Division No. 1
Court No. 32360
Estate No. 51-1003176

In the Matter of the Bankruptcy of Tam Khanh Thi Vu

DECISION

Registrar: Richard W. Cregan, Q.C.

Heard: February 12, 2010

Counsel: Robert J. McCleave representing opposing creditors,
Gary and Barbara Staples.

Stan Hopkins representing the Trustee,
PricewaterhouseCoopers Inc.

Tam Khanh Thi Vu, the bankrupt, representing herself.

- [1] Tam Khanh Thi Vu made an assignment in bankruptcy on October 11, 2007. She now asks the Court to set the terms of her discharge. One of her creditors opposes her discharge and asks that much more stringent conditions be imposed on her than those recommended by her Trustee.
- [2] Ms. Vu is 33 years of age. She has a son who is in grade 5. She came to Canada from Vietnam as a refugee in 1993. She completed high school in 1996 and a course in Pharmacy Technology at the Community College in 2000. She has full time employment as a pharmacy assistant at Lawton's Drug Store in the Northwood Centre in Halifax. She is a single parent and does not receive any support from her son's father.
- [3] Her proven unsecured debts total about \$60,000.
- [4] The Trustee notes that she obtained credit in two transactions subsequent to her knowing she was insolvent, by borrowing \$7,000 to make a preference payment of \$7,500 to her family in Vietnam, which cannot be recovered by the Trustee, and borrowing \$1,500 to buy jewelry which she sold with the proceeds going to gambling, etc. To compensate for these matters the

Trustee recommends payment of \$9,000.

[5] Apparently, she transferred \$5,000 to her mother in Vietnam shortly before the opposing creditors mentioned below obtained a judgment against her.

The Trustee is not seeking return of this sum because she may not have at that time known she was insolvent.

[6] The Trustee seeks the balance of surplus income of \$3,057.65. I quote from Appendix A, B4 of the Section 170 Report:

Surplus income is estimated as follows: In addition to the income the bankrupt reported, the trustee has added the income from bars which was \$1,000 per month to December 2007 and then decreased to \$600 per month thereafter. The \$300 per month for 5 months from baby sitting was treated as a lump sum and 50% was added to the surplus so as not to inflate the monthly income. The result is surplus income of \$4,482.65 less the amount paid to date of \$1,425.00 equals \$3,057.65.

The payments recommended by the Trustee total \$12,057.65.

[7] As well, the Trustee submits that her discharge should be subject to a lengthy suspension, for what are referred to as conduct issues, i.e., failure to deliver all credit cards and inform her Trustee of changes in circumstances, not having assets of 50 cents on the dollar, continuing to trade after

insolvency, gambling, giving a preference to a creditor, making material omissions on statements, and disposing of property paid for by credit cards and not paid.

- [8] Her creditors Gary and Barbara Staples oppose her discharge. They were represented at the hearing by their solicitor, Robert J. McCleave. They had obtained a judgment against her for \$18,944.04, on May 28, 2007, about four months before she made her assignment.
- [9] Ms. Vu had lived with her son and a gentleman named Khac Hieu Nguyen whom she represented variously as her common law husband, her husband, or her boyfriend in a rented flat or apartment on Agricola Street in Halifax.
- [10] In August 2003 she and Mr. Nguyen rented a house in Bedford from the Staples. They were both parties to the lease. Apparently the two along with Ms. Vu's son lived in this house for a period of time. However, she says that because of incompatibility, they separated. Ms. Vu returned to the Agricola Street premises. Her brother and his girlfriend have also been living there. Presumably Mr. Nguyen remained at the Bedford house. She

says she then ceased paying the rent for the Bedford house.

[11] In April 2007 the Staples learned that the house was being used for a marijuana grow operation. Ms. Vu admits that this in fact happened, but she does not admit to knowing of this operation before it was discovered by the Staples. This caused extensive damage to the house. Ms. Vu was sued by the Staples for damages, she having never been released from the covenants in the lease. The damage resulted in the judgment mentioned in [8].

[12] Somewhere along the way Ms. Vu, representing Mr. Nguyen as her husband, borrowed money from the Royal Bank to buy a Ford Windstar Van. It is alleged by Mr. McCleave that this van was part of the grow operation. He represented to the Court that a few nights before the police visited the house neighbors saw two vans, one like the Windstar, back into the garage attached to the house with the door each time being closed. As a result, when the police arrived the house was bare. The inference he draws is that these vans were used to remove the incriminating evidence of the grow operation.

[13] This may well all be so, but what is before me regarding it is only hearsay. I can only conclude that there was a grow op, as Ms. Vu admits that she has a limited knowledge after the fact of this use, but I can go no further.

[14] If Mr. McCleave wanted to implicate Ms. Vu for some reason or other, he should have produced evidence to show that she was clearly involved in the grow op business. As the evidence now stands the inferences which Mr. McCleave draws are possible, but they are not firm enough for me to conclude on a balance of probabilities that what he alleges actually happened.

[15] Mr. McCleave examined her extensively on her income and expenses and particularly the contributions she may have received from her family and Mr. Nguyen. This was to show that she had understated her financial affairs to her Trustee. Little, if anything, was usefully learned. I am not prepared to draw inferences respecting her income and expenses from what she said in this cross-examination. The Trustee has made the appropriate inquiries which took into consideration her supplementary income and has made an appropriate recommendation.

[16] The recommendation is that she pay \$200 per month from March 2010 to December 2010 and thereafter \$450 per month until the \$12,057.65 is paid in full with the right of prepayment, and that she be suspended until at least two years from the date she would have automatically received her discharge. With prepayment this could be as early as July 11, 2010, or with simply making these payments regularly would be in the latter part of 2012. I accept the Trustee's recommendation for these payments.

[17] However, I am concerned with the attitudes she expressed on the stand. They were less than respectful of what is expected of one who takes advantage of bankruptcy proceedings. She protested too much. She repeatedly assured me of her respect of the law. She assured me that she does not gamble much now. She said that she did not intentionally not tell her Trustee of her extra earnings at the bar scene and from babysitting. She thought she only had to reveal her regular income. She exhibited a facility for shifting her answers as would be convenient in the particular circumstances. For every criticism she had an excuse whereby she protested her innocence. Her explanations were convenient but sometimes did not ring true. The list of failed duties, facts and offences in paragraph 5 of the

Trustee's Section 170 report also cause me concern. They require that I dispose of this application under Subsection 172(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

[18] I think that to address these concerns and comply with this *Act* a minimum suspension must be imposed. She shall be entitled to her discharge on the payment in full of \$12,057.65 as outlined in [16], but not before June 30, 2012.

R.

Halifax, Nova Scotia
April 1, 2010