

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

**Citation:** Deveaux (Re), 2011 NSSC 82

**Date:** February 24, 2011

**Docket:** 35143

**Registry:** Halifax

District of Nova Scotia  
Division No. 03 - Sydney  
Court No. 35143  
Estate No. 51-1291787

In the Matter of the Bankruptcy of Eric Ronald Deveaux

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**D E C I S I O N**

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**Registrar:** Richard W. Cregan, Q.C.

**Heard:** January 13, 2011

**Trustee:** Michael Connor representing BDO Canada Limited

- [1] On November 25, 2009 Eric Ronald Deveaux made an assignment in bankruptcy. BDO Dunwoody Goodman Rosen Inc. was appointed Trustee. It was succeeded by BDO Canada Limited on January 1, 2010. An internal report was prepared by the Trustee on July 26, 2010 which recommended an automatic discharge for Mr. Deveaux. The discharge followed effective on August 26, 2010.
  
- [2] In mid November 2010 the Trustee reviewed the file and determined that Mr. Deveaux had had surplus income during the bankruptcy period and should not have been discharged. Rather he should have been granted a conditional discharge requiring him to pay surplus income and providing that he not be discharged for 21 months from the date of assignment.
  
- [3] A representative of the Trustee discussed the situation with Michael Chisholm of the Office of the Superintendent of Bankruptcy in Halifax. They agreed that the correct course of action was to make application to the court to annul Mr. Deveaux's discharge.
  
- [4] An application for this purpose was made to the court by the Trustee at the

sitting in Sydney on January 13, 2011.

[5] To put the matter in perspective, if the mistake had not been made Mr. Deveaux would have been required to pay surplus income of \$886.00 during the initial nine month period. In the meantime he was ordered to make monthly payments of spousal support of \$1400.00. The result is that, if he had not been discharged, he would not have any surplus income to pay during the remaining twelve months.

[6] The provisions for discharge in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 are found in Section 180(1) and (2), which I quote:

180. (1) Where a bankrupt after his discharge fails to perform the duties imposed on him by this Act, the court may, on application, annul his discharge.

(2) Where it appears to the court that the discharge of a bankrupt was obtained by fraud, the court may, on application, annul his discharge.

[7] No evidence was given that Mr. Deveaux had failed to perform any duties. As well there was no evidence suggesting in any way fraud on his part in obtaining his discharge.

[8] A similar problem was dealt with in *Bank of Montreal v. Petty* (1997), 45 C.B.R. (3d) 183 (Sask., Kyle J.), where a bank had filed its proof of claim as an unsecured creditor and received its dividend as such. Some years later it was realized that the bank officer, who had prepared the claim, had forgotten that the bank had security. It applied for an order setting aside the bankrupt's absolute discharge so that it could refile its proof of claim as a secured creditor.

[9] Paragraph 3 contains helpful observations. I quote it:

There is no specific period of limitation under the Act which would have application to this case but it is noted that ss. 168(1)(f) provides a nine month period within which the discharge of a bankrupt may be opposed and thereafter the bankrupt is automatically discharged. The discharge is absolute if it has not been obtained through fraud or bad faith. The Act permits a bankrupt to receive a complete discharge of all his debts in order that he may be able to integrate himself into the business life of the country as a useful citizen free from the crushing burden of his debts (*Re: Newsome* (1927), 8 C.B.R. 279 (Ont. S.C.)) and the complexity of modern business is such that claims will, from time to time, be overlooked or improperly dealt with. The time periods permitted by the Act would seem to have been provided to the end that, with reasonable caution, errors or omissions or inadvertence might reasonably be discovered and remedied. When, however, an absolute discharge has been granted it effectively closes the books on the relations between a bankrupt and his creditors.

The bank was denied relief.

[10] I know of no authority which would enable me to annul this discharge. I agree with the observations of Kyle J.

[11] The application is then denied. Mr. Deveaux's discharge stands.

R.

Halifax, Nova Scotia  
February 24, 2011