

SUPREME COURT OF NOVA SCOTIA

Citation: *Meredith (Re)*, 2018 NSSC 153

Date: 20180612

Docket: Halifax, No. 471584; B-41715

Registry: Halifax

In the Matter of the Bankruptcy of Griffith Thomas Meredith

DECISION

Judge: The Honourable Justice Kevin Coady

Heard: June 12, 2018, in Halifax, Nova Scotia

Oral Decision: June 12, 2018

Written Decision: June 21, 2018

Counsel: D. Bruce Clarke, Q.C., Counsel for the Trustee, Powell & Associates Ltd.
Maeve Baird, Counsel for the Attorney General of Canada

By the Court:

Introduction

[1] Mr. Meredith made an assignment in bankruptcy. Powell & Associates were appointed trustee for Mr. Griffiths' estate (hereinafter referred to as "the Trustee"). The Canada Revenue Agency filed a Proof of Claim with the Trustee. One claim was for \$29,693.50 and was described as "secure". A second claim was for \$66,938.82 and was described as "unsecure". It is the former that forms the subject matter in this motion.

[2] By notice dated February 28, 2018 the Trustee filed a Notice of Disallowance alleging that the claim for \$29,695.50 was not a "secure" claim and, as such, was not in priority to other creditors. The reason advanced by the Trustee was that the claim was not registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act* (hereinafter referred to as "BIA") and, as such, was not a "secured" claim.

[3] The *Income Tax Act* (hereinafter referred to as "ITA") prescribes, in section 223(11.1) that in order to have a secured claim in a debtor's bankruptcy, they must comply with the following two conditions: 1) The Crown must have created a

"charge, lien, priority or binding interest" by registering a Federal Court writ in accordance with subsections 223(5) and 223(6) of the ITA, and 2) the registration must be in accordance with subsection 87(1) of the BIA.

[4] There is no issue in this motion about the first requirement. The issue is about the registration. The Crown's position is that their security was registered in Colchester County in accordance with the requirements of the *Land Registration Act*. The Trustee argues that such registration does not meet registration requirements and, as such, is not a secure claim, i.e., does not comply with section 87(1) of the BIA.

[5] Section 87(1) of the BIA states as follows:

A security provided for in federal or provincial legislation for the sole or principal purpose of securing a claim of Her Majesty in right of Canada or of a province or of a workers' compensation body is valid in relation to a bankruptcy or proposal only if the security **is registered under a prescribed system of registration** before the date of the initial bankruptcy event.

[emphasis added]

[6] In 2017, the debtor made a consumer proposal that ultimately went nowhere. The Trustee disallowed CRA's secured claim in the consumer proposal on the basis "that a search by the Trustee in the Registry Office using the PID number did not disclose any registration by the CRA." The Trustee indicated that CRA's security was not registered "under a prescribed system of registration" and therefore was

not a "secured" claim. On January 15, 2018, the debtor withdrew his consumer proposal and the trustee then withdrew its Notice of Disallowance.

[7] One month later the debtor made an assignment in bankruptcy. Shortly thereafter the trustee sent Canada Revenue Agency another Notice of Disallowance in respect of the "secure" portion of its claim - and for the same reasons essentially.

Those reasons are set forth at page 5 of the Crown's brief:

1. The Certificates were registered by CRA in the judgment roll established under the Land Registration Act. The Judgment Roll was established for the purpose of judgment creditors registering judgments and not for the recording of security interests.
2. Other creditors cannot register security against real property by registering their security in the Judgment Roll. As such, the Judgment Roll does not constitute a prescribed system of registration pursuant to subsection 87(1) and Rule 111 of the *BIA*.
3. CRA provided no evidence of the registration of their security in the Registry Office against PID 20074514.
4. A search of the Registry for PID 20074515 on February 20, 2018 did not disclose any registration by CRA.
5. CRA has not complied with subsection 87(1) of the *BIA* and its claim was therefore not secured.

[8] The issue before the Court is whether the claim is "secured". The CRA submits the following factors in support of their position:

1. Subsection 223(5) of the *ITA* permits a document issued by the Federal Court . . . to be filed, registered, or otherwise recorded in accordance with the laws of the province where it is issued to create a

charge, lien or priority on the property of the tax debtor. [*emphasis added in original*]

2. Subsection 223(6) of the *ITA* provides that if a certificate is filed, registered or otherwise recorded pursuant to section 223(5) a charge, lien or priority is created on or a binding interest is created in the property of the debtor. [*emphasis added in original*]
3. Subsection 223(11.1) of the *ITA* provides that when a charge, lien, priority or binding interest created pursuant to subsection 223(6) has been created by the registration of a memorial in accordance with subsection 223(5) and if it is registered in accordance with section 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed to be a claim that is secured by a security. [*emphasis added in original*]
4. Section 87(1) of the *BIA* provides that if a security for the purpose of securing a claim of Her Majesty is registered under a prescribed system of registration before the date of the initial bankruptcy event, the Crown will have a binding and valid security interest against the bankruptcy estate.
5. Rule 111 of the *BIA* defines "prescribed system of registration" as a system of registration of securities that is available to Her Majesty in

Right of Canada or a province and to any other creditor holding a security, and is open to the public for inspection or for the making of searches.

[9] The Crown contends that the Nova Scotia Land Registration system is a "prescribed system of registration" and relies on the Ontario case of *LeDrew, Re*, 2005 CarswellOnt 2751, in support of that submission. The Court stated as follows:

The memorial was registered under the Land Titles Act R.S.O. (1990) c.L.5. Rule 111 under the *BIA* defines 'a prescribed system of registration' as a general system of registration of security that is available to any creditor and open to the public. **There can be no doubt that the land titles registration system under the Land Titles Act is such a general system of registration of security.** In the case at bar, the earliest date under subsection 87(1) of the *BIA* is the date on which LeDrew filed his notice of intention to file a proposal. That date was July 30, 2003. The memorial was registered under the Land Titles Act on July 7, 2003. Accordingly, in my view, **all of the requirements of both the *ITA* and the *BIA* have been satisfied with respect to the registration of CRA's memorial against the family home and CRA ranks as a secured creditor against the property** to the extent of approximately \$172,500, being the amount payable by LeDrew pursuant to the certificate, and accrued interest thereon to the date of bankruptcy.

[emphasis added]

This position is also supported by *Holden* and *Morawetz*, prominent authors on the subject of bankruptcy and insolvency:

The prescribed system of registration for the purposes of s. 87(1) is a general system of registration of securities that is available to any creditor and that is open to the public for inspection: Rule 111. In the provinces that have personal property security legislation, security registered under that legislation would be

sufficient. Similarly, registration in a Registry Office or Land Titles Office would also be sufficient.

[*emphasis added*]

[10] The Trustee takes the position that the CRA did not register its certificate using a PID and that error is fatal as far as the "security" issue is concerned. It should be noted there are several ways to identify or access Nova Scotia's Land Registration System: the Parcel Identification (PID) system; the Assessment Account Number (AAN); Document number, or an individual's name and address. The Trustee acknowledges it searched only on the PID identifier. It argues that registration in the Judgment Roll of a registry does not amount to a "prescribed system of registration".

[11] The Crown's response is that the CRA is not required to register its judgments in the same manner as that used to register "consensual securities" in order to meet the demands of the BIA. That registration in the Judgment Roll is registration in a "prescribed system of registration" as stated in Rule 111 of the BIA. This position is supported by Sections 14 (1) and (20) of the *Land Registry Act* which states as follows: Section 14(1) states "in this section 'register' includes a roll established pursuant to the Act." Section 20 states that a parcel register is a complete statement of all interests affecting the parcel.

[12] For the sake of clarity, I will review the Trustee's position at paragraph 2 of their motion brief.

The question here is a straight-forward one: A CRA Judgment was registered in the Judgment Roll, not in the parcel register as a recorded interest. It is protected by *Bankruptcy and Insolvency Act* ("BIA") s. 87(1) and therefore a secured claim in the bankruptcy?

The Trustee submits that the Nova Scotia Judgment Roll is not a system for the registration of judgments. And further that filing under the Judgment Roll "tells the world that CRA asserts only the rights of a Judgment Creditor . . . leaving users of the Nova Scotia Property System at risk of confusion or financial loss, but without recourse."

[13] The Trustee relies on the Newfoundland case of *Tom Woodford Ltd., Re*, 2010 NLTD(G) 118, 2010 CarswellNfld 196, in support of its position. I refer to paragraph 27 of that decision:

27 The principle [*sic*] focus of Chrysler Financial's argument is that the JER, established under the *JEA* is not a registry established for the registration of securities. Rather, Chrysler Financial contends that the *JER* is simply a registry for the registration of documents and enforcement thereof and that, therefore, registration of the CRA claim against TWL is not a security and is not registered in a registry set up for the registration of securities.

Analysis

[14] There is no doubt that the debtor owes the \$29,000 to the CRA for unpaid tax obligations. There is no question that the CRA registered the Certificate/Memorial at the Registry of Deeds and pursuant to the *Land Registration Act*. It is established that the Trustee searched by the PID for any registrations by the CRA and found none and, as a result, deemed those claims to not be registered under a system of registration within the meaning of Rule 111 of the BIA.

[15] The Trustee acknowledges that this is clearly a matter of statutory interpretation and ancillary issues (i.e., fairness, knowledge) play no role in this analysis. The Crown raised the proposition that the legislation governing registries in Newfoundland differs from that of Nova Scotia. I must say that since reading *Woodford* I was left with the impression that submission has merit. However, I cannot, on the materials before me, measure those differences with exactitude. So, it seems I must apply the legislation effective to Nova Scotia in order to do the statutory interpretation required.

[16] Rule 111 starts off with the words "for the purposes of subsection 87(1) of the Act". It then goes on to indicate a "prescribed system of registration" is a

system of registration of securities that is available to Her Majesty . . . or a province, and to any other creditor holding a security, and is open to the public for inspection or for the making of searches. The Judgment Roll is part of Nova Scotia's System of Registration and, as such, is that contemplated by the drafters of the legislation.

Conclusion

[17] I find the subject obligation to be a "secure" obligation. I find this to be the correct outcome and I have not found there to be any other reasonable outcomes available.

Coady, J.