**SUPREME COURT OF NOVA SCOTIA**
**IN BANKRUPTCY AND INSOLVENCY**
**Citation:** *Rodgers (Re)*, 2020 NSSC 255

**Date:** 20200921
**Docket:** No. 44343
**Registry:** Truro-Pictou
**Estate No**. 51-2585273

**IN THE MATTER OF:** The bankruptcy of Adam Daniel Rodgers

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| **Judge:** | Raffi A. Balmanoukian, Registrar |
| **Heard:** | September 16, 2020, in Halifax, Nova Scotia |
| **Final Written Submissions:** | September 16, 2020 |
| **Counsel:** | Joseph A. Wilkie, for the Trustee, MNP Ltd.<br>Tim Hill, QC, for the objecting creditor, BridgePoint Financial Services Limited Partnership I.<br>Adam D. Rodgers, for himself personally |

**Balmanoukian, Registrar:**

[1] Is it stupidity or is it treason?

[2] When Pavel Miliukov rhetorically asked this of the Duma in 1916 - whether the military disaster facing Russia was owed to the Tsar's incompetence or treachery - he concluded the answer ultimately did not matter. The result was the same.

[3] In the case of Adam Rodgers, in contrast, the answer to the same question is critical to a fair and proper disposition of his bankruptcy.

[4] He is a lawyer of 15 years' standing. He is a former partner – *the* former partner - of Jason Boudrot, who was disbarred for considerable and substantial trust improprieties[1]. For a short time, Rodgers attempted to carry on the multi-office firm, but the ignominious departure of Mr. Boudrot coupled with a substantial debt load made this impossible[2]. He practiced with an arm's length

[1] https://nsbs.org/wp-content/uploads/2019/12/noticeaccepting_jasonboudrot.pdf
[2] While not directly germane to the matter before me, it is worth noting that Mr. Boudrot and Mr. Rodgers were the owner/operators. Other lawyers were on a fee-splitting arrangement and it was this business model that was presented to both lawyers and lenders.

firm for a period[3], and now operates his own solo practice. He is prohibited from operating a trust account.

[5] Mr. Rodgers filed for personal bankruptcy in November 2019. Most of the debts are the result of personal guarantees of (or statutory liability for) his prior firm's obligations.

[6] He is also under investigation by the Nova Scotia Barristers' Society. In a nutshell, the allegations are that Mr. Rodgers "was aware of, was wilfully blind to, and/or was reckless about" Mr. Boudrot's nefarious deeds. The Society also alleges that Rodgers allowed fees to be taken in advance of earnings, failed to care for client property, and failed to supervise those in charge of various office tasks and responsibilities.

[7] Mr. Rodgers denies all of this, and terms any shortcomings on his part to be "minor bookkeeping discrepancies."[4] A hearing is scheduled for a little over two weeks from now. Mr. Rodgers testified that he has received "hundreds of pages" of disclosure, none of which are before me.

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[3] I had, in my private practice, a couple unremarkable client files with the former Boudrot Rodgers firm, and briefly met Mr. Rodgers through a Pictou County Barristers' Society function in early 2019. Prior to this hearing, I canvassed all participants as to whether any objected to my presiding over this matter. None did.

[4] Affidavit of Adam Rodgers, para. 22.

[8] He seeks his discharge now, saying that he has fulfilled all of his bankruptcy duties; that he lives a very modest life and has done nothing wrong – in fact he has gone above and beyond to cooperate with the Society's receiver to pick up the pieces of his defunct firm – and that the Society's investigation has a different purpose and a different set of issues to that of the bankruptcy.

[9] The Trustee takes no position.

[10] The objecting creditor, BridgePoint Financial Services Limited Partnership I ("BridgePoint"), disagrees. It says that Mr. Rodgers has not satisfied the Court that the shortfall in his assets, being less than 50 cents on the dollar of unsecured liabilities, has not arisen "from circumstances for which the bankrupt cannot justly be held responsible." It is common ground that the burden, to a civil standard, is on the bankrupt to bring himself within this exception (173(1)(a) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "BIA")).

[11] The objecting creditor also says that Mr. Rodgers has "failed to account satisfactorily for any assets or for any deficiency of assets to meet the bankrupt's liabilities" (173(1)(d) BIA).

[12] The Court raised the further question of whether 173(1)(e) of the BIA has application. That section provides for proof of whether

> 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 [emphases added]

[13] If a s. 173 "fact" is proven, s. 172(2) of the BIA provides that I cannot grant an absolute discharge.

[14] I also note that incompetence, overexpansion, carelessness, unwarranted speculation, gross negligence, and fraud are factors that a Trustee is to include in a report to the Superintendent, if requested under s. 171. No such report is commissioned here. I mention it simply to illustrate that these are factors of considerable interest to systemic integrity of the bankruptcy process.

[15] Mr. Rodgers says he is a victim of Mr. Boudrot's actions and that he would still be in business today under the Boudrot Rodgers banner but for those misdeeds. Indeed, he says he would still be in business today under the Adam Rodgers Law Group banner (the changed name of the original firm) if Bank of Nova Scotia had not "pulled the pin" on the firm's operating credit facility, drawing a direct link between that decision and Mr. Boudrot's departure. He says that Scotiabank "will, or perhaps may already, regret that decision."[5]

[5] Adam Rodgers affidavit, para. 20.

[16] He says that Mr. Boudrot was, in effect, the "partner in the office," running the firm's financial and logistical affairs, while Mr. Rodgers was the litigator and marketing whiz. As such, Rodgers was "not involved in the minutiae" of firm operations. I will later discuss the apparent consignment of responsibility for trust accounts to the category of "minutiae".

[17] He further admits that the firm was leveraged – in fact, the objecting creditor, who provides working capital as against personal injury and estate files, charges onerous interest rates and fees[6]. It almost speaks for itself that, in conjunction with substantial other borrowings, the firm's business plan was moving into the realm of "rash and hazardous speculation."

[18] Notwithstanding this Icarus-like ambition, Mr. Rodgers says the firm would have survived – that it was up to date on its obligations – if Mr. Boudrot had not sent the firm crashing into the sun.

[19] In short, Mr. Rodgers cannot have it both ways. He cannot say that he didn't know of the improprieties and has no responsibility as a consequence, when those

[6] 19.56% on advances. 25.56% on overdue amounts. A 3% draw fee; on a three year term and five year amortization, the payments were $12,696.71 per month. The firm appears to have requested a draw down of the full authorized $500,000 on signing in May 2018; the evidence is $484,000 was advanced in two tranches on May 7, 2018, which would be net of the $15,000 draw fee; the remaining $1,000 is unclear to me. The firm collapsed in December 2018.

improprieties led directly to the collapse of the firm. If he didn't know, he was derelict. If he did know, he was culpable. It was stupidity or treason.

[20] This was not a firm with fifty partners and in which one went rogue, taking innocents who had no involvement with trust funds down with them, or one in which a lawyer has operated a rogue separate trust account without any reasonable ability of innocent partners to have awareness of it. It is trite to say that a lawyer may delegate trust tasks, but not trust responsibility.

[21] It is also trite to say that trust administration, and the consequences of misadministration, are *not* firm "minutiae." As stated by Scanlan, JA in *Robinson v. Gallagher Holdings Ltd*., 2019 NSCA 97, at para. 43 (in the context of an improper execution of an affidavit), "**it is a big deal**." The emphasis is in the original and I would similarly so emphasize for trust accounts, client billing, client property, and firm administration.

[22] To reiterate: being literally the name on the door and (if true) uninvolved in trust oversight – at least outside of Rodgers' own client ledgers, is "stupidity."

[23] If he actually knew of Mr. Boudrot's actions, it is "treason."

[24] I also note, perhaps as a microcosm of this inattention or failure of Mr. Rodgers to bring himself within the "not responsible" exception of 173(1)(a) and

his "failure to account" in 173(1)(d), an example cited by the objecting creditor. Mr. Rodgers testified that he agreed with the affidavit of Rasna Gulri, in-house counsel for BridgePoint's General Partner. That affidavit recites that about $20,000 in fees had been generated by the Boudrot Rodgers firm (or its rump successor) and had not been turned over to BridgePoint, contrary to its security agreement. Mr. Rodgers could not explain this and couldn't recall the file. Twenty grand in fees is not couch change. In my view, this unexplained discrepancy brings the bankrupt within the ambit of s. 173(1)(d).

[25] He also couldn't explain why he signed as an officer of Boudrot Properties Limited (a guarantor) at the time of the loan agreement. This is despite Mr. Rodgers' assertion in argument that he has a business background and had seen his future with the law firm as transitioning from a litigator / marketer to a kind of latter-day Minister Mentor.

[26] Once again, Mr. Rodgers cannot have it both ways. He says he is "not responsible" for the 50-cents-on-the-dollar shortfall because Mr. Boudrot was the cause of the firm's collapse, and he was not aware of these acts. Mr. Rodgers had the skill set to know and the responsibility to find out. His failure to couple ambition with oversight – or, worse, be aware of misconduct – was a grievous fault, and time will tell how grievously he will hath answered for it.

[27] Put another way, and with apologies to the late Howard Baker Jr., "what did Mr. Rodgers know, and when did he know it" is a crucial question to the proper disposition of this case.

[28] So what is to be done? The objecting creditor says I should refuse the discharge with leave to re-apply upon completion of the Society's inquiry. Alternately, it says I should impose conditions tied to Mr. Rodgers' future earnings.

[29] Mr. Rodgers, again, submits that the Society's inquiry is of a different nature and topic than those before me and that I should dispose of his discharge now without regard to those proceedings.

[30] I disagree with all of these submissions.

[31] It will be recalled that the Society's hearing is looming – expedited, Mr. Rodgers says, at his request. There is little to no prejudice to anyone in awaiting the outcome of that hearing. It will not be in itself conclusive *proof* for the issue before me of "what Mr. Rodgers knew and when he knew it," but it will be *evidence*. That evidence is relevant to what I should do in respect to the discharge.

[32] As I said at the September 16th hearing, I send files back for further information and evidence all the time – valuation issues, income determination,

realization proceedings, Official Receiver's examinations, insurance or inheritance issues, and on and on (probably oft to the chagrin of Trustees and bankrupts alike). I see no reason this should not be such a situation.

[33] It will also be noted that the outcome of the Barristers' Society proceedings will have a direct and lasting impact on Mr. Rodgers' future prospects; he is still a comparatively young man. If he is exonerated (as he asserts), he will presumably carry on with the practice of law.[7] If he is not, he may face constraints on or removal of his license to practice. Those economic consequences are front-and-centre to a fair disposition of this case.

[34] For that reason, it is inappropriate for me to formulate (as urged by BridgePoint) what if any monetary conditions should be imposed on Mr. Rodgers as a condition of his discharge, at this time. That time will come.

[35] I also disagree that a refusal with leave to reapply is appropriate. A refusal expresses the Court's indignation and sanction for the actions (or inactions) of the bankrupt (see for example, the cases cited in Houlden, Morawetz and Sarra's *Annotated Bankruptcy and Insolvency Ac*t at Section H37).

[7] I also note that while Mr. Rodgers is prohibited from operating a Trust Account, he confirmed that he does not need one to carry on the type of practice in which he is currently engaged. It is my understanding that the Barristers' Society will not allow an undischarged bankrupt to have signing authority on a trust account (Legal Profession Act Regulation 4.4.2); however, given Mr. Rodgers' confirmation that this does not impinge upon his practice, he is not prejudiced in this respect by any delay in his discharge.

[36] The distinction between a refusal with leave to reapply, and an adjournment, is a fine one and in practical terms may be something of a distinction without a difference – in some ways akin to a disbarment versus permission to resign. However, the tone and tint of the distinction is quite different. For me to refuse the discharge, at this point, would be to prejudge precisely the issues that the Society has before it, and that I want to have in evidence before me before formulating a resolution. Whether I am in the ultimate analysis dealing with stupidity or treason will have a direct impact on my disposition.

[37] I am therefore adjourning this matter without day, with the direction that it is to be brought back before me after disposition of the proceedings before the Barristers' Society (and disposition of any appeals or expiration of any appeal period). The transcript, if any, and the exhibits to those proceedings if available are to be put in evidence before me.

[38] The discharge of the Trustee would lift the stay of proceedings in place (BIA 69.3(1.1)). That, too, would be unfair to the bankrupt at the present time. Therefore, I order that the Trustee (as an officer of this Court) is not to seek its discharge without leave of the Court, prior to my final disposition of this case. While that may be something of an imposition on the Trustee, it knew or should

have known from inception that this would not be a garden-variety summary administration estate.

[39] I add two further comments, in the event I am wrong or have mis-exercised my discretion in the foregoing analysis.

[40] First, this Court has jurisdiction over its own process and procedure (BIA 192(1)(k)). I would exercise that authority here to adjourn this matter on the terms aforesaid.

[41] Second, even if no s. 173 "fact" is proven, I have authority under s. 172(1) BIA to grant an order on such terms as I deem just, including as to after-acquired income or property. As noted, Mr. Rodgers' prospects hinge directly and lineally upon the disposition of the Society's proceedings.

[42] At present, he describes his modest lifestyle in terms in which one can almost envisage the iron bedstead and dangling naked lightbulb. Whether that continues or he arises as an exonerated Phoenix from the ashes of Boudrot Rodgers remains to be seen, and is directly relevant to how I dispose of the case. It is in evidence that this *will be* determined, but not in evidence as to what that determination *will be*. It is unfair to both debtor and creditors, and inimical to the

integrity of the insolvency system, to dispose of the matter either under either s. 172(1) or s. 172(2) until that is known.

[43] I leave any issues of costs to when the matter returns before me.

[44] Mr. Hill is to prepare the order for my review.

Balmanoukian, R.