SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: *Jewkes (Re)*, 2020 NSSC 287

Date: 20201009
Docket: No. 43758
Registry: Halifax
Estate Number: 51-2491605

In the Matter of: The bankruptcy of Cory Bradford Jewkes

Judge: Raffi A. Balmanoukian, Registrar

Heard: August 19, 2020, in Amherst, Nova Scotia

Counsel: Kimberley A. Burke, for the Trustee, BDO Canada Limited (by teleconference)
Cory Bradford Jewkes, not appearing

Balmanoukian, Registrar:

[1] The vast majority of bankrupts perform the duties required of them under the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "BIA"). As a result, only a minority of filings make their way to Court.

[2] Of those, most have had meaningful participation and interaction between Trustee and Debtor. The usual reasons for a file coming to Court include outstanding financial disclosure, residual payment and repurchase obligations, and other timing issues. Third or subsequent bankruptcy filings must come to the Court as well. Occasionally, a creditor objects to the debtor's discharge. All are heard on their merits, and a bespoke disposition results.

[3] Sometimes, there has been a lack of activity on a file because of a Debtor's own difficulties. She or he may have mental or physical health problems. They may have not been within easy means of communication for perfectly valid reasons, such as overseas military service or remote work commitments. They may have genuinely misunderstood the duties incumbent upon them. It is the responsibility of the Trustee and, that failing, the Court to set matters aright. Such files, generally, I adjourn either with or without day, sometimes coupled with a s. 68 order if I deem it appropriate.

[4] And then there are the few but noticeable files like this one.

[5] Cory Bradford Jewkes filed for bankruptcy on March 28, 2019. He cited "relationship breakdown" as the reason for this filing. He disclosed no assets other than minor (exempt) personal effects. He showed income below – but just below – the Superintendent's guidelines. It consisted solely of EI benefits. His skeletal initial budget, after accounting for $200 for smoking and a projected payment to his estate of $190 per month, shows a $589 surplus.

[6] His creditors are of the quotidian consumer variety – credit cards, a line of credit, a collection agency, two telecom accounts, Nova Scotia Power, a payday lender; listed at $24,259 in all.

[7] He disclosed two minor sales – a dated vehicle and a mobile home with little equity – shortly before his bankruptcy. We have only his say-so to date on the net proceeds received.

[8] And there matters ended. He has not supplied income and expense information. He has not provided the Trustee with information necessary to file his pre-bankruptcy or post-bankruptcy tax returns. He has not attended counselling sessions. He has not complied with his payment agreement, beyond the $150

deposit. He has not provided corroboration or an accounting for his pre-bankruptcy dispositions.

[9] He did not appear by teleconference at the hearing.

[10] The trustee asked for an adjournment without day. I asked Ms. Burke if she was aware of any reason for Mr. Jewkes' default. She was not. She advised the Court that she was unaware of any cognitive, health, or other difficulties which would preclude Mr. Jewkes' participation. She was not aware of any mail being returned.

[11] I refer to these situations as "radio silence" files. They are, as I have stated, the exception rather than the rule. But they are not unicorns. They appear frequently enough that it is time that this Court provide direction to Trustees, and fair warning to Bankrupts, when there is no valid reason for such egregious defaults.

[12] It appears that in at least some of these situations, the Bankrupt completes the initial documentation; pays a modest initial amount; and then drops off the map.

[13] The Bankrupt gets his or her stay of proceedings. Notices go out to the creditors. The phone calls from creditors or collection agencies stop.

Garnishments, if such existed, come to an end. The Bankrupt then goes on with life and everyone else can pound sand.

[14] Eventually, the Trustee may seek its discharge. In law, that lifts the stay of proceedings (s. 69.3(1.1)). However, creditors will almost always be unaware of that development. And if they are aware of the Trustee's discharge, they may be unaware of its effect.

[15] No more.

[16] I am aware that in at least some jurisdictions, Registrars direct (rather than permit) Trustees in "radio silence" files to seek their discharge. I think that is appropriate, but in a more overt fashion.

[17] Where unexplained defaults of the bankrupt reach the point of abdication, it is appropriate for the Court to lift the stay on application under s. 69.4(b). That failing, it is appropriate for the Court to direct that the Trustee seek its discharge; and, on its discharge, to advise creditors of that development and its effect in law – that is, that the stay has been lifted.

[18] In *Doncaster v. Chignecto-Central Regional School Board*, 2013 NSCA 59, Saunders JA stated at para. 45 and 48:

> [45] Litigants, self-represented or not, with legitimate interests at stake will be treated with respect and will quickly come to realize that judges, lawyers and court staff are prepared to bend over backwards to accommodate their needs, to explain procedures that may seem foreign, and to ensure that the merits of their disputes will be heard. They and their cases will be seen as the *raison d'être* for access to justice.
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> [Justice Saunders then discussed those abusing Court resources.]…
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> [48] Over the past two months I have encountered several such cases. Their number is mounting. I find that troubling. The Bench, the practicing Bar and the public should be concerned. This trespass upon legitimate advocacy is not in the public interest. In the short term it frustrates the efficient passage and completion of litigation. In the long term it erodes and denigrates confidence in and respect for the administration of justice. It defeats a system of dispute resolution managed and overseen by people who are doing the best they can to serve the public in a way that respects and follows the law, and produces a result that satisfies the primary object of the Rules which is to provide "for the just, speedy and inexpensive determination of every proceeding".

[19] *Doncaster* involved a litigant who clogged the system with various proceedings that approached and in some cases surpassed the bizarre. Here, we are faced with the opposite, but equally unjust and inimical, scenario – a bankrupt who quite rightly avails himself of the protection of the BIA, but who has shown neither a willingness to discharge his minor corresponding obligations, nor an explanation for that default.

[20] Mr. Jewkes takes up Court resources. He takes up the Trustee's resources. His inaction throws the administration of justice into disrepute. And if unjustified, those inactions besmirch the majority of bankruptcy files in which the proverbial and literal "honest but unfortunate debtor" does a level best to be fair and equitable to all stakeholders.

[21] As with Justice Saunders, I find it "troubling" the number of times the public interest is not being met.

[22] If Mr. Jewkes seeks to avail himself of the BIA's protections, he doesn't get to do so with a mere filing and a token deposit.

[23] Nor am I prepared, absent a rational explanation, to simply put a radio silence file on ice with an adjournment. I have seen too many simply disappear from corporate memory without any rehabilitative objective having been achieved, or the integrity of the process being respected.

[24] There is nothing apparently onerous in Mr. Jewkes' file. He has to file documentation to verify income and expenses – at the time of filing, at least, simply an EI payment which would not trigger a s. 68 surplus payment obligation. His payment agreement remains outstanding, excepting the initial payment[1]. He has to account for comparatively minor dispositions. He has to provide information required to file tax returns. He has to attend both counselling sessions (s. 157.1).

[25] At filing, at least, he had the financial wherewithal to do all of these things.

[1] The agreement, while one that I would enforce as a condition of discharge, is not one which comes under the protection of s. 156.1 of the BIA (the total called for is $1,860. The maximum allowable for a s. 156.1 agreement is $1800 – Rule 58.1).

[26] These do not call for a Stakhanovite effort. They are the bare minimum in both anticipated timeline (nine months) and duties (ss. 68 and 158) set out in the Act. If Mr. Jewkes, for whatever reason, thinks "the rules don't apply to him," he is profoundly mistaken.

[27] I have very recently discussed the difference between an adjournment and a refusal, in *Re Rodgers*, 2020 NSSC 255. I indicated at paras. 35-36 that while the result in both dispositions is for the matter to remain in something of a limbo, the tone and tint is quite different. An adjournment can be for a wide variety of reasons. An adjournment may have no negative aspersions. A refusal does.

[28] I am therefore refusing the application for discharge, with leave to reapply upon Mr. Jewkes' compliance with all of his duties under the BIA. I am also directing the Trustee, if those duties are not completed within three months, to seek its discharge. At that time, the Trustee is forthwith to apply to the Court for its discharge (s. 41(2)). Finally, upon the Trustee's discharge, I am directing it to write to all known creditors of that fact, and that the effect of the discharge is to lift the stay of proceedings as against creditors.

[29] At the risk of overservicing Justice Saunders' notation that courts and others will "bend over backwards" to serve the legitimate interests of those seeking

justice and access to justice, I provide Mr. Jewkes one final avenue. I have noted that there can be narrow instances in which "radio silence" has a rational explanation. The Trustee was aware of none. That does not mean they are non-existent. If any he has, Mr. Jewkes will have one week from the date of publication of this decision to contact the Trustee, with a fulsome explanation and a coherent plan for expeditious compliance with his duties. The Trustee is to communicate such developments, if any there be, to the Court. I will hold off issuing the relevant order, which the Trustee is to prepare, for that period.

Balmanoukian, R.