

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: Avery's Trucking Inc. (Re), 2013 NSSC 302

Date: September 26, 2013

Docket: B-37255

Registry: Halifax

District of Nova Scotia
Division No. 04 - Yarmouth
Court No. 37255
Estate No. 51-1742614

In the Matter of the Bankruptcy of Avery's Trucking Incorporated

And

In the Matter of the Appeal of WBLI Inc., in its capacity as Receiver of Avery's Trucking Incorporated ("Avery's") of the dispute or disallowance by Haley & Associates Inc., as Trustee of the Estate of Avery's in Bankruptcy (the "Trustee") of WBLI's claim pursuant to Section 81 of the *Bankruptcy and Insolvency Act* (Can) to property of Avery's in the possession of the Trustee.

BETWEEN:

WBLI Inc. in its capacities as Receiver of Avery's Trucking Inc.
appointed by Canadian Imperial Bank of Commerce ("CIBC")
and Business Development Bank of Canada ("BDC")

APPLICANT

- And -

Haley & Associates Inc. in its capacity as Trustee of the Estate of
Avery's Trucking Inc. in Bankruptcy

RESPONDENT

LIBRARY HEADING

Registrar: Richard W. Cregan, Q.C.

Heard: July 26, 2013

Written Decision: September 26, 2013

Subject: Two banks each held security for the indebtedness to them of a corporation. The corporation made an assignment and the trustee commenced the realization of the estate. The banks then appointed a receiver. The secured indebtedness to the banks significantly exceeds the assets realized by the trustee.

Issue: The trustee claimed it should be paid for its services from the estate in priority to the banks. The bank submitted that as secured creditors their claims against property of the bankrupt corporation take priority over all claims in bankruptcy including the fees and expenses of the Trustee.

Result: It was held that the banks have priority. Therefore the Trustee was not entitled to its fees and expenses. The Trustee's Final Statement of Receipts and Disbursements was disallowed.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET .***