

SUPREME COURT OF NOVA SCOTIA

Citation: *Enterprise Cape Breton Corporation v. Crown Jewel Resort Ranch, Inc.*, 2014 NSSC 128

Date: 20140410

Docket: Syd. No. 423486

Registry: Sydney

Between:

Enterprise Cape Breton Corporation, a body corporate, incorporated pursuant to the *Enterprise Cape Breton Corporation Act*, enacted as Part II to the *Government Organization Act, Atlantic Canada, 1987*, R.S., 1985, c. 41 (4th Supp.) (“ECBC”)

Applicant

v.

Crown Jewel Resort Ranch, Inc., a body corporate incorporated under the laws of Nova Scotia (“Crown Jewel”)
And I.N.K. Real Estate Inc., a body corporate incorporated Under the laws of Nova Scotia (“I.N.K.”)

Together the Respondents

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Judge: The Honourable Justice Frank Edwards

Heard: March 5, 2014 in Sydney, Nova Scotia

Written Decision: April 10, 2014

Subject: **Bankruptcy and Insolvency Act**, s. 243. **Judicature Act**, s.

43 (9) – Application to Appoint Receiver/Manager

Summary:

Respondent Companies (RC's) set up to operate high end tourist resort. Husband and wife principals in RC's became embroiled in protracted divorce proceedings which effectively caused resort to cease operation. Loans (secured and unsecured) of almost three quarters of a million dollars seriously in arrears. Monthly payments were just under \$19,000.00 per month. Municipal taxes over \$70,000.00 in arrears – prospect of tax sale imminent. Remaining principal, Mr. Korem, had no realistic prospect of significantly reducing debt nor refinancing it.

Issue:

Whether just and convenient to appoint a receiver/manager.

Result:

Receiver/manager appointed. Just and convenient to do so:

1. Need for protection of the assets;
2. Apprehended or actual waste of assets;
3. Creditor had right to appoint a private receiver pursuant to a general security agreement;
4. Court appointed receiver required as cooperation of Mr. Korem with private receiver highly unlikely;
5. Appointment the most practical and prudent approach to maximizing the return to the parties.

Cases Noted:

Bank of Montreal v. Sherco Properties Inc., 2013 ONSC 7023 (S.C.J.); **Textron Financial Canada Limited v. Chetwynd Motels Limited**, 2010 BCSC 477, **Canadian Tire Corp., v. Healy**, 2011 ONSC 4616; **Bank of Montreal v. Carnivale National Leasing Ltd.**; **Carnivale Automobile Ltd.**, 2011 ONSC 1007; **Bank of Nova Scotia v. Freure Village of Clair Creek** (1996), 40 C.B.R. (3d) 274 (Ont) S.C.J.; **Bank of Nova Scotia v. Freure Village of Clair Creek** (1996), 1996 CarswellOnt 2328, 40 C.B.R. (3d) 274 (Ont. Gen. Div.) [Commercial List]; **Romspen Investment Corp. v. 1514904 Ontario Ltd.**, et al (2010), 2010

CarswellOnt 2951, 67 C.B.R. (5th) 231 (Ont. S.C.J.).

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