Estate/Court File No.: 31-2675288

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 2505243 ONTARIO LIMITED OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

BOOK OF AUTHORITIES OF 2505243 ONTARIO LIMITED

(returnable September 29, 2020)

LOOPSTRA NIXON LLP
135 Queens Plate Drive – Suite 600
Toronto, ON M9W 6V7

Peter Carey (LSO No.: 29410V)
Tel: 416.748.4744
Email: pcarey@loonix.com

Thomas P. Lambert (LSO No.: 70354T)
Tel: 416.748.5145
Email: tlambert@loonix.com

Lawyers for Prince Gates GP Inc., Lowell Security Inc., The Small Winemakers Collection Inc., D.N.B. Media Group Inc., PR CC Plated Meals Inc., and Platinum Valet Hotel Cleaners Inc.

TO: **ATTACHED SERVICE LIST**

INDEX

TAB 1

1979 CarswellOnt 183
Ontario Supreme Court, In Bankruptcy

389179 Ontario Ltd., Re

1979 CarswellOnt 183, 29 C.B.R. (N.S.) 221

RE 389179 ONTARIO LIMITED

Steele J.

Judgment: March 7, 1979
Docket: Toronto File No. 07798

Counsel: *M. B. Page, Q.C.*, for petitioning creditor.
M. H. Greenglass, for debtor.

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
VI Proposal
VI.6 Effect of proposal
VI.6.d Effect on other legal processes
Headnote
Bankruptcy --- Proposal — Effect of proposal — Effect on other legal processes
Petition — For receiving order — Stay — Proposal filed — The Bankruptcy Act, ss. 25, 49.
The filing of a proposal does not automatically stay a petition in bankruptcy under the provisions of s. 49 of the Bankruptcy Act. Section 25 of the Act gives a discretion to the court as to whether there should or should not be a stay.
Held:
Where an interim receiver had been appointed, and a proposal was filed on the eve of the hearing of the petition for a receiving order, the petition should not be stayed.
Annotation

Section 49(1)of the Bankruptcy Act, R.S.C. 1970, c. B-3, provides that:

49.(1) Upon the filing of a proposal ... no creditor ... shall commence or continue any action, execution or other proceedings for the recovery of a claim provable in bankruptcy ... until the proposal has been refused, unless with the leave of the court ...

It appears that the filing of a petition for a receiving order does not fall within the words of the section dealing with proceedings "for the recovery of a claim provable in bankruptcy".

This has been clearly set out in the recent decision of the Newfoundland Court of Appeal in the case of *Re Prov. Refining Co.*, 14 Nfld. & P.E.I.R. 308, 27 C.B.R. (N.S.) 192, affirmed *(sub nom. Prov. Refining Co. v. Atlantic Trading (Delaware) Corpn.))* [1978] 2 S.C.R. 836, 21 N.R. 178. The same ruling was previously made in Ontario by Houlden J. (as he then was) in the case of *Re Beauport Investors Ltd.*, 17th May 1974 (not reported). In that case a proposal was filed on the very day when the petition for a receiving order was to be heard and, upon considering the terms of the proposal, the learned bankruptcy judge considered the proposal without merit and made a receiving order.

C. H. Morawetz, Q.C.

Table of Authorities
Cases considered:

Distinguished:

Re Lingen Trailer & Mfg. Co. (1969), 13 C.B.R. (N.S.) 197 (Ont.).

Followed:

Re Prov. Refining Co., 14 Nfld. & P.E.I.R. 308, 27 C.B.R. (N.S.) 192, affirmed *(sub nom. Prov. Refining Co. v. Atlantic Trading (Delaware) Corpn.))* [1978] 2 S.C.R. 836, 21 N.R. 178.

Statute considered:

Bankruptcy Act, R.S.C. 1970, c. B-3, ss. 25, 49.

Application for stay of petition for receiving order because of filing of proposal.

***Steele J.* (Endorsement on the record):**

1 As I understand the position there is a petition that has been filed and which is being opposed. It has been set to commence the hearing tomorrow morning, 8th March.

2 A proposal has been served and is filed today. I am of the opinion that under the authority of *Re Prov. Refining Co.*, 14 Nfld. & P.E.I.R. 308, 27 C.B.R. (N.S.) 192, affirmed *(sub nom. Prov. Refining Co. v. Atlantic Trading (Delaware) Corpn.)* [1978] 2 S.C.R. 836, 21 N.R. 178, the filing of a proposal does not automatically stay a petition in bankruptcy under the provisions of s. 49 of the Bankruptcy Act, R.S.C. 1970, c. B-3. I am of the opinion that s. 25 of the Act gives a discretion to the court as to whether there should be a stay or not.

3 In the present case an interim receiver has been appointed, and the proposal has been filed on the eve of the hearing. The proposal as made by the alleged debtor is unlike the case of *Re Lingen Trailer & Mfg. Co.* (1969), 13 C.B.R. (N.S.) 197 (Ont.). At this stage I am not aware whether the principal debt is in dispute. I think it would be improper under the circumstances to stay the petition, and I therefore rule that the matter will proceed tomorrow morning.

Stay refused.

End of Document

TAB 2

1977 CarswellNfld 6
Newfoundland Supreme Court, Court of Appeal

Provincial Refining Co. v. Newfoundland Refining Co.

1977 CarswellNfld 6, 14 Nfld. & P.E.I.R. 308, 27 C.B.R. (N.S.) 192, 33 A.P.R. 308

RE PROVINCIAL REFINING COMPANY LIMITED; RE NEWFOUNDLAND REFINING COMPANY LIMITED

Furlong C.J.N., Morgan J.A. and Noel J.

Heard: April 5, 1977
Judgment: September 1, 1977
Docket: St. John's 1976 Nos. 336 and 337

Counsel: *L. A. Kitz, Q.C.*, and *A. L. Bonnell*, for Provincial Refining Company Limited and Newfoundland Refining Company Limited.
J. R. Chalker, Q.C., for Atlantic Trading (Delaware) Corporation.

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
III Bankruptcy petitions for receiving orders
III.3 Hearing of petition
III.3.b Defences
III.3.b.vi Dispute of debt
Bankruptcy and insolvency
VI Proposal
VI.6 Effect of proposal
VI.6.d Effect on other legal processes
Headnote
Bankruptcy --- Bankruptcy petitions for receiving orders — Hearing of petition — Defences — Dispute of debt
Bankruptcy --- Proposal — Effect of proposal — Effect on other legal processes
Petition — Petitions for bankruptcy — Receiving orders — Disputed on grounds no acts of bankruptcy committed and not indebted to the petitioners for $1,000 — Proposals filed during hearing of dispute — No stay of proceedings created — The Bankruptcy Act, s. 49 — Not applicable to a petition in bankruptcy.
Petitions for bankruptcy were disputed by the debtors on the grounds that they had not committed acts of bankruptcy and that they were not indebted to the petitioners in the amount of $1,000. During the hearing of the dispute, the debtors filed proposals pursuant to the Bankruptcy Act and argued that the bankruptcy proceedings were stayed by the filing of the proposals.
Held:
The receiving orders should be granted. The debtors were not entitled to a stay of proceedings. Section 49 of the Bankruptcy Act, which provides that the filing of a proposal stays proceedings for the recovery of a claim provable in bankruptcy, does not operate as a stay of a petition in bankruptcy. A petition for bankruptcy is not a proceeding for the recovery of a claim provable in bankruptcy. The debtors were unable to prove that there was a bona fide dispute as to the debts alleged in the petitions.

The evidence of the indebtedness to other creditors and the statements of the financial position of the debtors attached to the proposals warranted the finding that the debtors had ceased to meet their liabilities as they became due.

Table of Authorities

Cases considered:

Distinguished:

Re Côté (1922), 3 C.B.R. 468 (Que.).

Not followed:

Re Lingen Trailer & Mfg. Co. Ltd. (1969), 13 C.B.R. (N.S.) 197 (Ont.).

Applied:

Re Whistle Co. Ltd., 27 O.W.N. 491, 5 C.B.R. 495, [1925] 1 D.L.R. 1110.

Re Coffey (1933), 15 C.B.R. 53 (Ont.).

Statute considered:

Bankruptcy Act, R.S.C. 1970, c. B-3, ss. 25 (10), (11), 32 (1), 49.

Words and phrases considered:

PROCEEDING FOR THE RECOVERY OF CLAIM PROVABLE IN BANKRUPTCY

Under Section 2 of the [*Bankruptcy Act*, R.S.C. 1970, c. B-3] "claim provable in bankruptcy" or "provable claim" or "claim provable" is defined as including any claim or liability provable in proceedings under this Act by a preferred, secured or unsecured creditor.

Appeal from the judgment of Mifflin C.J.T.D., granting petitions for bankruptcy receiving orders.

An appeal from the decision of the Court of Appeal for Newfoundland was dismissed by the Supreme Court of Canada on 26th April 1978.

***Furlong C.J.N.*:**

1 I have had the advantage of reading the judgment of Morgan J.A. which follows, and I agree with his conclusions and the reasons for them. I think that the learned trial judge was correct in making the receiving order and I see no reason for interfering with it.

2 This appeal is dismissed with costs.

***Morgan J.A.* (*Noel J.* concurring):**

3 These appeal are from receiving orders granted by Mifflin C.J.T.D. on 12th March 1976 against the debtor companies, Provincial Refining Company Limited ("PRC") and Newfoundland Refining Company Limited ("NRC"). The petitioning creditor in each case was Atlantic Trading (Delaware) Corporation ("Atlantic"), who filed petitions on 13th February 1976 in accordance with the provisions of s. 25 of the Bankruptcy Act, R.S.C. 1970, c. B-3.

4 The petition for a receiving order against PRC alleged, inter alia:

> That the debtor is justly and truly indebted to us in the sum of $21,744,901.33 represented by overdue bills of exchange accepted by Debtor and payable to Ataka America, Inc., of New York, New York (hereinafter called 'Ataka') for its purchases of crude oil, which bills of exchange were assigned for value by Ataka to us.
>
> That in addition the Debtor is justly and truly indebted to us in other substantial amounts due and to become due.
>
> That the Debtor within the six months next preceding the date of the filing of this petition has committed the following act of bankruptcy, namely, the Debtor has ceased to meet its liabilities generally as they become due.

5 Part of the additional amounts alleged due and to become due by PRC to Atlantic consisted of three debentures dated 8th November 1975, 15th December 1975 and 30th January 1976 in the amounts of $18,300,000, $25,000,000 and $6,320,000 respectively. These debentures were executed by PRC in favour of Ataka America, Inc. ("Ataka") and were assigned by Ataka to Atlantic together with all of the assets and liabilities of Ataka relating to transactions involving NRC and PRC. As of 10th March 1976 PRC owed some $27,000,000 under these debentures, which securities were valued by Atlantic at not more than an aggregate of $21,000,000, and the petition for a receiving order against PRC was, by order of the court, amended to include the balance of $6,000,000 as a debt due as provided by s. 25(2) of the Bankruptcy Act.

6 The petition for a receiving order against NRC alleged, inter alia:

> That the Debtor is justly and truly indebted to us in the sum of $4,000,000 represented by overdue promissory notes made by Debtor to the order of Ataka America, Inc., of New York, New York (hereinafter called 'Ataka'), for its purchases of crude oil, which promissory notes were assigned for value by Ataka to us.
>
> That in addition the Debtor is justly and truly indebted to us in other substantial amounts due and to become due.
>
> That the Debtor within the six months next preceding the date of the filing of this petition has committed the following act of bankruptcy, namely, the Debtor has ceased to meet its liabilities generally as they become due.

7 In their notice of cause against the petition, both PRC and NRC denied any indebtedness to the petitioning creditor and further denied that they had committed the act of bankruptcy as alleged.

8 NRC is the registered owner of all the shares in PRC, and, as the matters were interrelated, the proceedings were consolidated by consent of parties.

9 On the final day of the hearing, namely, 12th March 1976, the trial judge was informed that the debtors had lodged proposals with a licensed trustee and that these proposals had been filed with the official receiver of the bankruptcy division pursuant to the provisions of s. 42(1) of the Bankruptcy Act. Copies of the proposals were given to the Chief Justice in his chambers. Although upon his return to the court he made reference to them, the proposals were not entered as exhibits, nor was any motion made in relation to them. However, the Chief Justice considered whether the filing of the proposals with the official receiver operated as a stay of proceedings under the petition and concluded that they did not. Referring to s. 49, he stated:

> In my view the operative words of s. 49 are proceedings for the recovery of a claim provable in bankruptcy. This is not a proceeding in my view for the recovery of a claim provable in bankruptcy. This is a petition by a creditor for bankruptcy itself. I do not think that s. 49 operates as a stay of proceedings in bankruptcy. In any event it would seem to me manifestly unjust at this stage of the proceedings to stay them. If a receiving order should result in these hearings a proposal is still possible. We will continue with the proceedings.

10 The Chief Justice again referred to the proposals when granting the receiving order, stating that they were admissions by PRC and NRC that they were unable to meet their obligations as they generally became due. Copies of the proposals were included in the list of exhibits filed in this court. After finding that both PRC and NRC were indebted to Atlantic in amounts exceeding $1,000, that they were unable to meet their liabilities as they became due, that there was no bona fide issue to be tried and that there were not sufficient reasons for adjourning the proceedings, the Chief Justice granted a receiving order in each case.

11 The grounds of appeal are the same in each case and may be summarized as:

12 (1) Upon the filing of the proposals, all proceedings should have been stayed under the provisions of s. 49(1).

13 (2) The ruling that the filing of the proposals did not stay the proceedings ought not to have been made without hearing argument.

14 (3) There was a bona fide issue to be tried, and a stay of proceedings should have been granted pursuant to s. 25(10).

15 (4) The petitioner did not prove the existence of a debt exceeding $1,000 or that an act of bankruptcy had been committed in the six months preceding the filing of the petition.

16 As to the first ground of appeal, counsel for the debtors contended that a petition for a receiving order against a debtor falls within the category of "other proceedings for the recovery of a claim provable in bankruptcy" within the meaning of s. 49(1) of the Bankruptcy Act, and that such petition is automatically stayed under that section upon the filing of a proposal under s.42(1) of the Act. Counsel relied on *Re Côté* (1922), 3 C.B.R. 468 (Que.), and *Re Lingen Trailer & Mfg. Co. Ltd.* (1969), 13 C.B.R. (N.S.) 197 (Ont.).

17 Section 49(1) provides:

> 49.(1) Upon the filing of a proposal made by an insolvent person or upon the bankruptcy of any debtor, no creditor with a claim provable in bankruptcy shall have any remedy against the debtor or his property or shall commence or continue any action, execution or other proceedings for the recovery of a claim provable in bankruptcy until the trustee has been discharged or until the proposal has been refused, unless with the leave of the court and on such terms as the court may impose.

18 Under s. 2 of the Act, "claim provable in bankruptcy" or "provable claim" or "claim provable" is defined as including "any claim or liability provable in proceedings under this Act by a preferred, secured or unsecured creditor".

19 Section 25 lays down the procedure to be followed by a petitioning creditor or creditors and provides in part:

> (10) Where the debtor appears on the petition and denies the truth of the facts alleged in the petition, the court may, instead of dismissing the petition, stay all proceedings on the petition on such terms as it may see fit to impose on the petitioner as to costs or on the debtor to prevent alienation of his property and for such time as may be required for trial of the issue relating to the disputed facts.
>
> (11) The court may for other sufficient reason make an order staying the proceedings under a petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think just.

20 It is noted that a stay of proceedings under these subsections is permissive and not mandatory.

21 The case of *Re Lingen Trailer & Mfg. Co. Ltd.*, supra, is one in which a petition in bankruptcy was filed and, following a subsequent filing of a proposal, proceedings were stayed pending the decision of the creditors at a meeting to be held two weeks from the date the proposal was filed. The proposal was rejected by the creditors, and under the provisions of s. 32B [en. 1966-67, c. 32, s. 7] of the Bankruptcy Act, R.S.C. 1952, c. 14 (now s. 39) the debtor was deemed to have made an assignment on the date the proposal was so filed. Application was then made to the court for an order annulling the deemed assignment and for the granting of a receiving order on the petition effective from the earlier date on which the petition was filed. The reasons why the proceedings on the petition were stayed following the filing of the proposal were not stated. In his reasons for judgment granting the application Houlden J., while recounting the facts, stated [p. 197]: "On 17th October 1969, a proposal was filed by the debtor *which, of course, stayed any further proceedings on the petition.*" (The italics are mine.) The opinion expressed by Houlden J. in the *Re Lingen Trailer* case was unnecessary for the determination of the case before him and must therefore be regarded as obiter. With respect, I cannot accept the proposition that the filing of a proposal operates as an automatic stay of proceedings on a petition for a receiving order.

22 In my view, s. 49(1) is meant to prevent any creditor with a claim provable in bankruptcy from instituting or continuing any proceedings against a bankrupt or an insolvent who has filed a proposal which might otherwise gain him an advantage over other creditors without leave of the court. A petition is a proceeding for the benefit of all creditors. Furthermore, s. 25 of the Act deals specifically with stay of proceedings on a petition for a receiving order. The provisions of s. 49(1) are not in conflict with or in addition to s. 25 in this regard. They refer to cases in which a proposal has been filed or a debtor declared bankrupt

and in which a creditor seeks to recover from the debtor a claim provable in bankruptcy. A petition for a receiving order is not such a claim, and it is governed by the provisions of s. 25.

23 In my opinion, *Re Côté*, supra, is merely illustrative of what the courts will consider "sufficient reason" within the meaning of s. 25(11) for the exercise of their discretion to stay such proceedings. In that case, Lemieux C.J.Q. entertained a motion to stay all further proceedings on a bankruptcy petition following the filing of a proposal by the debtor. The motion was granted not simply because a proposal had been filed but for the reasons stated by the learned Chief Justice [p. 469]:

> Whereas the principal creditors of said debtor have pronounced themselves in favour of said proposal of extension and the trustee has sent to the creditors the notice required by *The Bankruptcy Act* and the meeting of the creditors is to be held at the office of Mr. Lucien Charest (the trustee), November 21 instant.

24 In that case, the learned trial judge exercised his discretion to stay proceedings for the reasons specified.

25 In this case, however, the petition for a receiving order and the order appointing an interim receiver were filed on 13th February 1976. The hearing of the petition commenced on 8th March and concluded on 12th March 1976. The debtors lodged their proposals with a trustee on the last day of the hearing, namely, 12th March 1976, and the trustee apparently filed a copy thereof with the official receiver under s. 32(1) on the same date. Notice of the proposal in Form 36 as required by R. 57 was not sent to the registrar until 22nd March, some ten days after the receiving order had been made, and hence did not form part of the proceedings at the hearing. The trial judge was informally notified that a proposal had been filed, and a copy of the proposal was given to him. He decided, however, to continue with the proceedings. He held, and in my opinion quite properly, that it would have been "manifestly unjust" to stay proceedings at that stage.

26 As to the second ground of appeal, it was contended that the failure of the learned trial judge to hear argument as to the effect of the filing of the proposal constitutes a defect in procedure warranting the setting aside of the order.

27 The cases cited by counsel for the debtors in support of this contention dealt with the invalidity of proceedings where the trial judge announced his decision on the issue before him without calling on counsel to argue. Such is not the case here. The learned trial judge merely ruled that, despite the filing of a proposal with the official receiver, the proceedings before him should continue. Shortly thereafter he called on counsel for the debtors to argue on the evidence presented. Counsel had every opportunity to introduce a motion that the proposals be accepted in evidence and that argument be heard as to their merits, or during his argument on the issues before the court it was open to him to request that the court defer the granting of a receiving order until the proposals had been considered by the creditors. He did neither, and in my view he cannot now be heard to say that he was denied the right to be heard.

28 As to the third and fourth grounds of appeal, the issue is, simply stated, whether or not the petitioner had established indebtedness to it by PRC and NRC in an amount in excess of $1,000 not subject to a bona fide dispute, and that PRC and NRC had committed an act of bankruptcy within six months next preceding the filing of the petition.

29 Counsel for the debtor contended that there was a bona fide dispute as to the rights and obligations of the petitioner and the debtors under an agency agreement, and that the proceedings under the petition should have been stayed pending determination of that dispute. In support of this argument counsel cited *Re Whistle Co. Ltd.*, 27 O.W.N. 491, 5 C.B.R. 495, [1925] 1 D.L.R. 1110, and *Re Coffey* (1933), 15 C.B.R. 53 (Ont.). These cases are authorities for the proposition that, where a petition for a receiving order is founded on alleged debts as to which there appears to be a bona fide dispute, the court will stay proceedings pending the settlement of that dispute by a civil court. Courts have long held that the bankruptcy court is not to be made a collection agency. This is not to say, however, that a mere denial of the debt is to be taken as constituting a bona fide dispute about its validity. Evidence must be adduced to establish to the court's satisfaction not only that the alleged dispute is bona fide but also that such dispute pertains to the debt or debts on which the petition is founded.

30 In this case the alleged dispute arises over the interpretation of an agency agreement made between Ataka and NRC, under the terms of which Ataka agreed, inter alia, to finance the purchase of crude oil for delivery to the debtors' refinery at Come-by-Chance. The amount and terms of any advances made by Ataka were entirely at its discretion, and in return for such

advances NRC agreed to issue promissory notes to Ataka according to repayment terms and conditions to be agreed. PRC was not a party to this agreement. Crude oil, financed by Ataka, was duly delivered to the debtors' refinery at Come-by-Chance, for which Ataka received promissory notes from NRC in respect of some shipments and bills of exchange and debentures from PRC in respect of others. Certain notes and bills of exchange were rolled over, as there were insufficient funds in the debtors' bank accounts to meet them when they fell due. All the notes and bills of exchange were subsequently assigned to the petitioner, as was all the other indebtedness of the debtors to Ataka. Notice of the assignments was given to both PRC and NRC. Overdue bills of exchange drawn by Ataka to its own order, accepted by PRC and endorsed to Atlantic, were filed in evidence. These notes and bills of exchange evidenced indebtedness to the petitioner, as assignee of Ataka, of many millions of dollars. The validity of these notes and bills of exchange was not contested, nor was the fact that they had been dishonoured. Counsel for the debtors maintained, however, that the rights and obligations of the parties to the alleged agency agreement should first be decided by a court of competent jurisdiction before it could be determined whether or not either PRC or NRC owed any debt to Ataka or Atlantic. Such is not the case.

31 The bills of exchange, accepted by PRC, were drawn in New York and payable in New York. The law of the state of New York governing negotiable instruments, according to expert evidence tendered at the hearing, is essentially the same as the law of Canada. These bills were given as payment for shipments of crude oil and were in no way related to the alleged agency agreement, to which PRC was not even a party.

32 The promissory notes were issued by NRC to Ataka to cover the advances made by Ataka for the purchase of crude oil. There was no objection as to their form, nor was it denied that the notes were unpaid after maturity. The notes were unconditional promises to pay many millions of dollars at a specified time. They were not tied to any agreement, nor is there anything in the alleged agency agreement to qualify them. Any dispute, therefore, over the rights and obligations of the parties to the alleged agency agreement should not be taken as a bona fide dispute to the alleged debt as envisaged under s. 25(10).

33 Evidence of indebtedness to other creditors on the part of both debtors was adduced at the hearing. This evidence, apart entirely from the statement of the debtors' financial position attached to the proposal, warranted a finding that both PRC and NRC had ceased to meet their liabilities generally as they became due.

34 I would accordingly dismiss the appeal with costs.

Appeal dismissed.

TAB 3

1978 CarswellNfld 17
Supreme Court of Canada

Provincial Refining Co. v. Newfoundland Refining Co.

1978 CarswellNfld 17F, 1978 CarswellNfld 17, [1978] 2 S.C.R. 836, 21 N.R. 178

Provincial Refining Company Limited and Newfoundland Refining Company Limited, Appellant and Atlantic Trading (Delaware) Corporation, Respondent

Laskin C.J. and Martland, Ritchie, Spence, Pigeon, Dickson, Beetz, Estey and Pratte JJ.

Judgment: April 26, 1978

Proceedings: On appeal from the Supreme Court of Newfoundland, Appeal Division

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
III Bankruptcy petitions for receiving orders
III.3 Hearing of petition
III.3.b Defences
III.3.b.vi Dispute of debt
Bankruptcy and insolvency
VI Proposal
VI.6 Effect of proposal
VI.6.d Effect on other legal processes
Headnote
Bankruptcy --- Bankruptcy petitions for receiving orders — Hearing of petition — Defences — Dispute of debt
Bankruptcy --- Proposal — Effect of proposal — Effect on other legal processes

The judgment of the Court was delivered orally by *The Chief Justice*:

1 We do not need to hear you, Mr. Chalker and Mr. Nesbitt. We see no error in the judgment of the Newfoundland Court of Appeal and, accordingly, this appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors of record:
Solicitors for the appellants: *Kitz, Matheson, Green & MacIsaac*, Halifax.
Solicitors for the respondent: *Chalker, Green & Rowe*, St. Johns.

TAB 4

business; the court refused a stay even though it meant that a number of employees would lose their jobs and the principals of the debtor company would lose their investment.

Where the court was of the view that it would be to the benefit of all parties to have the affairs of the debtor investigated by an independent trustee and the necessary facts had been proved to justify the making of a bankruptcy order, the court refused to stay the application: *Re 676915 Ont. Ltd.* (1989), 76 C.B.R. (N.S.) 164 (Ont. S.C.); *Re Steintron Int. Electronics Ltd.* (1986), 62 C.B.R. (N.S.) 78, 7 C.B.L.R. (2d) 267 (S.C.); *Re Maple City Ford Sales (1986) Ltd.* (1992), 14 C.B.R. (3d) 188 (Ont. Gen. Div.).

Where the court found that a plan put forward for solving the debtor's financial difficulties was unrealistic and unworkable, a stay was refused: *Re Caslexa Construction Inc.* (1996), 43 C.B.R. (3d) 197 (Ont. Gen. Div.).

Where a dispute is concocted for the purposes of attempting to hinder recovery of indebtedness by the creditor, a stay will not be granted: *Re 1130703 Ontario Ltd.* (2003), 2003 CarswellOnt 3414, 45 C.B.R. (4th) 320 (Ont. S.C.J.).

(9) — Stay of Proceedings Because of Pending Criminal Proceedings

In deciding whether a stay of an application should be granted because of pending criminal proceedings, the test to be applied is the same as in civil proceedings, *i.e.*, a stay should only be ordered if the debtor can show that he or she will be prejudiced in some specific or particular way in his or her criminal trial if the application is allowed to proceed: *Re Bookman* (1982), 44 C.B.R. (N.S.) 34, 142 D.L.R. (3d) 49 (Ont. S.C.).

The court denied the motion of an applicant creditor for a stay of a bankruptcy application until after the respondent debtor's trial for fraud. The court held that the *BIA* requires the applicant to have a *bona fide* intention to prove the existence of the debt and the act of bankruptcy at the time of commencement of the application. Here, the applicant had no more than a hope that criminal proceedings would establish the basis for the debt: *Re DiNardo*, 2013 CarswellOnt 9067, 3 C.B.R. (6th) 133, 2013 ONSC 2653 (Ont. S.C.J.).

(10) — Stay of Application for a Bankruptcy Order by Reason of the Filing of a Proposal

The filing of a proposal does not *ipso facto* operate as a stay of an application: *Provincial Refining Co. v. Newfoundland Refining Co.* (1977), 27 C.B.R. (N.S.) 192, 14 Nfld. & P.E.I.R. 308, 33 A.P.R. 308 (Nfld. C.A.); affirmed [1978] 2 S.C.R. 836; *Sport Maska Inc. v. RBI Plastique Inc./RBI Plastic Inc.* (2005), 2005 CarswellNB 635, 17 C.B.R. (5th) 244 (N.B.Q.B.). Hence if an application is filed and the debtor then files a proposal, the applicant creditor is entitled to proceed with the application: *Re 389179 Ont. Ltd.* (1979), 29 C.B.R. (N.S.) 221 (Ont. S.C.). The filing of a proposal is, nevertheless, a factor that the court can consider in granting a stay of proceedings pursuant to s. 43(11) of the *BIA*, if it determines that it would be in the best interests of creditors to stay an application while the creditors consider a proposal. The onus is on the debtor to satisfy the court that there is a sufficient reason for staying the application; here, the onus was not discharged: *Sport Maska Inc. v. RBI Plastique Inc./RBI Plastic Inc.* (2005), 2005 CarswellNB 635, 17 C.B.R. (5th) 244 (N.B.Q.B.).

(11) — Staying Bankruptcy Orders

For the power of the court to stay a bankruptcy order, see D§55 "Annulling Bankruptcy Orders and Staying Bankruptcy Orders", *post*.

Estate/Court File No.: 31-2675288

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 2505243 ONTARIO LIMITED OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ONTAIRO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

Book of Authorities of Princes Gates GP Inc., Lowell Security Inc., The Small Winemakers Collections Inc., D.N.B. Media Group Inc., PR CC Plated Meals Inc. and Platinum Valet Hotel Cleaners Inc.

LOOPSTRA NIXON LLP
135 Queens Plate Drive – Suite 600
Toronto, ON M9W 6V7

Peter Carey (LSO No.: 29410V)
Tel: 416.748.4744
Email: pcarey@loonix.com

Thomas P. Lambert (LSO No.: 70354T)
Tel: 416.748.5145
Email: tlambert@loonix.com

Lawyers for Prince Gates GP Inc., Lowell Security Inc., The Small Winemakers Collection Inc., D.N.B. Media Group Inc., and Platinum Valet Hotel Cleaners Inc.