Court of Queen's Bench of Alberta

Citation: Mainstreet Hair Salon 1992 Ltd. v. Schumaker, 2008 ABQB 363

Date: 20080616
Docket: BE03 977107
Registry: Edmonton

In the Matter of the Bankruptcy of
Angeline Melanie Schumaker

Between:

Mainstreet Hari Salon 1992 Ltd.
operating as Kaya Loma Salon and Spa

Applicant

- and -

Angeline Schumaker

Respondent

Memorandum of Decision
of the
Honourable Madam Justice J.B. Veit

Summary

[1] Ms. Schumaker's only creditor, Kaya Loma Salon and Spa, appeals the Registrar's order discharging her from bankruptcy. It argues that Ms. Schumaker's bankruptcy is an abuse of the bankruptcy system.

[2] On June 7, 2007, the creditor obtained a judgment from this court against Ms. Schumaker for approximately $6,000.00 and then entered into negotiations with Ms. Schumaker for the payment of the judgment. Ms. Schumaker proposed paying $150.00 monthly; the creditor countered with a proposal that she pay $200.00 monthly. Ms. Schumaker immediately assigned herself into bankruptcy. The judgment was for tuition which the creditor, her then employer, had paid on Ms. Schumaker's behalf, on the condition that if Ms. Schumaker left her employment

within 3 years of completion of the course, she would repay her employer. According to the information that she has filed, Ms. Schumaker has no children, no other debts or responsibilities, and lives at home with her mother.

[3] The appeal is allowed.

[4] The reluctance that courts have always shown for using bankruptcy legislation to relieve a debtor from getting rid of a judgment is increased when the judgment is for education or training that will allow the debtor to earn future income. Here, no special circumstances exist to attenuate that reluctance. It was therefore an error of principle for the Registrar to totally relieve the debtor of her debt. It is a condition of her discharge from bankruptcy that Ms. Schumaker pay off 90% of the appellant's judgment at the rate of $150.00 per month, commencing when Ms. Schumaker has finished paying off her Trustee.

Cases and authority cited

[5] **By the appellant:** ***Re Gigault*** [1981] O.J. No. 33 (C.A.); ***Re Main*** [1999] A.J. No. 532 (R.); ***Re Lasky*** [1998] A.J. No. 1641 (R.); ***Re Elias*** [2001] M.J. No. 270 (R.)

[6] **By the court:** ***Re Impact Tool & Mould Inc. (Trustee of) v Impact Tool & Mould Inc. (Interim Receiver of)*** 208 O.A.C. 133, [2006] O.J. No. 958 (C.A.); ***Re Ganden*** 2006 ABQB 806; [2006] A.J. No. 1397(R.)

1. Background

[7] Ms. Schumaker was employed by Mainstreet Hair Salon 1992 Ltd., operating as Kaya Loma Salon and Spa, when she took some type of esthetics course from Aveda Academy. Her employer paid for the course, on the condition that Ms. Schumaker would repay the cost of the course if she left her employer within 3 years of completing the course. Ms. Schumaker contended that her employer "changed their policies to an extent that I was not able to continue working there" and left her employment within the 3 year period.

[8] On June 7, 2007, this court concluded that Ms. Schumaker was, in fact, obliged to repay her employer; the total judgment was for approximately $6,380.00. The judgment was entered on June 26, 2007. After the judgment was issued, the employer entered into negotiations with Ms. Schumaker concerning its payment: Ms. Schumaker offered to pay $150.00 per month and the judgment creditor countered with an offer of $200.00 per month.

[9] On July 12, 2007, Ms. Schumaker assigned herself into bankruptcy.

[10] In March, 2008, Ms. Schumaker applied for discharge from bankruptcy. Her Trustee opposed her discharge on the grounds that Ms. Schumaker had agreed to pay the Trustee $1,720.00 and that $670.00 of that amount remained unpaid. On May 1, 2008, the Registrar ordered that Ms. Schumaker be discharged from bankruptcy on the condition that she pay to her

Trustee the sum of $670.00 at the rate of $150.00 per month. No payments were required to be paid to Ms. Schumaker's only creditor.

[11] Ms. Schumaker is approximately 24 years old. She does not have any children or any other dependents; she does not have any other debts except the one owed to the appellant; she does not have any credit cards; she does not have a vehicle; so far as the judgment creditor is concerned, she lives with her mother. When she went into bankruptcy, Ms. Schumaker stated that she was working as a waitress, that her net monthly income from employment was $932.00 and that she earned $400.00 a month in tips, for a total monthly income of $1,320.00.

2. Standard of review

[12] An appeal from the Registrar is on the record and is governed by the standard as set out by the Ontario Court of Appeal in ***Impact Tool & Mould Inc.***:

> The Deputy Registrar in bankruptcy is not an administrative tribunal. Although not a judge, he or she exercises a judicial function in deciding issues such as those arising in this case. Applying the patently unreasonable/reasonable/correct spectrum that constitutes the standard of review in administrative law matters to the decisions of a deputy registrar in bankruptcy is not helpful. As Lane J. noted in Re Golden Mile Bowl Inc. (2005), 14 C.B.R. (5th) 187 (Ont. S.C.), at para. 13:
>
> An appeal of the registrar's order will be allowed where it is demonstrated that the registrar erred in principle or in law or failed to take into account a proper factor or took into account an improper factor, which led to a wrong conclusion.
> See also Re Barukory Investments Limited (1979), 32 C.B.R. (N.S.) 185 (Ont. H.C.), at p. 186; Re Barrington and Vokey Limited (1996), 48 C.B.R. (3d) 270 (N.S.S.C.) at para. 18; Re Mengistu (2003), 45 C.B.R. (4th) 277 (Sask. Q.B.) at para. 4.

3. Bankruptcy principles where single judgment creditor

[13] In ***Re Gigault***, the Ontario Court of Appeal said:

> 6 The Court does not regard with favour the filing of an assignment in bankruptcy for the purposes of getting rid of a judgment such as that held by the appellant: Kozack v. Richter (1973), 20 C.B.R. (N.S.) 223. However the respondent is in bankruptcy and the issue now is: What is the proper order to make as a condition of granting him a discharge? The order must not cripple the respondent financially, but at the same time it must be fair to the appellant. With respect we think that the amount of $600.00 fixed by Saunders J. is not fair to the appellant and is so inordinately low as to constitute an error in principle.

[14] In ***Re Ganden***, Registrar Waller of this court said:

> 16 The courts have always been reluctant to grant a discharge to a bankrupt who files in the face of a judgment and such applications have always been subject to special scrutiny. See ReMayrand (1979) 32 C.B.R. (N.S.) 80; Re Webber (1980) 35 C.B.R. (N.S.) 299; Re Gigault (1981) 37 C.B.R. (N.S.) 119.

[15] The same principles were repeated by the Quebec Court of Appeal in ***Re Carrier***, where the court noted that, in this context, it was important to note whether a judgment arose out of a voluntary and deliberate act of the bankrupt:

> 20 En résumé, à l'occasion d'une demande de libération d'un failli, est un facteur d'examen pertinent la question de savoir si le débiteur a fait cession de ses biens pour éviter de payer les dommages pour lesquels il a été condamné par jugement, surtout si étudiée en première instance, ces dommages découlent d'un acte volontaire et délibéré.

[16] The purpose of bankruptcy legislation has been discussed in a great many cases. A frequently used summary of the legislation is that it is designed to permit an honest but unfortunate debtor to obtain a discharge from debts subject to reasonable conditions. The very structure of the legislation, which does not relieve a debtor from student loans, suggests an additional principle: debts acquired for the purpose of obtaining education or training that will last a lifetime should only be completely discharged in special circumstances. Education and training are assets that allow their holders to earn income throughout a lifetime; when a debtor can continue to profit from those assets, any discharge must recognize the ongoing advantage to the debtor as well as the ongoing disadvantage to the creditor.

4. Did the Registrar breach the applicable principles in granting a discharge here?

[17] With respect, I am of the view that the Registrar did, in the circumstances here, commit an error of principle by not imposing reasonable conditions on a debtor who had obtained a life-time advantage from the debt incurred.

[18] Here, the debt acquired by Ms. Schumaker was for the purpose of acquiring training that she could use in her career. The fact that she appears to have abandoned a career in esthetics in order to take up employment as a waitress, for which no special training is required, is not relevant to the issue of whether she should be held to pay for the training she has received.

[19] No circumstances have been demonstrated that should be taken into account in relieving Ms. Schumaker of her debt: she is young, she is healthy - as her employment as a waitress indicates - she has no dependents, she has no other debts.

[20] The only reason that I have concluded that Ms. Schumaker should be relieved of paying a small part of the judgment against her is that she has already paid a hefty price for going into bankruptcy: not only has she acquired new debt - to her Trustee - but she has also acquired the liabilities of being a bankrupt. This may have particular repercussions for Ms. Schumaker in that many beauty salon and spa businesses, for which she appears to be ideally suited, are operated from a corporate base; she may have lost some of the options she had in this area because of her

bankruptcy. Her loss is of course, irrelevant to her judgment creditor, but it is a reality of her situation that the court considers should be addressed.

5. Conclusion

[21] For the reasons set out above, I am of the view that reasonable conditions should be imposed on Ms. Schumaker's discharge from bankruptcy and that those conditions must include, in addition to the obligation to pay off her Trustee, an obligation to pay off 90% of the appellant's judgment against her, at the rate of $150.00 per month, with payments to commence when she has finished paying off her Trustee.

Heard on the 13th day of June, 2008.
Dated at the City of Edmonton, Alberta this 13th day of June, 2008.

J.B. Veit
J.C.Q.B.A.

Appearances:

Philip G. Lister, Q.C.
For the Applicant

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For the Trustee

Angeline Schumaker (did not appear)