

GERALD THOMAS REGAN  
Regan (Re)  
File No. NB 8564  
New Brunswick Queen's Bench Registrar in Bankruptcy  
2001 A.C.W.S.J. LEXIS 14374; 2001 A.C.W.S.J. 612023; 105 A.C.W.S. (3d) 14

April 24, 2001, Decided

KEYWORDS: [\*1]

BANKRUPTCY AND INSOLVENCY -- Discharge --Opposition -- Creditor opposed bankrupt's discharge -- Creditor questioned transfer of matrimonial home to bankrupt's wife and fact that bankrupt did not disclose certain assets -- Transfer of matrimonial home was sufficiently removed from bankruptcy -- Non-disclosure of assets did not amount to fraud

SUMMARY: Creditor opposed bankrupt's discharge on basis that bankrupt was responsible for the value of his assets being less than fifty cents on the dollar and that creditor had not adequately responded to questions concerning property dealings prior to bankruptcy. Creditor questioned transfer of matrimonial home to bankrupt's wife five years prior to bankruptcy and fact that bankrupt did not disclose certain assets.

HELD: The transfer of the matrimonial home was sufficiently removed from the bankruptcy. The bankrupt failed in his obligation to fully disclose assets, however, evidence fell short of disclosing fraud. Discharge was granted. Creditors had remedy under Bankruptcy and Insolvency Act (Can.), s. 38 against trustee if trustee refused to pursue bankrupt for undisclosed assets.

COUNSEL: Susan Reidpath, Trustee  
Frederick C. McElman for Gerald Thomas [\*2] Regan  
Bernard F. Miller for The Society of Lloyd's

JUDGES: Bray  
Michael Bray , Registrar

#### INTRODUCTION

[\*\*1] Gerald Thomas Regan ("the Bankrupt") filed for bankruptcy on July 11, 2000. A creditors' meeting was held on August 11, 2000 with the Association of Canadian Names being the only creditor noted on the attendance list. The bankrupt was eligible for an automatic discharge on April 12, 2001, on the condition that he had fulfilled all obligations imposed on him by the Bankruptcy and Insolvency Act ("BIA").

[\*\*2] An initially scheduled Discharge Hearing on December 8, 2000 was postponed due to ill health on the part of the bankrupt and rescheduled on March 16, 2001. The Trustee's 170 Report dated February 28, 2001 indicated that the Bankrupt had completed his obligations and recommended a discharge conditional upon the payment of \$6,564.00. On February 16, 2001, The Society of Lloyd's ("Lloyd's"), the primary creditor of the bankrupt signed a Notice of Intended Opposition alleging that the Bankrupt was responsible for the fact that his assets were not of a value equal to fifty cents on the dollar and that he had not adequately responded to questions concerning property dealings [\*3] prior to bankruptcy.

[\*\*3] At the outset of the hearing on March 16, 2001, it was established that no attempt had been made to examine the Bankrupt pursuant to subsection 163(2) of the BIA. Counsel for Lloyd's, however, stated that there had been some difficulty in obtaining information from the Trustee related to shares that had been held by the Bankrupt in Parrtown Place Ltd. ("Parrtown"), a corporation of which he was also a director. An adjournment for two weeks was granted to permit further exchange and examination of documents. This was effected and counsel for Lloyd's examined the Bankrupt based on the information obtained when the hearing continued on March 30, 2001.

#### ISSUE

[\*\*4] Has the bankrupt wrongly concealed information on property such that his discharge on the terms suggested by the Trustee would prejudice the rights of creditors?

#### FACTS

[\*\*5] The Bankrupt is presently 68 years of age and was an ophthalmologist earning \$200,000 to \$300,000 at career prime. His spouse has not worked outside the home since 1987. The family home, currently assessed at \$367,000, and which previously had been jointly owned, was transferred by the

Bankrupt and his spouse to [\*4] the sole property of the spouse on August 12, 1992. [\*\*6] At the time of bankruptcy the Bankrupt had shares in a professional corporation and 150 of 600 preferred shares in Parrtown. These are still held and estimated by the Trustee to be valued at par, \$1.00 each. The shares in G. T. Regan Professional Corporation were given an estimated value of \$1.00 on the Statement of Affairs signed by the Bankrupt on June 27, 2000. The interest in the professional corporation shares was vested in the Bankrupt pursuant to a directive given to the Trustee at the first meeting of creditors. No mention in the Statement of Affairs was made of Parrtown Place Ltd., in which the Bankrupt held a one-quarter interest. He also had RRSP investments that were exempt from seizure by the Trustee. The RRSP was given an estimated value of \$300,000.00 on the Statement of Affairs. Counsel for Lloyd's questions the accuracy of this estimate and further submits that the withholding of information on Parrtown was wrongful. Although it was submitted on behalf of the bankrupt that he had omitted to include the shares because he believed them to be of no value due to the company's long term debt exceeding its [\*5] assets, Lloyd's pleads that had the primary asset sold for the asking price of \$885,000.00 in a recent sale listing, equity could have resulted, since the outstanding mortgage debt was approximately \$450,000.00. No offers were received, however, and the building was not sold. [\*\*7] The bankrupt in 1993 transferred to his spouse shares that he held in a company named Sheradave Ltd. Counsel for Lloyd's submits that this is a substantial asset that has been shielded from creditors and operates in the nature of a "family trust account". [\*\*8] The three primary issues raised are cited by Lloyd's to indicate a lack of forthrightness on the part of the Bankrupt which, it is submitted, would undermine the integrity of the process if the Bankrupt were discharged on the condition recommended by the Trustee.

## DECISION

[\*\*9] It is common ground that the Bankrupt's assets are not equal to fifty-cents on the dollar of the value of his unsecured liabilities. Lloyd's submits that the transfer of the Sheradave shares is sufficient evidence to permit a conclusion that this fact was due to circumstances for which the Bankrupt should be held responsible. The Bankrupt, when questioned on [\*6] the beneficial ownership of this investment, stated that it belonged to his spouse and was to provide for retirement. [\*\*10] The Bankrupt was also questioned about the transfer of the marital home to his spouse. This transfer occurred more than five years prior to the bankruptcy and although counsel for Lloyd's states that Names knew in the early 1990's that liabilities were possible, no evidence was given that would indicate that the bankrupt had any indication of personal insolvency at that time. It might have been a prudent measure undertaken in case of future eventualities but there is no proof that the intention was to defeat creditors extant at the time of transfer or foreseeable in the future. The marital property transaction is not material to the issues in this hearing. [\*\*11] Can the same be said for the transfer of the shares of Sheradave Ltd.? Counsel for Lloyd's suggests that this transfer should be viewed in the light of subsection 173(1) paragraph (d) of the BIA as being a loss of assets that might otherwise have been used to meet subsequent liabilities. The opposing creditor views the value of the assets thus transferred as an amount placed in trust for the bankrupt, [\*7] portions of which should be used to pay his creditors.

It is further advanced as a reason by which the Bankrupt could be held responsible for the fact that his assets are not equal to fifty cents on the dollar of the value of his unsecured liabilities. [\*\*12] The Trustee is aware of the value of the Sheradave account. The evidence presented at this hearing was not conclusive in demonstrating that Sheradave is a trust account for the bankrupt's personal benefit although it appeared that he might profit from his spouse's use thereof. The discharge hearing, furthermore, is not an appropriate forum to perform the detailed examination required to make such a determination. If the Trustee decides that the funds are not held in trust for the Bankrupt and should not be used to pay creditors, the latter have a remedy pursuant to section 38 f the BIA. [\*\*13] The shares in Parrtown should have been included on the Statement of Affairs prepared by the Bankrupt. It is immaterial that the Bankrupt considers an asset to be of little or no value. All assets must e declared to the Trustee who is empowered to conduct an evaluation. If a sale is possible that will allow realization on the shareholder's [\*8] loan this can be claimed by the estate for the benefit of creditors. This principle applies also to the disclosure of the value of RRSP's. Although these funds are exempt from seizure, they are nonetheless assets and all details should be provided to the Trustee who may effect a discounting to show after-tax value if this is appropriate. In the present instance the Trustee now has knowledge of these matters and Bankrupt's interest in Parrtown property, whatever its value, is vested with the Trustee for distribution to the creditors.

[\*\*14] The evidence concerning the bankrupt's omissions in full disclosure fall short of that required to show fraudulent intent and no misconduct will be presumed.

## CONCLUSION

[\*\*15] The transfer of the marital home is not material to the Bankrupt's discharge. The Trustee is aware of the value of RRSP holdings, which are exempt assets not available to the creditors, and has the

power to use any value in the Parrtown holdings to the benefit of creditors. [\*\*16] The one issue that is still somewhat unclear is the status of Sheradave investments and whether the Bankrupt has any beneficial interest therein that might be accessed by creditors. Counsel [\*9] for Lloyd's characterizes this as a "family investment account". Should sufficient evidence be presented to demonstrate this to be an accurate view, it would be necessary to determine the interest of the bankrupt therein and whether a part of any income that might be generated therefrom should be made available to creditors.

[\*\*17] The Trustee has decided that the property transfer in Sheradave which occurred more than five years prior to the bankruptcy falls outside her jurisdiction. A suspension of the discharge hearing to allow time for evaluation under the circumstances would serve little purpose. [\*\*18] As previously noted, a creditor has a remedy under section 38 of the BIA if it has requested that the Trustee act in a manner which in the opinion of its representative would be beneficial to creditors and the Trustee has refused. An application pursuant to section 38 would be the appropriate manner for Lloyd's to proceed if dissatisfied with the Trustee's actions on Sheradave. [\*\*19] As a condition of discharge the Bankrupt shall vest with the Trustee the sum of \$6,564.00 which shall be payable in minimum monthly instalments of \$547.00. The Bankrupt shall be discharged [\*10] upon the payment of \$6,564.00