

CANADA / JUDGMENT

Bankruptcy of Funnell

2000 BCSC 1571

COURT

Supreme Court of British Columbia

DECIDED

25 October 2000

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2000 BCSC 1571 Citation: Bankruptcy of Funnell Date: 20001025 2000 BCSC 1571 Docket: 166773VE6 Registry: Vernon IN THE SUPREME COURT OF BRITISH COLUMBIA IN THE MATTER OF THE BANKRUPTCY OF RICHARD FUNNELL OF THE REGIONAL DISTRICT OF WESTBANK IN THE PROVINCE OF BRITISH COLUMBIA REASONS FOR DECISION OF REGISTRAR WELLBURN
Written submissions for the former Trustee by: Howard R. Berge, Q.C. Written submissions for the Opposing Creditor by: Megan Ellis

- [1] The opposing creditor seeks costs against the former trustee personally for two court appearances, September 20, 1999 and April 19, 2000. She claims lump sum costs of \$1500, including airfare from Vancouver to Kelowna, taxi fare, airport improvement fees and an allowance under the Supreme Court Rules for the attendances.
- [2] The opposing creditor's claim is 99.2% of the total proven claims in the bankruptcy. Therefore, if she receives costs paid out of the estate it will be of almost no benefit to her.
- [3] Her position is that the former trustee acted unreasonably in refusing a request for an adjournment and putting forward an unreasonable account for taxation, thereby putting her to considerable trouble and expense in opposing his claims for remuneration and legal fees.
- [4] The jurisdiction of the registrar with respect to costs is found in s. 197(1) of the Bankruptcy and Insolvency Act which provides: ...Subject to this Act and to the General Rules, the costs of and incidental to any proceedings in court under this Act are in the discretion of the Court. S. 197(3) provides: ...Where an action or a proceeding is brought by or against a trustee, or where a trustee is made a party to any action or proceeding on his application or on the application of any other party thereto, he is not personally liable for costs unless the court otherwise directs.
- [5] One authority has been provided in which a trustee was ordered to pay costs personally, Re: Bryant v. Isard & Co. ex parte Higginson (1923) 4 C.B.R. 41. There is no discussion in that case about the jurisdiction to award costs against a trustee personally or in what circumstances it would be appropriate to do so.

- [6] The former trustee has not claimed costs with respect to passing his accounts. Usually a trustee is allowed special costs for proceedings before the registrar with respect to approving remuneration and passing accounts, as was found to be the case with respect to receiver's fees in *Canadian Imperial Bank of Commerce v. Barley Mow Inn* (1996) 20 B.C.L.R. (3rd) 70.
- [7] At the hearing before me, April 19, 2000, the former trustee conceded that there should be reductions to the legal bills claimed as disbursements. In my reasons, I criticised the former trustee's conduct and reduced his remuneration and the remaining amount claimed for legal fees. It is therefore appropriate that there has been no claim for costs by the former trustee for the passing of his accounts.
- [8] However, in my view, the former trustee's conduct was not so outrageous or scandalous that I should go the further step and award costs to the opposing creditor to be paid personally by the former trustee.
- [9] I allow costs in the amount of \$1500 to be paid from the estate to the opposing creditor for the two hearings on September 20, 1999 and April 19, 2000. "Registrar Wellburn"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/00/15/s00-1571.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bankruptcy-of-funnell-2000>

Prepared on 29 October 2026 · Esheria