

CANADA / JUDGMENT

Karim (Re)

2007 BCSC 624

COURT

Supreme Court of British Columbia

DECIDED

7 May 2007

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2007 BCSC 624 Karim (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Karim (Re), 2007 BCSC 624 Date: 20070507 Docket: B040825 Registry: Vancouver IN BANKRUPTCY AND INSOLVENCY IN THE MATTER OF THE BANKRUPTCY OF ALNASIR HUSSEIN KARIM Before: The Honourable Mr. Justice Hinkson Reasons for Judgment Counsel for the Applicant Murray K. Morrison Counsel for the Objecting Creditor West Star Holdings Ltd. Murray H. Shapiro Date and Place of Hearing: April 12, 2007 Vancouver, B.C.

- [1] This is an application by Mr. Karim to be discharged from bankruptcy.
- [2] The applicant, Mr. Karim, filed an assignment into bankruptcy on January 7, 2004. Mr. John Bottom of J. Bottom and Associates Ltd. was appointed as the Trustee in Bankruptcy for Mr. Karim.
- [3] West Star Holdings Ltd. ("WSHL") was the landlord of Nanaimo Carpet Depot when Mr. Karim operated that business. The business experienced financial difficulties during the first year of its operation under Mr. Karim, in 1994 - 1995, and as a result, the landlord agreed to reduce the rent payable by Mr. Karim. Mr. Karim failed to make the required rental payments.
- [4] Mr. Shapiro for the Objecting Creditor, WHSL, asserts that Mr. Karim's true assets and liabilities were not disclosed at the time of his filing.
- [5] On May 12, 1999, Paris J. granted judgment to WSHL for rent owing up to May 1996 in the amount of \$13,801 exclusive of costs, making adverse credibility findings against Mr. Karim in the process.
- [6] Mr. Karim resisted reasonable efforts by WSHL to collect the proceeds of the judgment, forcing a variety of applications for production of documents and information by WSHL.
- [7] On September 4, 2003, MacKenzie J. granted a further judgment in favour of WSHL against Mr. Karim for an additional \$12,956 plus costs, making further adverse credibility findings against Mr. Karim.

- [8] Mr. Karim has persisted in deliberately delaying the further efforts of WSHL to collect on its judgments.
- [9] Mr. Bottom was discharged as Trustee on March 15, 2006.
- [10] Mr. Karim now seeks to be discharged from bankruptcy, having made no payments to WSHL on their judgments.
- [11] WSHL does not oppose Mr. Karim's discharge absolutely, but says that the discharge should be conditional, relying upon ss. 172(2)(c) and 173(c), (d), (e) and (f) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3.
- [12] I am satisfied on the material before me that Mr. Karim has repeatedly engaged in frivolous and vexatious defences to the claims of WSHL and put that company to unnecessary costs, contrary to s. 173(f) of the Act.
- [13] The conditions proposed are that Mr. Karim be ordered to pay a sum of money, one-half to WSHL, and the other half to the now discharged Trustee in Bankruptcy, for a period of three years. While the amount is not agreed upon by Messrs. Morrison and Shapiro, they both submitted that the payments to the proposed recipients could be ordered pursuant to the Bankruptcy and Insolvency Act.
- [14] I do not agree that the legislation would permit me to make the order sought, even if I were prepared to set a specific amount and a specific term for payment.
- [15] Section 176(3) of the Act mandates that conditional payments can only be made to the Trustee. As there is no Trustee at the present time, I am unable to make the order sought. Even if the Trustee were in place I would be unable to make the order sought, as it proposes payments directly to WSHL which the legislation does not permit.
- [16] In the result, Mr. Karim's discharge is refused pursuant to s. 172(2)(a) of the Act, with costs to the Objecting Creditor, WSHL. "C. Hinkson, J." The Honourable Mr. Justice C. Hinkson

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