

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: Abdo (Re), 2009 NSSC 338

Date: November 17, 2009

Docket: B-33848

Registry: Halifax

District of Nova Scotia
Division No. 01 - Halifax
Court No. 33848
Estate No. 51-1132615

In the Matter of the Bankruptcy of Alfredo Jeremy Abdo

LIBRARY HEADING

Registrar: Richard W. Cregan, Q.C.

Heard: October 15, 2009

Written Decision: November 17, 2009

Subject: Discharge from Bankruptcy
A former university student borrowed from a bank over \$50,000 on a student line of credit.

Summary: He left his studies because of health problems, which he claims prevent him from working. The bank submitted that he could not prove that he should not be justly held responsible for his debts and asked that he be required to make a substantial payment as a condition of discharge.

Result:

Court held that, considering his health in the widest sense, he could not justly be held responsible. He was granted an absolute discharge.

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DECISION

Registrar: Richard W. Cregan, Q.C.

Heard: October 15, 2009

Counsel: Rebecca Hiltz LeBlanc representing the Royal Bank of
Canada

Donald Leet and Matthew Fader representing the Trustee,
WBLI Incorporated

Alfredo Jeremy Abdo, the bankrupt, representing himself

- [1] Alfredo Jeremy Abdo made an assignment in bankruptcy on November 18, 2008. He now asks the Court to grant him his discharge. The recommendation of his Trustee, WBLI Incorporated, is that he be given an absolute discharge. His major creditor, Royal Bank of Canada (RBC), opposes his discharge. Its opposition is based on several grounds which center around his having borrowed a substantial amount of money from it under a Student Line of Credit to finance his studies in engineering. He has now abandoned his studies. RBC says that he made his assignment to avoid repayment of his debt owed to RBC and that his discharge should be conditional on him paying his estate a substantial amount of money.
- [2] Mr. Abdo who is now 23 was a very able student, academically, socially and athletically, at Halifax West High School. In September 2004 he entered Dalhousie University to study for the degree of Bachelor of Engineering. In both the fall term and the winter term he did very well. His cumulative GPA was 4.06. For various reasons which will be related later, in the fall term of 2005 he switched the direction of his studies. He took only four courses, rather than the usual five, two in commerce and two in engineering. His

marks, compared to the first year, were not very good, a GPA of 1.50. The winter term of 2006 involved four courses in commerce with improved marks and a GPA of 3.02. The fall term of 2006 involved five commerce courses with a GPA of 3.40. He has not continued his formal studies beyond that term.

- [3] During the course of these studies he received from Dalhousie two scholarships of \$8,000 each.

- [4] On August 31, 2005 he arranged a Student Line of Credit with RBC. \$20,000 was then advanced to him on the basis of his excellent academic performance during his first year at university. This line of credit is made available to students in professional courses where there is expectation that the student, on graduation, will find well paying employment within a short period of time and be able to pay back the loan. This loan facility is popular with medical, dental, law and engineering students.

- [5] Apparently before the end of the year he found himself in financial difficulties as a result of some investments. He called on his loans officer at

RBC for advice. To solve his problem the officer offered to advance him a further \$30,000 on his line of credit. This he accepted, resulting in total advances of \$50,000. With interest accrued at the time of his assignment, this loan had grown to \$58,200.

[6] Somewhere in the meantime he received a student loan under government sponsorship which at assignment had accrued to \$14,795 and another similar loan through RBC which had accrued at assignment to \$2,613.27.

[7] There is a debt of \$4,735 with a securities business and several other debts of a consumer or credit card nature, totalling \$8,316.88.

[8] It appears that along with his studies he was seriously involved in on line investing and quickly was in over his head. He admitted this was the reason for the second advance on his line of credit in December 2005. There is no suggestion of any expensive indulgences on his part. It is thus apparent that a significant portion of the money borrowed was put into investments and is now lost.

- [9] Mr. Abdo told of the drive for excellence that has dominated his upbringing. He did very well in school. He was active in athletics, played soccer, and was involved in community projects, such as fund raising. This intensity continued through at least his first year at university. However, somewhere along the way he did not have the emotional resources to keep it all going. He started to question whether it was all worthwhile. This has manifested itself physically in that he suffers from dizziness. Because of that he withdrew from his athletic activities. He consulted a doctor who simply encouraged him to take breaks in his activities. He has become quite uncomfortable in social situations. He perceived a certain bullying about the university. He decided that he could not stand the environment. He switched his studies from engineering to commerce believing that there would be reduced pressure on him.
- [10] Basically he has now withdrawn to his comfort zone. He lives with his mother who supports him. He reads self-improvement books and popular literature regarding world issues. He has no gainful employment. He has no desire to return to university. Except for the one consultation about his dizziness he has not sought medical advice. His Trustee had strongly urged

him to see a doctor. The dizziness continues. He asked to be able to sit down when making his submissions to the Court.

[11] Having observed him I think it is fair for me to say that he has very serious health problems, and I mean that in the widest sense, the most serious aspect of which is that he does not see that he should seek help. I would further say that he very much lacks a sense of proportion about the matters which preoccupy him. He cannot handle the world except by withdrawing into his comfort zone which, if he does not do something positive, is only going to continue to contract.

[12] Counsel for RBC reminds me of what Registrar Nettie of Ontario said in *Tranh (Re)*, [2008] O.J. No 27 08 in paragraph 10

What to do? It is trite to point out that a discharge Court must balance three interests - - the desire of the honest but unfortunate bankrupt to be released from debt, and returned to commercial society; the rights of the creditors to be re-paid; and the integrity of the insolvency system.

[13] She submits that Mr. Abdo is not unfortunate in terms of his debt. To address this submission I note a number of relevant matters in the evidence. Mr. Abdo was 19 when he arranged the loan. The sum of \$20,000 was

advanced to him. He had a scholarship which would have covered his tuition. It appears that his life style is modest. He lived at home. I question whether advancing all that money at one time was prudent banking on the part of RBC. It might be said that it is not for me to question RBC's practices. However, I think it appropriate that I note the circumstances under which three months later an additional \$30,000 was advanced to him. He went to see the loans officer because he had a problem. He needed money to answer a commitment he made, presumably to buy securities. He says it was the loans officer's recommendation that \$30,000 be advanced against the established line of credit. Clearly this was not an advance for the aid of Mr. Abdo's education but an advance to relieve him from an investment difficulty. The officer was not called as a witness nor did he give an affidavit. He apparently no longer lives in the area. I was not informed as to whether he is still in the employ of RBC. Vague as it was, I accept Mr. Abdo's evidence on this point.

[14] As a result none of the discussion regarding the special status of a student line of credit applies to the \$30,000 advance. I take it simply to be a loan to an immature 19 year old investor out of his depth to temporarily solve a

financial problem. RBC took the risk.

[15] I think it can be said, considering the total picture, that Mr. Abdo is “unfortunate”. It may also fairly be said that, at least in part, RBC is responsible for the situation. Furthermore it does not necessarily follow that discharging him absolutely would be an affront to the integrity of the insolvency system.

[16] I shall comment on some cases counsel has cited to me.

Galloway (Re), [2007] B.C.J. No. 204 involved a practicing chiropractor who had not paid loans to finance his education. His income was modest. He was required to pay surplus income, if he had any, in six months time. This case must be distinguished. Dr. Galloway had an income and some expectation for it to increase. Mr. Abdo has no income and there is very little likelihood that he will have any surplus income in the foreseeable future.

Swerid (Re), [2007] M.J. No. 278, centered on one, who having obtained a law degree, chose a less lucrative career path. The Court decided that his

creditors should not have to suffer for this personal choice. Mr. Abdo's present choice is his comfort zone which does not allow for gainful employment. There is a health factor with Mr. Abdo that was not present with Mr. Swerid.

Dalgetta (Re), [2008] A.J. No. 1001 concerned a medical doctor who borrowed from a bank \$150,000 during her education. It was alleged she was somewhat indulgent in lifestyle. This is quite remote from Mr. Abdo's situation. There was no lifestyle extravagance on his part nor does he have the ability to earn anything significant. This case is not helpful.

[17] The remaining cases do not address the particular problems faced by Mr. Abdo.

[18] However, let me quote paragraph [17] from my decision *Watkins (Re)*, 2009

N.S.S.C. 35:

What one has in the present case and in the cases reviewed is a peculiar line of credit offered by banks to help students finance expensive and long periods of university education to qualify for a profession. The loans are granted on the understanding that with successful completion of the education the borrowers will be able to make good incomes which will enable them to repay the loans over a reasonable period of time as they establish their practices.

A creditor cannot realize on an education. The only security the bank has is the borrowers' good faith that they will complete their studies, and qualify for and establish their professional practices. I presume most of these arrangements are successful. Students graduate, are successful and pay the loans. For those students who for various reasons face misfortunes and do not establish a lucrative practice, the remedy of bankruptcy is for them often appropriate. However, it should not be used by those who are successful or have good expectations of being successful as an easy way of eliminating their education debts.

[19] Mr. Abdo has two and a half years of university education. Without completing a degree, be it in engineering or commerce, his education to date will not likely give him advantage in earning a living. Presently, he is living within a very limited comfort zone, from which he will not escape without considerable help and time. I hope that he will have the will soon to look after himself, obtain the help he needs and be able to use his considerable intelligence. This is a significant hurdle which will be very difficult to jump. It is a hurdle which the bankrupts in the cases cited to me did not have to face. He is not like them. They have potential. We do not know whether Mr. Abdo has potential. There is much that he must successfully address before this can be answered. He is not a successful person trying to rid himself of debts which he is expected to pay and is able to pay. His financial problems are only one of several difficulties he faces.

[20] I do not think the line of cases on which RBC's opposition is based are about people like Mr. Abdo.

[21] In disposing of this application I am governed by Section 172 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. Under Subsection (1), I may grant or refuse an absolute discharge, suspend the discharge or require payments with respect to his earnings to be made. If a fact under Section 173 is proved, under Subsection (2) I may refuse the discharge, suspend the discharge or require a condition of discharge that acts be performed, money be paid, a judgment be consented to, or compliance with other terms.

[22] The Notice of Opposition refers indirectly to certain facts under Section 173. I shall deal with them one by one.

1. The bankrupt's assets are of value less than \$0.50 on the dollar (ss.173(1)(a)).

I think my discussion of Mr. Abdo's health, prospects for the future, and the role of RBC support a finding that his debts are such that he cannot justly be held responsible for them.

2. The bankrupt brought on or contributed to the bankruptcy by unjustifiable extravagance in living and/or culpable neglect of the bankrupt's business affairs

(ss.173(1)(e)).

There is no evidence of extravagance. I do not see that, considering his health and his inexperience in financial matters, there was any culpable neglect on his part.

3. The bankrupt continued to trade after becoming aware of being insolvent (ss.173(1)(b)).

This is no evidence of this.

4. The bankrupt chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness (ss. 173(1)(h)).

The Trustee's Report in paragraph 4(b) says that he could not make a viable proposal.

[23] I am accordingly satisfied that no fact has been proved under Section 173. I am at liberty to dispose of this application under Subsection 172(1).

Nothing would be served by a refusal or suspension. It would only be another impediment to him in dealing with his substantial personal problems. He has no income presently and little expectation that he will have significant income in the foreseeable future to justify requiring him to make payments.

[24] He is entitled to be absolutely discharged from bankruptcy. I very much hope that he will seek the help he needs.

R.

Halifax, Nova Scotia
November 17, 2009