SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: *Sullivan (Re)*, 2018 NSSC 334

Date: 20181224
Docket: No. 42624
Registry: Halifax

In the Matter of: The bankruptcy of Tracy Lynn Sullivan

Judge: Raffi A. Balmanoukian, Registrar

Heard: November 16, 2018, in Halifax, Nova Scotia

Counsel: Tracy Lynn Sullivan, applicant, appearing personally

Balmanoukian, Registrar:

[1] Some 2500 years ago, Aesop warned of the dangers of wanting too much, too soon, by killing the goose that lays golden eggs.

[2] I am not sure the student loan authorities got the memo.

[3] On even date, I have released my decision in *Re Simon*, which like this is an application for relief under subs. 178(1.1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA"). I will simply incorporate my comments respecting the "all or nothing" nature of these applications.

[4] Ms. Sullivan currently makes some $40,000 a year as a funeral director's apprentice. She has three children, one a young adult and two others at home. She receives child support for them, which she included in her budget of a monthly take-home of around $3700. This exceeds the superintendent's guidelines. Her current husband is a municipal employee in Chester; his biweekly take-home is approximately $1500, out of which he must pay child support obligations of his own, in an amount that was not in evidence before me.

[5] The tremendous difficulty I have with this case is that the minimum payment presented to me, on a loan balance of just under $55,000, is $1,372.

[6] I have little doubt that the applicant could service this loan on a reasonable amortization. In reviewing her balanced budget, I note in particular that she is a pack-a-day smoker ($360 per month), has a $512.70 car payment, and so on. I do not find it to be an extravagant budget, but there is certainly room to service an obligation, within reason.

[7] But there isn't $1,372 worth of room.

[8] I have no authority to change those terms. I can only find whether they constitute financial difficulty within the meaning of Subs. 178(1.1) BIA or not.

[9] They do.

[10] Accordingly, this decision really comes down to whether the applicant has acted in good faith. I have discussed that matrix in some detail in *Simon*, supra.

[11] I have had some difficulty with the fact the applicant appears to have made no effort to discuss payment terms with the loan authorities. Her affidavit says "representatives from the government have called and sent letters," which could have led naturally to such a dialogue.

[12] Neither has the applicant attempted to refinance with a commercial lender. That may be impracticable given the amount of debt, the lack of security, and the

fact the applicant is only 3.5 years post-discharge, but the failure to make the effort does not speak well for her good faith, within the meaning of subs. 178(1.1).

[13] On the other hand, the applicant did make use of interest relief while an "in progress" student. She has been through some personal tribulations that I need not air in detail – suffice it to say they had financial repercussions that justify the use of the insolvency process. The student loan, while the bulk of the debt, was by no means all or nearly all of it. Until recently, her income has been modest, with compensation at or near the minimum wage in various service industries. They do not appear to have invoked the skills learned in her degrees.

[14] By the thinnest of margins, I find I must give the benefit of the doubt to the applicant in having satisfied the "good faith" test in 178(1.1). I cannot condone all of the choices of activity or inactivity, but neither can I find that she has been cavalier or indolent, given the events of the last several years and the other debts included in the bankruptcy.

[15] The question is then whether, having met the two tests in subs. 178(1.1), the Court should exercise its discretion to grant or refuse relief.

[16] If this was a discharge application, I would have the authority under s. 172 to set terms. In light of Ms. Sullivan's current circumstances, I would do so. The student loan is substantial, and she has some means to pay.

[17] However, to reiterate, I have no such authority under s. 178(1.1). It is a take it or leave it. Having found that her means to pay does not extend to $1,372 per month, and that she has (barely) met the good faith test, there is no juristic reason known to me by which I should not exercise my discretion in her favour. I do so.

Conclusion

[18] The student loan is discharged.

Balmanoukian, R.