The Charter, contempt, and unreasonable delay in a bankruptcy context

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In *Lymer v Jonsson*, 2023 ABKB 565, the Alberta Court of King's Bench, in the context of bankruptcy proceedings, rendered a judgment concerning the applicability of section 11(b) (Section 11(b)) of the Canadian Charter of Rights and Freedoms (the Charter) and Rule 4.31 of the Alberta Rules of Court (Rule 4.31) within the framework of a contempt of court application. The Court ruled that an individual bankrupt, facing contempt of court proceedings for failing to produce records of financial affairs, is precluded from seeking a stay under Section 11(b) and Rule 4.31. The Court held that, in cases where the individual bankrupt has contributed to the delay, he or she cannot seek redress by pleading unreasonable delay.

What you need to know

1. An individual bankrupt can be subject to contempt of court charges if he or she fails to provide financial records in a timely manner.
2. Relief under Section 11(b) and Rule 4.31 will not be extended to a bankrupt party who has, through lack of cooperation, exacerbated the delay.
3. The Court held that granting a stay of proceedings, particularly when creditors have not received an explanation or an accounting of their invested funds, would be grossly unjust to creditors of a bankrupt.

Background

In 2011, the Applicant filed an Assignment in Bankruptcy. In 2013, the Registrar issued an Order mandating the Applicant and his associated companies to prepare and submit Affidavits of Records within specific deadlines. The Applicant failed to produce the requisite Affidavits of Records. Consequently, the Respondents applied for an Order declaring the Applicant in civil contempt of court. The Registrar, having found the Applicant in contempt, referred the matter of sanctions for contempt to the Alberta Court of King's Bench.

On Jan. 15, 2015, the Alberta Court of King's Bench issued an Order prescribing directions to assist the Applicant in purging his contempt. However, on May 10, 2016, the Respondents lodged fresh allegations of contempt and petitioned for a declaration

that the Applicant had not successfully purged his contempt. This sequence of events ultimately led to a sanction decision by the Alberta Court of King's Bench on Oct. 22, 2018, which imposed a sentence of incarceration upon the Applicant. Following approximately two weeks of incarceration, the Applicant petitioned the Alberta Court of Appeal for a stay. The Appellate Court reversed the sanction decision and released the Applicant.

The Applicant subsequently submitted an application and Charter Notice requesting a Judicial Stay of Contempt Proceedings, invoking Section 11(b) and Rule 4.31.

Issues

The case presented two significant legal issues:

1. **Applicability of the Charter to civil contempt proceedings**: The Applicant contended that the Charter applied to civil contempt proceedings and referenced the *Jordan* case, which established a presumptive ceiling of 30 months for the completion of criminal trials. The Court, however, observed that the *Jordan* presumptive ceiling had not been applied to the sanctions phase of contempt proceedings. In criminal contexts, the Crown controls the pace of prosecution, whereas in this case, the delay resulted from the actions of both the Applicant and the creditors. Consequently, the Court declined to apply the *Jordan* analysis.
2. **Granting a judicial stay under Rule 4.31**: The Court ruled against granting a judicial stay under Rule 4.31. In its reasoning, the Court stated that it was impracticable to ascertain the extent to which the delay was attributable to the Applicant. The Court also emphasized that the primary rationale for refusing the relief laid in the Applicant's failure to fully disclose the records responsible for the delay. The Court ruled that granting a stay under such circumstances would be fundamentally inequitable to the creditors who had not received a comprehensive explanation or an accounting of their invested funds. Furthermore, it would not be just or equitable to issue a judicial stay pursuant to Rule 4.31 in cases where it was impossible to apportion blame for the delay between the Applicant and the creditors.

Takeaway

This case serves as an instructive precedent underscoring the Court's commitment to holding bankrupt individuals accountable for their lack of cooperation in the bankruptcy process. Notably, the bankrupt faced not only contempt of court proceedings, but also an attribution of any delays in resolving the matter to their failure to produce the requisite documents.

For more information, please reach out to one of the key contacts listed below.

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