

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

November 22, 2023

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.

By

[Kevin Barr](#), [Farrukh Ahmad](#)

Expertise

[Banking & Financial Services](#), [Insolvency & Restructuring](#), [Financial Services](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.