

2017 ONSC 6710
Ontario Superior Court of Justice

In re: Winston Isaac Williams

2016 CarswellOnt 21822, 2017 ONSC 6710, [2017] W.D.F.L. 5625, 284 A.C.W.S. (3d) 691, 53 C.B.R. (6th) 339

Winston Isaac Williams (Bankrupt)

Master J.E. Mills

Heard: June 7, 2016

Judgment: June 7, 2016

Docket: 31-1983022

Counsel: N. Epstein, for Opposing Party (former spouse of the Bankrupt)
M. Harris, for Trustee

Subject: Family; Insolvency; Property

Table of Authorities

Statutes considered:

Family Law Act, R.S.O. 1990, c. F.3

Generally — referred to

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Generally — referred to

s. 67 — considered

s. 136(1) — considered

s. 136(1)(d.1) [en. 1997, c. 12, s. 90(2)] — referred to

MOTION by Trustee in Bankruptcy for order to pay bankrupt's funds held in court to Trustee.

Master J.E. Mills:

1 Certain funds were paid into court following the sale of the bankrupt's matrimonial home within the context of *Family Law Act* proceedings. Perkins, J. ordered on January 29, 2015 that 50% of those funds, less \$4,253.91, be paid by the Accountant for the Province of Ontario to the bankrupt. The order was granted prior to the bankrupt's assignment and the trustee now seeks an order that the funds be paid to the trustee instead.

2 The motion is opposed by the former spouse who claims to have a debt owing to her for child support arrears. She seeks to have the funds paid to her instead, in partial satisfaction of those arrears.

3 The trustee does not dispute that a debt may be owed by the bankrupt and that the former spouse may have a valid claim in the estate, however a proof of claim has not been filed as yet.

4 The *Bankruptcy and Insolvency Act* is clear that the funds must first be paid into the estate as property of the bankrupt pursuant to s. 67 and then made subject to the scheme of distribution and levy imposed by s. 136(1) of the Act. Payment of claims in priority for child support arrears are not exempt from this scheme (s. 136(1)(d.1) and fall after payment of the statutory levy.

5 Perkins, J. ordered the funds paid out of court to the bankrupt are net of an equalization claim owed by the former spouse and a \$5,000 payment owed to the former spouse for child support arrears. Although a formal order has not as yet been taken out, the order is enforceable and effective from the date it is issued. Therefore, the amount to be paid by the Accountant to the trustee shall be \$4,891.78 plus any accrued interest. The \$5,000 directed to be added to the former spouse's entitlement to the funds shall be considered in the calculation of the 12 month priority claim for support arrears in the estate, should a claim be filed.

6 The trustee has been largely successful in this motion although there was a valid argument as to the appropriate quantum of the amount to be paid to the trustee. The law is clear on the application of s. 67 and s. 136(1) of the *Bankruptcy and Insolvency Act*. The trustee is entitled to its costs which I fix at \$1,500 inclusive of interest, HST and disbursements having regard to the relative success on the motion and the principles of proportionality.

Motion granted.