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Harold C. Gaffney v. In the Matter of the Bankruptcy of Sheila Fraces Gaffney, et al.

[Docket](#)

(B.C.) (Civil) (By Leave)

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Summary

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Judgments and orders - Appeal - Extension of time - Motion to vary denial of extension of time - Applicant applied to annul discharge of bankruptcy - Applicant found to be without standing to make application - Applicant sought to appeal that decision outside the prescribed time - Extension of time denied - Motion to vary decision on extension of time denied - Whether Court of Appeal erred in denying motion to vary.

[Note: This summary was prepared by a lawyer of the SCC whose name the registry refused to produce. These notations in blue show mistakes and reference to the material that was provided in the documents filed in SCC registrar.]

Harold Gaffney is the estranged husband of Sheila Gaffney. [Neither spouse have invoked the Family Relations Act, and this fact was included in the Application for Leave to Appeal in Vol. 1 at p. 125 para.11]

When Ms. Gaffney filed an assignment in bankruptcy in May 2005, her one-half interest in a piece of property she and Mr. Gaffney owned as tenants in common was transferred to the trustee. [The title was a joint tenancy and was severed on June 16, 2005, when the trustee transferred the title to his name. (Vol. 2 pa. 300 and p. 473)]. (No creditors existed however the Trustee transferred the title to his name for his benefit, to secure fees, (

Vol. 2 p. 324 & 377 to 379) and by doing so, he severed the joint tenancy, cutting Harold Gaffney off from his right of survivorship and to the whole of the property. Rowan transferred the 1/2 interest to Sheila Gaffney, after he collected \$13,000.00 from a bogus claim of child disability tax credit refund, going back to 1999, when no disabled children lived with the Gaffney's. pp. 461 to 466]

No proofs of claim were filed in the bankruptcy; in particular, Mr. Gaffney made no claim. [Christopher Ramsay, of Fraser Milner Casgrain, who became pro bono counsel for Harold Gaffney, advised him that no proof of claim was necessary and rather Chris Ramsay communicated with trustee by letter asking the trustee to remove his name off title since Harold Gaffney had satisfied all the debts of his wife. Rowan refused to remove its name from title knowing no creditors existed. The trustee did remove his name, 18 months later, only when he collected part of his fees from CRA). See attached document included in the Application for Leave to Appeal – Vol. 2 at p. 290 paras. 64; p. 332 para. 8 (c), 9 (a); p. 333 334 para 14 (a) to 14 (iv); p. 342; p. 440 –p. 441 paras. 42 (a) to 42 (c).]

In May 2006, the Registrar of the Supreme Court of BC granted Ms. Gaffney a discharge. Mr. Gaffney attended the Registrar's hearing, but did not raise any? objection to the discharge. The trustee then transferred Ms. Gaffney's interest in the property back to her. [The objection was raised with the trustee by way of letters and by way of Chris Ramsay, who alerted the trustee way before the discharge that Sheila Gaffney was using the bankruptcy for improper purposes; that no creditors existed.]

Mr. Gaffney then applied before a judge to have the discharge annulled and for ancillary relief. [Mr. Gaffney applied to the court because his property was in jeopardy due to the trustee having severed the joint tenancy and due to the fact that the bankruptcy was used for improper purposes.]

The application was later broadened to an application for an order declaring the bankruptcy annulled. The trustee applied for a declaration that Mr. Gaffney had no legal standing to ask for an order annulling the order for discharge of the bankruptcy, or, in the alternative, an amendment of Mr. Gaffney's. Mr. Gaffney was found to be without standing and his application was struck out and dismissed. [The summary of facts has failed to point out the case of **American Bullion Minerals Ltd. (Re), 2007 BCSC 1083**, wherein Pitfield J. without a proof of claim filed by the plaintiff, were given standing in the bankruptcy court, and they were simply a minority shareholders. Harold Gaffney is a major shareholder in the property, which the joint tenancy was deliberately severed by the trustee. Application for Leave to Appeal Vol. 1 at p. 142 paras. 67 to 69].

Mr. Gaffney sought to appeal that decision, but did so outside the prescribed time. [The appeal should not have been denied based on procedural technicalities.] A motion for an extension of time was denied by a single judge of the Court of Appeal. A panel of the Court of Appeal then denied a motion to vary that decision. [The lawyer omitted tone of the most important fact, which includes Justice Meiklem stating that, "the trustee was well aware that there was no real insolvency issue here. There was no insolvency". Application for Leave to Appeal --Vol 1 at p. 125, p. 217]

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