

THIS IS EXHIBIT C ATTACHED TO THE AFFIDAVIT
OF HAROLD GAFFNEY SWORN DEC 9 2006
IN THE CITY OF NEW WESTMINSTER, B.C.
A COMMISSIONER FOR TAKING AFFIDAVITS
IN B.C.

No. B05161
Vancouver Registry

In The Supreme Court of British Columbia
(Before the Honourable Mr. Justice Meiklam)

Vancouver, B.C.
August 31, 2006

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE BANKRUPTCY OF
SHEILA FRANCES GAFFNEY**

ESTATE NUMBER 11-795533

PROCEEDINGS IN CHAMBERS
(Submissions)

Appearing on behalf of Himself:	H. Gaffney
Appearing as agent on behalf of Harold Gaffney:	T. Zanetti
Appearing on behalf of Ms. Gaffney:	K. Oliver
Appearing on behalf of the trustee:	D. Donohoe



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1 special costs in light of the nature of the very
2 serious allegations made against the trustee of
3 participation in fraud and criminal activity.
4 Those are the kinds of allegations that should
5 attract some sort of centre from the court with
6 respect to costs ordered. And also I would say
7 that if Your Lordship was disposed to grant some
8 sort of amendment to the form of relief being
9 sought by the applicant, then obviously we'd have
10 to deal with this on another date because we're
11 opposed to having to deal with that sort of
12 last-minute change here today and that type of
13 remedy. Thank you, My Lord.

14 THE COURT: There's just two questions I have for you,
15 Mr. Oliver. Of the many mysteries before me on
16 this matter, two of them involve your client's
17 actions. Why has she not registered the transfer
18 from the trustee back to herself?

19 MR. OLIVER: The transfer documents are in my office
20 well after Mr. Gaffney served me with the notice
21 of motion in this matter and I felt it was --

22 THE COURT: You felt in the face of his claim for
23 relief that it not be conveyed, that you shouldn't
24 do it?

25 MR. OLIVER: That's correct.

26 THE COURT: Okay.

27 MR. OLIVER: I do continue to hold the transfer in
28 trust in my office.

29 THE COURT: Do you want to volunteer anything to me
30 about why, when she wasn't insolvent, she went
31 bankrupt and when she realized that she wasn't
32 insolvent why she continued?

33 MR. OLIVER: Certainly. She was insolvent. The debts
34 that you've heard of --

35 THE COURT: Well, she wasn't insolvent as of the day
36 Mr. Gaffney paid the bank off; right?

37 MR. OLIVER: That was after the bankruptcy.

38 THE COURT: After the assignment.

39 MR. OLIVER: That's right.

40 THE COURT: But why did she continue? Why did she
41 resist the notion of annulling it? She wasn't --
42 I mean, she no longer had a debt problem at that
43 point in time.

44 MR. OLIVER: I'm not sure that Mrs. Gaffney was in a
45 position to understand the difference between
46 continuing with the bankruptcy and being
47 discharged and an annulment of the bankruptcy.

1 THE COURT: Well, I'm sure that the trustee wouldn't
2 have made the comments he did in the section 170
3 report if he hadn't explained that to her.

4 MR. OLIVER: That may be. I'm not instructed about
5 what happened there. I was not on the file until
6 well after that.

7 THE COURT: And I suppose you're saying she was
8 insolvent in the sense that she couldn't meet her
9 obligations as they came due, but that does not
10 follow from the fact that you have a line of
11 credit that you don't have the liquid cash to pay
12 off. It may apply if you've got a demand later
13 you can't fulfill or that your joint-and-several
14 covenantor can't pay. But when you're a joint,
15 you know, wouldn't the first response be, I
16 haven't got the money, hubby, you pay it?

17 MR. OLIVER: And that, indeed, is the first response.
18 And the debt -- I'm not sure it's adequately
19 spelled out in detail in Ms. Gaffney's affidavit,
20 but the debt is a debt that was incurred on joint
21 obligations between Harold and Sheila Gaffney.

22 THE COURT: Of course.

23 MR. OLIVER: Those --

24 THE COURT: So --

25 MR. OLIVER: Those --

26 THE COURT: -- why would she treat it not only as hers
27 alone but too burdensome, overwhelming? Why would
28 she treat it like that?

29 MR. OLIVER: Well, the background that isn't in the
30 affidavit, I'm afraid, explains that. The
31 background is partly is Ms. Zanetti and her
32 sister, who operate some sort of a legal
33 assistance organization -- I'm not sure how close
34 they come to actually practicing law without
35 licences to do so, but, in any event, they require
36 funding and Mr. Gaffney was providing a lot of
37 funding to them. That was coming out of family
38 income. Mrs. Gaffney was using the line of credit
39 to pay all the family debts because Mr. Gaffney
40 wasn't contributing his share.

41 MS. ZANETTI: May I object, Your Honour, that there's
42 no evidence of such a thing.

43 THE COURT: I asked the question, ma'am.

44 MS. ZANETTI: Sorry, Your Honour.

45 THE COURT: I want the answer.

46 MS. ZANETTI: I'm very well aware --

47 MR. OLIVER: And I advise that it's not in the

1 affidavit.
2 MS. ZANETTI: There's nothing in the affidavit and that
3 is --
4 MR. OLIVER: That's my understanding. The debts arose
5 because Mrs. Gaffney had to use the joint
6 obligation line of credit in order to pay the
7 family debts as they arose, the payment on
8 mortgage, the payment of food, cash that was given
9 directly to Mr. Gaffney for whatever purposes.
10 She does say in one of her affidavits that he
11 would usually go out without his wallet so
12 whenever he wanted to purchase something, she
13 ended up paying for it --
14 THE COURT: Even more reason not to go bankrupt
15 yourself. Even more reason to have him look after
16 the obligation.
17 MR. OLIVER: Then they separated and what she was very
18 concerned about, she expressed this to me, was
19 that her credit would be affected; she wouldn't be
20 able to --
21 THE COURT: And it won't be by bankruptcy.
22 MR. OLIVER: Well, certainly it is by bankruptcy. But
23 her initial problem with Mr. Gaffney's behaviour
24 in running up the debts in the first place, was
25 that she didn't want to have to pay his debts and
26 continue to have to pay his debts and she
27 [indiscernible] take the advice of a trustee in
28 bankruptcy and explain to the trustee what she
29 understood her situation was and he followed
30 through with providing her with the opportunity to
31 the assignment.
32 MR. DONOHOE: My Lord, if I may, your line of
33 questioning to my friend reminds me that there is
34 some evidence from the trustee on this point and
35 it may be that it would be helpful to the court
36 for me to just refer you to that briefly --
37 THE COURT: Okay.
38 MR. DONOHOE: -- about this \$20,000. So if I could
39 refer you to tab 7, which is the affidavit of
40 Kenneth Rowan, which was filed May 16th, and at
41 page 6, paragraph 22, he said:
42
43 "I'm informed by the bankrupt of the
44 approximate \$20,000 obligation of the bankrupt
45 CIBC was the debt in respect of which the
46 bankrupt had cosigned with Harold Gaffney and
47 significantly all, if not all, monies from

1 that line of credit were consumed by Harold
2 Gaffney for his own personal benefit. Draws
3 may have been made by the bankrupt but those
4 draws were made at the instruction of Harold
5 Gaffney and attached as Exhibit G is a memo we
6 received from the bankrupt advising of her
7 involvement vis-a-vis the line of credit. I
8 have no reason not to believe the bankrupt's
9 version of events. The primary party
10 responsible for the line of credit debt is in
11 all likelihood Harold Gaffney. I believe it
12 would be improper for Harold Gaffney to obtain
13 a benefit vis-a-vis the bankrupt simply
14 because Harold Gaffney paid back one of his
15 debts."

16
17 Now, during her submission, Ms. Zanetti said that
18 Harold Gaffney informed the trustee of his payment
19 of the \$20,000 line of credit when he made such
20 payment to the creditor and, although there is a
21 reference here by Mr. Rowan to the fact that he's
22 aware that at some point Mr. Gaffney paid that
23 line of credit off, I can't verify without
24 consulting with Mr. Rowan exactly when he became
25 aware of that, whether it may have been just
26 before the discharge hearing or when.

27 THE COURT: But at some time very early on, as early as
28 when Mr. -- or when the trustee put down the value
29 of \$90,000-odd on the half interest, he was -- he
30 was well aware that there was no real insolvency
31 issue here. There was no insolvency.

32 MR. OLIVER: I presume. He did not communicate that
33 with Mrs. Gaffney. I just asked her a specific
34 question that Your Lordship was asking me about
35 the difference between annulling the bankruptcy
36 and having a discharge and she was not
37 understanding what the difference was. She took
38 the question from Mr. Rowan would you like to
39 annul as an indication that if she annulled the
40 bankruptcy she would no longer have his assistance
41 and she felt that she required his assistance.

42 THE COURT: All right. Briefly.

43 MS. ZANETTI: I'm going to try to go very briefly.
44 I'll bring you to tab 9. In response to paragraph
45 22 of Mr. Rowan -- and I'll bring you to page --
46 paragraph 16B, we'll go to 16B -- and insofar as
47 -- before I go into this, Mr. Donohoe brought up