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Bankruptcy won't shield debtor from Court's contempt powers

A fundamental purpose of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "*Act*") is the financial rehabilitation of the "honest but unfortunate" debtor. One way that this purpose is achieved is through the automatic stay of proceedings granted under section 69(1)(a) of the *Act*.

This provision protects bankrupts from having to defend against multiple proceedings brought by creditors:

> […] no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy […].

This stay of proceedings does not, however, preclude the Court from enforcing its judgments and orders. The *BIA* provides no protection from the contempt powers of the Court.

This principle was recently re-affirmed by Justice Harper in *Walchuk et. al. v. Houghton et. al.*, (2015 ONSC 1291). In this case, the plaintiff had successfully obtained judgment against the defendant. Following judgment, the defendant failed to attend at an Examination in Aid of Execution. The plaintiff obtained an Order compelling the defendant to attend for the examination and produce certain documents. The day before the defendant was to attend at the examination, he filed for bankruptcy and took the position that the Order was automatically stayed by section 69(1)(a) of the *Act*. The plaintiff responded by filing a motion for contempt.

In his reasons, Justice Harper confirmed that the remedy of contempt was not provable in bankruptcy and was therefore not captured by section 69(1)(a). Justice Harper further held that the *BIA* cannot be used as a shield to protect against the Court's powers to enforce its own orders. The only question to be answered is whether the party in question did or did not comply with a court order. This question "cannot be caught up in [the party's] choice of the timing of his filing for bankruptcy" or other forms of strategic game-playing.

This decision confirms that the "fresh start" and protections afforded by the *Act* relate to the relationship between the

bankrupt and his or her creditors, not the relationship between the bankrupt and the Court. In the eyes of the Court, all litigants, whether bankrupt or not, are subject to its authority to coerce certain conduct or punish failure to comply with its orders.