Court File No. CV-25-00743136-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, RSC 1985, C C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SHAW-ALMEX INDUSTRIES LIMITED AND SHAW ALMEX FUSION, LLC

ABBREVIATED BOOK OF AUTHORITIES OF TIMOTHY SHAW

December 2, 2025

Tyr LLP
488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3
Fax: 416-987-2370

Jason Wadden (LSO# 46757M)
Tel: 416.627.9815
Email: jwadden@tyrllp.com

Joshua Hearn (LSO# 87257J)
Tel: 647.740.4379
Email: jhearn@tyrllp.com

Lawyers for Timothy Shaw

TO: Service List

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TAB 1

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Court File No. 31-267857

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ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)
COUR DE L'ONTARIO (DIVISION GENERALE)
IN THE MATTER OF THE BANKRUPTCY OF
Stormont Chemicals Ltd.,
a company duly incorporated
under the laws of Canada, c.o.b. in
the City of Etobicoke,
in the Province of Ontario

Merran Christie
solicitor for the
appellant C.C.L.
Industries Inc.

Rahul Shastri
solicitor for the
Trustee

MASTER FERRON

REASONS FOR DECISION

It is clear that there was no mistake in the payment of funds by C.C.L. Industries Inc. to Sulquisa, and accordingly, there is no substantive basis for finding of the existence of a constructive trust.

If bankruptcy had not intervened, it could not have been said that those funds were impressed with a trust, and the mere fact the Trustee now has the funds by reason of the bankruptcy, and the application of s.73(3) of the Bankruptcy and Insolvency Act does not, suddenly, as it were, change the character of the funds, to impress them with such a trust.

Some background is necessary. S. A. Sulquisa obtained a substantial judgment against Stormont Chemicals Ltd., and, to enforce that judgment, issued a garnishee against the appellant, C.C.L. Industries Incorporated, which was a debtor of Stormont in an amount of about $39,000.

Because of certain communication difficulties internally, C.C.L. paid Stormont the funds aforesaid which it owed for goods sold and delivered, but on learning of the existence of a garnishee, called on its bank to stop payment of the cheque so given to Stormont.

It then issued a second cheque to the Sheriff in compliance with the Sulquisa garnishee.

For reasons which are unclear, the stop payment of the Stormont cheque did not "take", and both the cheque to Stormont and the cheque in the same amount paid to the Sheriff, were negotiated.

Stormont thereafter filed in bankruptcy, and the Trustee, after some delay, obtained the funds paid by C.C.L. to the Sheriff in response to the garnishee, which funds it holds pending the outcome of these proceedings.

C.C.L. Industries Inc. has filed a trust claim in the bankruptcy of Stormont, and this appeal arises out of the disallowance of that claim by the Trustee.

The appellant argues that the payment made by C.C.L. to the Sheriff in response to the Sulquisa garnishee was made under the mistake that the payment by C.C.L. to Stormont had been stopped by its bank, and that that mistake provides a substantive basis for a contructive trust, which impresses the funds.

The mistake by the bank or by C.C.L. (in its instruction to the bank) was not contributed to, or caused in any way, by Sulquisa or its employees. The mistake, in fact, was made either by the bank, or by C.C.L. in its instructions to the bank, quite apart from any dealings or obligation as between C.C.L. and Sulquisa. The funds, which C.C.L. paid to Sulquisa, were paid voluntarily, in compliance with the legal process. There was, as I have mentioned, no mistake of fact which affects that payment, and hence, C.C.L. would have had, outside of the bankrupt, no claim whatsoever against Sulquisa or the Sheriff.

In view of these facts, it is, nonetheless,

necessary to consider the effect of the decision in Ex parte James; in Re Condon, L.R. 9 CH. 609. There, the Sheriff realized on an execution against a judgment creditor, and quite properly, paid the funds in accordance with the applicable statutes to the judgment creditor.

Thereafter, the judgment debtor was adjudged a bankrupt, and the Trustee demanded that the judgment creditor pay the funds received from the Sheriff into the estate. The judgment creditor, as the court found, erroneously complied with the Trustee's direction, and when he found that he need not have done so, moved for an order that the funds were his property.

The court conceded that in strict law, the Trustee could not be compelled to return the funds but, as the Trustee was an officer of the court, the court could prevail upon him to do so.

At page 614, Sir W. M. James, L.J.said:

> "With regard to the other point, that the money was involuntarily paid to the Trustee under a mistake of law, and not of fact, I think that the principle that money paid under a mistake of law cannot be recovered, must not be pressed too far, and there are several cases in which the Court of Chancery has held itself not bound strictly by it. I am of the opinion that a Trustee in Bankruptcy

is an officer of the court. He has inquisitorial powers given him by the court, and the court regards him as its officer, and he is to hold money in his hands upon trust for its equitable distribution among the creditors. The court then, finding that he has in his hands, money which, in equity, belongs to someone else, ought to set an example to the world by paying it to the person really entitled to it. In my opinion, the court of bankruptcy ought to be as honest as other people."

In the case of Re Tyler, [1907] 1 K.B. 865, Lord Justice Buckley, in explaining Ex parte James, said at page 873:

"In Ex parte James, James L.J. speaks of money which, in equity, belongs to someone else. In my judgment, he there meant money which in point of moral justice and honest dealing, belongs to someone else. He was using the word in a popular sense, and not in the sense of money which in a court of equity, would belong to someone else. I think the context of his judgment plainly shows that that was his meaning. In Ex parte Simmonds, Lord Esher, referring to Ex parte James says that the court will direct its officer to act as any high-minded man would act, not to take an advantage of a mistake of law. That is to say, assuming that he has a right enforceable in a Court of Justice, the Court of Bankruptcy, or the Court for the Administration of Estates in Chancery, will not take advantage of that right if to do so would be inconsistent with natural justice, and that which an honest man would do. In Ex parte Simmonds, the court were extending the doctrine of Ex parte James in this sense, that they were holding, not merely that if the Trustee had the money still in his hands, he ought to hand it to the person who in point of justice was entitled to it, but that if he had parted with the money but there was other money coming in from the bankrupt he ought out of such money to make good the fund which he had ... appropriated.""

The principle in Ex parte James has been accepted and applied by the Bankruptcy Court of Ontario.

In the application of Ex parte James, the court has always found some element of unfairness in the Trustee's insistence on the letter of the law, and it has intervened on a higher plane to invoke something in the nature of moral justice, to require the Trustee to put aside his strict rights, and behave in a "high-minded" way.

The principle enunciated in Ex parte James is a general principle not confined to cases of mistake of law. This was made clear by Vaughan William L.J. in Re Tyler (above) where he said:

> "It seems to me that these two decisions (Ex parte James and Ex parte Simmonds) clearly lay down a general principle, and that they are not limited to the particular case of mistake of law and I think we ought to follow these decisions. I know it is said that it opens the door dangerously wide when you allow the court or its officer to order money to be repaid in a case where there is no legal right to recover; but it must be remembered that, although these decisions allow those who are acting judicially in bankruptcy to exercise this discretion. The discretion which is given must be acted on on judicial principles."

Here, there is no question, as I have said, of the funds received by the Trustee from the Sheriff belonging to

the estate. On the other hand, to permit the Trustee to retain those funds means that C.C.L. will have paid the bankrupt twice for the same debt. Clearly, there is an element of unfairness in the Trustee insisting upon retaining those funds, and that unfairness is the subject which the Bankruptcy Court has tried to address in the Ex parte James decision.

In my opinion, the Trustee should act as any high-minded individual would act and, since it has the very funds in its trust account which C.C.L. had paid to the Sheriff, these ought to be returned forthwith.

The appeal is allowed.

I think that in the circumstance of this case, there should be no award of costs, and that each party should pay its own costs, those of the Trustee out of the assets of the estate.

MASTER J.M. FERRON, Q.C.
REGISTRAR IN BANKRUPTCY

Released this 23 day of June, 1993

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Proceeding commenced at TORONTO

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Tyr LLP
488 Wellington Street West, Suite 300-302
Toronto, ON M5V 1E3
Fax: 416-987-2370

Jason Wadden (LSO# 46757M)
Email: jwadden@tyrllp.com
Tel: 416.627.9815

Joshua Hearn (LSO# 87257J)
Email: jhearn@tyrllp.com
Tel: 647.740.4379

Lawyers for Timothy Shaw