

FRAUD OVERCOMES ALL

Posted on October 16, 2016

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Fraudsters are the thinking person's criminal. They not only plan the fraud, but they plan their exit strategy if they get caught. First, they spend as much of their ill-gotten gains as they can so that if the victim hires a forensic accountant to trace where their money went, they discover it has been dissipated, usually in a dissolute lifestyle. Then they place their legitimate earnings in insurance based RRSP that is exemption from seizure. Finally, they go bankrupt so the victim loses all hope of recovery. Thanks to an amendment to bankruptcy legislation, RRSPs remain the property. They get to live off their RRSPs in their retirement while their victims go begging. That seems wrong, but that is the law - or so most people believe.

Debra McNabb was one such fraudster. On the surface she was the conventional, long serving assistant to her boss over a quarter century. Underneath however, she enjoyed the finer things in life. Not a dissolute lifestyle to be sure, but she enjoyed a lot of consumable items with no salvage value. Approaching retirement, she had little savings to show for a lifetime of labour. So what did she do? Over the last six years she worked, she embezzled \$300,000 from her employer to pay her personal credit card. She embezzled another \$350,000 over the same time period on other consumable items. When she finished her fraud, she retired and moved to New Brunswick. Shortly after arriving in New Brunswick she put \$206,000 of her personal savings in an Insurance company based RRSP ("a Seg. Fund") and a further \$117,000 in an interest trust fund which she also believed to be creditor-proof. When the employer sued her for fraud she defended the lawsuit for a while and ran up her employer's legal bill to approximately \$400,000. Then, on the cusp of a motion for summary judgment against her, she withdrew her defence to the proceeding and went bankrupt. She had hoped this would leave her employer with a "paper" judgment. Debra was wrong.

First, a New Brunswick judge said her \$117,000 in Trust RRSPs could be seized by an "equitable receiver", a court appointed official who replaced Debra's trustee and who handed this RRSP to Debra's employer.

More recently, an Ontario Judge confirmed that the Insurance legislation that allowed creditor proofing was not to be used as an instrument of fraud. After Debra embezzled from her employer she knew she owed him some \$650,000. In the face of that debt she could not convey any assets out of her name because of the Fraudulent Conveyances Act of Ontario. But wait, she was not transferring any asset to anyone else, she was

simply transferring it into another form of investment that she also owned. That did not matter, said the Ontario judge. Fraudulent conveyance legislation should bear as large and liberal interpretation as it took to prevent fraud, and in this case the transfer of the RRSP into a Seg Fund when the fraudster knew she owed the fraud victim substantial funds was unlawful, and the court ordered the insurance company to pay the proceeds of the RRSP to the fraud victim without regard to the statutory protections afforded a Seg. Fund.

by David Debenham

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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