Tax evasion in Canada: The balancing act of bankruptcy and confidentiality

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The case of *Milot Law v Sittler*, 2024 ABCA 39 arises from the DeMara Consulting Inc. tax evasion scandal. Heather and Sheldon Sittler (collectively, the Sittlers) became engaged in litigation around a $4 million debt owed to the Canada Revenue Agency. Initially, Milot Law became involved with the Sittlers as their tax counsel. In 2022, Milot Law assumed the role of their trustee in bankruptcy. The complicated nature of their legal relationship resulted in a dispute linking bankruptcy, confidentiality, and solicitor/client relationships.

Background

- The Sittlers hired Milot Law as tax advisors until April 14, 2017.
- On Dec.12, 2022, a judge, under section 38 of the *Bankruptcy and Insolvency Act* appointed Milot Law as the trustee in bankruptcy for certain transfers made by the Sittlers. Milot Law disclosed information to the bankruptcy trustee on Dec.19, 2018, with redactions.
- On August 23, 2023, Milot Law sought to compel the examination of Heather Sittler. The Sittlers filed a cross-application to prevent the Trustee's reliance on information disclosed while Milot Law was retained as tax counsel. The Sittlers asserted privilege. The order largely dismissed the cross-application, permitting an examination of Heather Sittler within two months.
- The judge ruled that, with one exception, Milot Law did not breach confidentiality, pinpointing unredacted portions of the May 13, 2016 email as privileged.
- On Oct. 17, 2023, Milot Law sought to vary the August 23rd order and contested the judge's confidentiality ruling. The judge declined to consider the unredacted email chain containing the May email. This order became the basis for Milot Law's second proposed appeal, highlighting nuanced confidentiality concerns and the balance between transparency and legal privilege.

Issues

The case presented substantial legal issues:

1. **Confidentiality breach allegations** : The Sittlers asserted that Milot Law breached solicitor/client confidentiality during bankruptcy proceedings, contending that privileged information should remain shielded.
2. **Dual role of Milot Law** : The Sittlers argued that this dual role blurred the lines, prompting the Court to navigate the complexities of legal representation and trusteeship. The Court grappled with the intricacies of Milot Law wearing different hats, unraveling the intricacies of maintaining transparency while upholding confidentiality.
3. **Formal order omissions** : The absence of a formal order detailing key decisions became a pivotal issue for the appellate process, injecting ambiguity into the scope of the Court's determinations.

Analysis

The Court was confronted with a multifaceted legal challenge where the primary contention revolved around allegations of confidentiality breaches by Milot Law during the bankruptcy proceedings. The email chain at issue, particularly the communication dated May 13, 2016, played a pivotal role in the appeal. The Court highlighted this specific email as the exception to its ruling that Milot Law had not breached duties of confidentiality to the Sittlers when providing information to the bankruptcy trustee. In the judge's findings on August 23 it was revealed that the unredacted portions of the May email contained content that breached privilege to a limited extent. The judge expressed that, apart from this specific email, the majority of the disclosed information did not constitute a breach of confidentiality. He specifically noted that the lines in the May email should have been redacted to protect privileged content.

Furthermore, the Court grappled with the absence of certain determinations in the formal order, emphasizing the need for clarity in legal proceedings. This gap in the formal order prompted the Court to highlight the complexity of the appellate process and the parties' requirement to file an amended order that encapsulate all the determinations made during the proceedings. The Court adjourned the matter for a period of three months to allow the parties time to file an amended order which would include the omitted provisions.

The Court's nuanced approach to this case underscored the importance of balancing transparency and confidentiality in the context of insolvency proceedings, leaving the legal narrative with open questions and further avenues for resolution.

Takeaway

This case provides valuable insights into the intersection of legal transparency and solicitor/client privilege within insolvency proceedings. It illustrates the challenges of managing confidentiality concerns, especially when divulging information to bankruptcy trustees, emphasizing the need for a careful approach to balance legal obligations and client privilege.

The judge's specific scrutiny of the May email underscores the critical nature of preserving confidentiality, offering legal professionals a cautionary tale on the potential consequences of information disclosure. Moreover, the case highlights the broader implications for individuals navigating financial distress, emphasizing the necessity of adopting transparent financial practices to navigate insolvency proceedings successfully while safeguarding legal privileges.

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