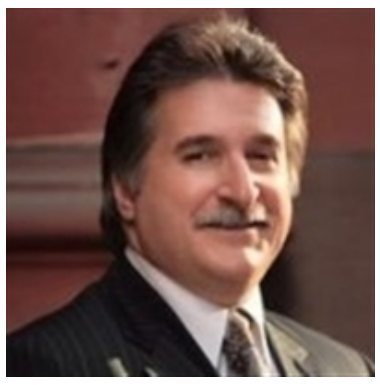
Estates & Wills & Trusts

Fraud victim paid by bankrupt business owner's life insurance



A recent Supreme Court of Nova Scotia ruling highlights the fact that life insurance, in certain situations, can be a useful tool for estate planning and creditor proofing, says Toronto-area estate lawyer Charles Ticker.

Glenn Alan MacArthur, who committed suicide three years ago in Halifax, had seven life insurance policies with total coverage of $1,534,882, the *Chronicle Herald* reports, noting MacArthur appeared to have a plan for the money that involved paying off individuals who invested in a Ponzi scheme he ran.

In a recently-released decision, Richard Cregan, registrar of Nova Scotia's bankruptcy court, ruled that Rita Christian, a former employee of and investor in Barring & Company Ltd., which was headed by MacArthur and was at the centre of the scheme, is entitled to a $300,000 payout from one policy, the report says.

"I don't practise bankruptcy law so I do not know how often a situation like that in this case arises, but I suspect not too often," says Ticker. "Creditors will sometimes require assignment of insurance policies as security for a debt, but that is different from what happened here."

MacArthur had originally named his mother as the beneficiary on all seven policies, but by May 2009, he had changed the beneficiaries of all but one of the policies to people he referred to as friends who were also investors in Barring, the *Herald* reports.

BDO Canada Ltd., the trustee of MacArthur's estate in bankruptcy, contested Christian's right to the insurance payout, which was placed in trust pending the outcome of Cregan's decision, the report continues.

"It is important to note that the insurance policy which was owned by the deceased bankrupt originally named his mother as beneficiary. As such, it was exempt from execution or seizure under the Nova Scotia Insurance Act," says Ticker. "Similar provisions are found in most common law provinces and in Quebec's Civil Code."

He adds: "The issue in the MacArthur case was whether changing the designation to a creditor of the bankrupt (who was an employee of the deceased) caused the policy and the proceeds to be subject to seizure and execution as the employee was not a close relative who had the protection of the act. There was also the issue whether the change in designation constituted a fraudulent conveyance of property."

Ticker says, “The registrar held that because the creditors or bankruptcy trustee did not take action until after the death of the bankrupt, the proceeds had to be paid to the creditor named as beneficiary and not the trustee in bankruptcy on behalf of all the creditors of the deceased. However, the registrar pointed out that once the insurance policy lost its exempt status, it could have been seized during the bankrupt’s lifetime and the designation changed to the trustee in bankruptcy. However, once the bankrupt died, the insurance proceeds had to be paid out to the named beneficiary and did not form part of the deceased’s estate.”

In Ontario, Ticker says s. 191 of the Insurance Act “provides that where a person designates a beneficiary irrevocably, the designation cannot be changed or revoked without the beneficiary’s consent and the insurance money is not subject to the control of the insured or of the insured’s creditors and does not form part of the insured’s estate. Section 196 of the Insurance Act provides protection from creditors where the designated beneficiary is a spouse, child, grandchild or parent of the deceased.”

Though, says Ticker, “in the context of support claims made on behalf of a dependent as against a deceased’s estate, s. 72 of the Succession Law Reform Act (SLRA) deems any amounts payable under a policy of insurance effected on the life of the deceased and owned by him or her or payable under a group policy to be part of the deceased’s estate for the purpose of ascertaining the value of the deceased’s estate. The proceeds are subject to a charging order in order to satisfy any support order made under Part V of the SLRA.”

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