

Most Negative Treatment: Distinguished

Most Recent Distinguished: [Singer Sewing Machine Co. of Canada Ltd., Re](#) | 2000 ABQB 116, 2000 CarswellAlta 155, 94 A.C.W.S. (3d) 1055, 18 C.B.R. (4th) 127, [2000] A.J. No. 212, [2000] A.W.L.D. 352, 259 A.R. 364, [2000] 5 W.W.R. 598, 79 Alta. L.R. (3d) 95 | (Alta. Q.B., Feb 24, 2000)

1996 CarswellOnt 4988

Ontario Court of Justice (General Division)

Microbiz Corp. v. Classic Software Systems Inc.

1996 CarswellOnt 4988, [1996] O.J. No. 5094, 45 C.B.R. (3d) 40

Microbiz Corp. (Plaintiff) and Classic Software Systems Inc. (Defendant)

Lederman J.

Judgment: October 9, 1996

Docket: Toronto 95-CU-93753

Counsel: *Peter J. Lukasiewicz* for Plaintiff Microbiz Corp.

Subject: Corporate and Commercial; Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency

I Bankruptcy and insolvency jurisdiction

1.2 Jurisdiction of courts

1.2.a Jurisdiction of Bankruptcy Court

1.2.a.iv Territorial jurisdiction

1.2.a.iv.A Foreign bankruptcies

Headnote

Bankruptcy --- Bankruptcy and insolvency jurisdiction — Jurisdiction of courts — Jurisdiction of Bankruptcy Court — Territorial jurisdiction — Foreign bankruptcies

Bankruptcy — Bankruptcy and insolvency jurisdiction — Jurisdiction of courts — Jurisdiction of Bankruptcy Court — Territorial jurisdiction — Foreign bankruptcies; Actions in Ontario stayed where creditors also making claims in U.S. bankruptcy.

A company declared bankruptcy in the United States. It carried on business in Ontario only through its distributor, and had no assets in the province. The bankrupt's plan of reorganization was confirmed by judgment in the United States. The distributor and another party had brought actions against the bankrupt in Ontario, and had made claims in the U.S. bankruptcy. The bankrupt applied for stays of the Ontario proceedings.

Held:

The actions were stayed.

The judgment of the U.S. court should be recognized in Canada because there was a real and substantial connection between the U.S. court's judgment and the subject-matter of the proceeding. Further, the distributor and the other party had recognized the U.S. bankruptcy by filing proofs of claim. As they had attorned to the jurisdiction of the U.S. court, and as a multiplicity of proceedings should be avoided, their actions in Ontario were stayed.

Table of Authorities

Cases considered:

Morguard Investments Ltd. v. De Savoye, 46 C.P.C. (2d) 1, 52 B.C.L.R. (2d) 160, [1991] 2 W.W.R. 217, 15 R.P.R. (2d) 1, 76 D.L.R. (4th) 256, 122 N.R. 81, [1990] 3 S.C.R. 1077 — referred to

United States v. Ivey (1996), 27 B.L.R. (2d) 243, 21 C.E.L.R. (N.S.) 92, (sub nom. *United States of America v. Ivey*) 30 O.R. (3d) 370, 139 D.L.R. (4th) 570, 93 O.A.C. 152 (C.A.) — referred to

Statutes considered:

U.S. Bankruptcy Code

generally referred to

MOTION to stay proceedings brought against U.S. company in Ontario.

Festeryga J.:

Endorsement — October 1, 1996

1 Mr. Peter Lukasiewicz for MicroBiz, Ms. Julia Scatz for Haggerty, Ms. I. Sutherland (not a lawyer) for Classic, with leave of the court. Ms. Sutherland served yesterday with volumes of documents requested adjournment of this action and 95-CU-102723. On consent, both actions adjourned to October 9, 1996, a date set by the Registrar of Motions.

2 Costs of today reserved to the Judge who disposes of these motions.

Lederman J.:

October 9, 1996

1 MicroBiz is a New Jersey corporation with its headquarters in that State. It carries on business in the U.S. It carries on business in Ontario only through its distributor, Classic Software. MicroBiz has no assets in Ontario. When it filed for bankruptcy in the U.S. on March 12, 1996 pursuant to the *U.S. Bankruptcy Code*, an automatic stay of all proceedings against it went into effect (as is the case under Canadian bankruptcy laws). MicroBiz's plan of reorganization was confirmed by judgment of Justice Winfield of the U.S. Bankruptcy Court on September 3, 1996. The plan of reorganization provides for distribution to all creditors whose claims are accepted, after adjudication if necessary, of 17.5% of their claims. There is no doubt that under the principles laid down in the *Morguard Investments* case [*Morguard Investments Ltd. v. De Savoye* (1990), 46 C.P.C. (2d) 1 (S.C.C.)] and *United States v. Ivey* [(1996), 27 B.L.R. (2d) 243 (Ont. C.A.)], that judgment of the U.S. Court should be recognized in Canada as there is a real and substantial connection between the U.S. Court's judgment and the subject matter of the proceeding. More importantly, both Classic Software and Haggerty have recognized the judgment and in fact have filed Proofs of Claim in the U.S. proceeding to take advantage of the mechanism provided therein for adjudication of their claims and recovery to the extent of 17.5% of their proven claims. To participate in the U.S. proceedings is beneficial in that it allows Classic and Haggerty to prove their claims and obtain collection in one proceeding rather than obtain judgment on their claims in Ontario and in a separate proceeding in New Jersey seek to effect recovery against the estate of MicroBiz. By filing their Proofs of Claim, Classic and Haggerty have thereby altorned to the jurisdiction of the U.S. Court in New Jersey.

2 Multiplicity of proceedings in two different jurisdictions should be avoided.

3 Accordingly, there must be an order staying both Haggerty action and the Classic action in Ontario until further order of the court.

4 Costs of the motions are fixed at \$750.00 payable by Classic and Haggerty forthwith.

Actions stayed.