

CITATION: Kelton and Ferracuti Consultants Limited (Re), 2008 ONCA 886
DATE: 20081222
DOCKET: C48503

COURT OF APPEAL FOR ONTARIO

O'Connor A.C.J.O., Doherty and Rosenberg JJ.A.

In the Matter of the Bankruptcy of Kelton and Ferracuti Consultants Limited of the City
of Toronto, in the Province of Ontario

Steven Bellissimo, for the appellant, Gaetano Lo Faso

Harry Fogul and Stephanie Grace, for the respondent, Pollard and Associates Inc.

Colby Linthwaite, for the respondents, Anthony and Heather Ferracuti

Shanti Barclay, for the respondent, Alex Pizzimenti

Heard: December 19, 2008

On appeal from the order of Justice Campbell of the Superior Court of Justice, dated
February 28, 2008.

APPEAL BOOK ENDORSEMENT

[1] We are satisfied that s. 39(5) of the *Bankruptcy and Insolvency Act* provided the motion judge with the authority to fix the trustee's remuneration in the manner he did. We see no basis to interfere with that order.

[2] The motion judge did address the question of whether he should appoint a substitute trustee on the merits. He concluded that there was no basis for appointing a

court officer to carry a claim against the bankrupt and others because Mr. LoFaso is permitted to do so and is quite capable of continuing. We agree.

[3] The appellant made submissions about the alleged inadequacy of the trustee's actions in administering the estate. These issues were settled by Echlin J. and it is not open to the appellant to raise these issues at this point.

[4] Finally, it was within the motion judge's discretion to decide whether parties were entitled to appear on the motion to appoint a new trustee. We see no basis to interfere with the motion judge's order concerning costs to the Ferracutis and the inspector, Mr. Pizzimenti.

[5] Accordingly, the appeal is dismissed. Costs to the respondents, inclusive of GST and disbursements fixed as follows:

The Trustee	-	\$15,000
The Ferracutis	-	\$2,800
Mr. Pizzimenti	-	\$3,860