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COURT OF APPEAL FOR ONTARIO

Cronk J.A. (In Chambers)

In the Matter of the Bankruptcy
of Morris Kaiser
of the City of Toronto
in the Province of Ontario

BETWEEN

Morris Kaiser, a Bankrupt

Applicant

and

Soberman Inc., Trustee in Bankruptcy
of the Estate of Morris Kaiser

Respondent

Melvyn L. Solmon and Cameron J. Wetmore, for the applicant

Neil Rabinovitch and Milton A. Davis, for the respondent

Heard: October 18, 2011

On a motion for leave to appeal from the order of Justice F.J.C. Newbould of the Superior Court of Justice, dated August 16, 2011.

ENDORSEMENT

[1] This is a motion for leave to appeal to this court from the order of Newbould J. of the Superior Court of Justice, In Bankruptcy, dated August 16, 2011, refusing to order the removal of a law firm as counsel of record for a trustee in bankruptcy.

I. Background

[2] The applicant, Morris Kaiser (“Kaiser”), was adjudged bankrupt on October 17, 2009. The respondent, Soberman Inc. (the “Trustee”), was appointed trustee of the bankrupt estate.

[3] For more than a decade, Milton Davis (“Davis”), a partner in the law firm of Davis Moldaver LLP, has acted as counsel in various legal proceedings against or involving Kaiser. Specifically, since the spring of 1999, Davis has acted as counsel for approximately 20 individual or corporate litigants in more than 14 actions against Kaiser or his interests. By reason of these professional engagements, Davis has gained considerable knowledge of Kaiser as a litigant.

[4] Davis, through Davis Moldaver LLP, also acts for the Trustee in the Kaiser bankruptcy.

[5] As set out in an affidavit sworn by Kenneth Tessis (“Tessis”) of the Trustee’s offices on July 14, 2010, as a result of Davis’ extensive experience with Kaiser, the Trustee regards Davis Moldaver LLP as “the best suited law firm to be acting on behalf of the Trustee” in the Kaiser bankruptcy.

[6] Representatives of three of Kaiser's largest creditors – Bernie Ghert, Lautec Properties Inc. ("Lautec") and the Canada Revenue Agency – serve as inspectors in Kaiser's bankruptcy. It is undisputed that each of these creditors has "unequivocally" advised the Trustee of their desire to have Davis Moldaver LLP continue to act for the Trustee in the Kaiser bankruptcy.

[7] It is against this general background that this leave to appeal motion must be understood.

(1) Removal Motion

[8] In the summer of 2011, Kaiser moved for an order removing Davis Moldaver LLP as counsel of record for the Trustee (the "Removal Motion"). As relevant to this leave motion, Kaiser alleged on the Removal Motion that Davis Moldaver LLP was in a conflict position because: (1) while acting for the Trustee, Davis was also acting for Lautec; and (2) in breach of obligations that Kaiser claimed are owed to him by Davis and the Trustee (in particular, the alleged duty to protect Kaiser's right to solicitor-client privilege), Davis advised and permitted the Trustee to take steps that preferred Lautec's interests over those of the Trustee and the Kaiser estate.

[9] By order dated August 16, 2011, the motion judge dismissed the Removal Motion and awarded costs to the Trustee.

(2) Leave to Appeal Motion

[10] Kaiser seeks leave to appeal from the motion judge's order dismissing his request for a removal order. If leave be granted, he also seeks an order expediting the appeal.

[11] Section 193 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") provides for an appeal as of right to the Court of Appeal from any order or decision of a judge in bankruptcy in limited circumstances as set out in ss. 193(a) to (d). Under s. 193(e), leave of a judge of the Court of Appeal is required to appeal to this court "in any other case".

[12] Thus, the preliminary issue on this motion is whether leave to appeal the motion judge's decision to this court is required.

[13] In his notice of motion, Kaiser seeks leave to appeal, "if leave is required", pursuant to s. 193(e) of the BIA. Kaiser previously filed a Notice of Appeal and Amended Notice of Appeal in which he invoked ss. 193(a) and (c) and, "if necessary", s. 193(e) of the BIA as the jurisdictional basis for appealing the motion judge's decision to this court.

[14] In both his leave motion materials and his oral submissions, Kaiser took the position that leave to appeal under s. 193(e) is not required. At the same time, he also expressly sought leave to appeal under s. 193(e) of the BIA. He advanced no argument regarding an appeal as of right under any of ss. 193(a) to (d) of the BIA. Leave to appeal was the only relief sought on the motion, apart from an expedited appeal date.

[15] Argument of the leave motion proceeded on the basis that s. 193(e) of the BIA applies in the circumstances. It is the Trustee's position that s. 193(e) is engaged, that leave to appeal to this court is required, and that leave should be denied given the history of this matter, as outlined below.

[16] I am not persuaded that Kaiser's proposed appeal from the motion judge's decision falls within any of the appeal as of right categories set out in s. 193 of the BIA.¹ Nor, as I have said, did Kaiser urge a contrary conclusion. I therefore proceed on the basis that leave to appeal to this court is required under s. 193(e) of the BIA.

II. Governing Legal Principles

[17] The jurisprudence of this court indicates that a flexible approach should be applied to the factors to be considered on a motion for leave under s. 193(e) of the BIA. As Armstrong J.A. of this court explained in *Fiber Connections Inc. v. SVCM Capital Ltd.* (2005), 10 C.B.R. (5th) 201 (in chambers), at para. 19, "There is a variety of factors to consider depending upon the circumstances presented to the court." These factors include: (1) whether the judgment at issue appears to be contrary to law, amounts to an abuse of judicial power or involves an obvious error, causing prejudice for which there is

¹ For example, s. 193(a) of the BIA provides for an appeal as of right "if the point at issue involves future rights". The proposed appeal concerns the motion judge's discretionary ruling refusing to order the removal of Davis Moldaver LLP as ongoing counsel of record for the Trustee. Kaiser has no existing, let alone future, right to dictate the Trustee's choice of counsel. I do not regard the Trustee's selection of counsel as implicating Kaiser's "future rights". Similarly, it is difficult to see how s. 193(c) of the BIA is engaged in this case. That provision applies "if the property involved in the appeal" exceeds \$10,000 in value.

no remedy; (2) whether the point of the appeal is of significance to the practice or to the action itself; (3) whether the appeal is *prima facie* meritorious or frivolous; and (4) whether the appeal will unduly prejudice the progress of the action: see *Fiber Connections*, per Armstrong J.A., at para. 15; *GMAC Commercial Credit Corp. of Canada v. TCT Logistics*, [2003] O.J. No. 5761 (C.A.) (in chambers), per Feldman J.A., at para. 9. The relevant factors to consider will vary according to the circumstances of each case.

[18] One factor that is considered in all cases where leave to appeal under s. 193(e) of the BIA is sought is whether the proposed appeal is *prima facie* meritorious. In assessing the merits of a leave to appeal motion under this provision, the court's inquiry is informed by the principle of deference owed to a commercial court judge. Absent demonstrable error, an appeal court will not interfere. See *Ravelston Corp. (Re)* 2007 ONCA 268, (2007), 31 C.B.R. (5th) 233 (in chambers), per Borins J.A., at paras. 11-12; *Fiber Connections*, per Armstrong J.A., at paras. 15-19; *GMAC Commercial Credit*, per Feldman J.A., at para. 9.

[19] In addition, where the order sought to be appealed from is discretionary, as in this case, this court has recognized that leave will not be granted unless the matter is of importance either to the administration of justice generally or to the respective rights of the parties to the litigation: *Fiber Connections*, per Armstrong J.A., at para. 15; *GMAC Commercial Credit*, per Feldman J.A., at paras. 9 and 14; *Zurich Indemnity Co. of*

Canada v. Reemark Rideau Developments Ltd. (1992), 22 C.B.R. (3d) 291 (B.C.C.A.) (in chambers), *per* Southin J.A., at para. 21.

[20] Given the nature of the order sought to be appealed, Kaiser's leave motion is also informed by those principles that govern the court-ordered removal of a litigant's counsel of record. These principles were relevant to the motion judge's discretionary decision to deny the relief sought by Kaiser. They are also a relevant consideration in assessing the merits of Kaiser's proposed appeal.

[21] As the motion judge properly noted, "A litigant should not be deprived of counsel of its choice without good cause. See *McDonald Estate v. Martin*, [1990] 3 S.C.R. 1235." For this reason, Canadian courts exercise the highest level of restraint before interfering with a party's choice of counsel. Where such discretionary, equitable relief is invoked, there must be a possibility of real mischief should a removal order be refused. The test is whether a fair-minded and reasonably informed member of the public would conclude that counsel's removal is necessary for the proper administration of justice: see for example, *McDonald; Zawadzki v. Matthews Group Ltd.* (1998), 18 C.P.C. (4th) 373 (Ont. Gen. Div.); *Colville-Reeves v. Canadian Home Publishers Inc.* (2002), 111 A.C.W.S. (3d) 1202 (S.C.); *Lautek Properties Inc. v. Barzel Windsor (1984) Inc.* (2002), 26 C.P.C. (5th) 131 (S.C.).

III. Discussion

[22] In my opinion, it cannot be said that Kaiser's appeal is *prima facie* meritorious. Far from it.

[23] Kaiser sought discretionary, equitable relief of a type that is granted only sparingly and with great caution – the involuntary removal of counsel chosen by a client in the face of the client's opposition to the removal. That relief was denied by the motion judge for clear and cogent reasons. On the motion judge's findings, the requested relief was sought for improper and tactical, rather than legitimate, reasons. This factor alone tells strongly against granting equitable relief. Further, in all the circumstances, I do not regard any of the issues sought to be raised on appeal as important either to the administration of justice generally or to the rights of the parties.

[24] I therefore conclude that Kaiser has failed to satisfy the test for leave under s. 193(e) of the BIA. I note, in particular, the following.

[25] First, the record suggests that Kaiser has a demonstrated history of initiating proceedings, including removal motions, for purely strategic reasons. His motive for bringing the Removal Motion, which was a central issue before the motion judge, bears directly on the merits of his proposed appeal.

[26] The motion judge declined to exercise his discretion in favour of granting the requested removal order in part because he concluded that the Removal Motion had been brought "for tactical purposes to try to delay actions by the [T]rustee [to recover Kaiser's

assets for the estate]”. In his view, the Removal Motion was “completely miscast”. These conclusions are firmly grounded in the evidentiary record.

[27] The record reveals that the Removal Motion was not Kaiser’s first attempt to secure Davis’ removal as counsel of record in proceedings against Kaiser or his interests. In 2002, Kaiser moved for an order removing Davis as counsel of record in 14 related actions. In dismissing that motion, Epstein J., then of the Superior Court of Justice, concluded that: (1) the motion was brought for an improper, tactical purpose; (2) the moving parties knew that such an order would cause delay and inconvenience; and (3) the evidence before her did not support the allegations of misconduct advanced against Davis: *Lautec Properties*, at paras. 42-45. These were serious findings of impropriety by Kaiser. Justice Epstein put it this way, at para. 46: “[T]he case made out in support of the relief sought ... was like a blanket heavily patterned with strong animus toward Mr. Davis and woven together with speculation and conjecture.”

[28] Further, Kaiser had attempted in the past, without success, to secure a removal order against Davis’ predecessor – also a senior member of the litigation bar in Toronto – as counsel of record for parties opposite in interest to Kaiser. On that removal motion as well, Kaiser alleged serious professional wrongdoings by the involved counsel, allegations that were later found to be wholly groundless.

[29] Moreover, it is uncontested that Kaiser previously sued Davis for conspiracy, but adduced no evidence to support this serious claim when the matter proceeded to

arbitration. The experienced arbitrator, a former judge of the Superior Court of Justice, held that there was no evidentiary basis for any criticism of Davis and that the allegations against him were “unfounded and persistent”. He awarded costs to Davis and others on a substantial indemnity scale.

[30] This troublesome history of improperly-motivated litigation strongly supports the motion judge’s conclusion in this case that removal motions “appear to be part of Mr. Kaiser’s *modus operandi*” and that Kaiser holds a clear *animus* towards Davis. Kaiser’s pattern of advancing serious unfounded allegations of professional improprieties against counsel opposite and of initiating ill-founded removal motions, raises a sharp red flag, necessitating close scrutiny of the merits of any proposed appeal from the motion judge’s ruling on the Removal Motion.

[31] Second, the record also indicates that Kaiser, in numerous ways, has declined to co-operate with the Trustee and has sought to frustrate the disclosure of his financial resources and assets and the efficient administration of his bankrupt estate by the Trustee.

[32] The motion judge held that Kaiser, “who has an obligation to the trustee to assist in locating assets belonging to the bankrupt estate”, was “taking every opportunity to refuse to provide information that could assist the trustee”. This finding was not challenged during argument of the leave motion. Nor is it attacked by Kaiser in his Notice of Appeal or Amended Notice of Appeal as a factual finding tainted by palpable and overriding error.

[33] Again, there was considerable evidence before the motion judge to support this finding. Consider the following:

- (1) the Trustee provided evidence on the Removal Motion that although Kaiser claimed to be impecunious at the time of his bankruptcy, he engaged in a lifestyle, both *before and after* the date of his bankruptcy, that belied this claim. This included evidence of frequent gambling trips to the United States, the loss of significant funds at gambling tables during these trips and numerous cash withdrawals on credit cards belonging to or controlled by a third party (who is suspected by the Trustee to be complicit in Kaiser's efforts to conceal his assets) at or near various casinos;
- (2) it was also the Trustee's uncontradicted evidence on the Removal Motion that the Trustee has not been able "to determine much regarding Kaiser's affairs", that a motion is pending to determine the source of funds being used by Kaiser to finance this litigation, that Kaiser appears to have structured his affairs "in such a way as to have [a third party act] as a 'straw man' – thereby shielding his funds from the Trustee and his creditors" and, further, that Kaiser appears to have "access to funds, which he did not have before, the source of which is unknown to the Trustee, to pay for his various family, living and day-to-day expenses";
- (3) on his examination conducted under s. 163 of the BIA, Kaiser or his counsel objected to approximately one-half of the questions asked on the ground of privilege. Yet, in the opinion of the motion judge following a review of the relevant questions, most, if not all, the refusals related to factual matters in respect of which a privilege claim could not be advanced; and
- (4) on June 30, 2011, Kaiser was cross-examined in respect of the pending Removal Motion. The motion judge noted that every question asked of Kaiser regarding his

affairs was objected to, as being irrelevant to the Removal Motion.

[34] In part on the basis of these facts, Tesis indicated in his affidavit sworn on behalf of the Trustee in response to the Removal Motion that, in the Trustee's opinion, the Removal Motion was brought "to deflect attention from the fact that [Kaiser] seems to have access to significant sums of money which he has not disclosed to the Trustee".

[35] The foregoing circumstances militate in favour of the conclusion that the Removal Motion and, arguably, this associated leave motion, are merely the latest steps taken by Kaiser to delay and impede the expeditious and efficient administration of his bankrupt estate. At the very least, they provide a solid foundation for the motion judge's decision to deny discretionary equitable relief of the type sought by Kaiser. They also undercut Kaiser's contention that his proposed appeal from that decision is meritorious or of significance either to the parties or to commercial bankruptcy practice in general.

[36] Finally, a word about the merits of the specific proposed grounds of appeal identified by Kaiser. To be blunt, I consider the merits of the identified grounds to be highly dubious.

[37] Kaiser raised numerous grounds of appeal in his Amended Notice of Appeal. However, during oral argument of this motion, these grounds became more focused.

[38] Kaiser's principal complaint is that Davis, while acting as counsel for the Trustee, also acted for Laotec, one of Kaiser's major creditors. Kaiser seeks to renew his

argument on appeal, advanced before the motion judge, that Davis' dual engagement as counsel placed him and Davis Moldaver LLP in a conflict position, that Davis allegedly abused his role as counsel to the Trustee and breached alleged duties to Kaiser by advising the Trustee to take steps that favoured Lautec's interests over those of the Trustee and Kaiser, and that, by so doing, Davis exposed Davis Moldaver LLP "to an influence that impaired its professional judgment in respect of the Kaiser bankruptcy".

[39] At the heart of this complaint is a written waiver document dated February 10, 2010, prepared by Davis and executed by the Trustee (the "Waiver"), pursuant to which the Trustee purported to waive Kaiser's solicitor-client privilege and authorized certain solicitors to disclose information that might otherwise have been subject to that privilege.

[40] In the main, Kaiser contends that Davis, as counsel for the Trustee, owed a duty to Kaiser to protect his solicitor-client privilege. Kaiser invokes the professional standards set out in the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368 (the "Rules"), in support of his claim that Davis breached this duty by drafting and arranging for the execution and subsequent use of the Waiver for the benefit of Lautec in breach of Kaiser's right to solicitor-client privilege. Kaiser describes the Waiver as an "unlawful, misleading and prejudicial document", the preparation and use of which was "a misuse of the process and powers of the BIA".

[41] These arguments were raised before the motion judge and fully addressed by him in his reasons on the Removal Motion. He rejected Kaiser's claims of any impropriety by

the Trustee, Davis or Davis Moldaver LLP generally and, in particular, in respect of the Waiver. I see no reviewable error in this ruling.

[42] Kaiser argued before the motion judge, and seeks to re-argue on appeal, that duties are owed directly by a trustee in bankruptcy's counsel to the bankrupt. In support of this proposition, he relies on *Engels v. Richard Killen & Associates Ltd.* (2002), 60 O.R. (3d) 572 (S.C.) (In Bankruptcy), aff'd (2004), 69 O.R. (3d) 183 (C.A.) and *Dugas (Re)*, 2003 NBQB 197, (2003), 41 C.B.R. (4th) 168 (N.B.Q.B.) and various of the Rules.

[43] The Rules do not appear to have been raised before the motion judge. The motion judge considered the above-mentioned cases cited by Kaiser and declined to follow them, preferring instead to adopt his own prior reasoning on this issue in *Turbo Logistics Canada Inc. v. HSBC Bank Canada*, 2009 CanLII 55292 (S.C.). *Turbo* involved yet another solicitor-removal motion brought by counsel who act for Kaiser on this motion, albeit against another law firm in an unrelated proceeding. In *Turbo*, after considering the decisions in *Engels* and *Dugas*, the motion judge said, at para. 16 :

I cannot agree with the notion that counsel for a trustee in bankruptcy, or for a court-appointed receiver, normally owes any duty to the creditors of the bankrupt or debtor under a court-appointed receiver. The obligation of a solicitor is to his or her client. The fact that the solicitor is an officer of the court does not change that. It is the trustee in bankruptcy or the court-appointed receiver that owes a fiduciary duty to the creditors or other stakeholders. To suggest that the lawyer advising the trustee in bankruptcy or the court-appointed receiver owes a duty to those creditors or other stakeholders would, amongst other things, lay the solicitor open to actions

at the hands of the creditors of the trustee in bankruptcy or court-appointed receiver for failure to properly carry out the lawyer's obligations to those creditors or stakeholders. This is not the law and would make no sense. A solicitor giving advice to a client, whether the client is a trustee in bankruptcy or court-appointed receiver or otherwise, is responsible to the client to give proper advice to the client. It is the client, and not the solicitor, that owes duties to creditors and other stakeholders in the case of a trustee in bankruptcy or court-appointed receiver.

See also *Manufacturers Life Insurance Co. v. Juno Developments (North Bay) Ltd.*, 2011 ONSC 3945, (2011), 79 C.B.R. (5th) 229 (S.C.).

[44] I see no error in the motion judge's reasoning on this issue or in the proposition that it is the trustee in bankruptcy, as principal, rather than his or her solicitor, as agent, who owes direct legal duties to the creditors of a bankrupt or the bankrupt. Nor do I read the Rules now cited by Kaiser as undermining this conclusion.

[45] I reject Kaiser's contention that his proposed appeal raises "an important question of law for which there are conflicting authorities in Ontario", namely, whether a trustee's counsel owes direct legal duties to a bankrupt and, if so, the scope of those duties.

[46] *Engels* is the only Ontario decision cited by Kaiser that is said to be contrary to the motion judge's ruling on this issue. *Engels* was concerned primarily with whether the bankrupt in that case was bound by a common law non-solicitation restriction following the sale by a trustee in bankruptcy of a book of business to a third party. It was in this context that the trial judge in *Engels* commented on the duties of trustees in bankruptcy

and the obligation of the trustee and its counsel to act fairly and neutrally in the conduct of the administration of a bankrupt estate.

[47] In any event, it is not in every instance in which potentially conflicting decisions exist that leave to appeal to this court is warranted. The issue has now been addressed squarely in two recent Superior Court decisions – *Turbo* and *Manufacturers Life*. In both cases, the notion of duties of counsel of the type urged by Kaiser was rejected.

[48] Perhaps more importantly, on the motion judge's findings, neither Davis nor Davis Moldaver LLP breached any obligations to Kaiser.

[49] The motion judge considered, and rejected, Kaiser's contention that the drafting, execution and use of the Waiver required the removal of Davis Moldaver LLP as the Trustee's counsel. In my view, this conclusion is overwhelmingly supported by the record.

[50] First, the Waiver was prepared following the numerous privilege-based refusals by Kaiser on his BIA s. 163 examination, described above. Although Davis sent the Waiver to Kaiser's previous solicitors, he did not, in fact, request the disclosure of privileged information by those solicitors. In addition, it is uncontroverted that no privileged information was obtained as a result of the Waiver. Thus, regardless of the propriety of the Waiver, no prejudice was occasioned to Kaiser by its creation, execution or use.

[51] Second, the motion judge granted a declaration, without opposition from the Trustee, that the Waiver was “null, void and of no effect”.

[52] Third, the motion judge accepted the Trustee’s argument that the issue of the Waiver, and the attempt to invoke it as a basis for the removal of Davis Moldaver LLP as counsel for the Trustee, was part of a continuing effort to protect Kaiser from having to provide information to the Trustee.

[53] Fourth, and importantly, the record indicates that Kaiser instructed his counsel to object to Davis’ representation of the Trustee about one month *before* the Waiver was signed. Thus, Kaiser’s reliance on the Waiver to support the Removal Motion was an ‘after-the-fact’ stratagem.

[54] Fifth, the motion judge, as he was entitled to do, accepted the Trustee’s evidence that the Waiver was used in an effort to trace funds that the Trustee has grounds to believe either emanated from Kaiser or from persons who hold money at his behest. He also accepted that at least part of the funds at issue may have been applied to reduce the debt owed to Lautec, one of Kaiser’s largest creditors. The reduction of this debt, if it occurred, could only have decreased the amount of Lautec’s claim in the bankruptcy and, consequently, increased the funds potentially available for recovery by Kaiser’s other creditors. In these circumstances, the Trustee had a legitimate interest in attempting to trace the funds in question.

IV. Disposition

[55] I end where I began. It bears repeating that none of the Trustee or Kaiser's major creditors and estate inspectors has voiced any objection to the representation of the Trustee by Davis and his law firm. Nor have they voiced any concern about Davis' conduct or a conflict of interest arising from the fact that Davis acts for both Lautec and the Trustee.

[56] To the contrary, the Trustee has sworn that there is no conflict, that Davis has not preferred Lautec's interests over those of the Trustee, and that Kaiser's largest creditors, together with the Trustee, wish Davis to continue as counsel to the Trustee. The Trustee's position was succinctly stated in Tesis's affidavit on the Removal Motion:

[I]t would be a disservice to the creditors and bankruptcy estate and ultimately a large and expensive impediment to the smooth administration of this bankruptcy if [Davis Moldaver LLP] was to be removed as solicitor of record.

[57] Accordingly, for the reasons given, I conclude that Kaiser has not satisfied the test for leave to appeal under s. 193(e) of the BIA. The leave motion is dismissed.

V. Costs

[58] The Trustee is entitled to its costs of this motion. I have now received and reviewed the parties' written submissions concerning costs. The Trustee seeks its costs of the leave motion on a full indemnity basis, in the sum of \$21,521.48. The Trustee argues that this motion, like the Removal Motion, was tactical in nature and designed to

further delay the proper administration of Kaiser's bankrupt estate. Consequently, the Trustee says that the dismissal of the leave motion should attract a costs award on the full indemnity scale.

[59] Kaiser submits that his leave motion was reasonable and justified. He argues that, based on the decisions in *Engels* and *Dugas*, he had a legitimate legal foundation on which to object to Davis Moldaver LLP's continuing representation of the Trustee. He argues that the costs of the leave motion should be fixed in the amount of \$5,000.

[60] The Trustee emphasizes that the motion judge awarded costs to the Trustee in the amount of \$50,000 – almost the entire amount of the Trustee's full indemnity costs (\$53,758.76). In large part, that award was based on the motion judge's conclusion that the Removal Motion was misconceived and tactical in nature. He viewed the Removal Motion as merely one more effort by Kaiser to "stone wall" the Trustee's efforts to ascertain and realize on Kaiser's assets for the benefit of his bankrupt estate.

[61] I have strong suspicions that, like the Removal Motion, Kaiser's leave motion was brought for tactical reasons. That said, the record before me does not clearly establish an improper purpose in the decision to seek leave to appeal.

[62] I therefore conclude that the Trustee is entitled to its partial indemnity costs of the leave motion. Contrary to Kaiser's submission, I regard the amount of \$14,200, inclusive of disbursements and all applicable taxes, as an appropriate award of partial indemnity

costs in this case and I so order. I decline to grant any other relief in respect of the Trustee's costs of this motion.

“E.A. Cronk J.A.”