

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE BANKRUPTCY OF CREATIVE WEALTH
MEDIA FINANCE CORP OF THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
163(2) OF THE *BANKRUPTCY AND INSOLVENCY ACT*.

ABBREVIATED BOOK OF AUTHORITIES

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Hoc Group

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INDEX

TAB	DOCUMENT DESCRIPTION
1.	<i>Assaf (Re)</i> (1976), 23 C.B.R. (N.S.) 14 (Ont. SCJ)

TAB 1

Most Negative Treatment: Distinguished

Most Recent Distinguished: *G.W. Holmes Trucking (1990) Ltd., Re* | 2005 NSSC 290, 2005 CarswellNS 462, 15 C.B.R. (5th) 191, 757 A.P.R. 219, 238 N.S.R. (2d) 219, 143 A.C.W.S. (3d) 421, [2005] N.S.J. No. 432 | (N.S. S.C., Sep 7, 2005)

1976 CarswellOnt 84
Ontario Supreme Court, In Bankruptcy

Assaf, Re

1976 CarswellOnt 84, 23 C.B.R. (N.S.) 14

Re Assaf

Ferron, Registrar

Judgment: December 13, 1976

Counsel: *R. P. Preszler*, for applicant.

W. J. Meyer, for trustee.

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure

Related Abridgment Classifications

Bankruptcy and insolvency

XVII Practice and procedure in courts

XVII.3 Discovery and examinations

XVII.3.b By creditor

Headnote

Bankruptcy --- Practice and procedure in courts — Discovery and examination — By creditor

Scope of.

Section 133(2) of the Act provides a means for the examination of the bankrupt and other persons by those interested in the administration of the estate and not for the private purposes of any person, whether a creditor or otherwise. Subsection (3) of s. 133 is peremptory in its terms and contemplates that the examinations authorized are relevant to the administration of the estate on matters pending before the bankruptcy court.

An application by a chattel mortgagee to examine the bankrupt as to the whereabouts of the chattel covered by the security was dismissed.

Ferron , Registrar:

1 This is an application brought by counsel for Myer Schnier, a secured creditor, for leave to examine the bankrupt under s. 133(2) of the Bankruptcy Act, R.S.C. 1970, c. B-3.

2 It appears that the applicant holds a chattel mortgage on certain household goods which belonged to the bankrupt and has foreclosed on that mortgage. A judgment was obtained for possession of the security set out in the mortgage, but a kerman rug described in the chattel mortgage was missing from the debtor's assets.

3 The applicant accordingly wants to examine the bankrupt to determine the whereabouts of the kerman rug.

4 Section 133(2) provides for the examination of the bankrupt upon the application of any creditor or other interested person, "for the purpose of investigating the administration of the estate of any bankrupt". I wish to emphasize that the purpose of the examination is for the investigation of the administration of the estate.

5 Section 133(2) provides the persons mentioned therein with extraordinary powers of examination and were never, in my opinion, intended to be used to assist a litigant in private proceedings outside the Bankruptcy Act. The section provides a means for the examination of the bankrupt and other persons by those interested in the administration of the estate and not for the private purposes of any person whether a creditor or otherwise.

6 The words used in the section, "for the purpose of investigating the administration of the estate of any bankrupt", are very significant. It is an examination for the general interest and for the demonstrable general benefit of creditors and not, as I have mentioned, for creditors to pursue a private remedy.

7 The applicant has a judgment for possession of the chattels described in his security. The only examination which, in my opinion, he is entitled to take is such as may be available to him in the very action taken on his security.

8 In addition, subs. (3) of s. 133 contemplates the filing of the transcript in the bankruptcy court to be read in any proceedings under the Act before the court of which the person examined is a party. If persons were permitted under the section to examine the bankrupt on a private matter, what possible use could there be in requiring the transcript to be filed in court? Subsection (3) is not merely directory but is peremptory in its terms, and accordingly the section must contemplate that the examinations authorized are relevant to the administration of the estate on matters pending before the bankruptcy court.

9 Subsection (3) on a quick reading appears to be broad in its meaning. Certainly it is broad so far as it relates to the category of persons who may be examined, but with respect to the occasion for such examination the subsection is narrow and rightly so. The application is dismissed.

IN THE MATTER OF THE BANKRUPTCY OF CREATIVE WEALTH MANAGEMENT INC., OF
THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

**ONTARIO
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Proceeding commenced at TORONTO

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