

## **REGINA VS. C. Rosen (Brittany Antiques)**

### **SYNOPSIS**

This case illustrates the change that took place in purchasing and payment activity before the company's bankruptcy.

### **BACKGROUND AND FINANCIAL POSITION**

Brittany Antiques Limited was incorporated in October, 1970. Carl and Monica Rosen were the President and Vice-President of the company, which sold antique furniture by auction and on a wholesale basis. For the fiscal year ended October 31, 1973, the company reported sales of \$122,090.00, merchandise purchases of \$90,265.00 and a net loss of \$3,740.00.

### **CHANGE IN PURCHASE POLICY THROUGH THE INTRODUCTION OF A NEW PERSON**

In the fall of 1974, John MacHibroda joined Rosen's firm. In January 1975, Brittany changed its buying habits to include large purchases of merchandise. Carl Rosen and John MacHibroda went to the various furniture and gift shows in January and February 1975 in Toronto to become personally acquainted with the many dealers. They would explain that they were in the business of buying and selling furniture by auction, and would mention that they had a contract to supply two new motels, in the Northern Ontario towns of North Bay and Kapuskasing, with furniture.

In fact, Brittany's new purchasing policy resulted in the acquisition of merchandise, during the period January 1975 to May 31, 1975, totaling \$411,586.13. However, by June 24, 1975, Brittany's new payment policy resulted in only \$10,248.86 being paid to the suppliers.

### **NEW ACCOUNTANT – SOMEONE TO BLAME**

A key ingredient in a successful planned bankruptcy is being able to blame someone else for the failure of your corporation. Equally important, the transactions normally examined by the trustee in bankruptcy in the search for corporate assets should not leave a trail of evidence - especially when it becomes apparent to the trustee that a large inventory discrepancy exists.

In March 1975, Brittany advertised the position of "bookkeeper ... chance for advancement to managerial position" [in the Toronto Star newspaper]. The real Mr. John Peter Geslak, a Mississauga accountant, called Brittany to apply for the

position. He was advised by someone in Brittany's office to send in his resume. As he was applying for several positions at this time, he had prepared several copies of his resume and simply sent one to Brittany. This was the last he heard from them about the position.

On March 27, 1975, a man called John Geslak (not the real J.P. Geslak) rented an apartment at 54 Howland Avenue, Toronto. He paid one month's rent in advance. This person, an American, was intended to be the scapegoat for Rosen.

On April 9, 1975, Carl Rosen went to see his bank manager to introduce this John Geslak as Brittany's new accountant. Rosen stated that Geslak would handle all of the firm's financial affairs and would therefore have full signing authority for the firm (thus solving the problem of access to the assets). A banking resolution was drawn up to this effect, and the authorized signature card was changed to show the name of John Peter Geslak.

With the changed policies and the new people in place, and the inventory of furniture boosted to its highest level in the company's history, the planned bankruptcy was now ready for the next stage, the quick disposal of the furniture. To document these activities, the investigating accountant attempted to set out sales of furniture and cash receipts to the bank account of Brittany, so as to determine the disposal of the furniture based on the available documentation.

## **SALES AND CASH RECEIPTS**

Based on the available documentation, known sales of \$245,222.00 occurred between April 15, 1975 and May 17, 1975.

Mrs. Betty MacHibroda, wife of John MacHibroda, apparently purchased \$38,925.00 worth of merchandise. The first invoice dated April 22, 1975, totaled \$5,250.00 and was marked "paid by cheque." A corresponding cheque from Betty MacHibroda to Brittany was found along with the deposit to Brittany's bank account. The other four invoices were marked "paid in cash - John Geslak" and dated April 28th, May 2nd, 12th, and 15th. The bank records for Brittany do not disclose the deposit of any cash to the company's account.

In a second transaction, Brittany sold \$74,378 worth of merchandise to R. & G. Enterprises. This company made available Brittany's sales invoices for the goods purchased in April 1975 and May 1975. They stated "Paid in Full Cash John P. Geslak". The bank records for Brittany did not disclose the deposit of any cash to the company's account.

The sales which resulted in large deposits to the bank account of Brittany related to:

Imperial Motors Hotel	\$27,000.00	May 6, 1975
Bill Manteen	<u>\$88,346.00</u>	May 15, 1975

\$115,346.00

Thus, the introduction of a John Geslak into the operation of Brittany Antiques, along with the sales invoices marked "paid in cash John Geslak", enabled Rosen to claim that John Geslak must have taken this cash from the customer and, instead of depositing the cash in the company account, had stolen it.

This technique is one means of blocking the trustee's access to the furniture. The furniture could very well have been located in the home of Betty MacHibroda and in the business premises of R. & G. Enterprises, since they had paid by cash. The technique likewise blocked the trustee from attacking Rosen because he could blame his plight on the theft by his accountant John Geslak of the sale proceeds. However, before the disbursement of these funds is discussed, the Brittany sales invoices should be examined.

### **SELLING PRICE EQUAL TO PURCHASE PRICE**

As indicated earlier, payments to suppliers appeared minimal. With suppliers pressuring Brittany for payment, Brittany sold the merchandise at a selling price equal to their cost price, in order to sell the merchandise more quickly and at more favourable terms (i.e., cash).

The example on page 23 compares Brittany's cost of merchandise purchased from a supplier, George Palliser Limited, with Brittany's sale of this merchandise to R. & G. Enterprises.

### **DISBURSEMENT OF FUNDS FROM BRITTANY'S BANK ACCOUNT**

The disbursement of funds from Brittany's bank account has been segregated into two schedules which set out the source of funds and the disbursement of funds for two different periods. The first period of January 1975 to the end of April 1975 was segregated from the month of May 1975 because of the lack of available documents. However, information was available for the disbursements for May 1975, simply because Rosen had neglected to visit his bank to pick up the current month's accumulation of bank statements and cancelled cheques. (This particular source of information should be kept in mind at the time of a search at a business location.) Thus, for the most part our comments deal with the month of May 1975.

During the first half of May 1975, the company issued \$43,000.00 in certified cheques to the following:

1.	S, Wasserman	\$10,000.00
2.	M. Schull	\$ 5,000.00
3.	S. Bahry	\$10,000.00
4.	B. MacHibroda	\$ 8,000.00
5.	J. MacHibroda	<u>\$10,000.00</u>

\$43,000.00

Schull and Wasserman were friends of Rosen, and Bahry was a relative of the MacHibroda's. When the trustee attempted to obtain repayment of these funds, he was advised that the company's payment was in fact a loan repayment, so the trustee's path was blocked again.

On May 7, 1975, Geslak, accompanied by Rosen, withdrew \$20,000.00 in cash. Again on May 15, 1975, Geslak, accompanied by Rosen, withdrew \$60,000.00 in cash from the bank account. The bank balance on May 20, 1975, was \$1,609.20.

As a result of these withdrawals, the monies deposited to the bank account of Brittany Antiques from Imperial Motors Hotel and Bill Maneen were quickly removed from the company, to the detriment of the creditors and to the personal benefit of John Gelak, Rosen and MacHibroda.

In a planned bankruptcy, time is of the essence, Most creditors will allow 30 to 60 days for payment, especially for more significant orders. They are, after all, in business to do business, and granting credit is an accepted practice and an accepted risk in business. With most of the purchases having occurred in March and April 1975, it was not surprising that in the latter part of May some of the suppliers would be pressuring Brittany for payment on account.

One of the better ways of buying time from Brittany's point of view was to issue cheques to the suppliers. This was done commencing May 20, 1975. A series of cheques totaling \$65,285.33 were issued to some 12 creditors between May 20 and May 26, 1975, when the bank balance as at May 20 was \$1,609.20. Of course all of these cheques were subsequently returned NSF.

### **BLAME THE ACCOUNTANT**

On May 30, 1975, C. Rosen wrote to the suppliers saying in part, "Our accountant has absconded with all deposits placing our firm in a terrible position."

On June 16, 1975, the landlord of Brittany's business premises had a bailiff lock the place for non-payment of rent.

On July 15, 1975, Rosen filed an assignment request in bankruptcy for Brittany Antiques Limited.

Thus, at the time of bankruptcy Rosen believed that the path of the trustee had been blocked and, with John Gelak having returned to his place of origin with the proceeds obtained by crime, it appeared initially that a planned bankruptcy had in fact succeeded.

However, when investigation commenced it was determined that the real John P. Geslak in Mississauga, Ontario, had had no further dealings with Brittany Antiques Limited. The question then arose as to the real identity of the individual who had claimed to be John Geslak. Eventually investigation revealed that the accountant who had absconded with the firm's money was actually a William James Brady of Hyannis, Massachusetts.

The prosecution was unable to proceed at that time against Brady. It did proceed and obtained convictions against both Carl Rosen and John MacHibroda which resulted in sentences of 4 years for each man on the charges that they "did unlawfully by deceit, falsehood and other fraudulent means defraud members of the public who were induced to sell merchandise to Brittany Antiques Ltd. under terms of credit.": Some three years later, William Brady was observed by chance on the beach near Hyannis, Massachusetts, and returned to Canada voluntarily. He received a one-year sentence for his part in the planned bankruptcy.

Brittany Antique Ltd.  
Statement of Apparent Source and Application of Funds  
For the period May 1, 1975 to May 31, 1975  
Based on the  
Canadian Imperial Bank of Commerce Account Number 18-01511

Balance per Bank Statement as of May 1, 1975		\$ 5,601.74
Add: Deposits Apparently Provided by:		
D. Mateev & Sons Limited	\$88,346.00	
* Patson developments Limited	\$27,000.00	
Patson Developments Limited	\$ 3,825.12	
S. Beyerbaum	\$ 402.15	
Source Unknown	<u>\$14,035.27</u>	<u>\$133,608.54</u>
		\$139,210.28
Less: Disbursements apparently Made to:		
Cash	\$60,000.00	
John P. Geslak	\$20,000.00	
Mr. S. Bahry	\$10,000.00	
Mr. J. MacHibroda	\$10,000.00	
S. Wasserman	\$10,000.00	
Mrs. B. MacHibroda	\$ 8,000.00	
Mr .Manuel Shull	\$ 5,000.00	
General Motors Acceptance	\$ 3,097.90	
Petty Cash	\$ 2,000.00	
The Glorious Muddle	\$ 1,750.00	
Tru Wall Concrete Forming Ltd.	\$ 1,093.75	
Petty Cash	\$ 1,000.00	
Other Identified Payments (51)	<u>\$ 7,264.24</u>	<u>\$139,205.89</u>
Balance per Bank Statement as of May 31, 1975		<u><u>\$ 4.39</u></u>

\* like amount and time transaction

This schedule shows the withdrawal of funds from the company bank account by management in the period prior to bankruptcy.