

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHCR 10

Bankruptcy No 36 of 2017 (Summons 1730 of 2022 and Summons 2841 of 2022)

Between

(1) HSBC Bank (Singapore) Ltd

... Plaintiff

And

(1) Ong Chee Han Jeremy

... Defendant

JUDGMENT

[Insolvency Law — Bankruptcy — Annulment of bankruptcy order]
[Insolvency Law — Bankruptcy — Discharge]

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HSBC Bank (Singapore) Ltd

v

Ong Chee Han Jeremy

[2022] SGHCR 10

General Division of the High Court — Bankruptcy No 36 of 2017 (Summons No 1730 of 2022 and Summons No 2841 of 2022)
AR Randeep Singh Koonar
24 May, 21 June and 9 September 2022

10 October 2022

Judgment reserved

AR Randeep Singh Koonar:

Introduction

1 The present applications, Summons No 1730 of 2022 (“Summons 1730”) and Summons 2841 of 2022 (“Summons 2841”), raise two issues. The first is whether a bankruptcy application can be made against a deceased debtor. If the answer is “no”, the second issue concerns the consequences which ought to follow where a bankruptcy order is made on such a bankruptcy application

and substantial steps have been taken to administer the bankruptcy estate pursuant to the bankruptcy order.

Facts

2 The present bankruptcy application was filed on 6 January 2017, by way of Bankruptcy No 36 of 2017 (“the Bankruptcy Application”).

3 The Defendant was recorded as being absent at the first hearing of the Bankruptcy Application on 9 February 2017. As the Defendant was eligible for possible placement on the Debt Repayment Scheme (“DRS”), the case was referred to the Official Assignee to assess the Defendant’s suitability for the DRS.

4 On 17 March 2017, the Official Assignee found the Defendant unsuitable for the DRS on the ground that the Defendant had failed to submit the necessary documents to the Official Assignee for the assessment within the stipulated timeframe.

5 At the second hearing of the Bankruptcy Application on 20 April 2017, the Defendant was again recorded as being absent. A bankruptcy order was made against the Defendant at the second hearing (“the Bankruptcy Order”). Under the Bankruptcy Order, Mr Chee Yoh Chuang (“Mr Chee”) and Mr Abdutahir Abdul Gafoor were appointed as joint and several private trustees in bankruptcy of the Defendant’s estate (“the PTIBs”).

6 It later emerged that the Defendant had in fact died on 23 July 2016; that is, before the Bankruptcy Application was made. It appears that the Plaintiff

was unaware of the Defendant's death. As such, this was not made known to the Court.

7 On 9 May 2022, the PTIBs applied for a discharge of the Bankruptcy Order by way of Summons 1730. Mr Chee's affidavit filed in support of Summons 1730 on 13 May 2022 disclosed that:

(a) As the Defendant had passed away on 23 July 2016, no statement of affairs was filed and the PTIBs could not determine the Defendant's monthly contributions and target contributions. A probate search also did not yield any results.

(b) The PTIBs had taken steps to realise the Defendant's assets. The main asset was a property which was sold by the mortgagee for \$1,250,000. After deducting the outstanding mortgage, the net sale proceeds were \$112,570.52. Except for a further sum of \$654.14 in the Defendant's bank account, there were no other realisable assets.

(c) There was a balance of \$110,866.67 in the bankruptcy estate. This comprised the total assets realised by the PTIBs (\$113,224.66) and the petitioning creditor's deposit (\$1,850) less payment of the Official Assignee's fees (\$704) and payment of the Plaintiff's costs (\$3,503.99).

(d) A notice of intended first and final dividend was published on 31 August 2018, inviting creditors to file proofs of debt by 14 September 2018. Proofs of debt were filed by nine creditors and were admitted by the PTIBs in the sum of \$158,198.04. A creditors' meeting was held on 10 December 2020 to approve the PTIB's fees.

(e) The PTIBs intended to declare a first and final dividend as follows ("the Proposed Distribution"):

(i) The PTIBs first proposed to settle their fees (\$23,939.82), the professional fees of the solicitors acting for them in the discharge application (\$4,492.84) and the debt due to a preferential creditor (\$6,435.93).

(ii) Thereafter, the PTIBs proposed to declare a dividend of approximately 50 cents in the dollars to the ordinary creditors.

(f) The PTIBs had completed the administration of the bankruptcy estate. More than four years had passed since the Bankruptcy Order was made and there were no other known assets which could be realised. Hence, the PTIBs were applying for an order to have the Defendant discharged from bankruptcy.

8 I first heard Summons 1730 on 24 May 2022. At the hearing, I queried counsel for the PTIBs on: (a) whether the Bankruptcy Order was irregular given the Defendant was deceased when the Bankruptcy Application was made; and (b) if the Bankruptcy Order was irregular, whether it should be annulled instead of discharged. I also directed that the Official Assignee attend the next hearing to address the Court on these issues.

9 Thereafter, discussions took place between the Official Assignee, the PTIBs and the creditors. By way of the Official Assignee's letter to the PTIBs dated 14 June 2022, the Official Assignee took the position that the Bankruptcy Order was irregular and should be annulled.

10 The PTIBs filed Summons 2841 on 1 August 2022. Summons 2841 was an application to amend Summons 1730. The effect of the amendment was that the PTIBs were now applying to: (a) annul the Bankruptcy Order; and (b) have

themselves appointed as the administrators of the deceased Defendant's estate in bankruptcy pursuant to s 148 of the Bankruptcy Act (Cap 20, 2009 Rev Ed).

11 I heard Summons 1730 and Summons 2841 together on 9 September 2022. By then, there was a further change in the PTIBs' position. The PTIBs no longer wished to proceed with Summons 2841 to have the Bankruptcy Order annulled and have themselves appointed as the administrators of the deceased's estate under s 148 of the Bankruptcy Act.

12 The PTIBs instead sought directions from the Court, pursuant to s 40(2) of the Bankruptcy Act, for the PTIBs to be allowed to conclude the administration of the bankruptcy estate as set out in the Proposed Distribution and for the Bankruptcy Order to be annulled thereafter. The Official Assignee did not object in-principle to the directions sought.

Issues

13 Based on parties' position at the 9 September 2022 hearing, the issues before me are as follows:

- (a) Whether a bankruptcy application can be made against a deceased debtor ("Issue 1").
- (b) If the answer to Issue 1 is "no", whether the Bankruptcy Order should be annulled forthwith, or whether the Court should allow the administration of the bankruptcy estate to conclude before the Bankruptcy Order is annulled ("Issue 2").

Decision

Decision on Issue 1: A bankruptcy application cannot be made against a deceased debtor

14 Issue 1 concerns whether a bankruptcy application can be made against a deceased debtor under the Bankruptcy Act. The Official Assignee submits, and the PTIBs accept, that the Bankruptcy Act does not permit this. While I agree with parties, it is helpful to briefly explain my reasons as the position may not be entirely clear from a plain reading of the Bankruptcy Act.

15 I begin by examining the relevant statutory provisions. The starting point is ss 60(1) and 61(1) of the Bankruptcy Act which together set out the conditions for making a creditor's bankruptcy application against an individual debtor:

Conditions to be satisfied in respect of debtor

60.—(1) No bankruptcy application shall be made to the court under section 57(1)(a) or 58(1)(a) against an individual debtor unless the debtor —

- (a) *is domiciled* in Singapore;
- (b) *has property* in Singapore; or
- (c) *has*, at any time within the period of one year immediately preceding the date of the making of the application —
 - (i) been ordinarily resident or has had a place of residence in Singapore; or
 - (ii) carried on business in Singapore.

...

Grounds of bankruptcy application

61.—(1) Subject to section 63A, no bankruptcy application shall be made to the court in respect of any debt or debts unless at the time the application is made —

- (a) the amount of the debt, or the aggregate amount of the debts, is not less than \$15,000;

(b) the debt or each of the debts is for a liquidated sum payable to the applicant creditor immediately;

(c) the debtor is unable to pay the debt or each of the debts; and

(d) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the applicant creditor by virtue of a judgment or an award which is enforceable by execution in Singapore.

...

[emphasis added]

16 Broadly, s 60(1) deals with the kinds of *debtors* a bankruptcy application can be made against and over whom the court may exercise bankruptcy jurisdiction. Section 61, on the other hand, deals with the kinds of *debts* which support the making of a bankruptcy application.

17 It will be evident that while ss 60(1) and 61(1) of the Bankruptcy Act do not expressly *prohibit* the making of a bankruptcy application against a deceased debtor, they equally do not say that a bankruptcy application *can* be made against a deceased debtor.

18 A case involving a deceased debtor is, however, regulated elsewhere in the Bankruptcy Act. Section 71 of the Bankruptcy Act applies where a debtor dies *after* a bankruptcy application is made against him or her:

Continuance of proceedings on death of debtor

71. If a *debtor by or against whom a bankruptcy application has been made dies*, unless the court otherwise directs, the *proceedings in the matter are to be continued as if the debtor were alive*, and the court may —

(a) order that the application be served on the debtor's personal representative or such other person as the court thinks fit; or

(b) dispense with service of the application on the debtor.

[emphasis added]

19 Section 71 makes clear that if a debtor dies *after* bankruptcy proceedings are commenced, the proceedings may continue as if the debtor were still alive. Hence, the mere fact that a debtor is deceased does not prevent the making of a bankruptcy order, even though the administration of the bankruptcy estate may encounter difficulties in practice.

20 Finally, s 148 of the Bankruptcy Act permits the Official Assignee or a creditor of a deceased debtor to apply to court for an order for the administration of the estate of the deceased debtor according to the Bankruptcy Act (which I will refer to as an “administration order”, to distinguish it from a bankruptcy order). The material parts of s 148 read:

Administration in bankruptcy of estate of person dying insolvent

148.—(1) In this section, unless the context otherwise requires, “creditor” means one or more creditors qualified to make a bankruptcy application under this Act.

(2) The Official Assignee or any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy application against the debtor had he been alive, *may make to the court an application for an order for the administration of the estate of the deceased debtor according to this Act.*

...

(4) Upon the prescribed notice being given to the legal representative, if any, of the deceased debtor, *the court may, in the prescribed manner, upon proof of the applicant’s debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased debtor, make an order for the administration in bankruptcy of the deceased debtor’s estate, or may, upon cause being shown, dismiss the application with or without costs.*

(5) An administration order under this section shall not be made until the expiration of 2 months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal representative of the deceased debtor.

(6) An application for administration under this section shall not be made to the court after proceedings have been commenced for the administration of the deceased debtor's estate except that the court may, in that case, on the application of any creditor and on proof that the estate is insufficient to pay its debts in the prescribed manner, make an order for the administration of the estate of the deceased debtor in bankruptcy, and the like consequences shall ensue as under an administration order made on the application of a creditor.

...

(9) Sections 98, 105 and 106 shall apply in the case of an administration order under this section as if the administration order were a bankruptcy order.

...

[emphasis added]

21 Taking a purposive interpretation of the above provisions, I find that although the Bankruptcy Act does not expressly prohibit the making of a bankruptcy application against a deceased debtor, it does so as a matter of necessary implication.

(a) First, s 60(1) of the Bankruptcy Act uses the present tense when describing the requirements as to the debtor's domicile, ownership of property, residence and carrying on of a business in Singapore. Whilst not conclusive in itself, I agree with the Official Assignee's submission that the use of the present tense suggests that Parliament did not intend for the term "debtor" under 60(1) to cover a debtor who is deceased when a bankruptcy application is to be made.

(b) Second, s 148 of the Bankruptcy Act uses the distinct term "deceased debtor" when referring to a debtor who is deceased when an application for an administration order is made. The absence of similar language in ss 60 and 61 suggests that Parliament did not intend for these provisions to also apply to a deceased debtor.

(c) Third, and most crucially, s 148 of the Bankruptcy Act allows an application for an administration order to be made against a deceased debtor. While an administration order is not identical in all aspects to a bankruptcy order, its broad purpose is similar, in that it is for the deceased debtor's estate to be administered as if it were bankrupt. I agree with the Official Assignee that s 148 would be rendered otiose if a bankruptcy application could also be filed against a deceased debtor, and Parliament could not have intended such a result. Having a parallel regime where a creditor can elect between applying for bankruptcy application or an administration order would allow creditors to by-pass the procedural safeguards which apply to the latter. Such an arbitrary and unprincipled outcome could not have been intended by Parliament.

(d) Fourth, ss 60, 61, 71 and 148 of the Bankruptcy Act should be read harmoniously. In my judgment, this entails reading s 71 as applying where debtor dies *after* a bankruptcy application is made. Conversely, where the debtor is deceased *when* the application is made, the application should be for an administration order under s 148 of the Bankruptcy Act instead.

22 For completeness, I address the English Court of Appeal's decision in *Ex parte Geisel, In re Stanger* (1882) 22 Ch D 436 ("*Stanger*"), which the Official Assignee cites for the proposition that a bankruptcy application cannot be made against a deceased debtor.

23 In *Stanger*, the petitioning creditor filed a bankruptcy petition alleging, as an "act of bankruptcy", that the debtor had absented himself from his place of business with the view of defeating and delaying his creditors. The debtor was adjudicated bankrupt on the petition. After the bankruptcy adjudication,

probate was granted on a will executed by the debtor, with the probate court finding that the debtor was presumed to be dead from a date before the bankruptcy petition was filed. The debtor's executors then applied to annul the bankruptcy adjudication on the ground that the debtor was dead when the bankruptcy adjudication was made. The Registrar refused the application at first instance. The English Court of Appeal allowed the executors' appeal and annulled the bankruptcy adjudication.

24 In *Tang Yong Kiat Rickie v Sinesinga Sdh Bhd (transferee to part of the assets of United Merchant Finance Bhd) and others* [2014] SGHCR 6 ("*Rickie Tang*") at [13(d)], AR Paul Chan Wei Sern cited *Stanger* for the proposition that a bankruptcy order ought not to be made if the debtor was dead at the time proceedings were commenced.

25 In my respectful view, *Stanger* is of limited assistance in deciding whether a bankruptcy application can be made against a deceased debtor under the Bankruptcy Act.

26 First, the legislation in issue in *Stanger* was the UK Bankruptcy Act 1869 (32 & 33 Vic, c 71) ("UK BA 1869"). The provisions of the UK BA 1869 are materially different from the Bankruptcy Act insofar as the present case is concerned. The key differences are that: (a) the UK BA 1869 required proof that the debtor had committed an "act of bankruptcy" within six months before the presentation of the bankruptcy petition (see s 6 of the UK BA 1969), whereas there is no such requirement under the version of the Bankruptcy Act which applies in this case; and (b) the UK BA 1869 does not contain provisions similar to s 148 of the Bankruptcy Act, which allow an application for an administration order to be made.

27 Second, while the Court in *Stanger* unanimously decided that the bankruptcy adjudication should be annulled, the judges differed in their reasons:

(a) Jessel MR (at 438–439) was not satisfied that the debtor had committed the alleged act of bankruptcy as he was not satisfied that the bankrupt was alive *at the time of the alleged act of bankruptcy*.

(b) Cotton LJ found (at 440) that even if the bankrupt was alive at the time of the alleged act of bankruptcy, he was not alive *when the bankruptcy petition was presented*.

(c) Sir Hannen found (at 440) that the inference to be drawn from the evidence was that the bankrupt was dead *when the adjudication was made* and not that he had committed an act of bankruptcy.

28 Hence, *Stanger* is not clear authority for the proposition that a bankruptcy application cannot be *made* against a deceased debtor. Apart from *Stanger*, there appears to be a dearth of authority, both local and foreign, which has considered this question. In any event, nothing turns on this. The question is ultimately a matter of statutory interpretation. For the reasons discussed at [21] above, the answer to the question is clear based on a purposive interpretation of the Bankruptcy Act.

29 To conclude on Issue 1, I find that a bankruptcy application cannot be made against a deceased debtor under the Bankruptcy Act.

Decision on Issue 2: The Bankruptcy Order should be annulled on the condition that the Defendant’s property is to vest in the PTIBs who are to distribute the property in accordance with the Proposed Distribution

30 I turn Issue 2. Having found that a bankruptcy application cannot be made against a deceased debtor, I must next decide the consequences which

ought to follow. The specific questions to be determined are: (a) whether the Bankruptcy Order should be annulled; and (b) if the Bankruptcy Order should be annulled, whether the Court can annul the Bankruptcy Order but allow the PTIBs to first conclude the administration of the bankruptcy estate based on the Proposed Distribution.

Law on the annulment of a bankruptcy order

31 I first consider the law on the annulment of a bankruptcy order.

32 The court's power to annul a bankruptcy order is found in s 123 of the Bankruptcy Act. The provision reads:

Court's power to annul bankruptcy order

123.—(1) The court *may* annul a bankruptcy order if it appears to the court that —

(a) *on any ground existing at the time the order was made, the order ought not to have been made;*

(b) *to the extent required by the rules, both the debts and the expenses of the bankruptcy have all, since the making of the order, either been paid or secured for to the satisfaction of the court;*

(c) *proceedings are pending in Malaysia for the distribution of the bankrupt's estate and effects amongst the creditors under the bankruptcy law of Malaysia and that the distribution ought to take place there; or*

(d) *a majority of the creditors in number and value are resident in Malaysia, and that from the situation of the property of the bankrupt or for other causes his estate and effects ought to be distributed among the creditors under the bankruptcy law of Malaysia.*

(1A) An application to annul a bankruptcy order under subsection (1)(a) must be made to the court within 12 months after the making of the bankruptcy order, unless the court gives leave for the application to be made later.

(2) The court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(3) Where a court annuls a bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by or under the authority of the Official Assignee or by the court shall be valid except that the property of the bankrupt shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms as the court may direct.

(4) The court may include in its order such supplemental provisions as may be authorised by the rules.

[emphasis added]

33 Three aspects of the court’s power of annulment under s 123 of the Bankruptcy Act bear emphasis.

34 First, the court has discretion as to whether to annul a bankruptcy order, even if one of the grounds for annulment under s 123(1) is satisfied. This is clear from the use of the words “may annul” in s 123(1). The Official Assignee also cites *Rickie Tang*, where AR Chan described the exercise of the court’s power under s 123(1)(a) of the Bankruptcy Act in the following terms (at [13]):

Under s 123(1)(a) of the Bankruptcy Act, two requirements must be satisfied. First, the bankruptcy order ought not to have been made on a ground existing at the time it was made. Secondly, the court should in the circumstances annul the bankruptcy order, the court having been vested with overriding discretion to decide this question even if the first requirement is made out.

35 Based on *Rickie Tang*, the Official Assignee submits that s 123(1) of the Bankruptcy Act involves a two-step inquiry. The first step requires the court to consider whether one of the prescribed grounds for annulment is made out. If the first step is satisfied, the second step requires the court to decide whether the bankruptcy order should be annulled in the exercise of its discretion.

36 Second, where the court’s power to annul a bankruptcy order is engaged, the court’s discretion is a broad one. In *Rickie Tang* (at [14]), AR Chan

described the power as being “wide and flexible”. In this regard, there is authority to the effect that the court may decline to annul a bankruptcy order even if the order is a nullity. As the learned author of *The Law and Practice of Bankruptcy in Malaysia* (Malayan Law Journal, 2000) explains (at pp 175–176):

The court has a discretion in deciding on an application to annul the adjudication order. The court may dismiss the application even if any of the three situations in [the Act] is proved in view of the term “may” in the provision. Hence, the court may refuse to annul the adjudication order even if it can be proved that he committed no act or bankruptcy, or where the bankruptcy notice and subsequent bankruptcy orders were a nullity.

[emphasis added]

37 In my view, the discretionary nature of the court’s power to annul a bankruptcy order is premised on the fact that when a bankruptcy order is made, third parties may rely on the order. Hence, while defects in the bankruptcy proceedings would constitute basis for the Court to consider annulling the bankruptcy order, an annulment will not be ordered as a matter of course. The court must also consider how annulment might impact third-party interests.

38 Third, while the court’s discretion is a broad one, it must be exercised judiciously, having regard to the purpose of the power and the circumstances of the case. In my view, where an annulment is sought under s 123(1)(a) of the Bankruptcy Act, factors relevant to the inquiry might include: (a) the nature of the irregularity; (b) whether the irregularity was intentional or innocent; (c) prejudice to the bankrupt if the bankruptcy order is not annulled; (d) prejudice to third parties if the bankruptcy order is annulled; and (e) the conduct of the bankrupt.

The Court could annul the Bankruptcy Order under s 123(1)(a) of the Bankruptcy Act

39 I turn to apply the principles discussed above to the facts of the case.

40 As regards the first step of the inquiry under s 123(1)(a), parties agree that the ground under s 123(1)(a) of the Bankruptcy Act is satisfied. As a bankruptcy application cannot be made against a deceased debtor, this is a clear case where the Bankruptcy Order ought not to have been made. The Court can annul the Bankruptcy Order and the question is whether it should do so.

The Bankruptcy Order should be annulled on the condition that the PTIBs be allowed to conclude the administration of the bankruptcy estate in the manner proposed

41 In respect of the second step in the inquiry, the PTIB's reconsidered position at the 9 September 2022 hearing was that the Court should direct that the PTIBs conclude the administration of the Bankruptcy Order in the manner set out in the Proposed Distribution and order that the Bankruptcy Order be annulled thereafter.

42 The Official Assignee does not object to the directions sought by the PTIBs in principle. The Official Assignee only raises two points. The first is that the Court might wish to direct the PTIBs to file a formal application, as the orders now sought by the PTIBs are different from those sought in Summons 1730 and Summons 2841. The second is that the PTIBs were seeking directions from the Court under s 40(2) of the Bankruptcy Act, and the Official Assignee was not aware of any case law considering the type of directions which might be given under that provision.

43 As regards the first point raised by the Official Assignee, I am not minded to require the PTIBs to file a formal application. As drafted, s 123 of the Bankruptcy Act does not condition the court's power of annulment on the making of an application and I am satisfied that the court can annul a bankruptcy order on its own motion. This can be contrasted with the Court's power to

discharge a bankruptcy order under s 124(3) of the Bankruptcy Act, which can only be exercised “on an application under [the] section”. Further, the relevant evidence was already before the Court, in the form of Mr Chee’s affidavits filed in support of Summons 1730 and Summons 2841. Having the PTIBs make a further application would unnecessarily incur further time and costs.

44 For completeness, I note that under s 123(1A) of the Bankruptcy Act, an application to annul a bankruptcy order under s 123(1)(a) must be made within 12 months after the making of the bankruptcy order, unless the court gives leave for the application to be made later. In my view, the time-bar under s 123(1A) does not apply in the present case where the issue of annulment is considered by the court on its own motion. Even if I am wrong and the time-bar does apply, I find that this is an appropriate case to extend time, as the defect in the proceedings was not discovered or appreciated earlier.

45 As regards the second point raised by the Official Assignee, it seems to me that while the PTIBs has sought “directions” from the Court under s 40 of the Bankruptcy Act, the real issue is whether the Court has power, under s 123 of the Bankruptcy Act, to annul the Bankruptcy Order in the terms sought by the PTIBs.

46 In my judgment, the Court does have power under s 123 of the Bankruptcy Act to annul the Bankruptcy Order on terms which are substantially similar (but not exactly the same) as those sought by the PTIBs. In particular, I find that the Court can grant an annulment of the Bankruptcy Order, on the condition that the Defendant’s property (i.e the assets realised in the course of the bankruptcy administration) are to vest in the PTIBs who are to then distribute the assets according to the Proposed Distribution.

47 To begin, as discussed at [34]–[38] above, the court is vested with broad discretion as to whether to annul a bankruptcy order. Based on the language of s 123, and the objectives served by the conferral of such discretion, there is no apparent impediment to the court ordering an annulment on conditions, if appropriate.

48 Moreover, while it is established that an annulment *generally* has the effect of wiping out the adjudication and placing the bankrupt in a position as if no bankruptcy order had been made, it is equally clear that the general rule is subject to exceptions: *Tan Teck Guan v Mapletree Trustee Pte Ltd (trustee of Mapletree Industrial Trust)* [2011] 3 SLR 1031 (“*Tan Teck Guan*”) at [14]–[15]. For present purposes, one key exception is found in s 123(3) of the Bankruptcy Act, which reads:

(3) Where a court annuls a bankruptcy order under this section, *any sale or other disposition of property, payment made or other things duly done by or under the authority of the Official Assignee or by the court shall be valid except that the property of the bankrupt shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt* on such terms as the court may direct.

[emphasis added]

49 Section 123(3) comprises two limbs. The first preserves the validity of acts done prior to the annulment of the bankruptcy order: see *Tan Guan Teck* at [17]. This includes sales and dispositions of the bankrupt’s property and payments which may have been made out of the bankruptcy estate. The second, which is the crucial at present, allows the court to determine the person(s) in whom the bankrupt’s property is to vest, upon annulment. The bankrupt’s property only reverts to the bankrupt if the court does not make such a determination.

50 The upshot of the above is that an annulment does not invariably operate to unwind a bankruptcy order in its entirety, such that all of the bankrupt’s property at the time the bankruptcy order was made must be restored to the bankrupt upon annulment, with no further payments allowed out of the bankrupt’s property. This is confirmed by the case authorities.

51 In *Stanger* at 441, the Court had, after annulling the bankruptcy adjudication, allowed an application for the trustee’s costs and charges properly incurred in the administration and the costs of the application and the appeal to be paid out of the bankrupt’s property.

52 In *Bailey v Johnson* (1872) 7 Exch 263 (“*Bailey*”), Cockburn CJ observed (at 264) that:

The effect of s. 81 is, subject to any bona fide disposition lawfully made by the trustee prior to the annulling of the bankruptcy, *and subject to any condition which the Court annulling the bankruptcy may by its order impose*, to remit the party whose bankruptcy is set aside to his original position.

[emphasis added]

53 Likewise, in *West v Baker* (1875) 1 Ex D 44 (“*West*”), Kelly CB found (at 46) that:

The whole of the estate of the bankrupt was undisposed of; and the Court has power under the 81st section, in the case of an adjudication being annulled, *to order that the property of the debtor shall vest in such person as the Court may appoint, or, in default of such appointment, revert to the bankrupt.*

[emphasis added]

54 On the facts in *West*, the bankruptcy adjudication was annulled after the bankrupt had entered a composition with his creditors. Upon annulment of the bankruptcy adjudication, the Court ordered that the bankrupt’s property be transferred to one of the bankrupt creditors.

55 A similar factual matrix presented itself in *In re Chidley, In re Lennard* (1875) 1 Ch D 177. The bankrupt there also entered into a composition with his creditors, consequent to which the bankruptcy adjudication was annulled. Upon the annulment of the bankruptcy adjudication, the Court ordered the bankrupt's property to be assigned to the trustee in bankruptcy, to be held on trust to secure payment of the composition sum.

56 It is apposite to note that these English cases were concerned with s 81 of the UK BA 1869, which worded identically to s 123(3) of the Bankruptcy Act. I therefore consider them to be of considerable assistance in interpreting s 123(3) of the Bankruptcy Act.

57 Having found that the Court *can* order that the Bankruptcy Order be annulled on the condition that upon annulment, the Defendant's property is to vest in the PTIBs, to be distributed according to the Proposed Distribution, the question then is whether the Court *should* do so. In my judgment, this course of action is plainly appropriate in the circumstances of the case.

58 On the one hand, I note that the irregularity in the present case was a serious one. In effect, the Court had made a bankruptcy order which it did not have power to make. However, while this is a strong factor pointing towards the Bankruptcy Order being annulled, it is not determinative as to whether the bankruptcy should be unwound in its entirety, with the Defendant's property reverting back to his estate, for the reasons discussed above. Further, there are strong countervailing considerations pointing against such an outcome which must be considered.

59 First, I find that the irregularity was not intentional. I accept the PTIBs' explanation that the Plaintiff was unaware of the Defendant's death when it filed

the Bankruptcy Application or when it obtained the Bankruptcy Order. And while the PTIBs must have learnt of the Defendant's death in the course of administering the bankruptcy estate, the PTIBs were not legally trained and were unlikely to appreciate the legal significance of this fact and how it impacted the validity of the Bankruptcy Order. There is no reason to believe that the PTIBs had decided to proceed with the administration of the bankruptcy estate knowing that the Bankruptcy Order was irregular.

60 Second, ordering the Defendant's property to vest in the PTIBs, to be distributed according to the Proposed Distribution would not prejudice the Defendant's estate. Despite the Defendant having died more than five years ago, it appears that no personal representatives or beneficiaries have come forward to lay claim to his estate. Furthermore, the PTIBs' investigations strongly suggest that the Defendant's estate is insolvent. As any entitlement which the Defendant's beneficiaries may have to the Defendant's estate would rank behind the claims of the Defendant's creditors, any distribution will not prejudice the estate.

61 Third, I agree with the PTIBs that having the Defendant's property revert back to the Defendant's estate would prejudice all other parties concerned. Work has been done by the PTIBs in the administration of the bankruptcy estate, which the PTIB should be paid for. It would also be unfair if the creditors received nothing in respect of the debts long due to them, given the Bankruptcy Order was made in 2017 and the administration has been ongoing for more than five years. While it may be open to the creditors to apply for an administration order under s 148 of the Bankruptcy Act, this would involve additional costs and time, which quite understandably, the creditors might not be willing to incur given the already modest size of the bankruptcy estate, which would be further diminished if an application for an administration order is

made. Finally, as no personal representative or beneficiary has laid claim to the Defendant's estate, having the Defendant's property revert to his estate would result in the realised sums remaining stuck in the Bankruptcy Estates Account, held by the Official Assignee. For the same reasons which apply to creditors, I do not think the Official Assignee should be put to the inconvenience of applying for an administration order under s 148 of the Bankruptcy Act given the circumstances of this case.

62 To conclude on Issue 2, I find that the Bankruptcy Order should be annulled. Upon the annulment of the Bankruptcy Order, however, the Defendant's property will not revert to the Defendant's estate. Instead, the Defendant's property is to vest in the PTIBs, to be distributed in accordance with the Proposed Distribution.

Conclusion and Orders

63 For the reasons given, my orders are as follows:

(a) In respect of Summons 1730:

(i) I make no order on prayers 1 and 1(a).

(ii) I order that the Bankruptcy Order is to be annulled, pursuant to s 123(1)(a) of the Bankruptcy Act, on the conditions set out below.

(A) Pursuant to s 123(3) of the Bankruptcy Act, upon the annulment of the Bankruptcy Order, the Defendant's property is to vest in the PTIBs.

(B) Upon the vesting of the Defendant's property in the PTIBs, the PTIBs are to distribute the Defendant's property in the following order of priority:

(I) \$23,939.82 is to be paid to the PTIBs, for the PTIBs' costs and expenses of the administration.

(II) \$4,492.84 is to be paid to the solicitors acting for the PTIBs in Summons 1730 and Summons 2841, for the solicitors' professional fees.

(III) \$6,435.93 is to be paid to the preferential creditor, the Comptroller of Income Tax.

(IV) The balance shall be paid to the ordinary creditors, in proportion to the debts proved by them and admitted by the PTIBs, less any fees payable to the Official Assignee.

(C) The PTIBs are to complete the distribution of the Defendant's property within eight weeks' of my order.

(D) The PTIBs and the Official Assignee have liberty to apply.

(b) I make no order on Summons 2841.

64 This leaves me to record my appreciation to counsel for the PTIBs and the Official Assignee for their able assistance in the matter.

Randeep Singh Koonar
Assistant Registrar

Michael Moey Chin Woon (Moey & Yuen) for the Private Trustees
in Bankruptcy;
Christopher Eng Chee Yang and Angela Lee (Insolvency & Public
Trustee's Office) for the Official Assignee.
