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Neutral Citation Number: [2002] EWCA Civ 1527

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE HIGH COURT OF JUSTICE

FAMILY DIVISION

IN BANKRUPTCY

(Mr Justice Coleridge)

Royal Courts of Justice

Strand

London WC2

Wednesday 16 October 2002

B e f o r e :

LORD JUSTICE WARD

and

LORD JUSTICE CHADWICK

- - - - - - - - - -

MICHELLE CELIA CULVER FORDER

Applicant

(Respondent)

-v-

TIMOTHY EDWARD FORDER

1st Respondent

(Applicant)

THE OFFICIAL RECEIVER

2nd Respondent

MARY SWINDALE

Intervener

- - - - - - - - - -

Computer Aided Transcript of the Palantype Notes of

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Mr James Bogle (instructed by Messrs HCL Hanne & Co, London SW11) appeared on behalf of the Applicant Mr Forder.

Mr Michael Glaser (instructed by Messrs Russell Cook, Kingston) appeared on behalf of the Respondent Mrs Forder.

Mr Duncan Macpherson (instructed by Messrs Johnson Sillett Bloom, London WC2) appeared on behalf of Miss Swindale.

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J U D G M E N T

1. LORD JUSTICE WARD: I will ask Lord Justice Chadwick to give the first judgment.

2. LORD JUSTICE CHADWICK: This is an application for permission to appeal from an order made by Mr Justice Coleridge on Monday 14 October, at the outset of the hearing of an application for ancillary relief in matrimonial proceedings between Mrs Michelle Forder and her husband, Mr Timothy Forder. The ancillary relief hearing had been fixed for many months and was expected to extend over five days.

3. The effect of the judge's order has been that the ancillary relief hearing will commence subject to the outcome of this present application. Indeed, we understand that the judge is ready and waiting to commence that hearing today. The relief which is now sought in this court, if granted, would abort that hearing. It is in those circumstances that the application for permission to appeal has been listed for immediate hearing in open court. The first available opportunity to hear the application, which was made yesterday, has been 10.00am this morning.

4. The factual background may be described shortly. On 10 October 2002 the husband, Mr Timothy Forder, presented his own petition to the High Court for a bankruptcy order pursuant to section 264(1)(b) of the Insolvency Act 1986. He did so without notice to the wife or, it seems, to the other party to the matrimonial proceedings, Miss Mary Swindale, who has been joined as an intervener. That was the second petition for his own bankruptcy which Mr Forder had presented within the space of a week. The previous petition had been presented on 3 October 2002 to the Kingston County Court - which, prima facie at least, was the court having bankruptcy jurisdiction in this case under rule 6.40 of the Insolvency Rules 1986. The district judge adjourned that petition to 23 October to enable the wife to attend if she so wished. On Monday 7 October the husband sought and obtained leave to withdraw that petition; thereby depriving the wife of the opportunity to appear and be heard on it. The husband then presented his own petition to the High Court, without notice, on Friday 10 October 2002.

5. A bankruptcy order was made against him at two o'clock in the afternoon of Friday 10 October. The wife, through her solicitors, learned of the bankruptcy order in the course of that afternoon. It seems that she was advised to seek an order under section 282 for the annulment of the order. She applied to Mr Justice Hedley in the Family Division. He directed that her application for annulment be listed for hearing before Mr Justice Coleridge at 10.30 on Monday 14 October, at the time when the ancillary relief hearing was due to commence.

6. So it was that Mr Justice Coleridge, at the outset of the ancillary relief hearing on the Monday morning, was asked to hear and determine the wife's application for an order under section 282 of the Insolvency Act. He took the view that the issues that would have to be resolved on that application were the same, or substantially the same, as the issues which he would need to determine on the hearing of the application for ancillary relief; and that the sensible and convenient course was to stand over the annulment application until those issues had been determined in the proceedings that were already listed for hearing before him. That was the order that he made. He also stayed proceedings in the bankruptcy pending the determination of those issues and the consequent determination of the wife's application to annul the bankruptcy order. It is against that decision that the husband seeks permission to appeal.

7. As I have said, section 264(1)(b) of the 1986 Act enables an individual to present his own petition for a bankruptcy order. Section 272(1) provides that a debtor's petition may be presented only on the grounds that the debtor is unable to pay his debts. Section 272(2) requires the petition to be accompanied by a statement of the debtor's affairs containing such particulars of his creditors, his

debts and other liabilities and his assets and such other information as may be prescribed. The information is prescribed in section B of Chapter 5 of Part 6 of the 1986 Rules. That requires a statement of affairs setting out assets and liabilities.

8. In the present case the statement of affairs listed as secured creditors four creditors totalling £700,000; including the intervener, Miss Swindale, with a debt of £285,000. The creditors are secured on two charged properties, 14 Napier Place and a property known as Le Thon in France. The schedule discloses the values put on the properties by the debtor. At respectively £500,000 and £350,000, those values are, in each case, significantly lower than values that he had been asserting in correspondence. Schedule B to the statement of affairs sets out a list of unsecured creditors amounting in total to £106,000. On the face of those figures, the assets of the debtor exceed his liabilities. The standard form requires, at Schedule E, the debtor to state whether any court judgment or other legal process is outstanding against him. He noted two matters - £25,000 due to Coutts Bank, which is secured by a registered charge on 14 Napier Place, and the debt of £285,000 said to be due to Miss Swindale, which is also secured by a registered charge on that property. He did not disclose any unsatisfied judgments which are not secured on property which he owns or any outstanding statutory documents. It was on the basis of that material that the Bankruptcy Registrar made an order on the afternoon of 10 October.

9. The wife disputes the debts which the husband has set out in his statement of affairs; in particular, she denies the existence of the debt to Miss Swindale of £285,000. That is an issue which is raised in the ancillary relief proceedings. She has applied, therefore, under section 282(1)(a) of the 1986 Act. That section provides that the court may annul a bankruptcy order if, at any time, it appears to the court that, on any grounds existing at the time the order was made, the order ought not to have been made.

10. Applications for annulment of a bankruptcy order are governed by rule 6.206 of the Insolvency Rules; which requires that the application must specify under which provision it is made and be supported by an affidavit stating the grounds on which it is made. There is no requirement in that rule - or elsewhere in the 1986 Act - that an application for an order under section 282 can only be made by a person who claims to be a creditor of the bankrupt. There is, in my view, no reason why a person who is affected by a bankruptcy order, and who claims that it ought not to have been made on grounds existing at the time that it was made, should not make an application to the court, asking the court to undo that which, on the statutory hypothesis, it should not have done. Whether or not the court would think it right to make such an order will depend on the particular circumstances; including the interest of the applicant in seeking the order for annulment.

11. The issue in the present application is whether the judge was entitled to take the view that the convenient course, before deciding the application under section 282 of the Insolvency Act, was to determine issues in the ancillary relief relating to the financial status of the husband. It is said, first, that he should not have entertained the application for an order under section 282; he should have dismissed it in limine on the grounds that the applicant had no standing to make it. For the reasons that I have already indicated, it seems to me that he could not have dismissed the application until he had satisfied himself as to the extent to which the interest which the applicant had would be prejudiced.

12. Then it is said that, on the material before him, there was only one conclusion to which he could come; namely that, as things stood on 10 October 2002, the bankruptcy order was rightly made. The judge took the view that that was a decision which he should not make until he had conducted the financial investigation into the husband's means which he would be conducting in the course of

the ancillary relief application; and that it would not be a sensible exercise of his powers under the Civil Procedure Rules, having regard to the overriding objective, to adjourn the ancillary relief application so as to enable separate proceedings for annulment to be fought out in the Bankruptcy Court. It is important to keep in mind that this is not a case in which the husband's statement of affairs discloses either a deficiency of assets or the existence of pressing unsecured creditors. It will be for the judge to decide whether he was unable to pay his debts on 10 October.

13. In my view that was a decision which was within the judge's discretion. This court could have no justification or reason for interfering with it. I may, perhaps, be permitted to draw attention to what I said in Pallisers of Hereford Ltd v Reekie Manufacturing Ltd and Others on 1 July 2002 (Neutral Citation [2002] EWCA Civ 959) in the context of an application for permission to appeal against a case management decision:

> “... where a judge has addressed himself properly to [the task of dealing with the application in accordance with the overriding objective] it is not open to this court to interfere. ... the overriding objective itself requires this court to exercise a proper degree of self-discipline by respecting case management decisions made by judges in cases which they are to try.”

14. This was essentially a case management decision. Was it sensible to hear the application to annul in advance of determining the issues which the judge knew he would have to determine in the ancillary relief proceedings? The judge identified that issue and reached a conclusion upon it. As I said in the Pallisers case, it is of little or no moment whether this court would have reached the same conclusion; the question is whether this court is entitled to substitute its view for that of the judge. This is a case in which, as it seems to me, the Court of Appeal is not entitled to substitute its view for that of the judge. But having said that, I should add that my own view, for what it is worth, is that the decision reached by the judge was a sensible and pragmatic solution to the problem which confronted him. It is not to be criticised.

15. This is an application which has no prospect of success. It should not have been made. I would refuse it.

16. LORD JUSTICE WARD: I agree.

Order: application for permission to appeal dismissed; public funding costs assessments; order pursuant to section 11 of the Access to Justice Act made in relation to Mrs Forder's costs.