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## **BROKE BUT NOT BANKRUPT – A BANKRUPTCY ORDER SET ASIDE FOR WANT OF PURPOSE**

*By Sam Cheesbrough, Barrister, Nicholas Woolf & Co*

To many, the decision of HHJ Hodge QC in *Lock v Aylesbury Vale District Council [2018] EWHC 2015 (Ch)* may seem a little strange. In that case, the Council had presented a bankruptcy petition on Ms Lock in respect of £8,067-odd unpaid council tax. At first instance, the District Judge made a bankruptcy order, which was appealed by Ms Lock on the basis that she had absolutely no assets to satisfy any liability in bankruptcy. This, she said, meant that a bankruptcy order would serve no useful purpose and would not benefit the Council.

The Judge on appeal agreed with Ms Lock, and the bankruptcy order was set aside.

This may seem counter-intuitive. After all, one of the conditions that must be satisfied before presenting a bankruptcy petition is that:

*“the debt, or each of the debts, is a debt which the debtor appears either unable to pay or to have no reasonable prospect of being able to pay” (section 267(2)(c) of the Insolvency Act 1986).”*

If a person has no assets, then it must follow that there is no reasonable prospect of them being able to pay the debt. The Council was therefore justified in serving a statutory demand on Ms Lock, which was relied upon when presenting the bankruptcy petition.

It also seems to run counter to the general use of the term “bankrupt”. Whether a person is called financially bankrupt or morally bankrupt, the general understanding is that such a person lacks the particular asset being referred to. If the person on the street was asked to describe a person who was bankrupt, they would likely say it was a person with no money.

That, of course, would be an incorrect definition. A person is bankrupt when an order of the Court declares that person to be bankrupt. The Court has a general discretion, under section 266(3) of the Insolvency Act 1986, to dismiss a bankruptcy petition:

*“if it appears to it to be appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason”.*

The “*any other reason*” relied upon by Ms Lock was that a bankruptcy order would serve no useful purpose and would not benefit the Council.

What, then, is the purpose of a bankruptcy order? At paragraph 34 of his judgment, the Judge outlined four purposes that had been recognised by Mr Registrar Jones in the case of *Hemsley v Bance [2016] EWHC 1018 (Ch)*:

1. Provide a system of collective execution against a debtor’s property and ensure a fair distribution of assets amongst creditors.
2. Allow an investigation into the bankrupt’s assets and affairs.
3. Introduce measures to protect the public from future misconduct and/or to encourage others not to follow the same path.

4. Protect a bankrupt from harassment by creditors and provide the opportunity for a fresh start.

Taking each of these in turn, it is easy to see why the bankruptcy order was set aside:

1. If a person has no assets, then there is nothing to be distributed between creditors. There is no prospect of one creditor being preferred above others, when nobody is going to receive anything.
2. There was no evidence that an investigation into Ms Lock's assets and affairs would bring anything to light. Indeed, the Judge remarked that "*[e]verything in evidence about the bankrupt and her financial affairs indicated that she was not worth powder or shot.*" Further, a receiver appointed to investigate a bankrupt's affairs would usually be paid out of the bankrupt's assets. If there are no assets, and no evidence that any assets would be found following an investigation, who would pay the receiver?
3. There is an argument that the only way to protect the public from a person with no assets is to ensure that it is made clear on their credit report that they are bankrupt. However, in practice, if a person has no assets, and is unlikely to obtain any assets in the near future, this would be immediately discovered on any application for credit. A bankruptcy order would offer little further protection.
4. On the facts of this case, although other creditors did not oppose the bankruptcy petition, none supported it. The position may have been different had Ms Lock been pursued by a number of creditors. In any event, it is questionable whether the Court should make a bankruptcy order solely to protect the bankrupt from harassment and give a fresh start, if the debtor does not want that to happen.

A bankruptcy order comes with a degree of social stigma. There is no reason for the Court to condemn a person to such social stigma if no purpose is to be served by it. After all, the bankruptcy process is not a means of "punishing" somebody because they have fallen into debt. This case is a welcome reminder that the bankruptcy process is to be engaged for specific purposes, and creditors should think carefully before embarking upon it.

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