

Lock v Aylesbury Vale DC

Chancery Division

09 July 2018

Case Analysis

Where Reported

unreported;

Case Digest

Subject: Insolvency **Other related subjects:** Local government

Keywords: Arrears; Assets; Bankruptcy orders; Council tax; Local authorities' powers and duties

Summary: A bankruptcy order was set aside where it would serve no useful purpose and would be of no benefit to the creditor because the debtor had no assets to satisfy her liability in bankruptcy. There was no proper evidence that there were any present or prospective assets that could be realised and nothing to indicate that any investigation of the bankrupt's affairs would bring anything to light.

Abstract: The appellant appealed against a bankruptcy order made against her in respect of allegedly unpaid council tax owed to the respondent local authority.

The local authority had served a bankruptcy petition on the appellant based on a statutory demand in respect of allegedly unpaid council tax of £8067. The local authority had served evidence addressing the council tax liability orders on which the debt had been founded. The appellant had served evidence in reply which did not address her financial situation, but made it clear that she was living in social housing and had been dependent on financial support from her daughter. The appellant was ordered to serve a skeleton argument setting out why the petition should not be granted. She prepared a long skeleton in which one argument was that a bankruptcy order would serve no purpose and be of no benefit to the local authority because she had no assets to satisfy her liability. It was not filed or served on the local authority until the day of the bankruptcy petition hearing. The district judge stated that the appellant had failed to comply with the order despite having ample opportunity to file her skeleton argument. A bankruptcy order was made on the basis that there had been liability orders which had not been set aside or challenged. During the instant hearing, the appellant referred to a bankruptcy checklist used by the local authority which had not been in evidence before the district judge. It made clear that, prior to presenting the petition, the local authority had been aware that the appellant was unemployed and did not receive any benefits or own a home. It also stated that the case was an unusual one as there were no clear assets, but that the appellant might have received funds from an inheritance although there were no documents to support that. The appellant argued that the possible inheritance was no more than a small legacy and she had not received any funds, nor was she likely to receive any.

The appellant submitted that the district judge had failed to consider her argument that a bankruptcy order would serve no useful purpose and would be of no benefit to the local authority because she had no assets to satisfy any liability in her bankruptcy, and no investigation by a trustee in bankruptcy or official receiver would bring any assets

to light, and therefore the bankruptcy order should be set aside pursuant to the [Insolvency Act 1986 s.266\(3\)](#).

Held: Appeal allowed.

The district judge's conclusion - There was a heavy burden to demonstrate that an individual did not and would not have assets available for distribution in bankruptcy, and also to demonstrate that no useful investigation of the bankrupt's assets or affairs could be undertaken, [Shepherd v Legal Services Commission \[2003\] B.C.C. 728](#), [Field \(A Debtor\), Re \[1978\] Ch. 371](#) and [Bell Group Finance \(Pty\) Ltd \(In Liquidation\) v Bell Group \(UK\) Holdings Ltd \[1996\] B.C.C. 505](#) considered. Where a bankruptcy petition was founded on unpaid council tax, there was a burden upon a public authority petitioning for a debtor's bankruptcy at least to show a prima facie case that a bankruptcy order would achieve some useful purpose. That had been recognised by the local authority's bankruptcy checklist. The bankruptcy petition and the local authority's evidence had said nothing about what purpose a bankruptcy order might achieve. The evidence should have addressed the possibility that the appellant might have received an inheritance. It had never been drawn to her attention that the whole basis of the local authority's thinking had been the possibility of an inheritance. Otherwise, it was clear that the appellant had nothing that would give a bankruptcy order any real purpose. Having found that a liability order gave rise to jurisdiction to make a bankruptcy order, the judge should have considered whether it was appropriate to do so. It was understandable that he was critical of the appellant for failing to file the skeleton argument, and that the length of it made it difficult to see the wood for the trees, but he should have identified one of the points made there which was whether a bankruptcy order would serve any purpose or benefit to the local authority. Therefore, it fell to the instant court to exercise its discretion which the judge had omitted to do.

Whether the bankruptcy order should be set aside - The bankruptcy order was unjust as the judge had not considered whether any useful purpose would be served by making it. There was no proper evidence that there were any present or prospective assets that could be realised in bankruptcy, and nothing to indicate that any investigation of the appellant's affairs would bring anything more to light. The local authority had not expressly drawn the appellant's attention to its belief that there might be a possibility of an inheritance and the appellant had not had the opportunity to address that in evidence. That unraised possibility did not justify making a bankruptcy order in terms of giving rise to any need for an investigation of assets. As a matter of good practice, it was entirely right that the local authority should carry out the sort of assessment required by the bankruptcy checklist. Then, the unusual circumstances for a local authority to pursue a bankruptcy order should be put before the court so that a respondent to a bankruptcy petition could address the point. For those reasons, the bankruptcy order was set aside pursuant to [CPR r.52.21\(3\)](#).

Judge: Judge Hodge QC

Counsel: For the appellant: In person. For the respondent: Thomas Cockburn.

Significant Cases Cited

Shepherd v Legal Services Commission

[\[2003\] B.C.C. 728](#); [\[2003\] B.P.I.R. 140](#); CHD; 23 May 2002

Bell Group Finance (Pty) Ltd (In Liquidation) v Bell Group (UK) Holdings Ltd

[\[1996\] B.C.C. 505](#); [\[1996\] 1 B.C.L.C. 304](#); CHD; 13 December 1995

Field (A Debtor), Re

[\[1978\] Ch. 371](#); [\[1977\] 3 W.L.R. 937](#); [\[1978\] 2 All E.R. 981](#); [Times, July 6, 1977](#); [\(1977\) 121 S.J. 727](#); CHD; 29 June 1977

All Cases Cited

Shepherd v Legal Services Commission

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Significant Legislation Cited

[CPR r.52.21\(3\)](#)

[Insolvency Act 1986 \(c.45\) s.266\(3\)](#)

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