RE TAN CHONG KEAT EX PARTE ASIA COMMERCIAL FINANCE BHD
HIGH COURT MALAYA, PENANG
ABDUL HAMID MOHAMAD J
BANKRUPTCY NO: 29-40-93
1 OCTOBER 1996
[1997] 4 CLJ SUPP 355; [1997] 4 BLJ 355

***BANKRUPTCY**: Bankruptcy notice - Setting aside - Procedures - Rule 95 Bankruptcy Rules 1969 - Form 7 - Whether complied with - Application to set aside on 'other grounds' - Rule 18 of the Bankruptcy Rules - Whether grounds stated therein constituted 'other grounds' - Bankruptcy Act 1967 s. 3(1)(i), 3(2) proviso (ii) , s. 5(1)(c) - Bankruptcy Rules 1969 rr. 18, 95*

This was an appeal against the decision of the learned Senior Assistant Registrar dismissing the appellant's applications, *vide* encls. 9 and 21 respectively, to set aside a bankruptcy notice that the judgment creditor had taken out against him.

Enclosure 9 is an affidavit purportedly filed pursuant to Form 7 of r. 95 of the Banktuptcy Rules 1969 ('the Rules'), while encl. 21 is a summons-in-chambers filed purportedly under r. 18 of the Rules for an order that the appellant be allowed to challenge the bankruptcy notice on grounds other than those stipulated in Form 7. The facts showed that in filing encl. 9, the appellant did not comply with the requirements of Form 7, and in particular did not condescend to particulars of the amount due when disputing the same.

The application under r. 18, on the other hand, stated that 'the grounds of this application are supported by the affidavit of Tan Chong Keat affirmed on 18 July 1994 and filed herein'. The said affidavit of Tan Chong Keat, however, only generally contended (i) that the appellant had a valid counter-claim, setoff or cross demand (ii) that there was a genuine effort to settle the outstanding sum (iii) that the judgment in question was obtained against three defendants and the judgment sum, therefore, ought to be equally apportioned against them.

The sole issue that arose was whether there was merit in this appeal.

Held:

[1] Paragraph 1 of Form 7 requires the judgment debtor to state that he had on such-and-such a date been served with a judgment notice and this was not done.

Paragraph 2 requires the judgment debtor to specify the amount of counter-claim etc. being a sum equal to or exceeding the claim.

This was not done.

Paragraph 3 requires the judgment debtor to state that he could not have set up the said

counterclaim etc. in the action in which the said judgment was obtained against him.

This also was not done.

[2] The appellant judgment debtor has failed to satisfy the court that he had a counterclaim equal to or exceeding the claim in the bankruptcy notice.

The Senior Assistant Registrar was therefore right in dismissing encl. 9.

[2a] The particulars also show that the amount claimed by the judgment creditor was arrived at by deducting from the judgment sum the amount paid by the judgment debtor.

The judgment creditor is thus claiming the judgment sum less what has been paid.

That is all.

This is not a case where the bankruptcy notice states the judgment sum but does not quantify the interest.

[3] The affidavit in support of the summons in chambers which is supposed to provide 'the other grounds', in effect speaks only of 'a sincere and genuine effort to settle any outstanding sum', by virtue apparently of a business venture that the judgment debtor had undertaken with the sister company of the judgment creditor.

This is not 'another ground' at all, being also raised in encl. 9.

[3a] The judgment debtor has not shown any ground for the bankruptcy notice to be set aside.

The application in respect of encl. 21, likewise, was also properly dismissed.

Obiter:

[1] There are presently two procedures by which to set aside bankruptcy notice i.e. *vide*rr. 18 and 95 respectively of the Bankruptcy Rules 1969. The existence of these separate procedures has quite often caused confusion.

It would be simpler to have only one standard procedure, namely, by filing a summons in chambers under r. 18under which all grounds may be included.

We can do away with the application under r. 95 or the notice under s. 3(2) proviso (ii) of the Bankruptcy Act 1967.

[2] The time period for filing an application to set aside bankruptcy notice should be made more reasonable, say, within 14 days from the receipt of the same.

The affidavit in reply, in turn, may be filed within 14 days of the service of the summons in chambers and the affidavit in support thereto, unless with leave of court.

No further affidavit should be allowed to be filed unless with leave of court and no act of

bankruptcy is committed until the application is heard and determined.

The Registrar, on his part, will fix a date for the hearing of the application and hear it just as any other summons in chambers.

This way the application can be disposed of much faster.

At the least, there will only be one application, one decision and one appeal regarding the challenge to the bankruptcy notice2 OF 13.

[3] Under s. 3(1)(h)(i) of the Act, a debtor commits an act of bankruptcy if 'he does not within seven days after service of the notice...either comply with the requirements of the notice or **satisfy the court** that he has a counterclaim, set-off or cross demand...'. Rule 94 of the Rules, however, only requires the judgment debtor to **file an affidavit** within seven days of the service of the bankruptcy notice on him.

To 'satisfy the court' means that there has to be a hearing and a decision, all within the seven days, and is not like filing an affidavit.

The rule thus appears to contradict the Act. *[Appeal dismissed.]*

Case(s) referred to:

Datuk Lim Kheng Kim v. Malayan Banking Berhad [1993] 3 CLJ 324 ***(refd)***

Ghazali bin Mat Noor v. Southern Bank Berhad [1989] 2 CLJ 380 ***(refd)***

Soh Bok Yew v. Cindle Development Sdn Bhd [1977] 1 MLJ 242 ***(refd)***

Legislation referred to:

Bankruptcy Act 1967, ss. 3(1)(h)(i), 3(2) proviso (ii)5(1)(c)

Bankruptcy Rules 1969, rr. 1894(1), (1)(b), (2)95, 95(1), (2)

Counsel:

For the judgment creditor - Toh Lee Hong; M/s. Chew, Tan & Lim

For the judgment debtor - Harjit Singh Sangay; M/s. Harjit Singh Sangay & Co.

For the official assignee - Dharmalingam

JUDGMENT

Abdul Hamid Mohamad J:

This is an appeal against the decision of the Senior Assistant Registrar given on 15 February 1996 dismissing the judgment debtor's applications in encls. 9 and 21. Enclosure 9 is an affidavit on an application to set aside bankruptcy notice.

Enclosure 21 is a summons in chambers, also filed by the judgment debtor, for an order that the judgment debtor be at liberty to object and challenge the bankruptcy notice on other grounds.

The judgment creditor had obtained a judgment on 27 August 1988 in a suit filed in 1986.

On 15 January 1993 this bankruptcy proceeding was commenced with the issue of the bankruptcy notice.

It was served by way of substituted service pursuant to an order of court.

The effective date of service is 27 August 1993.

On 2 September 1993 which is six days after the service of the bankruptcy notice, the judgment debtor filed the affidavit - Enclosure 9. This was followed by numerous affidavits and applications by the judgment debtor:3 OF 13

Date of Filing Enclosure Title
3 December 1993 13 Supplementary affidavit
10 January 1994 15 Further supplementary affidavit
9 March 1994 16 Further affdavit on an application to set aside bankruptcy notice
29 June 1994 17 Affidavit
29 June 1994 18 Summons in chambers for an order of interim stay of proceedings and to cross-examine the branch manager of the judgment creditor bank.
11 July 1994 19 Affidavit
11 July 1994 21 Summons in chambers for an order that the judgment creditor be at liberty to object to the bankruptcy notice on other grounds and to set aside the said bankruptcy notice
12 July 1994 22 Further affidavit on an application to set aside bankruptcy notice
12 July 1994 23 Further affidavit to object and challenge the bankruptcy botice
20 July 1994 24 Further affidavit on an application to set aside bankruptcy notice
20 July 1994 25 Afidavit tambahan
25 July 1994 26 Further affidavit
7 October 1994 28 Affidavit
7 October 1994 29 Saman dalam kamar (untuk perintah penggantungan prosiding sementara menunggu keputusan rayuan penghutang Penghakiman kepada Hakim dalam Kamar dalam satu prosiding kebankrapan lain terhadapnya4 OF 13)

The judgment creditor had replied once on 14 December 1993 by way of a affidavit in reply

(encl. 14).

All these had led to many postponements, including, of course, to "pending settlement". Finally on 15 February 1996, the Senior Assistant Registrar dismissed both applications (encls. 9 and 21). Hence this appeal to Judge in Chambers.

I must make it clear that the two appeals before me are against the decisions of the Senior Assistant Registrar in encls. 9 and 21. ***Enclosure 9***

Enclosure 9 purports to be an affidavit under r. 95 of the Bankruptcy Rules 1969. Learned counsel for the judgment creditor submitted that encl. 9 could not be an affidavit under r. 95. She gave these reasons.

Firstly, it was not in Form 7. Secondly it did not contain a counterclaim, set-off or cross demand, as required by s. 3(1)(i) of the Bankruptcy Act 1967. Thirdly, it did not attract proviso 2(ii) of s. 3 of the Act as it merely disputed the amount due without particularising the amount actually due.

She referred to the Supreme Court judgment in *Datuk Lim Kheng Kim v. Malayan Banking Berhad [1993] 3 CLJ 324*.

It is pertinent to note that the Supreme Court in that case said:

We are concerned here with the content of the said affidavit.

It merely denies and disputes that the appellant was indebted to the respondent in the sum of RM2,603,913.28, but falls to disclose that he has a counterclaim, set-off or cross demand, etc against the respondent, which he is required to depose under s. 3(1)(i) of the Bankruptcy Act ('the Act') and provided for in Form 7. Following the above decision and in the face of the above affidavit, we are of the opinion that the said affidavit cannot operate as an application to set aside the bankruptcy notice within the contemplation of s. 3(1)(i) of the Act, and the case should have been treated as if no affidavit under r. 95 had in fact been filed.

Similarly, as para 3 of the enclosure merely disputed his indebtedness in the said sum to the respondent 'based on an erroneous calculation and grossly exaggerated' without condescending to particulars of the amount actually due, we say that the said affidavit does not attract proviso 2(ii) of s. 3 which states that a bankruptcy notice shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the actual amount due.

Actually all these three grounds can be dealt with together.

It should be noted that para. 1 of Form No. 7 requires the judgment debtor to state that he had on such-and-such a date been served with a judgment notice and annex it. This was not done.

Paragraph 2 requires the judgment debtor to specify the amount of counter-claim etc. being a sum equal to or exceeding the claim.

This was not done.

Paragraph 3 requires the judgment debtor to state that he could not have set up the said counterclaim etc. in the action in which the said judgment was obtained against him.

This was not done also.

The judgment debtor tried to remedy the defect of not stating the amount of counterclaim in a subsequent "further affidavit on an application to set aside bankruptcy notice" filed on 9 March 1994 - Encl. 16. In it he referred to his earlier affidavits which talked about the deed of assignment between Ever Point (M) Sdn. Bhd. and the judgment creditor dated 4 July 1990 and a sale and purchase agreement between Ever Point (M) Sdn. Bhd. and Ladang Dahan Setia Sdn. Bhd. dated 22 June 1990.

He said that had Ladang Dahan Setia Sdn. Bhd. carried out the housing projects on lands assigned by Ever Point (M) Sdn. Bhd. to the judgment creditor, he (the judgment debtor) "would have made an estimated pre-tax profit of RM18,697,597.

First, I would like to observe that this affidavit (encl. 16) was filed long after the seven day period after the bankruptcy notice was served.

It cannot be treated as an affidavit on an application to set aside the bankruptcy notice under r. 95. The affidavit under consideration is encl. 9. It is in that affidavit that the amount should be stated.

Secondly, that amount, in the judgment debtor's own words is no more than "an estimated pre-tax profit' if the housing project had materialised.

It is a mere "hypothesis" as learned counsel for the judgment creditor puts it.

Thirdly, the judgment debtor appears to treat the profit of a company (even if it is his) as his own profit, forgetting that a company is a different legal entity from himself.

Fourthly the judgment debtor is not personally a party to the assignment and both the judgment debtor and the judgment creditor are not the parties to the sale and purchase agreement dated 22 June 1990.

In the circumstances, the judgment debtor has failed to satisfy the court that he had a counterclaim equal to or exceeding the claim.

Another point raised by the judgment debtor in encl. 9 is that the bankruptcy notice did not state the exact amount as at the date of the bankruptcy notice after having taken into account all the payments to the judgment debtor.

He must know the exact amount he would have to pay to avoid bankruptcy.

He need not have to make any calculation or enquiries.

He referred to the case of Ghazali bin Mat Noor v. Southern Bank Berhad [1989] 2 CLJ6 OF 13 380 .

As far as the law is concerned, I agree with learned counsel for the judgment debtor.

But a look at the bankruptcy notice shows very clearly that the amount claimed by the judgment creditor is no other than RM372,149.64. The particulars show that the amount was arrived at by deducting from the judgment sum the amount paid by the judgment debtor. I do not think anything can be clearer than that.

This is not a case where the bankruptcy notice states the judgment sum but does not quantify the interest.

The judgment creditor is only claiming the judgment sum less what had been paid.

That is all.

The Senior Assistant Registrar was right in dismissing encl. 9 even though I have no way of knowing his reason for so doing.

The appeal regarding encl. 9 should therefore be dismissed with costs. ***Enclosure 21***

Enclosure 21 is an application under r. 18 to set aside the bankruptcy notice on other grounds, i.e. grounds other than the existence of a counterclaim, setoff or cross demand.

This application was heard by the Senior Assistant Registrar together with encl. 9, even through it was filed some ten months after encl. 9 was filed.

There is no doubt that the judgment debtor may challenge the bankruptcy notice on grounds other than that he has a counterclaim, set-off or cross demand by filing a summons in chambers supported by an affidavit - Rule 18 and see also *Datuk Lim Kheng Kim v. Malayan Banking Bhd [1993] 3 CLJ 324*. (That case was decided before the rule was amended, hence it was said that the application should be made by motion.)

What are the "other grounds"? encl. 19 is relevant, since that is the affidavit in support of the summons in chambers.

Indeed the summons in chambers does not contain the grounds for the application as required by Form 62 of the Rules of the High Court 1980 (RHC 1980). It says "The grounds of this application are supported by affidavit of Tan Chong Keat affirmed on 8 July 1994 and filed herein." That affidavit is encl. 19. So, even if we take those words quoted above to mean that the grounds are as stated in the said affidavit, we will have to look for the grounds in that affidavit, and nowhere else.

In para. 4 of the affidavit, the judgment debtor reiterated that he had a valid counterclaim, set off and/or cross demand.

This clearly should not be a ground in this application.

That was the ground in encl. 9 pursuant to r. 95.

The affidavit in support of the summons in chambers (encl. 19) which is supposed to provide "the other ground", speaks only of one thing, that is, "in a sincere and genuine effort to settle

any outstanding sum", a company known as Ever Pont (M) Sdn. Bhd. had sold two lots of land to Ladang Dahan Setia7 OF 13

Sdn. Bhd. a sister company of the judgment creditor.

These two lots were subsequently assigned to the judgment creditor, of which a sum of RM2,500,000 would be paid to MUI Finance Bhd. to redeem the two lots and the balance of RM800,000 would be paid to the judgment creditor to pay off all debts due and owing by a group of debtors including himself.

The land was to be developed into a housing estate but Ladang Dahan Sdn. Bhd. did not carry out the proposed project.

Had this project materialised, the judgment debtor estimated he (actually it is the company) would be making a profit of more than RM18 million.

So, the judgment debtor said that it was unfair on the part of the judgment creditor to proceed with the proceeding as it was the judgment creditor's sister company which had failed to carry out the housing project.

As can be seen this is not "another ground" at all.

It is the same ground raised in encl. 9. I have dealt with it. I say no more.

Another ground raised in encl. 19 was that the judgment in question was obtained against three defendants.

The judgment sum should have been apportioned equally as between them.

That was not done.

Instead the judgment debtor had commenced this bankruptcy proceeding based on the whole judgment sum, which, he said, was wrong.

We have seen earlier, when the judgment debtor was talking about the expected profits from the housing scheme that the company would make if the housing project materialised, he treated the company and himself as synonymous.

But when it comes to liablity he draws a distinction between the company and himself.

Be that as it may, the judgment creditor had clarified the matter in its affidavit in reply:

8. *Vide* Clause 2.3(b) of the said Sale and Purchase Agreement dated the 22nd day of June, 1990, it was expressly agreed that the Judgment Debtor herein Asia Commercial Finance (M) Berhad shall have the absolute right to determine the appropriation of the said Malaysian Ringgit Eight Hundred Thousand only (RM800,000/-). The said Malaysian Ringgit Eight Hundred Thousand only (RM800,000/-) was accordingly utilized only to partially settle the outstanding sum in the account of Polite Enterprise Sdn. Bhd. and Pearl View Sdn. Bhd. as follows:- Polite Enterprise Sdn. Bhd. RM195,772.60 Pearl View Sdn. Bhd. RM604,227.40

RM800,000.8 OF 13 00

Clause 2.3(b) provides:

(b) The Purchaser's Solicitors is expressly authorised to release the remaining balance Purchase Price of Malaysian Ringgit Eight Hundred Thousand (RM800,000.00) to ACF in settlement of the debts due from the debtors to ACF. It is expressly agreed that ACF shall have the absolute right to determine the appropriation of monies received from the Purchaserps Solicitors.

In the circumstances I find that the judgment debtor had not shown any ground for the bankruptcy notice to be set aside. I also dismiss the appeal against the order of the Senior Assistant Registrar dismissing Encl. 21.

Before leaving, I hope I can be forgiven for making some comments on the existing procedure to set aside a bankruptcy notice.

As the law now stands, there are two ways of doing it. First, if a judgment debtor claims that he has a counterclaim, set-off or cross demand equal to or exceeding the claim by the judgment creditor he may file an "affidavit on an application to set aside bankruptcy notice" in Form 7 under r. 95. Secondly, if he wants to challenge the bankruptcy notice on other grounds he may also file a summons in chambers under r. 18 - see *Datuk Lim Kheng Kim v. Malayan Banking Bhd.[1993] 3 CLJ 324 @ 305*.

To further complicate matters, s. 3(2) proviso (ii) of the Bankruptcy Act 1967 provides:

Provided that a bankruptcy notice -
(i)...
(ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such mistake; but if the debtor does not give such notice he shall be deemed to have complied with the bankruptcy notice, if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein.

In other words, if a judgment debtor wants to challenge the amount due, he must, within seven days of the service of the bankruptcy notice on him give notice of his intention, to the judgment creditor.

Regarding the first method, r. 94(1) requires the bankruptcy notice to be endorsed with:9 OF 13

(a)...
(b) an intimation to the debtor that if he has any counterclaim, set off or cross demand which equals or exceeds the amount of the Judgment debt, and which he could not have set up in the action in which the Judgment or order was obtained, he must within the time specified in the notice file an affidavit to that effect with the Registrar.

The time is seven days - Rule 94(2).

On the other hand, it must be noted that under s. 3(1)(h)(i) of the Bankruptcy Act 1967, a debtor commits an act of bankruptcy if "... he does not within seven days after service of the notice..., either comply with the requirements of the notice or satisfy the court that he has a counterclaim, set off or cross demand..."

Note that the Act requires the judgment debtor to "satisfy the court" that he has a counterclaim, etc within seven days, whereas r. 94 only requires him to file an affidavit (which operates as an application to set aside the bankruptcy notice) within that time.

How does one "satisfy the court"? There must be a hearing and a decision, all within seven days from the service of the bankruptcy notice.

But r. 94 seems to relax the requirement.

It only requires that the affidavit (in Form 7) be filed within the seven days.

The Rule appears to contradict the Act. Rule 95(1) requires the Registrar, upon receipt of the affidavit in Form 7, to fix a day for the hearing of the application.

The Registrar must give three clear days notice thereof to the debtor, the creditor and their respective solicitors if known. "If the application cannot be heard before the time specified in the notice for compliance with its requirements, the Registrar shall extend the time, and no act of bankruptcy shall be deemed to have been committed under the notice until the application has been heard and determined" - subrule 2.

If we are to follow the provision of the Act (s. 3(1)(h)(i)) rather than the rule (r. 94(1)(b) and (2)), as we should, we will have the following situation: within seven days of service of the bankruptcy notice the judgment debtor will have to retain a solicitor, the solicitor must file the affidavit in Form 7, the Registrar must fix a date within the seven days and give notice of hearing to the debtor, the creditor and their respective solicitors giving them three clear days, hear the application and decide, all within the seven days. I do not think all these can ever be done within seven days.

This rule is simply not practical.10 OF 13

In practice, as far as I know, it is never done.

It is simply impossible to comply.

In practice, the application is heard months or years later.

In *Soh Bok Yew v. Cindle Development Sdn. Bhd.* [1977] 1 MLJ 242 FC, we see that the application to set aside the bankruptcy notice under r. 95 was heard by the learned trial judge on the same day as the hearing of the petition itself.

What it means is that the petition was filed contrary to s. 5(1)(c) read with r. 95(2), that is,

before the act of bankruptcy was committed.

However, it is heartening to note that the Supreme Court in *Datuk Lim Kheng Kim* expressed the following view:

In passing, we wish to emphasize that, contrary to what had been expressed in *Soh Bok Yew*, if a bankruptcy petition is to be founded on an act of bankruptcy based on a failure to comply with a banruptcy notice, it is self-evident that such a petition can only be filed after the application to set aside the bankruptcy notice is heard and dismissed.

Of course this is the correct view.

But, if that was the view of the Supreme Court, then the judgment, with respect, does not appear to follow it. The facts of that case, so far as are material, are similar to *Soh Bok Yew's* case.

In *Datuk Lim Kheng Kim's* case the judgment debtor filed an affidavit to set aside the bankruptcy notice pursuant to r. 95 within seven days of the service of the bankruptcy notice on him.

Creditor's petition was filed **before** the affidavit (application) was heard.

It was also heard on the same day as the petition.

When I heard that case (*Datuk Lim Kheng Kim's* case), I was of the view that I was bound by the Federal Court's decision in *Soh Bok Yew's* case even though I doubted its correctness - see [1992] 2 MLJ 540. So, having dismissed the application, I considered the petition and made the Receiving and Adjudicating Orders.

So, as the Supreme Court had expressed the view that the petition could not be presented before the application was heard and dismissed, my said orders should be set aside on that ground.

However, the Supreme Court took the view that that affidavit was not an affidavit under r. 95 as it failed to disclose that the judgment debtor had a counterclaim, etc and because it merely disputed the indebtedness of the judgment debtor without condescending to particulars of the amount due.

In other words the Supreme Court treated as if there was no affidavit under r. 95 at all.

With greatest respect, I cannot keep asking myself this question: just because an application is dismissed at a later date, does it mean that until it was dismissed, there was no application at all? After all, it is the Court, after hearing, which decides whether an affidavit filed or purportedly filed under r. 95 discloses that a judgment debtor has a counterclaim, etc. or not, complies with r. 95 and Form 7 or not.

To allow a judgment creditor to treat as if there is no affidavit at all will render the provision of r. 95 (regarding the time of the commission of the act of bankruptcy) and the provision of s. 5(1)(c) of the Act (which says that a creditor shall not be entitled to present a bankruptcy petition against the debtor unless the act of bankruptcy has occurred within six months before

the presentation of the petition) and indeed the very view expressed by the Supreme Court, ineffective. A judgment creditor can disregard all the said provisions and authority and file a bankruptcy petition even though an application under r. 95 has not been heard and determined.

He then takes a chance.

If the application is later dismissed, he gets the Receiving and Adjudicating Orders forthwith.

That does not seem to be right to me.

Be that as it may, it now is clear, at least from the passage quoted above of the judgment of the Supreme Court that a bankruptcy petition can only be filed after the application under r. 95has been heard and determined.

What is more relevant to the point under discussion is that that case (*Datuk Lim Kheng Kim's* case) also shows that the application under r. 95 was not (like most, if not all cases) and could not be, heard within the seven day period.

Besides an application under r. 95, there is another mode of making an application to set aside the bankruptcy notice which is under r. 18. The procedure is by summons in chambers.

The grounds are different and wider.

The existence of these procedures has quite often caused confusion. *Soh Bok Yew's* case and *Datuk Lim Kheng Kim's* case are good examples.

The present case is no better if not worse.

The observation of Mohamed Dzaiddin SCJ in *Datuk Lim Kheng Kim's* case as to how every conceivable ground had been jumbled up is very apt.

All these have caused me to ask myself a question: should not the procedure be made simpler and the time period more reasonable?

I think, instead of having two different procedures for the same purpose, it would be simpler just to have one - just by filing a summons in chambers under r. 18 and all grounds may be included.

We can do away with the application under r. 95 and the notice under s. 3(2) proviso (ii). The time period for filing such an application should be more reasonable, say, within 14 days from the receipt of the bankruptcy notice.

Affidavit in reply must be filed within 14 days of the service of the summons in chambers and affidavit in support thereto, unless with leave of court.

No further affidavit should be allowed to be filed unless with leave of court.

No act of bankruptcy is committed until12 OF 13 the application is heard and determined.

The Registrar will fix a date for the hearing of the application and hear it just as any other summons in chambers. I think it can be disposed of much faster.

At least there will only be one application, one decision, one appeal regarding the challenge to the bankruptcy notice.

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