



IN THE SUPREME COURT OF BERMUDA

BANKRUPTCY JURISDICTION

1998: No. 21 and 1998: No. 423

IN THE MATTER OF THE BANKRUPTCY ACT 1989

AND IN THE MATTER OF JULIAN ERNEST SINCLAIR PHILLIPS HALL

RULING

Date of Hearing: Friday, 3 November 2008

Date of Judgment: Wednesday, 12 November 2008

Kulandra Ratneser for the Officer Receiver

Saul Froomkin, QC for the Petitioning Creditor

The Bankrupt in person

Introduction

1. Julian Hall was adjudged a Bankrupt on 26th January 2000. Pursuant to an application by the Official Receiver under section 32 of the Bankruptcy Act 1989, a hearing was conducted before Ground CJ in April 2008 and judgment was delivered on 18th April 2008. That judgment was subsequently set aside by Ground CJ on 23rd May 2008 on the application of the Bankrupt.

2. On 20th August 2008 an application by the Official Receiver for directions was heard together with an application by the Bankrupt.
3. The Official Receiver sought the following orders:
 1. That within 14 days the Bankrupt, as a preliminary matter, comply with the requirements in section 26 of the Bankruptcy Act 1989 (the “Act”) by answering the questions posed on behalf of the Official Receiver which were attached to a letter dated 6th June 2008 addressed to the Bankrupt;
 2. That the Official Receiver be granted permission to withdraw his report dated 22nd February 2008 and within 21 days following the receipt of the bankrupt’s response to the aforementioned letter dated 6th June 2008, file and serve an updated report for the purpose of the rehearing of the application pursuant to section 32 of the Act;

After some argument at the hearing the Bankrupt abandoned his motion and consented to the application of the Official Receiver. The orders were accordingly made in the terms of the application of the Official Receiver.

4. On the 15th October 2008 the Official Receiver filed a summons for directions in the following terms:
 1. That the Bankrupt having failed to comply with the requirements of section 26 of the Bankruptcy Act 1989 (the “Act”) and having failed to comply with a Supreme Court Order for Directions dated 20th August 2008 (“Order for Directions”) directing the Bankrupt to answer a set of questions posed on behalf of the Official Receiver (“questionnaire”) be found guilty of contempt of court pursuant to s 26(4) of the Bankruptcy Act.
 2. That unless the Bankrupt complies with the Order for Directions within 5 days, an immediate order for committal be granted pursuant to s 98 of the Bankruptcy Act.

And for such alternative or additional orders as the nature of this application may require and which this Honourable Court may seem just and equitable in the circumstances.

On the 24th October an application for committal was also filed for breach of section 26 of the act.

5. On 29th October 2008 the Bankrupt filed a motion seeking an enlargement of time to the 28th October 2008 to satisfy the order of 20th August. 2008.
6. On 3rd November both matters were heard. Under the first limb of his submissions counsel for the Official Receiver submitted that the Bankrupt's failure to comply with the courts order within the stipulated time was a contempt of the court and for that alone he should be found in contempt and be committed to prison.. On the second limb he submitted that even now that the Bankrupt has submitted answers to the questions asked and seeks an extension of time to perfect their submission, his answers are so wholly inadequate that they in effect fail to comply with the directions or questions and therefore he should still be held in contempt and be imprisoned until he complies. Counsel for the creditor joined in these submissions.
7. The Bankrupt answered in apology for his tardiness. He set out his reasons in his motion as it relates to his noncompliance to the stipulated time. He submitted that he has now provided the answers subject to the courts granting of the extended time he is seeking. Further that given the nine years of time that has passed since his adjudgment, he has answered as best he could. And that he should not be judged in contempt and or be incarcerated. He submitted that his failure to answer the questions in time or to answer them adequately, if it is so found, does not amount to a willful refusal.

8. The questions for this court are:
 1. Should the Bankrupt be held in contempt for failing to comply with the courts order to answer the Official Receivers questions in time or, should his application for an extension of time be allowed.
 2. Should the Bankrupt be held in contempt of court for inadequately answering the questions of the Official Receiver.

9. In respect of question 1, the Bankrupt never answered the questions until 28th October 2008, approximately 48 days after he should have. His answers seem clearly to have been activated by the Official Receiver's application. Some of the reasons given for his tardiness at best appear to be either arrogant or motivated by some disregard for the serious authority of the court. His tardiness on this occasion appears to be consistent with that exhibited by him over the years – always making promises or seeking extensions but either not complying or complying at later stages, submits counsel for the receiver. It maybe difficult to disagree with these submissions. In this instance he did inform the Official Receiver about the 17th September of his desire for additional time, whereupon the Official Receiver indicated that he would agree providing the appropriate application was approved by the court. Time passed and he never applied until apparently spurred by the receiver's application.

10. Before he can be found guilty of contempt the court must be satisfied that on this occasion, his failure was willful. *Re Prickard Ex parte Official Receiver* [1912] 1 KB 397.

In this instance despite the obvious bad behavior of the Bankrupt the court finds it difficult to conclusively find that his failure was willful. He has given some reasons which the court with some reservation has decided to accept. The period of delay on this instance, though substantial, is when compared with the history of this matter, relatively short. The fact is, he has now filed the answers and in the interest of justice, the court can see no useful purpose in refusing them at this point. Such would add nothing to the proceedings. Further it may be said that the

questions were pretty numerous and spanned over a fairly long period of time and may have required some time beyond the stipulated period to be properly complied with. Having seen and heard the bankrupt the court is in no doubt that the bankrupt now takes this court very seriously and is very unlikely in the future to employ any further delay. It is also confident that he is now convinced that henceforth the Official Receiver will be invoking the relevant instruments against him to command his adherence.

11. In the circumstances the application for a finding of contempt on limb 1 will be refused and the bankrupt's application for an extension of time to the 28th of October 2008 will be allowed.

I think this decision is further supported by the terms of the receivers application- that he be allowed 5 days within which to file his answers. He is now deemed to have complied.

12. In respect of the second question. It is the opinion of the court that the object of the application of 20th August 2008 was to effect certain amendments to the withdrawn report and to be aided by the new answers to provide a new and updated report to the court for the purpose of the upcoming section 32 application. It was not this court's impression that the quality or lack of quality of those answers once received would be an issue for contempt proceedings. It is true that the court has the authority under section 26 to force the bankrupt to comply with its orders or the directions of the Official Receiver. But it is doubtful that on the assertion of the receiver, that the answers are unhelpful to him, the court should follow with a finding of contempt. (See the old case of *Re Davis*, *Ex parte Turnpenny*(1892)9 Morr. 278 where the principle seem to be that the powers of the court to commit for contempt will not be exercised, when it is alleged that an account furnished by the debtor is untrue. The proper course, it is suggested, in such a case is to institute a prosecution).

13. The Bankrupt asserts that he has always been most anxious to have the section 32 hearing so that he can as he put it get back to his profession. Of course the Official Receiver is not in agreement with that submission, given the Bankrupts conduct so far.

In any event he must be taken to be aware that his good faith is of high importance. He must obviously be aware and so is the Official Receiver that a court in a section 32 proceeding is vested with wide authority and may in arriving at its decision draw such inferences as it may, whether adverse or not, and make such orders as it considers fit, having regard to the evidence before it and the ambit of the provisions.

In all the circumstances this court is unable to at this time allow the application on the second limb for a finding of contempt against the bankrupt.

Of course it is not thought that there is anything in this judgment that prohibits the receiver from acting in accordance with the other enforcement provisions of the Act, for example section 54, given some of the information he now has in the answers.

In all the circumstances the order of 20th August 2008 remains in effect and the next step is now awaited.

Carlisle Greaves
Puisne Judge