

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2009-01064

IN BANKRUPTCY
RE: HARRY HARNARINE EX PARTE RAYMOND & PIERRE LIMITED
AND AFRA RAYMOND

AND

IN THE MATTER OF THE BANKRUPTCY ACT CHAPTER 9:70

AND

IN THE MATTER OF THE JUDGMENT ORDERED AGAINST MR. HARRY
HARNARINE AND HCU COMMUNICATIONS LIMITED IN CV2006-02964 IN
FAVOUR OF RAYMOND & PIERRE LIMITED AND AFRA RAYMOND BY THE
HONOURABLE MASTER DOYLE ON 23RD JULY, 2008

BETWEEN

RAYMOND & PIERRE LIMITED
AFRA RAYMOND

JUDGMENT CREDITORS

AND

HARRY HARNARINE

JUDGMENT DEBTOR

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

Appearances:

For the Petitioner: Mr. S. Jairam, S.C., instructed by Mr. A. Maraj and Ms. H. Alves
For the Respondent: Mr. F. Scoon, instructed by Dr. W. Debideen

Date of Delivery: 18th December, 2013

DECISION

BACKGROUND

- [1] The Judgment Debtors, Raymond & Pierre Limited and Afra Raymond, filed a Request for Issue of Bankruptcy Notice and a Bankruptcy Notice against the Judgment Creditor on the 25th March, 2009; which was served¹ on the 6th April, 2009.
- [2] I gave judgment in this matter on the 3rd May, 2010 wherein I ordered, *inter alia*, that:
- i. There was no actual or ostensible authority on the part of the Second Judgment Creditor to act on behalf of the First Judgment Creditor;
 - ii. There was no actual or ostensible authority on the part of Selwyn Mark:
 - a. to act on behalf of the Judgment Creditors;
 - b. to act on behalf of Alves, Clarke and Company; or,
 - c. to compromise the entire Judgment Debt;
 - iii. The Bankruptcy Notice was good in law; and,
 - iv. There was no undue influence on the part of Dr. Wesley Debideen, Attorney-at-Law for the Judgment Debtor.
- [3] By Creditor's Petition of the 15th July, 2010 - on behalf of Raymond & Pierre Limited and Afra Raymond, in his personal capacity - the Judgment Creditors petitioned the Court to grant a Receiving Order in respect of the Estate of Harry Harnarine. The Particulars are as follows:

¹ Para. 2 of the Affidavit of Harry Harnarine filed on the 16th April, 2009

- i. The said Harry Harnarine has for the greater part of six (6) months next preceding the presentation of this petition resided at Light Pole No. 81 Alligator Street North, Monroe Road, Cunupia, and lately residing at 3¹/₄ Mile End Village, Rio Claro Trinidad, within jurisdiction of this Court;
- ii. The said Harry Harnarine is justly and truly indebted to the said Judgment Creditors in the sum of \$867,726.589 (as at 10th July, 2010) being the amount of a final judgment obtained by the Judgment Creditors against Harry Harnarine and HCU Communications Limited in High Court Action No. CV2006-02964 on the 23rd July, 2008, interest on the said judgment debt and costs of obtaining the said judgment less sums recovered on execution of a Writ of FiFa;
- iii. The consideration for such judgment debt being certain defamatory statements made by the Judgment Debtor on the radio station operated and/or broadcast by HCU Communications Limited which were calculated to lower the Judgment Creditors in the view of right thinking members of society;
- iv. The Second Judgment Creditor, Afra Raymond, did on the 27th January, 2009 cause a Writ of FiFa to be executed against HCU Communications Limited. The said Writ of execution issued in respect of half the judgment debt, *i.e.* the portion of damages owed to Afra Raymond together with statutory interest from the date of judgment to the date of execution. However, the Second Judgment Creditor was not permitted to levy for the portion of the damages owing to First Judgment Creditor, Raymond and

Pierre Limited, or for the interest from the date of claim to the date of judgment or any portion of the costs as ordered;

- v. The said Judgment Debtor within three (3) months before the date of the presentation of this petition, committed the following act of bankruptcy, namely, that he failed before the 3rd May, 2010 to comply with the requirements of the Bankruptcy Notice duly served on him on the 6th April, 2009 before the hour of 6 o'clock in the afternoon;
- vi. Following the filing of the Bankruptcy Notice, the Judgment Debtor caused to be filed affidavits in opposition to the said Notice on the 16th April, 2009, which amounted to an Application to set aside the Notice;
- vii. These affidavits were heard before this Court and on the 3rd May, 2009 I upheld the validity of the Bankruptcy Notice. Further, it was ordered that the time for the Judgment Debtor to comply with the Bankruptcy Notice be extended to the 3rd May, 2010. The act of bankruptcy was completed on or about the 10th May, 2010;
- viii. Further, and/or alternatively, the said Harry Harnarine committed an act of bankruptcy within of the meaning of **SECTION 3(1)(g)² of the BANKRUPTCY ACT, CHAP. 9:70.**

² "...if a creditor has obtained a final judgment or final order against him for any amount, and, execution thereof not having been stayed, has served on him in Trinidad and Tobago, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, and he does not, within seven days after service of the notice, in case the service is effected in Trinidad and Tobago, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he had a counterclaim, set-off, or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained; and for the purposes of this paragraph any person who is, for the time being, entitled to enforce a final judgment or final order shall be deemed a creditor who has obtained a final judgment or final order..."

[4] On the 17th January, 2011, the Judgment Debtor filed a Notice of Intention to oppose the Judgment Creditor's Petition wherein he stated that he intended to dispute the act of bankruptcy stated in the Notice therein. Further, that he filed a Notice of Appeal against the making of the act of bankruptcy.

[5] This Appeal, Civ. App. No. 109/2010, was heard and dismissed in its entirety on the 6th May, 2013.

ANALYSIS

[6] **SECTION 5** of the **BANKRUPTCY ACT** provides:

"Subject to the conditions specified below, if a debtor commits an act of bankruptcy the Court, may on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called "a receiving order", for the protection of the estate."

The act of bankruptcy complained of by the Judgment Creditor is the failure of the Judgment Debtor to comply before the 3rd May, 2010 with the Bankruptcy Notice duly served on him on the 6th April, 2009 pursuant to **SECTION 3(1)(g)** of the **BANKRUPTCY ACT**. **SECTION 3(1)(g)** of the **BANKRUPTCY ACT** provides:

"...if a creditor has obtained a final judgment or final order against him for any amount, an execution thereof not having being stated, has served on him in Trinidad and Tobago ... a bankruptcy notice under this Act, and

does not within seven days after service of the notice ... then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counterclaim, set-off, or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up on the action in which the judgment was obtained, or the proceedings in which the order was obtained; and for the purposes of this paragraph any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed a creditor who has obtained a final judgment or final order."

[7] **RULE 130** of the **BANKRUPTCY RULES** provides:

"Where a debtor intends to show cause against a petition he shall file a notice with the Registrar, specifying the statements in the petition which he intends to deny or dispute, and transmit by post or otherwise to the petitioning creditor and his Attorney-at-Law, if known, a copy of the notice three days before the day on which the petition is to be heard."

This Rule³ clearly puts the burden on the Judgment Debtor to obviate the Receiving Order made against him. Thus, showing good cause to the Court why it should refuse the Judgment Creditor's Petition.

[8] On the 17th January, 2011, the Judgment Debtor filed a "Notice by Debtor of Intention to Oppose Creditor's Petition" and supporting affidavit. However, the contents of this Notice and Affidavit were insufficient, in my

³ In conjunction with Section 3(1)(g) of the Bankruptcy Act

view, to fall within the purview of **RULE 130** of the **BANKRUPTCY RULES**. In this notice, the Judgment Debtor stated:

"I, Harry Harnarine do hereby give notice that I oppose the making of a receiving order as prayed in the said petition and I intend to dispute the act of bankruptcy state therein and to contend that I have filed a Notice of Appeal against the making of the act of bankruptcy, and in the circumstances the said Bankruptcy Petition ought to be stayed pending the outcome of the appeal."

Further, at Paragraph 19 in his Affidavit in Support of this Notice filed on the 17th January, 2011, the Judgment Debtor stated:

"Should I be declared bankrupt, I will face serious difficulties. I am the President of the Hindu Credit Union and of several companies wholly or majority owned by the Hindu Credit Union. If I were bankrupt I will be unable to pursue several matters that are presently before the courts, including before the court of appeal, because as such President I am the most knowledgeable of the affairs of the Hindu Credit Union and these companies."

These matters are insufficient, in my view, to amount to a proper Notice as prescribed by **RULE 130** of the **BANKRUPTCY RULES**; as there is nothing preventing the Judgment Debtor to give instructions and/or information in legal matters should he be declared bankrupt.

CONCLUSION

- [9] In the circumstances, therefore, I am satisfied by the Judgment Creditor's Petition and I declare that a Receiving Order is hereby made against Harry Harnarine, Judgment Creditor, who has for the greater part of six (6) months next preceding the presentation of this Petition resided at Light Pole No. 81 Alligator Street North, Monroe Road, Cunupia, and lately residing at 3¹/₄ Mile End Village, Rio Claro Trinidad and hereby constitute the Chief State Solicitor as Receiver of the estate of the said Judgment Debtor.
- [10] The Judgment Debtor to pay to the Judgment Creditor costs for Senior and Junior Counsel.

Joan Charles
Judge