

Increasing income through bankruptcy: A practical review

28 February 2019

Introductions



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Ward Hadaway – Debt Recovery

- » Dedicated team doing 100% local authority work
- » Currently offer a wide range of debt recovery solutions for Local Authorities in relation to Council Tax, Business Rates and Sundry Debts
- » Bankruptcy & Winding up – free case recommendations
- » County Court proceedings
- » Enforcing liability orders
- » Tracing/employment searches
- » In house creditor services team
- » Providing prompt, efficient and cost effective debt recovery solutions
- » Bespoke IT systems – extensive reporting offering

Pursuing debt through bankruptcy

- » Debt over £5,000
- » Individuals domiciled in England and Wales
- » Debt is a liquidated sum
- » Debt is not secured
- » Debtor is unable to pay their debt(s)
- » Debtor has no reasonable prospect of being able to pay their debt(s) when payable in the future
- » Ensuring compliance with published Debt Recovery Policy
- » Provide solicitors with all relevant information to enable WH to establish the 'risk' and decide which cases to pursue

Bankruptcy successes – real data

- » 25 cases with total debt £311,188.24
- » All rated as 'green' high prospect of success
- » 6 paid in full £80,272.30 paid + £27,787.43 in interest + 100% legal costs
- » 7 paying by instalments £50,231.29 paid to date + interest £2,315.84
- » **£160,606.86** recovered to date.
- » 5 bankruptcy orders obtained - full recovery anticipated
- » 2 charges obtained in lieu of bankruptcy
- » 5 cases ongoing
- » 0 cases debt written off

Case study

- » Historic council tax arrears (2008) – previous lack of engagement with the local authority
- » Bankruptcy proceedings commenced + petition served
- » Debtor advised that she was selling a property which she had inherited
- » Local authority agreed to provide her with time to sell
- » Outcome – debt of £8,123.90, interest of £3,366.02, costs of £5,188.16 paid.
- » Debtor also paid the current year of council tax that wasn't included in petition of £1,402.01.

Case study

- » Historic business rates (2003) relating to an individual – despite extensive efforts the authority had been unable to secure recovery
- » Commenced bankruptcy proceedings
- » Recovery in full within 2 months of presenting a petition at court
- » Debtor paid the debt of £29,979.46, interest of £16,594.59 and costs of £4,091.76 to avoid bankruptcy.

What approach are the courts taking to bankruptcy

- » Vast majority of cases present no issues – bankruptcy very effective tool which delivers results
- » Issues emerging in a small minority of cases in two main areas:
 - » 1) Service of statutory demands; and
 - » 2) Annulments
- » Demonstrate lack of consistency in judicial decisions

Statutory demands

- » A pre-requisite to present a bankruptcy petition
- » Increase in applications to set aside: disputes and service

Service of statutory demand (r10.2) Insolvency Rules 2016

*A creditor must do all that is **reasonable** to bring the statutory demand to the debtor's attention and, if practicable in the particular circumstances, serve the demand personally.*

***High test** – creditors have to meet – always effect service **personally** wherever possible*

Antony Canning v Irwin Mitchell LLP [2017] EWHC 718 (Ch)

- » Appeal hearing
- » Default judgment for unpaid legal fees.
- » Hand-delivered statutory demand -address supplied by a trace agent.
- » Creditor had another address on file.
- » Posted through letterbox as debtor not present.
- » Presented a bankruptcy petition three weeks later.
- » Debtor later advised that this was not his address and requested re-service upon his solicitors. Personal service was effected upon that basis.
- » Petition based on first demand – judge found that the Creditor had not done everything possible to bring the demand to the debtor’s attention.
- » Held at appeal – fundamental failure to effect service.

Regional Collection Services Limited v Anthony Heald [2000] CA (Civ Div)

- » Unauthorised investment scheme conducted by Debtor. Creditor had advanced funds of approximately £150,000. Debtor disputed liability.
- » Case decided on service of statutory demand
- » Held that it was insufficient to simply make multiple attendances at a residence.
- » In this case there was also a business address
- » Held that the Creditor had not taken reasonable steps to serve the statutory demand and the petition should remain dismissed.

Melina Serpes v Mayor of the City of London [2017] EWHC 1241 (Ch)

- » Appeal hearing
- » Non-domestic rates relating to a restaurant
- » Property unoccupied – local authority aware of this
- » Debtor disputed rates as not the owner or occupier
- » Notices, including statutory demand, served at property subject to NDR, debtor had not provided another address
- » Held all notices were served properly in accordance with the Local Government Act 1972 s233 on the last known address
- » Court found irrelevant not received notices
- » Court held no evidence of tenant entitled to possession or in actual and exclusive occupation

Annulment – Insolvency Rules 2016

Application for annulment

r10.132.—(1) An application to the court under section 282(1) for the annulment of a bankruptcy order must specify whether it is made—

- (a) under subsection (1)(a) (claim that the order ought not to have been made); or
- (b) under subsection (1)(b) (debts and expenses of the bankruptcy all paid or secured).

What is annulment?

- » Debtor able to apply to court to annul their bankruptcy if the order *"ought not to have been made"*.
- » This means that the debtor can undo the making of the bankruptcy order if there is a problem with the underlying debt.
- » Costs risk on annulment for petitioning. Extends to more than just the debtor's legal costs – it includes **all** costs relating to the bankruptcy
- » These costs may well be significantly more than the debt owed to you.
- » Important that you are satisfied that the underlying debt is valid and that you have followed all of the correct procedures to collect your debt.

‘Ought not to have been made’

- » Where debt could have been disputed or set off was available
- » Procedural irregularity – where service was not properly effected
- » Three stage Kekhman test (following guidance set out in [JSC Bank of Moscow v Kekhman and others \[2015\] EWHC 396 \(Ch\)](#)).
- » The court should decide:
 - » What were the grounds existing at the time the bankruptcy order was made.
 - » Whether, on those grounds, the bankruptcy order ought not to have been made.
 - » If it determines that the bankruptcy order ought not to have been made, whether to exercise its discretion to annul.

Omokwe v (1) HFC Bank Limited and (2) Official Receiver [2007] HC

- » Debtor applied to annul the bankruptcy order.
- » Debtor's wife gave evidence that the Debtor was out of the country at the time of service of the statutory demand and bankruptcy petition
- » The process server gave evidence that personal service was effected on a man who identified himself as X.
- » Held that even if not brought to the debtor's attention there was no prejudice to the Debtor as he admitted the debt

Case study

- » Liability for the debt was not disputed
- » Insurance paid directly to debtor, debtor disputed receipt of the sums involved
- » Attended hearing with evidence (not previously produced) that the money had not reached him
- » Judge not satisfied that service of the statutory demand was effected properly – description on report
- » Outcome – order annulled and petition relisted for hearing. Costs reserved.

Case study

- » Council tax outstanding in relation to a property owned by the Debtor
- » Application to annul upon the basis of procedural irregularity.
- » Debtor disputed the validity of the service of the statutory demand – not applied to set aside within the permitted timescales
- » Service of statutory demand was attempted personally but unsuccessful. Letter of appointment left, neighbour having confirmed residence but that he had not seen him very recently
- » Service effected through the letterbox
- » Court annulled the order on the basis that there should have been service by e-mail (the council had an e-mail address) and that the neighbour had indicated that he had not seen debtor recently.

Conclusions

- » Bankruptcy very effective tool and delivers results
- » Follow internal Debt Recovery policy
- » Be aware of risks in minority of cases but balance against overall advantages
- » Pass on all information to solicitors
- » Ensure validity of underlying debt
- » Down to individual judge's interpretation

Questions

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