

PRELIMINARY NOTE IN RELATION TO ANNULMENT OF BANKRUPTCY ORDERS *Posted on April 15, 2013 by srlaw*

This is a preliminary advice note and is no substitute for the taking of detailed legal advice in what may relate to potentially a very complex legal position. We would at first note that it is not uncommon for bankruptcy orders to be made against individuals without their knowledge.

Common situations include where the creditor obtains an order for substituted service at an address at which the individual no longer lives – but service at which address becomes legally effective. Further, writing letters to the Court explaining why a person cannot attend a bankruptcy hearing are almost invariably ignored by the Court and bankruptcy orders are often made in such circumstances. Bankruptcy has an extremely unfortunate consequence of affecting the worldwide assets of a person.

Also the fact that the amount claimed is only modest does not preclude the making of a bankruptcy order (as long as the amount claimed is in excess of the bankruptcy limit currently £750), and the order will affect the whole of the worldwide assets of the individual. Accordingly if the bankruptcy order is only for £1500 council tax and a person's assets are several million pounds, the bankruptcy will still result in the whole of the individual's assets vesting initially into the Official Receiver and subsequently into the name of any appointed private Trustee in Bankruptcy.

An application can be made to annul a bankruptcy order. If such order is made, the individual is deemed to never have been bankrupted.

There are two grounds to annul a bankruptcy order.

The first ground is that the bankruptcy order ought not to be made. This is a fairly difficult ground to satisfy.

It is not uncommon for bankruptcy to be pursued following a judgment entered in default in the County Court. The Bankruptcy Judge will not normally go behind such judgment. In such case if it wished to contest the bankruptcy, it will be also necessary to apply to set aside the judgment in the County Court.

The second most common ground to secure a bankruptcy annulment order is upon the basis of payment in full of bankruptcy debts and expenses in full.

If a private trustee has been appointed then this will be considerably increase the amount of the bankruptcy expenses. The fees of the Official Receiver, who is initially appointed, will usually be relatively modest by comparison.

As a person has been adjudicated bankrupt, they are not able to raise money upon their assets (which will following the making of the bankruptcy order be vested in the Official Receiver). Accordingly if this ground is to be relied upon money will need to be raised from family, third parties or by way of bankruptcy annulment funding. This is a specialist form of funding- in essence in the form of bridging finance.

Once an application has been submitted to the Court for the annulment of the bankruptcy order it is generally the case that the Official Receiver does not take steps for the appointment of a private trustee in bankruptcy and therefore this will give rise to significant saving in bankruptcy expenses.

Bankruptcy represents a core area of the work of this firm.

We offer an initial fixed fee interview of half an hour at a cost of £75 plus VAT. We are pleased to undertake this by way of a telephone conference if this should be more convenient.

If you would wish this firm to assist please contact Lawrence Rodkin (partner).



SIMONS RODKIN
Litigation Solicitors

707 High Road,
Finchley

London N12 0BT

Tel: 020 8446 6223

Fax: 020 8446 7955

DX: 57359 Finchley

enquiries@sr-law.co.uk

www.sr-law.co.uk