Neutral Citation Number: [2021] EWHC 1688 (Ch)

Case No: BR-2020-000463

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BANKRUPTCY COURT

Royal Courts of Justice
Rolls Building, Fetter Lane, EC4A 1NL

Date: Double-click to add Judgment date

Before :

Deputy Insolvency and Companies Court Judge Addy QC

- -

Between :

Ms. Deborah Cassanova	**Applicant**
- and -	
Mrs Deborah Ann Cockerton (as Trustee of the Estate in Bankruptcy of Deborah Niomi Emily Cassanova)	**Defendant**

- -
- -

Owen Roach (instructed by **Jaycee Gold Solicitors**) for the **Applicant**
Mairi Innes (instructed by **Barker Gotelee Solicitors**) for the **Respondent**

Hearing dates: 4 May 2021

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APPROVED JUDGMENT

Deputy Insolvency and Companies Court Judge Addy QC :

1. This Judgment concerns an application made by Deborah Cassanova (the **Applicant**) against the **Respondent**, Mrs Deborah Ann Cockerton, who was appointed as the Applicant's trustee in bankruptcy following a bankruptcy order made on 4 October 2016 pursuant to a petition of HMRC. The Applicant has been discharged from bankruptcy on 23 October 2017. The Application which came on for hearing before me on 4 May 2021 was stated to be for –

   "permission to bring a claim against the Respondent as the trustee of the bankruptcy estate on the basis that she has misapplied or retained or become accountable for some money or other property comprised in the bankrupt's estate, and / or that the bankrupt's estate has suffered loss in consequence of the misfeasance or breach of fiduciary or other duty by the trustee in the carrying out of her functions. The LEGAL BASIS of the application is Sections 303(1) and 304(1)(a)(b) of the Insolvency Act 1986"

   I shall refer to this as the Permission Application.

2. The hearing of the Permission Application took place virtually, by Microsoft Teams. Mr Roach of counsel appeared for the Applicant and Ms Innes of counsel appeared for the Respondent. Although Mr Roach stated that he was unable to appear on camera for the hearing, his voice could be heard and he confirmed that he could hear the Court and the Respondent's counsel clearly and the parties (and the Court) were content to proceed with the hearing on that basis.

3. There is a somewhat unusual procedural history to the Permission Application:

i) Following the making of the bankruptcy order against the Applicant, the Respondent was appointed as her trustee in bankruptcy with effect from 27 October 2016.

ii) As part of the administration of the Applicant's bankruptcy, the Respondent sold a rental property known as 8 Northumberland Grove, London N17 0PZ. The sale of that property completed on 13 September 2018 for the sum of £242,500.

iii) As at the date of the bankruptcy order, the Applicant also owned, and occupied, another property known as 166 Billet Road, Romford RM6 5PT. There is a rather convoluted procedural history concerning the Respondent's endeavours to realise this property for the benefit of the Applicant's estate in bankruptcy.

iv) The Respondent was compelled to bring proceedings for possession and sale of 166 Billet Road, which the Applicant sought to oppose on the basis that she had made an application in the High Court challenging various acts of the Respondent and the level of costs and expenses of the bankruptcy (**the 2019 Conduct Application**).

v) An order was made for possession and sale in respect of Billet Road in August 2019, with possession to be given up within 56 days of determination of the 2019 Conduct Application, which was itself dismissed by way of consent order on 15 October 2019. Subsequently, the Respondent applied for permission to issue, and duly obtained, a writ of possession and control and eviction took place on 12 February 2020.

vi) Thereafter, the Applicant (along with others) issued an application challenging the lawfulness of such eviction. However, following a full hearing, on 20 August 2020 such application was dismissed and recorded as being "totally without merit", and the Applicant was ordered to pay (but has not yet paid) the Trustee's costs.

vii) On 2 September 2020, the Applicant then lodged a Claim Form, with accompanying Particulars of Claim, seeking (as stated in the Claim Form) "*an Order of the Court compelling [the Respondent] to give a detailed account of the bankruptcy estate and restraining [the Respondent] from selling the property [meaning the Billet Road property] until the final determination of this case".*

viii) The accompanying document described as Particulars of Claim complain that the Respondent prevented the Applicant's conveyancing solicitors from going ahead with a sale of 8 Northumberland Grove for the sum of £250,000 and instead required them to "hand over" the property to the Respondent as the Applicant's trustee in bankruptcy. The document then further alleges that such "*wholly unreasonable"* delay to the sale caused the property to diminish in value to approximately £242,500 and that "*in breach of the trustee's duty"* the Respondent had "*so neglected and mismanaged the estate"* that it has "*accumulated a debt of £426,326.32".* Various accounts and enquiries, including as to the "*strategy"* adopted, are then sought as to the Respondent's administration of the estate in bankruptcy; but whilst language such as '*misfeasance or breach of fiduciary or other duty"* is

used in the prayer, no particular misfeasance is alleged (other than the previous complaint about the delay to the sale and unparticularised accumulation of debts). Accordingly, on the face of the Particulars of Claim, the only alleged *loss* which is particularised is the averred £7,500.00 diminution in value of the property.

ix) On 3 September 2020, ICC Judge Mullen directed that the claim form be treated as an application notice, the particulars of claim be treated as evidence in support and a hearing be listed at which the Court was to be addressed on the basis of the application and as to whether permission was required pursuant to section 304(2) of the Insolvency Act 1986 (**IA 1986**). I refer to this as "**the Substantive Application".**

x) On 4 September 2020 the Applicant made a further application seeking to restrain the Respondent from selling or otherwise dealing with the Billet Road property until the final determination of the Substantive Application ("**the Injunction Application"**) and on 14 October 2020 the Applicant made an additional application seeking an order restraining the Respondent from removing or selling the Applicant's goods within the property at Billet Road until final determination of the Substantive Application ("**the Torts Application**").

xi) Subsequently the Substantive Application, the Injunction Application and the Torts Application all came on for hearing together and, on 5 November 2020, ICC Judge Burton made an order which variously recorded and provided as follows:

a) The Applicant had re-entered the Billet Road property in breach of the possession order;

b) The 14 day notice to the Applicant to remove her goods from the property served pursuant to the Torts (Interference with Goods) Act 1977 had thereby been rendered otiose;

c) The Injunction Application was dismissed as being totally without merit and the Applicant ordered to pay the costs (to be assessed at a later date);

d) The Torts Application was dismissed as being totally without merit and the costs to be paid by the Applicant were assessed on the indemnity basis in the sum of £3,450.00, payable by 17 November 2020;

e) In respect of the Substantive Application, the Applicant was given permission to file an amended Application Notice setting out the legal basis upon which relief is sought and the grounds on which permission is sought pursuant to section 304(2) IA 1986;

f) In addition, the Applicant was directed to file and serve evidence in support of the Amended Application "*to be limited to the Applicant's Application for permission pursuant to section 304(2)"*, with consequential directions being made for evidence in response and (if so advised) reply.

g) Paragraph 5 of the Order then provided that "*The permission stage of the Substantive Application pursuant to section 304(2) shall be dealt with as a preliminary issue and shall be listed for … 4 May 2021"*.

xii) On 17 November 2020, the Applicant then issued the Permission Application in the terms I have noted above and filed and served a witness statement dated the same date. The Respondent has served a statement in response dated 8 December 2020 (and further to her witness statement dated 26 October 2020 served in accordance with the directions previously made by ICC Judge Mullen) and the Applicant has served a further statement in reply dated 19 December 2020.

4. It is against that background, that the Permission Application came on for hearing before me. As I have indicated, during the course of the hearing I heard submissions from Mr Roach of counsel for the Applicant and Ms Innes of counsel for the Respondent. Whilst it was unfortunate that neither I nor Ms Innes could see Mr Roach during the course of the hearing, I was satisfied that it did not impede Mr Roach's ability to make submissions on the Applicant's behalf nor the Court's ability to hear and consider them.

5. Given the hour at which the hearing otherwise finished and the serious nature of the allegations which were being made against the Respondent, I reserved judgment on the Permission Application. Having given the matter careful consideration I am of the view that it would not be appropriate to grant the Applicant permission pursuant to section 304(2) IA 1986 to bring the desired

proceedings and accordingly the Permission Application should be dismissed.

My reasons for reaching such conclusion are summarised below.

The legal framework and the criteria to be applied to the Permission Application

6. Section 303(1) IA 1986 states:

"*If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit."*

7. The material parts of section 304 IA 1986 provide as follows:

"(1) Where on an application under this section the court is satisfied—

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or

(b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

the court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.

This is without prejudice to any liability arising apart from this section.

(2) An application under this section may be made by the official receiver, the Secretary of State, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of section 330(5) (final distribution)) the bankrupt himself.

But the leave of the court is required for the making of an application if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under section 299."

8. Although Mr Roach contended that the Substantive Application was additionally made pursuant to section 303(1) (such that it did not require the Court's permission to proceed), ICC Judge Burton clearly considered that permission was required for the Substantive Application to proceed. In my view this is clearly right. It is plain from the language used in the Claim Form and Particulars of Claim, and indeed the Skeleton Argument of Mr Roach, that the proceedings which the Applicant desires to bring fall within the scope of section 304 IA 1986. To quote from Mr Roach's skeleton argument, the Applicant "*avers that the Trustee has misapplied the monies accruing from the sale of 8 Northumberland Grove, London, N17, acted negligently in the sale of the said property, and breached her fiduciary duties owed to her in the management of the Bankrupt's Estate"* and it is alleged that "*the Bankrupt's Estate has suffered loss because of the actions of the Trustee".*

9. In those circumstances and in line with the judgment of Hart J in *Brown v Beat* [2002] BPIR 421, it seems to me that, particularly given the existence of section 304 with its prescriptive gateway, section 303 is not an appropriate jurisdiction to be invoking in the context of the relief presently sought. Although Mr Roach referred me to and relied upon *Woodbridge v Smith* [2004] BPIR 247, as authority for the proposition that section 303 can be invoked for the purposes of seeking to extract information from a trustee and submitted that the Applicant is similarly seeking "*a proper account"* from the Respondent, I do not consider that authority to be analogous.

10. In *Woodbridge v Smith*, having discharged all of the creditors' claims in full, the wife of the bankrupt was seeking a breakdown of the trustee's claim for fees and expenses, those being the only claims outstanding and which would otherwise be realised from his share in the matrimonial home (thus affecting the applicant). In the present case, the Applicant is clearly seeking a liability order against the Respondent. As Mr Roach put it in his oral submissions, the Applicant wants permission to bring a claim for an account on the basis the Respondent is a defaulting fiduciary. Such proceedings fall squarely within the ambit of section 304 and it would be inappropriate to allow section 303 to be used to circumvent the permission requirement provided for in section 304(2) IA 1986. Put another way, the Applicant is not really asking the Court to control the particular exercise of any of the Respondent's functions as trustee (and thus exercise the jurisdiction pursuant to section 303) but is asking the Court to hold her accountable for alleged misconduct.

11. As regards the criteria to be applied to the application for permission pursuant to section 304(2) IA 1986, Ms Innes referred me to *Brown v Beat*, *Borodzicz v Horton* [2016] BPIR 24 and *McGuire v* Rose [2013] EWCA Civ 429. The following principles relevant to the Permission Application can be drawn from those authorities:

    i) The Applicant has a high hurdle to overcome to obtain permission to challenge decisions of the Respondent;

    ii) The Court must be satisfied that the Applicant has a reasonably meritorious cause of action and that the proposed Substantive Application is reasonably likely to result in a benefit to the estate.

iii) Whilst such central factors must be taken into account, they are not exclusive criteria by reference to which the Permission Application must be judged. The Court should take into account the policy behind the leave requirement, which is to apply a filter because of the risk of vexatious litigation;

iv) Regard must be had to the costs and potential benefits of the desired litigation before authorising its institution;

v) Whilst the likelihood of any surplus is a relevant factor, it is not determinative; and

vi) The decision to accept claims in the bankruptcy is quintessentially a matter for an officeholder's discretion, which should only be impugned in circumstances where such decision goes beyond the generous scope of such discretion (*Borodzicz v Horton* at [51]).

The application of those criteria in the present case.

12. In the present case, it is fair to say that whilst serious and somewhat roving assertions of misconduct and breach of duty are made by the Applicant against the Respondent, their alleged content is rather vague, evidenced by the fact that the relief which the Applicant desires to seek is not so much a series of declarations or quantified orders for contribution to the estate but instead, to quote Mr Roach, the Applicant "*wants explanations in the interests of justice"* and desires "*a proper account"*, being dissatisfied with the receipts and payments accounts previously provided to her by the Respondent and with her overall conduct of the bankruptcy. Moreover, although Mr Roach submitted

that the Applicant contended that if the desired claim was allowed to be pursued she would ultimately be owed monies from the estate, he was unable to quantify such alleged likely surplus or identify how it would arise.

13. Having considered the matters raised in the evidence and in the submissions made by Mr Roach, it seems to me that the Applicant's complaints, in respect of which the Applicant contends the Respondent should be held to account, essentially amount to the following:

    i) 8 Northumberland Grove should have been sold for £7,500.00 more than it was – and sooner than it was;

    ii) The proceeds of sale of 8 Northumberland Grove and the rental income from that property should have been sufficient to discharge all the debts and expenses of the bankruptcy, such that the Respondent has therefore misapplied them;

    iii) The Respondent's fees and expenses are said to be "*exorbitant*";

    iv) The Respondent has allowed the estate to "*accumulate debts"* such that they have "*increased to £426,326.32"*; and

    v) The Respondent has included 4 false claims in the list of creditors.

8 Northumberland Grove

14. Notwithstanding the making of the bankruptcy order, the Applicant failed to disclose the existence of this property to the Official Receiver or to the Respondent. Whilst it is unclear as to when she first put it on the market for sale, she did so without notifying her own intended conveyancing solicitors or

potential purchasers of the bankruptcy order. Upon discovering the existence of the property in March 2017 (initially from a secured creditor who had received notice from the Applicant's intended conveyancing solicitors regarding its proposed sale and thereafter from a search of the Land Registry which revealed that the property was registered in her former married name, Dainty Emily Thomas[1]), the Respondent informed the conveyancing solicitors instructed by the Applicant that such sale should not proceed.

15. Subsequently, the Respondent sold the property for £242,500, in September 2018. The difference in the sale price achieved (which the Applicant avers in her evidence was 'negligent') was relatively minimal and was exceeded by the rental income in the intervening period, of £12,613.28. There was therefore no overall loss to the estate caused by the Trustee taking the appropriately cautious step of preventing the imminent sale of a property about which she had only just become aware and in circumstances where, acting on instructions from the Applicant, the conveyancing solicitors refused to give an undertaking to account to the Respondent for the entire net proceeds of sale. It also transpired that the intended sale was purportedly on the basis of vacant possession whereas the property was in fact let to a tenant.

16. In her second witness statement, the Respondent confirms that the net proceeds of sale amounted to £91,851.61. (A slightly lower figure, of £91,796.89, is referred to a second document also headed 'Final Statement of Account' issued by Barker Gotelee Solicitors, bearing the date 22 October 2020 in the footer, the difference between them being attributable to a slightly

[1] Mr Roach explained that the Applicant, born Dainty Cassanova, changed her first name to Deborah by deed poll after her divorce.

greater stated mortgage redemption figure). The Respondent further confirms in her evidence that she has received proofs of debt from 12 creditors totalling £92,629.18 (before statutory interest is applied).

17. Allowing for the applicable statutory interest at 8% and for the fees and expenses that would necessarily have been incurred by the Respondent between the date of her appointment and the sale of the property, as well as the petitioning creditor's costs and the fees owing to the official receiver and secretary of state, subject to the issue of the alleged falsity of the 4 creditor claims addressed below it is impossible to see how it could successfully be asserted that the Respondent misapplied the proceeds by failing to discharge the debts and expenses of the bankruptcy in full from the proceeds derived from this property (even if it had been sold for £250,000, whether in April 2017 or, when it was actually sold, in September 2018).

The Respondent's fees and expenses and the allegation that the Respondent has allowed debts to accumulate to £426,326.32

18. It is readily apparent that the administration of the bankruptcy has been anything but run of the mill. The Respondent has been caused by the Applicant to engage in unnecessary litigation at, so far irrecoverable, expense to the estate.

19. Leaving aside the fact that specific complaint about the Respondent's fees and expenses is not made in the Claim Form or Particulars of Claim (rather the complaint is simply that the estate has "*accumulated a debt of £426,326.32*" which appears to be a figure taken from an estimated outcome statement as at 24 September 2019 based on payment in full and thus included the actual and

projected fees and expenses of the bankruptcy assuming an imminent annulment application), Mr Roach submitted that the Respondent's fees are exorbitant and that fees in the region of £35,000 to £40,000 would have been more reasonable for the administration of the bankruptcy estate.

20. According to the Respondent's Receipts and Payments Account for the period from 27 October 2017 to 1 December 2020, payments of £29,000, £17,550 and £2,189.45 have respectively been made in respect of the Respondent's fees, legal fees and legal disbursements. However, time costs have clearly been incurred which have not yet been discharged. An updated estimated outcome statement as at 2 December 2020, which needs to be read alongside the Receipts and Payments Account for the period from 27 October 2017 to 1 December 2020, identifies then outstanding Respondent's time costs, legal fees and legal disbursements of £44,012.50, £35,980 and £1,825 respectively (plus VAT in each case).

21. Whilst I have not been shown any breakdown of these time costs and expenses (being something about which the Applicant complains), bearing in mind the particular litigation history, they do not strike me as in any way exorbitant or unreasonable in the circumstances. In any event, the allegation that the Respondent has misapplied the proceeds of the estate in respect of the payments already made does not seem to me to have merit. Nor does there appear to be any directly related purpose behind the Applicant's request for a more detailed breakdown from the Respondent. This is not a case in which the Applicant is proposing any application to annul the bankruptcy order and nor does there appear to be any realistic prospect of there being a surplus

available to the Applicant. Indeed, the estimated outcome statement as at 2 December 2020 identifies that a balance in excess of £300,000 would now be required in order to seek an annulment of the bankruptcy pursuant to section 282(1)(b) IA 1986. Instead, as I note further below, the request for greater particularisation appears (ultimately) to be aimed at delaying the Respondent's attempts to realise the Billet Road property. Accordingly, any challenge to the level of fees charged by the Respondent would seem to me to be a matter for the creditors to raise only if and to the extent that any of them should think fit, rather than a matter for the Applicant to be permitted to pursue at the creditors' unrequested expense.

22. In addition, the complaint that the Respondent has allowed the estate to accumulate debts of £426,326.32 reflects a misunderstanding of the corresponding entry in the earlier estimated outcome statement. That total figure included all the known creditors' claims, statutory interest thereon and all the known and estimated fees and expenses of the bankruptcy (including the ad valorem fees payable to the Secretary of State in respect of realisations paid into the Insolvency Services Account, at 15%) as at that date. Furthermore, it is clear from the estimated outcome statement as at 2 December 2020, which expressly attached a Schedule of Creditor Claims, that the estimated total of such claims (based upon figures received from the Official Receiver, those contained in the Applicant's Preliminary Investigation Questionnaire Booklet and the various proofs of debt received) is £124,085.89, before statutory interest (running at 8%).

23. That leaves the issue of the 4 creditors' claims which the Applicant avers are false. The allegations concerning these 4 claims are not particularised individually in the Claim Form or the Particulars of Claim but are addressed in the Applicant's witness statement filed in support of the Permission Application and Mr Roach made corresponding submissions in relation to the same. It was plain from the submissions made by Mr Roach that the allegations being made by the Applicant in respect of these 4 claims bordered on, if not crossed the threshold of, allegations of dishonesty against the Respondent. The 4 creditors' claims included in the Schedule provided by the Respondent referred to above, which Mr Roach submitted on behalf of the Applicant are false, are the following:

i) £118.00 owed to APS;

ii) £3,948.25 owed to Mercedez Benz Financial Service UK Ltd (**Mercedes Benz**);

iii) £457.58 owed to Fashion World; and

iv) £107.00 owed to BT plc.

24. These 4 claims total £4,630.83. As indicated within the Schedule, the debts referable to APS and BT plc have been taken by the Respondent from information provided to her by the Official Receiver and the debts owed to Mercedes Benz and Fashion World are based on proofs of debt received by the Respondent. Accordingly, only the debts owed to Mercedes Benz and Fashion World (totalling £4,405.83) are included within the total figure of £92,629.18 that I have referred to above. Even if these 2 claims were rejected by the

Respondent, the proofs of debt received would still total £88,223.35. Accordingly, allowing for statutory interest and for the necessarily incurred fees and expenses of the administration of the estate in bankruptcy, it is still impossible to see how it could successfully be asserted that the Respondent has misapplied the proceeds of 8 Northumberland Grove by failing to discharge the debts and expenses of the bankruptcy in full from them.

25. Moreover, whilst the Applicant has obtained documents from Mercedes Benz and Fashion World which the Applicant relies upon to seek to undermine their respective claims against the estate, those documents do not go as far as the Applicant contends (i.e. they do not support the allegation that the claims are false):

i) In the correspondence between the Applicant's solicitors and Mercedes Benz, Mercedes Benz indicated that they were "*having difficulty"* locating the Applicant's account with the details provided by her solicitors and asked for confirmation of the agreement number and the vehicle registration number. The Applicant's solicitors responded saying that the Applicant is unable to recall the vehicle registration number and nor did they provide any agreement number. The correspondence exhibited by the Applicant does not therefore corroborate the Applicant's claim that no monies are owed to Mercedes Benz or her subsequent claim (made in her witness statement in reply) that Mercedes Benz has confirmed that that is the position.

ii) Similarly, the response (or lack of substantive response) from Fashion World, to the Applicant's solicitors' email enquiry in relation to the

debt, does not support the Applicant's contention that such claim is false. The email response referred to appears to be a generic (and possibly automated) response simply stating that the External Debt Team aimed to provide a response within 5 working days.

26. I should also note that the Applicant further avers that the proof of debt submitted by the London Borough of Barking & Dagenham for £480 should not have been admitted (although Mr Roach did not include this claim within the group of 4 alleged 'false creditors'). But again, it does not seem to me that even if this claim should have been rejected, it would make a material difference to the Applicant's position and similarly the correspondence which the Applicant relies upon does not substantiate her claim that such debt does not exist. Whilst the Applicant avers that the council has not yet located any debt account in her name, the correspondence relied upon includes a request from the council to provide a council tax reference number, which was not supplied, and (contrary to the assertion in her witness statement in reply) there is no correspondence from the council that such liability does not exist.

27. I also note that whilst the Particulars of Claim and the Applicant's witness statements variously allege that the estate has suffered losses as a result of the Respondent's conduct, the only quantified loss that has been alleged is the £7,500 difference in value in the sale price of 8 Northumberland Grove. For the reasons I have identified above, I do not consider that such a claim would be meritorious. In any event its costs would be wholly disproportionate.

Conclusion

28. In all the circumstances, it does not seem to me that the Applicant can be said to have a reasonably meritorious cause of action or that her Substantive Application would be reasonably likely to result in a benefit to the estate.

29. In addition, I take into account the fact that the Applicant has already caused 3 "totally without merit" applications to be pursued against the Respondent, for which she has yet to reimburse the estate for the costs and nor could Mr Roach offer any comfort in relation to the costs which would be incurred if the desired litigation was permitted to be pursued. In those circumstances, any grant of permission would be extremely likely to operate to the unjustifiable detriment of the estate and its creditors.

30. In refusing to grant permission I also take into account that the real purpose of the Applicant's desire to pursue to the presently proposed litigation plainly appears to be a desire to stifle the Respondent's attempts to realise the value of the Billet Road property for the benefit of the estate. That is evident from the litigation history I have already referred to (including the Applicant's unlawful re-entry to the property which will no doubt put the estate to yet further costs), the terms of the Claim Form itself (which seeks an order restraining the Defendant from selling the property until its final determination), the content of the Applicant's witness statement (which avers that sufficient funds have already been realised to pay off her debts and therefore it is no longer necessary to sell the Billet Road property) and was further highlighted by a submission made by Mr Roach in reply that the Applicant wishes to stay in such property "*at all costs"*. Accordingly, in my judgment, the proposed Substantive Application is the very type of proceedings for which the filter in

section 304(2) was deliberately provided by the legislature and the Respondent and the creditors of the Applicant's estate in bankruptcy should be duly protected from having to incur the costs of the same.