Neutral Citation Number: [2017] EWHC 11 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
IN BANKRUPTCY

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

Date: 11 January 2017

Before:

MR ROBERT HAM, QC
(sitting as a deputy judge)

IN THE MATTER OF SHEIDA ORAKI
AND IN THE MATTER OF ARDESHIR ORAKI
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between

(1) SHEIDA ORAKI
(2) ARDESHIR ORAKI *Applicants*

- and –

DEAN & DEAN
(a firm taken over by the Law Society) *Respondent*

The 1st Applicant in person by telephone
Mr Leon Hines (Hines & Co) solicitor for 2nd applicant
Mr John Briggs (instructed by DAC Beachcroft LLP) for the trustee in bankruptcy

The respondent did not appear

Hearing date: 19 December 2016

JUDGMENT APPROVED

MR ROBERT HAM, QC:

1. This is a sequel to my judgment of 23 October 2012, neutral citation [2012] EWHC 2885 (Ch), which contains an account of the background to this sad case.

2. I said in that judgment that (a) it was quite clear that the assets of the bankrupt estates were more than sufficient to discharge all possible claims and costs that might fall on them, (b) the sooner the bankruptcies were ended the better and (c) too much judicial time had already been devoted to this matter. With that end in mind, I made an order dated 21 January 2013 conditionally annulling the two bankruptcy orders in this matter, on terms intended to protect the position of other creditors and the trustees in bankruptcy in respect of the costs incurred by them.

3. Unfortunately, the conditions have not been satisfied, so that the bankruptcies go on, well into their second decades; and there have more proceedings. They include (a) an unsuccessful appeal to the Court of Appeal against my order: [2013] EWCA Civ 1629; and (b) a claim for professional negligence against the predecessors of the present trustee in bankruptcy, which has involved (i) a strike out application to Deputy Master Clark (as she then was), (ii) an appeal to Mr Nicholas Strauss, QC (sitting as a Deputy High Court Judge) against her order, (iii) an eight-day trial before Proudman J [2015] EWHC 2046 (Ch), who dismissed the claim; and (iv) an appeal to the Court of Appeal, which has reserved judgment. There have also been various applications to Bankruptcy Registrars.

4. The costs generated are enormous, and it is no longer clear that the assets of the bankrupt estates are sufficient to discharge all claims and costs that may fall on them. The costs of the trustees alone are said to amount to over £700,000, many times greater than the judgment debt of less than £20,000, on which the bankruptcies were based, and which was set aside as a result of my order. I understand that Proudman J ordered the Orakis to pay the costs of the proceedings before here, and there are further bankruptcy proceedings against them in respect of those costs.

5. The Orakis now apply to have the bankruptcy order annulled on the ground that it was made without jurisdiction under section 264 of the Insolvency Act 1986 and/or under section 375(1) of that Act for a review and/or variation and/or rescission of my previous order. They rely on two points, but before considering them I must say something about the parties to the application.

6. The application was not served on the current trustee in bankruptcy, Michaela Hall, but her solicitors having got wind of it she attended by counsel when the matter was first listed before me on 28 November 2016. Despite strong objections to the presence of representatives of the trustee, I indicated that I would in any event have adjourned the matter to give the trustee an opportunity to attend to assist the court. The Insolvency Rules provide for the trustee to be notified and attend the hearing on an application to annul a bankruptcy order that ought not to have been made (see rules 6.206(4) and 6.210(1)) and similar consideration apply to an application under section 375(1). It is only right that the trustee should be joined, so that provision can be made for her costs and expenses, and to avoid the risk that the trustee does not hear the bankruptcy order has been set aside: see *Sands v Layne* [2016] EWCA Civ 1159 at [48]–[51] *per* Arden LJ. The trustee is, moreover, an officer of the court and it is right that her or his assistance should be available to the court, if required. I gave directions for the application and material in support of it to be served on the trustee, and laid down a timetable for evidence.

7. The first substantive ground relied on is simply this – that the judgment on which the bankruptcy orders were based was obtained by fraud. It is said this means that (a) the judgment was void, (b) there was no basis for making those orders, (c) they were made without jurisdiction and (d) they are nullities. It is often said that fraud unravels all, and that, once proved, it vitiates judgments as well as contracts and other transactions, and the Orakis rely on these principles.

8. In the present case, I am willing to accept that the original judgment was obtained by fraud. But it does not, in my opinion, follow that the bankruptcy orders based on that judgement were void:

(1) The Insolvency Act 1986 and the rules contain specific provision for getting out of bankruptcy, whether a bankruptcy which ought not to have been made or otherwise, through sections 282 and 375(1) both of which give the court a discretion. It is clear from the terms of section 282(4)(a) that where a bankruptcy order that ought not to have been made is annulled acts done in the interim are valid not void, a conclusion that is in my judgment inconsistent with the Orakis' case on this point.

(2) In *PricewaterhouseCoopers v Saad Investments Company Ltd (Bermuda)* [2014] UKPC 35 the Supreme Court of Bermuda made a winding up order it had no jurisdiction to make. The Judicial Committee of the Privy Council nevertheless held at [25] that the winding up order must, at least until set aside by a subsequent order, be treated as effective in law, because an order made by a court of unlimited jurisdiction must be obeyed unless and until it has been set aside by the court. There is no concept of *ultra vires* in the case of courts of unlimited jurisdiction, such as the High Court.

(3) There is good reason why a bankruptcy order should not be automatically void, even if based on a judgment obtained by fraud, namely the need to safeguard the interests of third parties other than the petitioner and the bankrupt, including the trustee in bankruptcy and other creditors. The legislation achieves this by giving the court a discretion under both sections 282 and 375(1).

For these reasons, I reject the Orakis' first substantive argument.

9. Their second argument is that I was misled by counsel at the previous hearing, and that I would not otherwise have made the order that I did. The point, which is developed at some length in Dr Oraki's evidence, is that during the hearing in July 2013 counsel for the trustee in bankruptcy told me that the trustee had adjudicated upon and accepted proofs of debt lodged by a number of creditors. It turns out that this was not the case. However, counsel corrected himself at the hearing in October 2013, when I handed down judgment and any misconception had been removed before my order was made. In any event, even if I had been misled, my underlying concern, that creditors and putative creditors should not be prejudiced, would have remained the same, and Mr Hines was unable to convince me it would have made any difference, if I had in fact been misled. I, therefore, also reject the second substantive argument advanced before me.

10. I should add that Mr Hines told me that he wished to rely on other aspects of the conduct of the trustees in bankruptcy, but that there was some overlap with the complaints made in the separate proceedings tried by Proudman J and under appeal to the Court of Appeal. I ruled that it was inappropriate for me to hear anything where there might be such an overlap, before the judgment of the Court of Appeal was delivered. However, while not wishing to encourage further expense which seems most

unlikely to be fruitful, I am prepared to hear further argument on this aspect of the matter after the Court of Appeal has given judgment.

11. When I hand down this judgment I propose, therefore, simply to adjourn the matter with liberty to restore when the Court of Appeal has given judgment. The judgment will be handed down on 11 January 2017 at 12 o'clock noon. No attendance is required, and I will hear no submissions on that occasion. I will extend the time for applying for permission to appeal until the restored hearing.