

Neutral Citation Number: [2018] EWHC 1226 (Ch)

Case Number 0168 of 1991

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY LIST (Ch D)
IN THE MATTER OF TERENCE PHILIP RAMSDEN
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 18 May 2018

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE AGNELLO QC

Between :

TERENCE PHILIP RAMSDEN

Applicant

- and -

THE OFFICIAL RECEIVER

First Interested party

**THE COMMISSIONERS FOR HER
MAJESTY'S REVENUE AND CUSTOMS**

Second Interested Party

Mr James Ramsden QC and Mr Steven McGarry of Counsel (instructed by
Muldoon Britton) for the Applicant

Mr Matthew Parfitt (instructed by HMRC) for the Second Interested Party

Hearing dates: 13 April 2018

JUDGMENT

Introduction and preliminary issue

1. This is the hearing of the preliminary issue directed to be heard in relation to an application to annul a bankruptcy order made on 5 March 1992 on the grounds that the order ought not to have been made (section 282(1)(a) Insolvency Act 1986). The preliminary issue was directed to be heard by Insolvency and Companies Court Judge Jones on 13 October 2017 when the Judge heard the original preliminary issue relating to delay and prejudice.

2. The preliminary issue I have to determine is as follows,
'Whether the court would grant an annulment of the bankruptcy order made on 5 March 1992 assuming the statutory demand and the petition were not served, in so doing to decide whether or not there is a reasonable prospect (a) of the Applicant being able to challenge the petition debt and the value of the security held by HMRC, and (b) to obtain an annulment in the event that other outstanding bankruptcy debts and expenses remain unsatisfied'

3. I am grateful to all Counsel for their submissions, skeletons, assistance and in particular for their ability to deal with my constant interruptions. Whilst such interruptions and interventions by me may seem disruptive, replies given to me really assist in my testing the submissions made and determining issues in this case . I am especially grateful to Mr Ramsden QC who dealt ably with all I threw at him in this respect. In this judgment, I will call the Applicant, the Debtor as this enables him to be distinguished from his Leading Counsel, Mr Ramsden QC, who shares his name. The use of the word 'Debtor' is merely a convenient shorthand and does not reflect, as I explained at the start of the hearing, any preconceptions in my mind about the case and what I had to determine. I extend my thanks to Mr Ramsden's junior, Mr McGarry who also dealt with queries raised by me, in particular in relation to the security issue.

4. Mr Ramsden expressed on behalf of his client, the Debtor, some concern that this matter had not been reserved to Judge Jones and dealt with by him rather than some other Judge (or Deputy). I had already considered this point bearing in mind the use by Judge Jones of the word 'adjourned' when formulating the preliminary issue before the court today. However, upon reading his judgment carefully it did not seem to me that the Judge intended this matter to be dealt with as a continuation of the original hearing before him. This view is confirmed by the fact that the order of the Judge dated 16 October 2017 does not reserve the matter to him either. Mr Ramsden stated that his client expected this matter to be heard by Judge Jones and he felt some concern. However Mr Ramsden did not seek to make an application that the matter be adjourned to be heard by Judge Jones. I pointed out that in so far as Mr Ramsden was making this point, on behalf of his client in order to preserve and make some appeal point on this ground, then two matters were of relevance. Firstly, since the moment the Debtor and his representatives ascertained that this case was listed before me rather than Judge Jones, there has been no application or communication to the Court in relation to the Debtor being so concerned . I note as well that I have been chasing skeletons pretty much actively in this matter from about two days prior to today's hearing. Secondly, Mr Ramsden makes no application before me today. Mr Ramsden expressly stated that he did not have instructions to make such an application. I am satisfied that this matter was directed by Judge Jones to be heard by one of the

Judges or Deputy Judges rather than an adjourned hearing of the original preliminary issue before him and I shall proceed to hear the matter.

Short Summary of facts

5. It is worth setting out a short summary of the relevant facts in chronological order in this case. I have deliberately not dealt with any issues relating to service in the short summary because the preliminary issue requires me to assume that there was no service of either the statutory demand or the petition. As I have indicated to the all Counsel, I will deal with the assumption of non service without considering or speculating as to the background to the service issue.

6. The Debtor was a financial instrument trader operating in the early 1980s who then took over a company, Glenn International PLC in 1984. From about 1985, the Debtor was the subject of investigations relating to his tax affairs. From 1985, Mr Alcock, of what is now HMRC's Special Compliance Office, was investigating the Debtor's tax affairs. At some stage in 1996, Mr Alcock was suspended from his position at HMRC and in February 1997, he was convicted of various offences including corruption in relation to the treatment of tax assessments whereby he would accept payment from parties in order to agree to reduce their tax assessments. There is no evidence that the Debtor's case formed part of the prosecution case in relation to Mr Alcock and Mr Ramsden quite fairly said the Debtor did not so allege. However, Mr Ramsden did rely upon Mr Alcock's conduct as being one of the grounds for the miscarriage of justice forming part of the Debtor's case thereby enabling the Debtor to invite this Court to go behind the tax assessments. I will come back to that later in this judgment.

7. A number of assessments were raised by HMRC as against the Debtor. According to his evidence, (paragraph 37 witness statement dated 22/12/16) the debtor appealed these assessments. He certainly believed that the 1981/82 assessment would have been appealed had it been received. I have little information from the Debtor's evidence as to what was the outcome of these various appeals which according to the Debtor also sought a postponement of the tax due under the assessments as well as an appeal. The two particular assessments relevant in this case (because they form the petition debt) is an assessment dated 18 November 1986 in the sum of £10,995,252.50 for the tax year 1986/87 (year end 5/4/87) and an assessment dated 5 April 1988 for the tax year 1981/82 (year end 5/4/82) in the sum of £5,938,236.50 plus interest thereon. According to the Debtor's evidence, he appealed the assessment dated 18 November 1986 when this was received. For some reason there was no application seeking to postpone the tax due thereon. The Debtor does not explain in his evidence what steps if any were taken to seek to apply to postpone the tax on the 1986/87 assessment prior to the issue of the Petition on 20 November 1991.

8. In 1988, HMRC took substantial documentation from the Debtor in relation to his affairs. There are pending proceedings relating to these documents and additionally, as is set out below, the absence of these documents is heavily relied upon by Mr Ramsden in relation to the miscarriage of justice submissions. I will return to these later in this judgment. The bankruptcy petition was presented

on 20 November 1991 based upon a statutory demand dated 14 October 1991. The bankruptcy order itself was made on 5 March 1992, being the first hearing of the petition. The Debtor was not in attendance or represented. By letter dated 26 March 1992 (paragraph 61 Debtor's witness statement), the Official Receiver contacted the Debtor seeking his cooperation in dealing with the bankruptcy order which had been made. On 7 April 1992, the Debtor met with the Official Receiver. After a period of suspension, the bankruptcy was discharged on 18 October 1996. In 1996, HMRC destroyed the documents which it had taken from the Debtor. When these documents went 'missing or 'astray' and when this was notified to the Debtor is not entirely clear, but for present purposes, those documents were not available to the Debtor from 1988. From 1996, those documents were not available because they had been destroyed. It is clear that the Debtor relied upon the fact that his documents had been taken and not returned during the hearing before the Commissioners in 2004.(exhibit TPR01, p 28 et seq)

9. In 1999, the Debtor engaged an 'energetic, young accountant, Peter Gregory' at Fox Associates (paragraphs 85 – 87 of Debtor's witness statement). By letters dated April 2000 to HMRC the Debtor sought to appeal the 1981/82 assessment and also seek a postponement of the 1986/87 tax assessment which had already been appealed by him back in 1986. HMRC initially took the position that any such application to appeal/postpone tax could not be made by the Debtor, but only by his Trustee in Bankruptcy ('the trustee'). Eventually, the Debtor obtained the consent of the trustee to support and pursue the appeals as well as obtaining an assignment in July 2001. In around June 2002, the application was made seeking to appeal in relation to the 1981/82 assessment which included the basis that the assessment had not been served on the Debtor as well as an appeal itself. Additionally, an application seeking the postponement of the 1986/87 assessment. These applications were supported/made by the trustee.(paragraphs 89 – 93 of the Debtor's witness statement)

10. The hearing of these applications took place on 10 November 2004. As is clear from the later judicial review document, the Debtor relied upon the fact that the HMRC documents had gone 'astray' and that these documents were needed by him to deal with the various applications. The position and the conviction of Mr Alcock was also relied upon by the Debtor before the General Commissioners. Judgment was delivered on 7 December 2012 refusing all the applications of the Debtor. The Debtor then sought to apply by way of judicial review, in relation to the decision of the General Commissioners. The judicial review application document is at exhibit TPR01, page 28). It is this document which makes it clear that issues relating to loss of documentation as well as the position of Mr Alcock had been before the General Commissioners. The judicial review application appears to be in relation to the 1981/82 assessment application rather than in relation to all applications which had been before the General Commissioners. Therefore in relation to the 1986/87 assessment, there is no postponement. I have no further details from the Debtor as to what happened in relation to the appeal which had already been launched in relation to 1986/87. Mr Parfitt has on instructions informed me that HMRC are not aware of any of the appeals having succeeded. The Debtor produces himself no evidence relating to what happened to these appeals, including the 1986/87 which is one of the two

forming the petition debt. The debtor states in his evidence that the judicial review application was abandoned by him, due to lack of funds for representation.

11. Pre actions correspondence in relation to the annulment application began in August 2014, but the application itself was only made on 23 December 2016. In support of the application, there is a lengthy witness statement from the Debtor and I have obtained the matters set out in this summary of the relevant facts from the Debtor's evidence and exhibits. HMRC's files relating to the bankruptcy were destroyed in 2012. Additionally, the court files of the bankruptcy proceedings have also been destroyed.

Law relating to Annulment Applications

12. The petition is based upon two assessments neither of which has been set aside. I will come back to the significance of the assessments and in particular whether the Debtor has reasonable prospects to challenge those assessments which form the petition debt. However I start with the principles in relation to annulment applications. Although this is the hearing of a preliminary issue, it is important to set out the annulment provisions because the preliminary issue requires me to answer the question as to '*whether the court would grant an annulment of the bankruptcy order made...*' The recent case of *JSC Bank v Kekhamn [2015] 1 WLR 3737* provides a useful summary of the approach to annulments. This was an appeal to Mr Justice Morgan from the decision of Chief Registrar Baister dismissing an application to annul a bankruptcy order made on the debtor's petition. The actual facts in that case are not necessary for current purposes. At paragraph 88, the Judge states that on an application to annul, the court normally needs to decide

'(1) what were the grounds existing at the time (question 1) : whether on these grounds, the order ought not to have been made (question 2) and (2) if the answer to question 2 is "the order ought not to have been made", whether it should annul the order: (question 3) ['the discretion question' – my comment]

13. In adopting this approach to the preliminary issue, in relation to *Kekhman* question 1, the preliminary issue formulation requires me to assume that the statutory demand and the petition itself were not served. Those are therefore the grounds existing at the time for the purposes of the preliminary question in this case. In relation to *Kekhman* question 2, I asked Mr Parfitt, Counsel for HMRC, whether he was going to assert that in a case where there has been no service of the petition or the demand, the order would have been made, being the reverse way of expressing the order ought not to have been made. Mr Parfitt, very sensibly and correctly in my judgment, accepted that on the basis of the assumption, in this case where there had been no service of those two documents, the Court would not make a bankruptcy order at the hearing. He was keen to assert that other orders could have been made at that hearing. In my judgment, the lack of service means that *Kekhman* question 2 has been established and the order '*ought not to have been made*'. So the determination of the preliminary issue and the matters upon which I heard most of the submissions from both parties relates to the exercise of discretion, being *Kekhman* question 3. For my purposes, the issue is, would the court grant an annulment in the exercise of its discretion, whilst specifically determining whether there is a reasonable prospect of the Debtor

challenging the petition debt, the value of the security held by HMRC and considering the other outstanding bankruptcy debts and expenses.

14. Most of the argument before me centred on the prospects of the petition debt being challenged by the Debtor. As I will set out below, the security issue had ultimately, in my judgment, little impact upon the prospects of the Debtor being able to challenge the value placed upon the security held by HMRC. There was some debate relating to the position of creditors, with Mr Ramsden submitting that the evidence demonstrated at least some support for arrangement that no other creditors save HMRC had been 'agreed' by the trustee. There was no evidence that the trustee actually adjudicated upon any of the creditors claims in this bankruptcy. I will return to the creditors point once I have dealt with the prospects of the Debtor being able to challenge the petition debt. The ability of the Debtor to be able to challenge the petition debt is in my judgment extremely relevant to the exercise of the discretion in section 282. This is not to be taken as being the determinative factor in this or indeed in any case. The authorities demonstrate that even in cases where clearly the order ought not to have been made, the Court frequently does, in its discretion, decide not to annul the bankruptcy order.

15. In *Askew v. Peter Dominic* [1997] BPIR 163, the Court of Appeal considered whether to grant leave to appeal in relation to what would have been a second appeal of the order refusing to grant an annulment of the bankruptcy order dated 4 February 1993. As the judgment sets out, on the original appeal from District Judge Wayne to Judge Cooke, the Judge considered that the statutory demand and the petition were 'sheer nonsense' because they both relied upon a judgment which had been obtained by the creditor against the bankrupt's husband rather than against the bankrupt. However the Judge held that, although the bankrupt was not a judgment creditor, she was clearly indebted to the creditor in the sum claimed and in the exercise of his discretion, the Judge refused to annul the bankruptcy order. The effect of annulling the order would be to compel the creditor to serve a fresh statutory demand which the bankrupt could not satisfy or set aside. Leave to pursue the second appeal was refused. This decision is in many ways reflected in the preliminary issue in that it expressly requires me to determine whether there are reasonable prospects for the Debtor to challenge the petition debt.

Are there reasonable prospects of the debtor being able to challenge the petition debt ?

16. As already set out in this judgment, the petition debt relates to two assessments, being 1986/87 assessment for £10,995,252.50, less credit of £2,023,000.00 with interest thereon in the sum of £4,407,342.56 and an assessment for 1981/82 in the sum of £5,933,236.50 plus interest thereon in the sum of £2,366,386.79, plus national insurance contributions in the sum of £326.66 and providing credit for the security held valid at £19,500. The petition debt therefore totals £21,547,545.01. As set out in the summary of facts above, the 1986/87 assessment was the subject of an appeal launched by the Debtor in 1986. This is clear from the Debtor's own evidence at paragraph 37 as well as being

confirmed in a letter dated 11 June 2002 from the Debtor's trustee in bankruptcy to Mr R McCann of the Inland Revenue Special Investigations Section (Page 56 of TPR01). The Debtor relies upon the contents of the letter as part of his evidence. Significantly, the appeal to the 1986/87 assessment therefore commenced well prior to the 40,000 odd documents being handed over to HMRC which then subsequently went 'astray'. The documents were handed over to HMRC by the Debtor in 1988. The significance of this is that well prior to the documents being handed over, the Debtor issued an appeal to one of the two assessments which form the basis of the petition debt.

17. The evidence before me does not provide details as to what occurred in relation to that appeal. Mr Ramsden sought to persuade me that it was the handing over of the papers to HMRC in 1988 and their loss by HMRC which meant that there was a miscarriage of justice because the Debtor could no longer deal with the appeal without his papers. He submitted that all that was done in 1986 was issue the appeal itself rather than actually prepare and consider its grounds with all the relevant documents in support of the same. There is no evidence to support this submission, but it seems to me that certainly at the time that the appeal was lodged, it was done with professional advisors retained by the Debtor. It is hard to imagine that such an appeal would have been launched without someone advising the Debtor as to its merits. Additionally, as is set out in the pleaded 'miscarriage of justice' part of the amended pleading (paragraph 27A) the Debtor complains that the assessments were raised by Mr Alcock without giving credit for the losses. In appealing the 1986/87 assessment in 1986, the Debtor must have been relying upon those losses.

18. As to the inability of the Debtor to pursue the appeals later, (at least the 1986/87 appeal lodged in 1986 and the appeal of 1981/82 which was only made in 2000/2) I specifically raised with Mr Ramsden what was set out in the letter dated 11 June 2002 from the Trustee in Bankruptcy to HMRC (p56 of TPR01). Referring to the late appeal to be made in relation to the 1981/82 assessment which the Debtor asserted he had not received, the letter states, *'The information made available to the Trustee makes it more than clear that there is every justification for making an application for complete postponement of all tax for 1981/82.'*...

'I am advised that the said information makes it clear that Mr Ramsden did not receive income that would be assessed for 1981/82 and there are the strongest possible grounds for ensuring that such an application for postponement of tax is justifiably being made.'

'The Agent acting on behalf of Mr Ramsden at the time the assessment was raised for 1986/87, lodged an appeal, which was accepted by the Inland Revenue and he then went on to lodge an application for partial postponement of tax.'

"Accounting information now provided, demonstrates that Mr Ramsden did not receive any taxable income for the year of assessment 1986/87, and consequently an application is to be made to the General Commissioners for a further request for postponement of tax in accordance with that legislation. As stated, I have been provided with sufficient evidence to consider that such an application will be valid.'

19. Upon reading the contents of this letter relied upon by the Debtor as part of his evidence, it appears that the Debtor had provided in 2002 evidence which enabled the Trustee to make the statements which he made in no uncertain terms about the merits of the appeals being made. In my judgement, when the contents of this letter is considered, it is simply not possible to conclude, as Mr Ramsden seeks to persuade me, that it was the loss of the documents which created a miscarriage of justice. The letter does not support a submission that the lack of these documents meant that the Debtor was unable to deal with his appeals either in 2002 or earlier.

20. The Debtor issued appeals in relation to the 1986/87 assessment in 1986 and also an appeal relating to the postponement issue in 2002. The Debtor has also made an appeal/application in relation to the 1981/82 assessment in 2002. The judicial review application refers to the lack of documentation and clearly that fact was relied upon by the Debtor at the hearing before the Tax Commissioners. As set out in the above summary of facts, the 2002 applications/appeals were heard by the Tax Commissioners in late 2004 and dismissed in December 2004. A judicial review was then launched but was later abandoned by the Debtor. The assessments which form the petition debt have therefore not been set aside despite the attempts by the Debtor described above.

21. Having now set out the position as appears from the evidence in relation to the appeals made and their outcome in some detail above, I now turn to the relevant case law in this area. Mr Parfitt relied upon the case of *Chamberlin v. Revenue and Customs Commissioners* [2011] EWHC 271 as being a recent case setting out the well know principles in relation to the approach of the bankruptcy courts to tax assessments. Mr Ramsden did not dispute the general principles, but sought to rely upon the Debtor's case being one of those falling under the 'miscarriage of justice' exceptions. Paragraph 16 of the Chancellor's judgment in that case states,

'The interaction of the insolvency regime and the various tax regimes has led to a well established practice to the effect that courts involved in the former leave the establishment of a liability in tax to the statutory procedure applicable by the latter. For instance the bankruptcy court does not usurp the jurisdiction of the VAT Tribunal by itself enquiring into matters within the statutory jurisdiction of the latter. This practice is well illustrated by Re Calvery [1899] 2 QB 145 and Lam v. Inland Revenue [2005] BPIR 301'

22. In the referred case of *Lam v. Inland Revenue*, Mr Lam was served with a statutory demand seeking payment of arrears of assessed tax. A petition followed. Mr Lam had protested that the assessments were erroneous and he had appealed against some but not other of the assessments. The Registrar made a bankruptcy order as against Mr Lam and he appealed that order. Mr Justice Blackburne stated,

'I understand that, but I have to remind myself (as [Counsel for the Inland Revenue has submitted) that authority clearly establishes that, where assessments to tax are concerned, Parliament has provided a clear and exclusive machinery for considering appeals against them. The statutory machinery does provide for appeals

to the court. That machinery, as [Counsel] correctly submits, is an exclusive machinery and an assessment, when made, is final and binding if it is not appealed. If it is appealed, the determination of an appeal is likewise final and binding, subject to any application there may be, in appropriate circumstances, to the court. In particular, she submits, it is not for the Bankruptcy Court to go behind those matters. As [Counsel] also submits, there is a wealth of authority to that effect, stretching back (in relation to predecessors of the current legislation) to the latter part of the 19th century.

13 [Counsel] is correct in that submission. It is not open to the Bankruptcy Court to review the manner in which the assessment has been made, much less to investigate the merits of the assessment. I can see that if there were evidence that the assessments had been made in some fraudulent or collusive way, or there were some other glaring miscarriage of justice, it might be that the Bankruptcy Court could go behind the assessment and not make the Bankruptcy Order based upon the debt created by the unpaid tax resulting from the assessment, but there is no suggestion of that in this case. On the contrary, as I have endeavoured to show, the Revenue have entertained attempts by Mr Lam, personally and through advisers, to reconsider the amount of the assessments, but have not been persuaded on the information that has been provided that they should do so.'

23. Mr Ramsden seeks to persuade me that there is in this case some 'miscarriage of justice', or using Mr Justice Blackburne's words, some 'glaring miscarriage of justice'. Mr Ramsden does not rely or seek to put forward a case that the assessments had been made in some fraudulent or collusive way. He does not rely on evidence in relation to Mr Alcock in that respect. He seeks instead to persuade me that this is a miscarriage of justice case. That would trigger a discretion ('might annul'), in the event that a miscarriage of justice matter is in evidence.

24. The more recent case of *Yang v. the Official Receiver [2017] EWCA Civ 1465* confirmed this approach in relation to going behind liability orders (rather than tax assessments). At paragraph 55, Lady Justice Gloster stated , '*Dictates of certainty and expediency require that a bankruptcy court should not go behind the liability orders, except in the event of fraud or some miscarriage of justice ...*' I am not certain that there is any real difference between the wording used by Lady Justice Gloster in *Yang*, as opposed to that used by Mr Justice Blackburne in *Lam*. The case of *Yang* involved whether an annulment could be made in relation to grounds which had not existed at the time or whether the correct approach was to rescind the order. So to that extent, the Court of Appeal were not directly dealing with the point I have to deal with and which was directly dealt with by Mr Justice Blackburne. However as I have already said, I am not sure that anything turns on the difference in wording. No one has sought to persuade me that there is a difference between the two cases.

25. Mr Ramsden invited me to determine that there were reasonable prospects of the Debtor being able to challenge the petition debt (being the two assessments) on the basis of the Debtor's case that there were miscarriages or a miscarriage of justice. Both Counsel took me through paragraph 27A and B of the Debtor's amended pleading which sets out the grounds of the miscarriages of justice. In dealing with the points raised, I summarise, without meaning any disrespect to the drafter, what each provision contains by way of support for the miscarriage of justice pleaded. Paragraph

27A commences with the general assertion that HMRC , though Mr Alcock was aware that the relevant tax assessments were wrong and unsustainable and then goes on to list particular reasons. Subparagraphs (i), (ii) (vii) (xiii) are assertions that HMRC had been provided, through Mr Alcock with the relevant documents demonstrating that according to the Debtor there were tax losses for the relevant years and therefore the assessments should not have been raised in the sums set out therein. (ii) refers to the relevant trading and personal accounts which had been provided and (vii) refers to tax mitigation investments which the Debtor asserts should have been taken into account in the tax assessments. (xiii) is a general concluding sub paragraph. Sub paragraph (iii) sets out the fact that appeals were made. Sub paragraphs (iv) and (v) relate to the documents taken by HMRC , being the documents taken in 1998 and not returned (eventually destroyed) well as third party documents which had been obtained by HMRC. Sub paragraph (vi) is an assertion of the 1981/82 assessment being made out of time. I will deal with the above before turning to the remainder of the paragraph.

26. Mr Parfitt submits that in relation to (i), (ii), (iii), (iv), (v), (vi), (vii) and (xiii), there are all arguments seeking to complain that the assessments are wrong and accordingly, such matters are to be determined by the relevant Tax Tribunal or hearing before the Commissioners. Mr Ramsden submits that HMRC have not really replied in their pleading to paragraph 27A and have not provided an explanation as to why the tax losses which Mr Alcock was aware of were not taken into account in the tax assessments. This is a matter, Mr Ramsden submits, which needs to be determined and therefore, the matter should proceed to trial, or in essence a full hearing. I questioned Mr Ramsden in order to understand the submission he was making as to how the particulars which form the basis of the Debtor's asserted miscarriage enabled me to go behind the assessments rather than follow the general principles so clearly laid out in both *Lam* and *Chamberlin*. He relied on the failure of Mr Alcock who was later convicted of fraudulent offences to take into account the tax losses and instead raised the assessments as well as relying on the inference, Mr Ramsden submitted, which arose from Mr Alcock's conduct (subparagraph (x)). Mr Ramsden also submitted that the fact that the assessments in this case were raised by Mr Alcock later found guilty as a corrupt officer of HMRC does make this case exceptional. Mr Ramsden accepted that the issue relating to Mr Alcock was raised before the Tax Commissioners (as was the missing documents issue) but submitted that the Tax Commissioners' approach would be different to that to be taken in this court and that they (the Tax Commissioners) were in some way constrained to follow the legislation.

27. I was provided with no authority to support that submission and in many respects it runs counter to the principles set out in both *Lam* and *Chamberlin*. Those cases would hardly set out as a general principle that the bankruptcy court should leave tax challenges to the relevant Tax Tribunal if, as Mr Ramsden submitted, the Tax Tribunal approach was in some way less able to take into account the points made in paragraph 27A, (i), (ii), (iii), (iv), (v), (vi), (vii) and (xiii). As Mr Parfitt submits, these points appear to have been available and made to the Tax Tribunal (see the judicial review document in this respect). Mr Ramsden also accepted, when asked by me, that the failure to take into account the tax losses would be a ground to appeal an assessment. The question he submitted is whether there should be an annulment before that question is dealt with. In his submission, the Debtor could seek

to challenge the assessments before the Tax Tribunal but that should be with the benefit of the court's findings on the annulment. I questioned Mr Rasmden as to why the challenge to the Tax Tribunal cannot take place prior to any annulment and he submitted that the question is what is the fairer context in which a challenge to the assessments should take place and Mr Ramsden submitted that the fairer context is to annul the bankruptcy order.

28. It was not really challenged by Mr Ramsden that as there is no time limit on tax assessments, if an annulment is granted, then HMRC can seek to serve a fresh statutory demand and thereafter present a fresh petition based upon the same two assessments. Mr Parfitt relied on this point as part of why the annulment should not be ordered. In my judgment, those parts of paragraph 27A do not persuade me that they present reasonable prospects for the Debtor to challenge the assessments, based upon an asserted miscarriage of justice. This is because the various sub paragraphs raise issues which were before the Tax Commissioners in 2004 and despite those points, the Tax Commissioners dismissed the various applications. Accordingly, in my judgment the Debtor does not have reasonable prospects of challenging the assessments on the basis on these alleged miscarriages of justice. The facts relied upon are matters which were before the Tax Commissioners in 2004. Mr Ramsden did submit that the hearing before the Tax Commissioners did not consider the actual merits of the appeals because in relation to the 1981/82, the Debtor had to persuade them first to allow the appeal to be made out of time. However, in considering that application, it is difficult to see how the Tax Commissioners would have ignored the actual merits of the Debtor's case. I also reject Mr Ramsden's submission that in some way 'it would be fairer' to annul before seeking to tackle the assessments which would still stand and upon which HMRC could simply present a fresh petition. With respect to Mr Ramsden, his submission is simply inviting me to annul for no purpose and effectively ignore the fact that an annulment does not set aside the assessments or even prevent a fresh petition being presented.

29. In many respects what is being sought by the Debtor is to go behind the assessments based on matters which were before the Tax Commissioners in 2004. His miscarriage of justice is then viewed as being an appeal from the dismissal of those applications by the Tax Commissioners. As *Lam* makes clear, this is not the role of the bankruptcy court. The remedy in those circumstances, as the Debtor properly perceived in 2004, was the judicial review application which was not pursued. The lack of documents (27A (iv)) submission was a matter which was before the Tax Commissioners in 2004. Additionally, as appears from the letter dated June 2002, despite the lack of documents, the information which had been provided to the Trustee and compiled by the Debtor's professional advisors was sufficient for there to be, in the opinion of the trustee, merit in the appeals/applications. I have quoted from that letter above. There is in that letter specific reference to information which had been provided to the trustee. Furthermore, in relation to the 1986/87 assessments, an appeal was launched about two years prior to the documents being taken by HMRC so the Debtor was able to issue that appeal and presumably prosecute it in the two years prior to the documents being taken. In all those circumstances, in my judgment, those parts of paragraph 27A are not capable of providing the Debtor with reasonable prospects of challenging the assessments (under the miscarriage of justice proviso), being the subject matter of the petition debt.

30. Sub paragraphs (ix) and (xi) of paragraph 27A relate to the assertion by the Debtor that there it had been agreed with HMRC that no demand for the debt would be made whilst the Debtor was having his tax affairs investigated. Mr Parfitt submits that the remedy here for the Debtor is one of judicial review, namely legitimate expectation and no such proceedings were taken. Mr Ramsden submits that even though this could be by way of judicial review, this does not prevent this matter being raised in this court and dealt with as constituting a miscarriage of justice. In my judgment, there is force in Mr Parfitt's submissions. The legitimate expectation complaint which the Debtor seeks to rely upon was open for him to take the moment he was aware of the petition and the bankruptcy order. That was in 1992 shortly after, on his own evidence, the bankruptcy order was made. There is no evidence as to why the Debtor decided to make no such application during an incredibly long period of time. For many years no action was taken by the Debtor and when action was taken, it concentrated upon seeking to set aside the assessments. It is now too late to seek to proceed by way of judicial review unless that court can be persuaded to extend time. In my judgment, the legitimate expectation matter does not provide reasonable prospects for the Debtor in seeking to challenge the assessments. It is simply far too late to consider this as a miscarriage when the debtor was aware of it from the very start upon being informed of the making of the bankruptcy order against him and when no action has been taken by way of judicial review, which would have been the appropriate place to proceed. There is no explanation for the prolonged delay in dealing with this issue even at times when the Debtor was engaged in seeking to set aside the assessments. One of the difficulties facing the Debtor is seeking to rely upon legitimate expectation in this court because the delay in raising this has not been explained. The reason for delay is a factor which the Court dealing with a judicial review application would consider. However before me no explanation was provided. That makes it in my judgment not possible to view these subparagraphs as raising reasonable prospects of challenging the petition debt on the grounds of constituting miscarriages of justice

31. Equally the inference which Mr Ramsden seeks to make about Mr Alcock (sub paragraph (x)) again does not reach in my judgment reasonable prospects as to challenging the debt. Mr Ramsden very fairly said it was a permissible inference that the assessments in this case were raised because Mr Alcock was intending to seek to demand a payment from the Debtor in return for reducing the assessments. This did not happen. However, this is a submission and inference perfectly capable of being put before the Tax Commissioners in 2004 or at any stage after the conviction of Mr Alcock in 1997 and indeed there is a clear reference that the conduct of Mr Alcock was raised at that hearing. In my judgement, the miscarriages of justice matters being relied upon by the Debtor are either

(1) matters which were put before the Tax Commissioners, or alternatively, (2) were matters (such as the legitimate expectation) which could have been the subject of judicial review proceedings. In relation to the latter, there is no explanation for the extraordinary delay in this case. None of these matters are in my judgement capable of constituting miscarriages of justice.

32. I now turn to the issue of the security which is referred to in the preliminary issue, being whether there is a reasonable prospects of the Debtor

challenging the value of the security held by HMRC. This is pleaded by the Debtor at subparagraph (vii) of 27A which relates to the value placed on the security held by HMRC in the petition. This point really fell away upon close scrutiny of the evidence. The petition states that HMRC holds security over assets belonging to the Debtor and places a value upon the secured assets of £190,000 (p61 TPR01). Subparagraph (vii) pleads that the security held was worth £19.5 million and therefore, with the other points raised by the Debtor in relation to challenging the debt, the bankruptcy order would not have been made. Mr Parfitt points to the fact that this sum is less than the petition debt of some £22 million. I raised the issue that the Debtor would have to succeed on the reasonable prospect of challenging the debt for the security issue to be relevant. However upon close scrutiny, there is no reliable evidence that as at the date of the petition, there was a valuation of the property at £19.5 million. Mr Parfitt points to the property being sold by the trustee in bankruptcy in 1994 (two years after the bankruptcy order was made) for the sum of £146,000. However when questioned by me, Mr Ramsden accepted that the valuation in the sum of £19,5 million was referred to in relation to an earlier purchase in 1973. However, the Debtor purchased the property in 1985, comprising it appears two separate parcels for the sums of £211,000 and £225,000, totalling £436,000 (see paragraph 12-14 of his witness statement). There is no valuation evidence produced or any evidence produced in relation to a valuation in 1985 of £19,5 million. Accordingly, in my judgement, there is no reasonable prospect of challenging the value of the security placed upon the property in the petition by HMRC. Even if that security had been equivalent to the acquisition price, this would have been an extremely small part of the overall petition debt.

33. I will deal with the other matters set out in the preliminary issue question, although due to my judgement in relation to the prospects of challenging the petition debt and the level of security, it would not be necessary for me to deal with these other aspects. However they were argued before me and I shall deal with them. Paragraph 27B pleads in relation to the position of the creditors. I remind myself, as Mr Parfitt in his reply submission invited me to as to what exactly Judge Jones directed in relation to the position of creditors. The Judge directed the Applicant (the Debtor) to file and serve evidence concerning the creditors in the bankruptcy. The Official Receiver was to file and serve detailed evidence concerning the events in the bankruptcy. The preliminary issue requires me to consider the reasonable prospects of the Debtor obtaining an annulment in the event that other outstanding bankruptcy debts and expenses remain unsatisfied. In my judgment, the evidence produced by the Debtor is not capable of supporting a submission that there are no other creditors in this estate because none of the other creditors' claims have been 'agreed'. Support for this submission relies upon a schedule produced by the trustee but which does not define what is meant by the 'agreed' column.

34. In order for the Debtor to succeed in persuading me that there are no other creditors, what this Court really needs to know is whether the trustee in bankruptcy adjudicated upon the creditors' claims. There is no evidence that he did and as I remarked during the hearing, it would be unusual for a trustee in bankruptcy to adjudicate upon claims in a case where there appears to be no assets available for distribution by way of dividend. As I mentioned at the hearing, this

is a matter of which judicial notice can be taken. Of course, if there were evidence that the claims had been adjudicated, then the Court would take note of this. I note from the Official Receiver's report that there are other creditors who submitted claims in the bankruptcy, although it is fair to say their claims are dwarfed by the claim of HMRC. However an annulment would effectively mean that all those claims would be statute barred on limitation grounds. The HMRC claim would not be time limited in the same way. The issue of creditors is therefore one which, on the basis of the evidence before me, it is not certain what effect the annulment would have on their claims.

35. In relation to the expenses, Mr Ramsden has already set out in his skeleton, that the Debtor accepts that he has to pay the trustee's costs. However, Mr Ramsden had no instructions in relation to the expenses in the bankruptcy during the very lengthy period of its existence, some 24 years. Mr Ramsden did propose that he would be asking, in the event that the annulment order is made, for a direction effectively validating all the actions of the trustee in the bankruptcy. I am not sure whether this could actually work, but it does seem to me that effectively Mr Ramsden is asking me to annul the order but to treat the bankruptcy for all intents and purposes as having occurred and thereby validate all the acts and events during that period. Although I have already determined that there are no reasonable prospects of the Debtor, based on his evidence of challenging the assessments, the type of order and its consequences as well as the expenses issue, are matters which also militate against granting the annulment.

36. I should mention the report prepared by Ms Hicks at page 724 of the exhibit MD 1 to Michael Muldoon's witness statement filed on behalf of HMRC. This document is titled, '*Settlement Report for a Code 8 Case*'. It is clearly an internal document of HMRC. This was relied upon by Mr Ramsden as establishing that the claim of HMRC was less than that set out in the petition. I confess that I have found this a difficult document to understand and sought clarification HMRC. It is a report prepared by Ms Hicks after her consideration of the papers which at the time she prepared her report in January 2006 were still in existence. At page 727, it appears to assess the value to be placed on recovery of the claims by HMRC. Although this was disclosed by HMRC in these proceedings, it is clearly an internal document and from the little I have been told, this type of valuation was an internal matter. The report itself is titled 'settlement report' and this of course is different from being a document setting out the actual claim of HMRC. In my judgement, this report really takes the Debtor's challenge to the petition debt no further. Whatever the report of Miss Hicks opines about the recoverability of the debt for HMRC purposes, the report does not act in some way, in my judgement, of supporting Mr Ramsden's submission that HMRC's debt is much smaller than that set out in the petition. There is no evidence of any communication from HMRC to the Debtor that a smaller sum than that set out in the petition would be sought from the Debtor. Additionally I am not convinced that this report can be viewed as a statement by HMRC that the sums due were less than those set out in the petition or arising from other assessments.

37. The position remains that the petition debt consists of two assessments neither of which has been set aside despite the appeals having been made and heard by the Tax Commissioners. The issues raised by the Debtor in relation to

miscarriages of justice are not in my judgement matters which can be classified as miscarriages of justice in circumstances where all the points raised were capable of being raised and some of which were raised at earlier hearings by the Debtor. If I am wrong about their characterization, I would not, in the exercise of my discretion, treat them as constituting grounds to go behind the assessments. Accordingly the reply to the preliminary issue is that when considering whether the Debtor has reasonable prospects of challenging the petition debt, the reply is no. The issues relating to security, creditors and expenses have been considered in this judgement but take the matter no further.

38. This is an extremely unusual case in that the bankruptcy order was made 24 years ago. Mr Ramsden accepts that there are many many years where there is no activity on the part of the Debtor. During this time, the trustee has been administering and dealing with the bankruptcy estate. The position is such that Mr Ramsden, as part of his annulment application, proposes a very unusual direction whereby the actions of the trustee are to be treated as valid during this entire period. Mr Ramsden properly accepts that in relation to all orders, there must come a time where the finality of the order is relevant. In the case of *Taylor v. The Macdonald Partnership [2015] EWCA Civ 921*, the Court refused to annul in a case which was 12 years old. The court also carried out a consideration of what had occurred in the bankruptcy during that time. In my judgement, in so far as it forms part of my assessment of the preliminary issue, I would not be minded to grant the annulment. The delay is essentially unexplained, of an extremely long duration with no real explanation. That delay would not by itself have caused me to refuse to annul but as one of the factors to be taken into consideration, it is significant.

39. I therefore determine that the Debtor does not have reasonable prospects of challenging the petition debt for the reasons I have set out above. I also conclude that the position of the creditors takes the matter no further. The issue as to security has no bearing. The issue of expenses will in those circumstances take the matter no further. As to the delay, this would have been another factor added to the others which would have made me in the exercise of my discretion refuse the annulment application. In replying to the preliminary issue, the answer is no and therefore the result is that HMRC have succeeded. I will hear the parties as to the terms of the order I will make as well as the issue of costs and any other matters.

Deputy Registrar Addy QC

Dated