

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2011-404-3557

IN THE MATTER OF THE INSOLVENCY ACT 2006
AND IN THE MATTER OF THE BANKRUPTCY OF BRONWYN
MAY DENIZE

BETWEEN STOCKCO LIMITED
Judgment Creditor

AND BRONWYN MAY DENIZE
Judgment Debtor

CIV-2011-404-3550

AND IN THE MATTER OF THE INSOLVENCY ACT 2006
AND IN THE MATTER OF THE BANKRUPTCY OF
JOHNATHAN PETER TAPLEN DENIZE

BETWEEN STOCKCO LIMITED
Judgment Creditor

AND JOHNATHAN PETER TAPLEN DENIZE
Judgment Debtor

Hearing: 6 October 2011

Appearances: D Williams for Judgment Debtors
K Puddle for Judgment Creditor

Judgment: 31 October 2011 at 5pm

JUDGMENT OF ASSOCIATE JUDGE ABBOTT

*This judgment was delivered by me on 31 October 2011 at 5pm
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date:

Counsel: S Grant, PO Box 4338, Auckland 1010

Solicitors: Lowndes Jordan, PO Box 5966, Auckland
Knight Coldicutt, PB 106 214, Auckland 1143

[1] The applicants, Mrs B M Denize and Mr J P T Denize, each seek an order setting aside bankruptcy notices served on them by Stockco Limited. The notices seek payment of a judgment debt of \$232,562.50.

[2] The applications are being heard together as Mr and Mrs Denize essentially rely on the same grounds (though Mrs Denize advances one additional ground that applies only to herself). The grounds are that the notices should be set aside because they are defective (they did not refer to or attach a certified copy of the underlying judgment as provided by the High Court Rules), and because Mr and Mrs Denize will be able to pay the debt in December 2011.

[3] Stockco acknowledges that a certified copy of the judgment was not attached to, or served with the notices but says that the notices should not be set aside because the Denizes have not been prejudiced by the omission, as a copy of the sealed judgment had been served separately. It also says that there is no certainty of payment in December 2011, and in any event that that is a ground for opposing any subsequent application for adjudication, rather a ground for setting aside the notices.

Background

[4] Mr and Mrs Denize were ordered to pay \$232,562.50 to Stockco in a judgment given by this Court on 22 February 2011. The judgment sum represents the outstanding balance of an advance made by Stockco to Spotburn Farms Limited in July 2008 for purchase of farming stock under a livestock agreement. Mr and Mrs Denize guaranteed Spotburn's obligations under that agreement.

[5] The judgment debt arises indirectly out of the purchase of a farm property in the South Island, Spotburn Station, by Develop Spotburn Limited, a company associated with Mr and Mrs Denize. The vendors (the Scurr family) provided of vendor financing, and were to continue to manage the farm under a farm management agreement. The arrangement was that Develop Spotburn Limited would develop the station for subdivision and Spotburn Farms Limited, also

controlled by the Denizes, would own the stock and, in conjunction with the Scurrs, run the farming operation.

[6] In July 2008 Spotburn Farms Limited entered a livestock agreement with Stockco (a livestock financing company) for a loan of \$252,562.50 to purchase stock for the farming business. Mr and Mrs Denize guaranteed that loan. The loan was to be repaid from sale of the livestock, anticipated to take place in November 2008. That did not occur. Spotburn Farms Limited made only a single repayment of \$20,000 in June 2009. Spotburn Farms Limited was put into liquidation, on Stockco's application, on 28 July 2011.

[7] Stockco obtained summary judgment against Mr and Mrs Denize (as guarantors) on 22 February 2011, for the balance then due under the loan.

[8] The Denizes do not dispute their liability for the underlying loan or that it is overdue for payment. They say that they have been attempting to repay Stockco, but in the meantime (in the words of the Court of Appeal) they have "engaged in protracted litigation to avoid being forced to do so".¹

[9] The Court of Appeal, on 17 May 2011, declined an appeal against the judgment of 22 February 2011, an appeal against a decision of this Court declining a stay of that judgment (and suppression of details of the decision), and a further application to the Court of Appeal for stay (and suppression) on 17 May 2011.

[10] Stockco applied for issue of bankruptcy notices as soon as this Court declined the Denizes' application for stay (16 March 2011). For unknown reasons, that application was not processed by the Court before the Denizes' appeal was determined. On 15 June 2011 Stockco sealed the judgment of 22 February 2011 (with the costs entitlement amended to take into account comments made by the Court of Appeal) and requested issue of the bankruptcy notices that are the subject of these applications.

¹ *Denize v Stockco Ltd* [2011] NZCA 192 at [1].

Grounds for the applications

[11] The applications were filed on 1 July 2011. The applications were made in reliance on r 24.10 of the High Court Rules and on the inherent jurisdiction of the Court to prevent abuse of process. The grounds were the same in each case:

- (a) The bankruptcy notice has been issued to put pressure on the applicant and is therefore an abuse of process;
- (b) No certified copy of a judgment or order on which the bankruptcy notice was based was attached to the bankruptcy notice;
- (c) The bankruptcy notice did not make reference to the judgment or order on which the bankruptcy notice was based being attached as required by Form B2;
- (d) The claim for costs is disputed as the notice is defective and is an abuse of process;
- (e) The applicant will be in a position to repay the amount claimed in the bankruptcy notice, \$232,562.50 (“the debt”), upon settlement of the sale of Spotburn Station by Develop Spotburn Limited, a company for which the applicant is the sole director. The sale of that property is expected to settle by Mid August 2011;
- (f) The applicant has offered to secure the debt by way of a registered mortgage over Spotburn Station and over two residential properties;
- (g) In the alternative the applicant seeks approval by the High Court of repayment terms.

[12] Each application was supported by an affidavit by the applicant. The same evidence was given by each:

- (a) Spotburn Development Limited had agreed to sell part of Spotburn Station and; that agreement was to have settled by the end of May 2011, but was currently still “on foot”;
- (b) an expected refinancing would allow issue of titles and settlement by mid August;
- (c) Develop Spotburn Limited had agreed to advance Spotburn Farms Limited part of the proceeds of sale to settle the debt;

- (d) the applicants had offered Stockco security;
- (e) Stockco was using the bankruptcy notice procedure to put pressure on the applicants in the belief that they had access to other assets; and
- (f) the bankruptcy notice had been served without a certified copy of the judgment.

[13] It was also said that Mrs Denize stood to lose her current employment if she was bankrupted which would cause hardship as she had two young children to support.

[14] Stockco filed a notice of opposition to both applications, also in identical form. The grounds of opposition were stated as follows:

- (a) the judgment debtor has not paid the judgment sum, and by her own evidence is insolvent;
- (b) the issuing of the bankruptcy notice on the judgment debtor was not an abuse of process;
- (c) there is no rule of law that requires that a certified copy of a judgment be attached to a bankruptcy notice on service;
- (d) the bankruptcy notice was not defective;
- (e) in the event that the Court finds that the bankruptcy notice was defective, the judgment debtor has suffered no prejudice as a result of such defects.

[15] The opposition was supported by an affidavit of Stockco's Chief Financial Officer setting out the background to the debt, giving the history of litigation, refuting the Denizes' suggestion that they had offered security, and giving evidence of service of the sealed judgment separately to the bankruptcy notices. He added that the Denizes had failed to put forward any commercially realistic settlement offer

or offer of security, and that there was no certainty that funds would be received from the sale then being proposed of part of Spotburn Station.

[16] In relation to the contention that the notices were defective, Stockco relied in particular on s 418 of the Insolvency Act 2006 (the Act) which provides that a proceeding under the Act is not to be invalidated or set aside for a defect unless a person is prejudiced by that defect.

[17] In her submissions for the hearing, counsel for the Denizes refined and narrowed the grounds of opposition to the defective bankruptcy notices, Mr and Mrs Denize's ability to pay, the alleged abuse of process and, in the case of Mrs Denize, hardship. At the hearing counsel for the Denizes did not pursue the ground of abuse of process and the applications were argued on two main points:

- (a) the bankruptcy notices were defective because of the failure to refer to and annex a certified copy of the judgment; and
- (b) the Denizes had the ability to procure payment of the debt from the proceeds of sale of Spotburn Farm.

Legal bases for setting aside

[18] The Act provides that failure to comply with a bankruptcy notice is an act of bankruptcy on which a creditor can rely in applying for the debtor to be adjudicated bankrupt.² Section 29 of the Act prescribes the form that a bankruptcy notice must take. The relevant part of that section reads:

29 Form of bankruptcy notice

- (1) The bankruptcy notice must—
 - (a) be in the prescribed form; and
 - (b) require the debtor, in relation to the judgment debt or the sum ordered to be paid under a final order,—
 - (i) to pay the amount owing, plus costs; or

² Insolvency Act 2006, s 17.

- (ii) to give security for the amount owing that satisfies the Court or the creditor; or
 - (iii) to compromise the amount owing on terms that satisfy the Court or the creditor; and
 - (c) state what are the consequences if the debtor does not comply with the notice; and
 - (d) be served on the debtor in the prescribed manner.
- ...

[19] Rule 24.8 of the High Court Rules provides for the issue of a bankruptcy notice:

24.8 Issue of bankruptcy notice

- (1) A request for the issue of a bankruptcy notice must be in form B 1.
- (2) The Registrar may approve the issue of a bankruptcy notice if—
 - (a) the request is founded on a judgment or order of a court; and
 - (b) the Registrar has no knowledge that payment of the debt has occurred.
- (3) A bankruptcy notice must be in form B 2 and a certified copy of the judgment or order on which the bankruptcy notice is based must be attached to it.
- (4) The bankruptcy notice must state the amount of any costs claimed.

[20] Form B2 of Schedule 1 to the High Court Rules is the prescribed form for a bankruptcy notice. It sets out the matters required by s 29(b) and (c) of the Act. Form B2 was amended as from 1 January 2011³ to insert (as a new paragraph 3) reference to a copy of the judgment being attached:

- 3. A certified copy of the judgment or order on which this bankruptcy notice is based is attached.

[21] There is no section in the Act, nor any rule, providing expressly for an application to set aside. It is brought pursuant to the provision in the prescribed form that the debtor must satisfy the Court that he or she has a counterclaim which

³ Rule 35(1) High Court Amendment Rules (No 2) 2010 (SR2010/394).

exceeds the amount claimed or set-off, or pursuant to the Court's inherent jurisdiction to prevent an injustice.⁴

Defects in the bankruptcy notices/service

[22] It is common ground that the bankruptcy notices omitted paragraph 3 of form B2. It is also common ground that a copy of the sealed judgment was not served on Mr and Mrs Denize at the time they were served with the bankruptcy notices, but that the sealed judgment had been served previously on their solicitors at the address for service for the proceeding in which judgment was given.

[23] Counsel for Mr and Mrs Denize argued that the bankruptcy notices should be set aside both because the Registrar should not have issued them without a sealed judgment, and because they were issued without paragraph 3 and were served without a copy of the judgment. Counsel submitted that the statutory requirements as to the content of a bankruptcy notice had the important purposes to inform the recipient as to what was being sought, what options were available, and the consequences of non-compliance. She argued that the Court did not have jurisdiction to waive or rectify the omissions because s 418 did not apply (because issue of a bankruptcy notice is not a "proceeding" as contemplated by s 418) and because the omissions were so substantial that in any event it could not be said that there was any proceeding on foot.⁵

[24] Counsel for Stockco acknowledged that the notices were defective, but argued that the defects did not invalidate the notices, and that s 418 did apply to bankruptcy notices and should be applied to cure the omissions.

[25] Counsel for Mr and Mrs Denize did not pursue an argument that the Registrar should not have issued the bankruptcy notices at all after it was established that copies of the underlying judgment were filed with the request to issue the notices. Her argument, accordingly, turned on the effect of the omission of the prescribed paragraph 3 from the notices.

⁴ *Re Wise* HC Auckland B227-228/95, 21 June 1995.

⁵ *Best v Watson* [1979] 2 NZLR 492 (CA) at 494.

[26] The omission appears to have been an oversight on the part of Stockco's solicitors of the change to the prescribed form introduced with effect from 1 January 2011. The prescribed form up to that point required reference to the judgment in the body of the bankruptcy notice (still a requirement under the present form) but did not provide for a copy of the judgment to be attached. On its face, the omission of paragraph 3 appears to be a defect to which s 418 of the Act applies:

418 Defects in proceedings

- (1) A proceeding under this Act must not be invalidated or set aside for a defect (which includes misdescription, misnomer, or omission) in a step that must be taken as part of, or in connection with, the proceeding, unless a person is prejudiced by the defect.
- (2) The Court may order the defect to be corrected, and may order the proceeding to continue, on the conditions that the Court thinks appropriate in the interests of everyone who has an interest in the proceeding.

[27] Counsel for Mr and Mrs Denize submitted that s 418 did not apply both as a matter of construction (on the basis that the issue of a bankruptcy notice was not a "proceeding" as contemplated by the section), and because the information omitted was so fundamental that without it the bankruptcy notices were a nullity, and there was nothing before the Court that was capable of rectification.⁶

[28] I do not accept the argument that the issue of a bankruptcy notice is not a proceeding for the purposes of s 418. The issue of the notice is part of the insolvency procedures under the Act. It is governed by the High Court Rules. It entails a request made to the Court and the creation of a Court file on which any subsequent application for adjudication is filed. If it is not a proceeding under the Act in its own right (a view that I favour based on the ordinary meaning of that word) it is a step that might be taken as part of, or in connection with, an application for adjudication (which is undoubtedly a proceeding under the Act). If support is needed for this, it can be found in the decision of this Court in *Re Wickham ex parte Moloney*.⁷ The point was raised in that case in relation to s 11 of Insolvency Act 1967 (1967 Act), the predecessor to s 418. I also note that s 418 was applied to

⁶ Ibid.

⁷ *Re Wickham ex parte Moloney* HC Hamilton CIV-2003-419-000352, 27 November 2003 at [23].

correct a bankruptcy notice in *Dental Council of New Zealand v Gibson*,⁸ where the Court had satisfied itself that the debtor had not been prejudiced by the defect.

[29] Counsel for Mr and Mrs Denize relied on the decision of the Court of Appeal in *Best v Watson*,⁹ and argued that the information omitted was so fundamental that it could not be said that a bankruptcy notice had been issued. She referred to the comments of the Court of Appeal that if the foundation document was so defective that it was a nullity, there was nothing before the Court capable of rectification. She accepted that this was a matter of degree, but argued that information about the judgment was so critical to the process that the absence of paragraph 3 and the failure to attach a certified copy of the judgment meant that Mr and Mrs Denize were inadequately informed about the demand being made. Counsel submitted that the notice should not have been issued without paragraph 3 and a certified copy attached.

[30] *Best v Watson* provides helpful guidance. That was an appeal against a decision of this Court dismissing a motion to rescind an ex parte order amending a bankruptcy petition. The bankruptcy petition failed to comply with the Insolvency Rules 1970 (the equivalent at that time of the present High Court Rules in relation to bankruptcy). One of the defects was that the petition omitted a prescribed paragraph which read “I have no security for the said debt”. The appellant argued that the omission was a defect of substance, and the Court should exercise its power under s 11 of the 1967 Act to amend the petition only where the defect was one of form, not substance. As I have already stated, s 11 of the 1967 Act is the predecessor of s 418, and is substantially similar to it.

[31] The Court of Appeal observed that s 11 was to be given its full meaning and was not to be read subject to any limitations not required by the statutory language. At the same time, it noted that there had to be a proceeding before the Court before rectification could be directed under s 11, which required consideration as to whether the documents were a nullity (drawing comparison with a defective information issued under the Summary Proceedings Act 1957). The Court held that the petition

⁸ *Dental Council of New Zealand v Gibson* (2010) 19 PRNZ 900 at [28].

⁹ *Best v Watson*, above n 5.

as originally filed was not a nullity, despite the omissions, and was therefore capable of amendment. In effect, it said that the issue had to be decided on the facts of the case:¹⁰

We think that the same considerations apply under s 11. That provision may be invoked in any case where the proceedings are defective and however the defect may be characterised. It will always be a question of degree whether or not it can be said that, notwithstanding failure to comply with an apparently mandatory requirement of the Act or of the Rules, there is before the Court what can fairly be described as proceedings under the Act; and that question should not be approached in a mechanical or technical way.

[32] A similar conclusion was reached by this Court in *Bridgecorp Ltd (in rec) and (in liq) ex parte Nielsen*,¹¹ where the Court declined to find that an omission to disclose the existence of a security rendered an application for adjudication a nullity, the debtor having failed to show any particular prejudice arising from the defect. The Court considered that the breadth of the language in s 418 spoke against a technical finding. The following reasons for that decision have application in the present case:¹²

[42] With respect, I do not agree with the analysis undertaken by Master Kennedy-Grant in *Moss*. I prefer the approach adopted in *Randhawa*. There are two substantive reasons that lead me to that view:

- a) The nature and function of the bankruptcy process has changed considerably in emphasis since *Nicol* was decided in 1902. ... Such considerations tell against the type of strict approach to technical requirements adopted in *Nicol*, *Schwebel* and *Moss*.
- b) From a policy point of view, there is little to be gained from regarding a defect in the statement of security as sufficient to make a proceeding a nullity. No prejudice has been caused to the debtor. The proceeding has worked its way through the system to the point at which a judicial discretion on adjudication is to be made. I agree with Ellis J, in *Randhawa*, that remedies are available to a debtor at that stage of the process; for example, if a creditor deliberately misled the Court to obtain an order of adjudication. But, in the case of genuine mistake (as here) there is no warrant to characterise the whole proceeding as a nullity, particularly given the breadth of s 11 of the 1967 Act and s 418 of the 2006 Act.

[43] Approaching this particular case by reference to s 418 of the 2006 Act, the omission of the existence of a security occurred “in a step” that was required to be taken as part of the bankruptcy proceeding. Section 418(1)

¹⁰ Ibid.

¹¹ *Bridgecorp Ltd (in rec) and (in liq) ex parte Nielsen* [2010] 1 NZLR 820.

¹² Ibid at [42]–[43].

makes it clear that such a defect is not invalidated. There is no prejudice to the debtor. *Best v Watson* applies. Section 418(1) applies to cure any defect that might have existed, if it had been necessary to disclose the security over the Queenstown property.

[33] There was no evidence to suggest that Mr and Mrs Denize were under any misapprehension as to the judgment in respect of which the bankruptcy notices were issued. Through their solicitors, they defended the summary judgment application and a sealed judgment served on them; and appealed parts of the judgment. The bankruptcy notice contained an express reference to that judgment. It cannot be said that they were unaware of the judgment, or that there could be any room for confusion about it. Indeed, counsel for Mr and Mrs Denize acknowledged that it was a technical argument and that Mr and Mrs Denize were aware of what was occurring.

[34] In those circumstances, and in the absence of any evidence that Mr and Mrs Denize have been prejudiced by the omission, s 418 applies. I make an order that Stockco may rely on the bankruptcy notices notwithstanding the omission.

[35] I have not overlooked the argument advanced by counsel for Mr and Mrs Denize that the amendment to form B2 is a statutory indication that the notice had to include paragraph 3, and that the bankruptcy notice was invalid unless the judgment was attached. There may well be cases where the absence of that paragraph and the judgment will cause embarrassment or confusion to the debtor or some other form of prejudice, which should count against the application of s 418. In my view, this is not one of those cases.

Alleged ability to pay

[36] Mr and Mrs Denize also seek orders setting aside the notices on the grounds that the judgment debt will be paid as a result of the prospective sale of Spotburn Station. This aspect of the application is brought under the Court's inherent jurisdiction in the interests of justice.

[37] Mr Denize has given evidence that Develop Spotburn Limited (now in receivership) entered into an agreement on 8 July 2011 to sell Spotburn Station in its

entirety, for the total sum of \$12.95 million. Although the agreement is conditional on the purchaser selling its own farm by 31 October 2011, Mr Denize says it is his understanding that the purchaser is receiving offers for its property. If the agreement becomes unconditional, the sale of the land, buildings and plant is due to settle on 16 December 2011. Mr Denize says that the proceeds of sale that will be made available to Mr and Mrs Denize will be sufficient to pay the judgment debt:

- (a) a family company, Denize Trustee Limited (of which Mrs Denize is director) is a 22.9 per cent shareholder of a company holding a mortgage over Spotburn Station, Spotburn Investments Limited.
- (b) after repaying prior mortgagees, there will be a balance of \$4.75 million payable to Spotburn Investments Limited (a company of which Mr Denize is one of two directors). Denize Trustee Limited's shareholding would entitle it to a distribution of \$1.045 million.
- (c) as Denize Trustee Limited is controlled by Mr and Mrs Denize, this money will be available to apply in payment of the judgment debt.

[38] Before Mr Denize's evidence of the latest agreement was given, Stockco's chief financial officer gave evidence of an earlier agreement, where a similar proposition was advanced as to payment out of sale proceeds. He commented that it was the latest in a long line of similar broken promises of funds flowing from possible property transactions. That view was borne out by the collapse of that agreement (an agreement for sale part only of Spotburn Station dated 22 November 2010). He also commented that there was no certainty that funds would flow to Mr and Mrs Denize from Develop Spotburn Limited. Counsel for Stockco accepted that a further agreement is now in place, with the sale being managed by the receivers of Develop Spotburn Limited, but submitted that there was still no certainty that it would result in money coming to Stockco:

- (a) it remained uncertain whether the agreement would settle, as it was still unconditional; and

- (b) there was no evidence to show that any of the proceeds of sale would in fact reach Stockco.

[39] Mr and Mrs Denize have failed to satisfy me that this is an appropriate ground to set aside the bankruptcy notices. I accept the submission of counsel for Stockco that there is no evidence to show that sale proceeds will reach Stockco, either in the immediate future or at all. In that respect, I note:

- (a) the agreement is still unconditional;
- (b) Mr Denize is only one of two directors of Spotburn Investments Limited, which would suggest that he is not in a position to direct distribution (there is no evidence of the company's constitution and hence no reason to believe a decision on distribution can be made other than unanimously or, at least, by majority decision);
- (c) there is no evidence as to the view of the Scurr Family director or the Scurr Family interests (as majority shareholders) about a distribution of money coming from Spotburn Investments Limited from a sale, but even if support has been indicated there is no evidence of a decision to that effect;
- (d) there is no evidence that Spotburn Investments Limited is in a position to distribute all or part of the proceeds of sale to Denize Trustee Limited (there is no evidence as to whether there are any other demands on the \$4.75 million); and
- (e) even if money is distributed, there is no evidence to show that Denize Trustee Limited is in a position to advance sufficient to Mr and Mrs Denize to clear the judgment debt (there is no evidence of the company's financial position or what other demands there might be on those funds).

[40] This ground is more appropriately advanced (assuming that these factual matters are addressed adequately) on the hearing of any application for adjudication, or on a proposal by Mr and Mrs Denize to their creditors.

Potential hardship to Mrs Denize

[41] I do not regard the ground of hardship advanced on Mrs Denize's behalf as an appropriate or sufficient basis for setting aside the notice given to her. The same point was advanced in support of an application to this Court for stay of the judgment pending appeal. The reasons given for rejecting that application are equally applicable in the present case:¹³

[48] I have carefully considered Ms Grant's submission and the evidence in support that the defendants' two young children may be affected if they are bankrupted. I am compelled to accept that in the event that the defendants were bankrupted, this would clearly have an adverse effect on both the defendants and their children. But having said that, this is a case involving a long-standing debt owing and due to the plaintiff. The plaintiff's shareholders may have dependants who rely also on cash flow to keep their business running and to avoid the sorts of consequences that may (or may not) befall the defendants.

[49] In these circumstances, I am not prepared to find that the potential (only) for effects on the dependants of the defendants justify the stay sought by the defendants. I am fortified in this view by the approach taken by Venning J in *Marac Finance Ltd v Twilight Trustee Ltd (and Ors)*, where he observed that the enforcement of a judgment debt without more could not be said to give rise to an injustice. While Venning J was addressing an application pursuant to High Court Rule 17, I am equally of the view that in this context simple enforcement of a judgment debt, without more, cannot be categorised as the type of effect that would automatically warrant a stay.

[42] Mrs Denize has been an active participant in the commercial transactions that have led to the judgment debt. She chose that involvement knowing that she had children to support. She must be taken to have accepted the risks as well as the anticipated benefits from the transactions, including financial consequences that could flow through to her dependants. There is no evidence before me to suggest that this debt should be regarded on any basis other than as a consequence of an arms length transaction between commercial parties. Certainly, there is nothing to warrant an equitable or discretionary intervention.

¹³ *Stockco Ltd v Denize* HC Auckland CIV-2010-404-005668, 15 March 2011 at [48]–[49].

Decision

[43] Mr and Mrs Denize's applications to set aside the bankruptcy notices are dismissed.

[44] As the successful party, Stockco is entitled to costs. Counsel did not indicate any reasons to consider an award of costs other than on a standard scale basis. Mr and Mrs Denize are to pay costs to Stockco in respect of the applications on a scale 2B basis, together with disbursements as fixed by the Registrar. As the applications were heard together, costs of preparation and appearance should be split between the two applications, rather than duplicated.



Associate Judge Abbott