

ONG HU HONG

... Plaintiff

AND

TEE KOK CHYE

... Defendant

**(High Court of Brunei Darussalam)
(Civil Suit No 21 of 2017)**

Muhammed Faisal Bin PDJLD Kol (B) DSP Haji Kefli, J.C

Date of Hearing: 15th May, 2025.

Date of Ruling: 3rd June, 2025.

Headnote: Civil Procedure – Bankruptcy – Application to review Certificate of Taxation – Whether debtor under Receiving Order requires leave of Official Receiver to initiate proceedings – Section 12(1)(b) of Bankruptcy Act – Whether jurisdiction lies with civil court or bankruptcy court – Whether personal costs order against solicitor appropriate – Appeal dismissed and Registrar’s ruling affirmed.

Mr Haji Mansur Bin Dato Paduka Dr Haji Abdul Latif of Messrs Pg Izad & Lee for the Plaintiff.

Mr Czar Cabading Calabazon of Messrs Rudi Lee, Annie Kon & Associates for the Defendant.

Statutes:

Order 59 of the Supreme Court Act

Order 59, Rule 8 of the Rules of the Supreme Court

Section 12(1) of the Bankruptcy Act

Section 12(1)(b) of the Bankruptcy Act

Section 25 of the Proof of Debt Rules

Section 26 of the Proof of Debt Rules

RULING

Muhammed Faisal, J.C.:

Introduction and Background

1. This is an appeal by the Defendant against the ruling of the Registrar delivered on 31 August 2024, in which the Registrar dismissed the Defendant's three preliminary objections and granted the Plaintiff leave to proceed with Summons in Chambers No. 189 of 2024, an application for extension of time to review the Certificate of Taxation dated 31 August 2020.

2. The Plaintiff, Ong Hui Hong, is under a Receiving Order (RO). The Defendant, Tee Kok Chye, had previously obtained a Certificate of Taxation awarding him costs in the sum of BND111,780.29. The Plaintiff filed the application under Order 59 seeking an extension of time to review the taxed costs on grounds that the amount taxed was manifestly excessive.
3. In response, the Defendant raised three preliminary objections:
 - (i) That the Plaintiff, being under a Receiving Order, had no legal capacity to file the application without first obtaining leave from the Official Receiver pursuant to section 12(1) of the Bankruptcy Act;
 - (ii) That the Certificate of Taxation had already been admitted as a proof of debt by the Official Receiver, and therefore the Plaintiff was estopped from challenging it; and
 - (iii) That jurisdiction over the Plaintiff's application lay exclusively with the High Court sitting in its bankruptcy jurisdiction, and not in its civil jurisdiction.

The Defendant's Submissions

4. On the first ground, the Defendant argued that under section 12(1) of the Bankruptcy Act, the Official Receiver becomes the receiver of all the property of the debtor upon issuance of a Receiving Order. "Property" includes "things in action," which encompasses the right to sue. It was therefore submitted that any court proceedings initiated by the bankrupt debtor, including the present application, required prior leave of the Official Receiver.
5. On the second ground, the Defendant submitted that the taxed costs had already been admitted as a proof of debt in the bankruptcy proceedings. The Plaintiff, through his then solicitor, had not objected to the Defendant's proof of debt at the relevant time. It was argued that the Plaintiff was now estopped from reversing that position and seeking to review the Certificate of Taxation under Order 59 Rules of the Supreme Court (RSC). The appropriate recourse, if any, would be under section 26 of the Proof of Debt Rules, which allows for a creditor (or trustee, as applicable) to apply to the Court to vary or reverse the Official Receiver's decision.
6. On the third ground, the Defendant contended that any challenge to an admitted proof of debt falls exclusively within the jurisdiction of the High Court exercising its bankruptcy jurisdiction. To permit the civil court to entertain such applications would, in the Defendant's view, cause jurisdictional overlap and undermine the integrity of the bankruptcy process. Counsel submitted that the Bankruptcy Act and the Proof of Debt Rules form a self-contained regime, and all disputes arising therefrom should be resolved within that framework.

The Plaintiff's Submissions

7. In response, the Plaintiff submitted that section 12(1)(b) of the Bankruptcy Act clearly applies only to creditors seeking to take action against a bankrupt debtor. The wording of the provision reads: "*no creditor to whom the debtor is indebted... shall commence any action or other legal proceedings unless with the leave of the Court.*" It was submitted that the provision does not impose any restriction on the debtor filing proceedings. Therefore, leave from the Official Receiver was not required.
8. The Plaintiff acknowledged that an initial application for leave was made to the Deputy Official Receiver but was subsequently withdrawn after it was determined, upon closer reading of the statute, that such leave was not necessary. The Plaintiff also noted that the Deputy Official Receiver had been notified of the present application and had raised no objection, particularly after receiving confirmation that the Plaintiff's legal fees would be borne by a third party.
9. On the second objection, the Plaintiff contended that the application before the court was not to challenge the validity of the Certificate of Taxation as a proof of debt, but rather to review the taxed costs due to their manifest excessiveness. The Registrar's ruling correctly noted that it would be premature to invoke section 25 or 26 of the Proof of Debt Rules until the Certificate itself had been reviewed under Order 59 RSC. The Plaintiff argued that it was procedurally sound to first review the amount taxed before seeking to amend the proof of debt.
10. As to the third objection, the Plaintiff argued that the civil court was the appropriate forum for hearing an application to review a Certificate of Taxation issued by the Registrar. The taxation process took place in the civil court, and the Registrar who conducted the taxation would be most familiar with the context and details. The Registrar had reasonably found that the bankruptcy court lacked the background necessary to deal with the specific issues arising from the taxation.
11. The Plaintiff also applied for personal costs against the Defendant's solicitor under Order 59, Rule 8 of the Rules of the Supreme Court, arguing that the first preliminary objection was legally untenable and constituted an unarguable submission.

Decision and Reasons

12. I have carefully considered the Registrar's ruling, the written and oral submissions of both parties, and the statutory framework.
13. On the first objection, I agree with the Registrar that section 12(1)(b) of the Bankruptcy Act is directed at creditors and not at debtors. The statutory language is unambiguous in this regard. There is no basis for extending the prohibition to the

debtor. The Defendant's reliance on "things in action" and foreign case law does not alter the clear and express wording of the Brunei statute. Accordingly, I find that the Plaintiff was not required to obtain leave from the Official Receiver to file the application.

14. On the second objection, I accept the Registrar's finding that the Plaintiff is not seeking to expunge or vary the proof of debt at this stage but merely to review the amount taxed in the Certificate of Taxation. The review under Order 59 RHC is the correct procedural step before any application under section 25 or 26 of the Proof of Debt Rules can be meaningfully made. There is nothing improper or premature about the application.
15. On the third objection, I agree that the civil court retains jurisdiction over matters arising from its own taxation proceedings. The Registrar's reasoning, grounded in practical efficiency and procedural familiarity, is persuasive. The Bankruptcy Court would not be in a position to effectively review a taxation decision it did not conduct.
16. As to the Plaintiff's application for personal costs against the Defendant's solicitor under Order 59, Rule 8, I decline to make such an order. While I disagree with the Defendant's interpretation of section 12, I am not satisfied that the argument was so devoid of legal merit as to constitute misconduct. The issue, though ultimately unpersuasive, was advanced in a professional manner and in the context of a genuine legal dispute.

Conclusion

17. For the reasons above, the Defendant's appeal is dismissed.
18. The Registrar's ruling dated 31 August 2024 is affirmed in full.
19. Costs of this appeal to the Plaintiff, to be taxed if not agreed.

MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HAJI KEFLI
Judicial Commissioner