

TEE KOK CHYE

..... Appellant

AND

ONG HUI HONG

..... Respondent

**(High Court of Brunei Darussalam)
(Civil Suit No. 5 of 2025)**

Edward Timothy Starbuck Woolley, J.C.

Date of Hearing: 13th October, 2025.

Date of Decision: 21st October, 2025.

Headnote: Application for leave to appeal – debtor the subject of a receiving order wishing to review taxation of costs – whether leave of Official Receiver required – whether certificate of costs final upon being admitted as a debt – jurisdiction of court

Mr Czar Cabading Calabazon (M/S Rudi Lee Annie Kon and Associates) for the Appellant.

Mr Hj Mansur Latif Bin DP Dr Hj Abdul Latif for the Respondent.

Cases cited:

Torkington v Magee [1902] 2 KB 427

Ho Ken Seng v Progressive Insurance Sdn Bhd [2013] 2 MLJ 335

Akira Sales & Services Sdn Bhd v Nadiah Zee Abdullah [2018] 2 CLJ 513

Smith v Cosworth Casting Processes Ltd [1997] 1 WLR 1538

DECISION

Woolley, J.C.:

The matter before me arises out of a High Court action HCCS No 21 of 2017 in which the Appellant was the Defendant and the Respondent was the Plaintiff. The facts of that action do not concern me here. Suffice it to say that the Plaintiff was unsuccessful and the action was dismissed with an order for costs against the Plaintiff/Respondent. These were taxed by the Taxing Master and on 31 August 2020 a Certificate of Taxation was issued finding the costs due were

in the sum of B\$111,780.29. Meanwhile, on 6 August 2020, a receiving order had been made in respect of the Respondent in relation to a debt unrelated to the High Court action.

2 The Appellant duly filed the Certificate of Costs as proof of debt in the bankruptcy proceedings and on 10 January 2023 the Official Receiver (the OR) admitted the taxed costs as a debt payable by the estate in bankruptcy. The Respondent's legal representatives made no objection to the admission of those costs as a debt due.

3 On 25 July 2024, the Respondent filed a summons in the High Court proceedings seeking an extension of time under Order 59 for a review of that taxation. Under Order 59, rule 34, an application for review of taxation must be filed within 14 days of taxation, however, under the same order an extension of time may be granted.

4 This application came before the learned Registrar Dk Hjh Norismayanti binti Pg Hj Ismail when the Appellant raised three preliminary objections to allowing the application for extension of time to proceed, which I will look at below. On 31 August 2024, these were rejected by the Learned Registrar who gave the Respondent leave to proceed with the application. The Appellant then appealed this decision, which appeal was heard by Judicial Commissioner Muhammed Faisal bin PDJLD Kol (B) DSP Haji Kefli on 15 May 2025. In his ruling handed down on 3 June 2025 the Judicial Commissioner dismissed the appeal with costs to the Respondent. The Appellant now seeks leave to appeal that decision to the Court of Appeal.

5 The three preliminary objections put forward by the Appellant are:

- i) That the leave of the Official Receiver is required to take any step in the High Court proceedings, such as the current application, under section 12(1) of the Bankruptcy Act, Cap 67.
- ii) That the Respondent was barred from challenging the Certificate of Taxation as it had been admitted by the OR with no opposition from the Respondent.
- iii) That the jurisdiction to challenge the costs order lay with the bankruptcy court, not the civil court.

6 I should add that the Appellant has also made much of the fact that this application was made nearly four years after the Certificate of Taxation and more than 18 months after it was admitted as a debt by the OR, and submits that the principle of res judicata and finality of judgments applies, and that the Registrar and the Learned Judicial Commissioner failed to consider this. The short answer to this is that it was not a matter under consideration before the Registrar or the

Judicial Commissioner. The only matters they were asked to deal with, and did deal with, were the three preliminary objections above, and the application for leave to appeal is from their decisions on those. Should this matter be returned to the Registrar to hear the application for extension of time, I have no doubt the delay in bringing it will feature in the parties' arguments and in the Registrar's decision on the matter when exercising their discretion as to whether the extension of time should be granted. It is not, however, a matter before me now.

7 In respect of the first preliminary objection it is worth setting out section 12(1) of the Bankruptcy Act in full:

“(1) On the making of a receiving order the Official Receiver shall be thereby constituted receiver of the property of the debtor and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall-

- (a) have any remedy against the property or person of the debtor in respect of the debt; or*
- (b) shall commence any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.”*

It is the submission of counsel for the Appellant that this section, while specifically preventing a creditor from taking proceedings against a debtor the subject of a receiving order, also applies to a debtor commencing proceedings and, indeed, making an application in an action already before the Court. He supports this submission by the words of this section whereby the OR is constituted receiver of the “property of the debtor” and, as property includes, under section 2 of the Act, “*things in action*”, concludes that this also includes an application in an action such as this.

8 However, I have difficulty with finding any basis for including an application such as this in the definition of “*things in action*”. As Channell J. said in *Torkington v Magee* [1902] 2 KB 427:

“‘chose in action’ is a known legal expression used to describe all personal rights of property which can only be claimed or enforced by action,”

To include an application to review an order for costs in this definition appears to me too wide an interpretation to the extent of taking a liberty with it.

9 In any event, this does not assist the Appellant when dealing with the matter of whether the Bankruptcy Act intended to prohibit a debtor from taking proceedings while the subject of a receiving order. I have had my attention drawn to two Malaysian cases, *Ho Ken Seng v Progressive Insurance Sdn Bhd* [2013] 2 MLJ 335 and *Akira Sales & Services Sdn Bhd v Nadiah Zee Abdullah* [2018] 2 CLJ 513 which, it is submitted, support this contention. However, both these

concern undischarged bankrupts to whom totally different considerations apply. I can find nothing in the Bankruptcy Act which prevents the Respondent from pursuing this application without leave from the OR.

10 The second preliminary objection is that the taxed costs cannot now be challenged as they have been admitted as a debt by the OR, and also that the Respondent, not having objected to their admission as a debt, is now estopped from challenging them. As to the challenge to the taxed costs, it is submitted by the Appellant that the proper remedy is to apply to reverse or vary the proof of debt under Rule 25 of the Proof of Debt Rules. However, this rule applies only to the trustee in bankruptcy who may make such application to the Court, not to the debtor. Similarly, as to the question of estoppel, the Appellant has produced nothing, and no authority, to support this submission. While it is open to the Appellant to raise this to oppose the application for extension of time, I can find nothing to say that an apparent admission of the debt should preclude the debtor from seeking to reduce it.

11 As to the third preliminary objection, that the jurisdiction to review the costs is with the bankruptcy court not the civil court, this does not bear close examination. The proposed review of taxation is still under the jurisdiction of the civil court where the review is conducted by the Taxing Master who carried out the original taxation. As a matter of common sense, it cannot have been the intention of the drafters of the High Court and bankruptcy legislation that a judicial officer unconnected with the proceedings should have been intended to undertake such a task. It is clear to me that the jurisdiction remains with the High Court in its civil jurisdiction.

12 As this is an application for leave to appeal, I have to decide whether the Appellant has an arguable case. The test was laid down in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538 where Lord Woolf MR said:

“The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used, which is that the applicant has no arguable case.”

He went on to say that in any event, leave may be granted where the issue is one which the court considers should be examined in the public interest or where the law needs clarifying. These tests have been largely followed in Brunei.

13 From what I have said above in respect of the three matters under consideration here, I find that there is no merit in any of the objections to the application before the Registrar, that the Appellant has shown no arguable case which has a realistic prospect of success, and that there is no question of public interest or any point of law which needs clarifying, and I accordingly see no reason to grant leave to appeal the decision of the Judicial Commissioner.

14 This application is therefore dismissed with costs to the Respondent to be taxed.

A handwritten signature in black ink, appearing to read 'ET Starbuck Woolley', written in a cursive style.

EDWARD TIMOTHY STARBUCK WOOLLEY
Judicial Commissioner