Lim Lye Hiang *v* Official Assignee
[2011] SGCA 56

Case Number	: Civil Appeal No 195 of 2010
Decision Date	: 02 November 2011
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Foo Soon Yien (Bernard & Rada Law Corporation) for the appellant; Lim Yew Jin and Li Mingjie Jordon (Insolvency & Public Trustee's Office) for the respondent.
Parties	: Lim Lye Hiang — Official Assignee

Insolvency Law – Bankruptcy

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2011] 1 SLR 707.]

2 November 2011 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

Introduction

1 This is an appeal by Lim Lye Hiang ("the appellant") against the decision of a High Court Judge ("the Judge") in *Re Lim Lye Hiang, ex parte the Official Assignee* [2011] 1 SLR 707 ("the Judgment").

The facts

2 Upon a petition of Keppel Bank of Singapore Limited, a bankruptcy order was made against the appellant on 9 January 1998.

3 Separately, the appellant's sister, Lim Lye Keow ("LLK"), had nominated the appellant pursuant to s 25 of the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("the CPFA") to receive LLK's Central Provident Fund ("CPF") monies and SingTel discounted shares (collectively, "the Monies"). LLK passed away on 14 March 2008, at which point the appellant was still an undischarged bankrupt.

4 On 18 September 2008, the CPF Board ("the Board") sent a letter to the appellant informing her that although she had been nominated by LLK to receive the Monies, the Monies would instead be released to the Official Assignee ("the OA") because she was an undischarged bankrupt. Although this letter was copied to the OA, it had no record of receiving the letter. As a result, no action was taken by the OA to claim the Monies from the Board.

5 On 26 June 2009, the Board sent an e-mail to the OA. The Board referred to its earlier letter of 18 September 2008 and requested the OA's instructions for the transfer of the Monies to it if the appellant was an undischarged bankrupt. Again, the OA had no record of receiving this e-mail and no action was taken on its part to claim the Monies.

6 On 16 October 2009, the OA filed a report to the court ("the Discharge Report") in support of its application to discharge the appellant from bankruptcy. By this time, the OA had admitted proofs of debt lodged by 13 creditors totalling $1,179,422.68, and had published a notice that it intended to

declare a first and final dividend. The last day for receipt of proofs of debt had expired on 12 May 2008. The Discharge Report stated, *inter alia*, that:

(a) The OA intended to declare a first and final dividend of about 0.989% to the creditors (*ie*, of about $11,664).

(b) The appellant had no further realisable assets.

(c) A period of more than 11 years had elapsed since the bankruptcy order.

(d) The appellant was 52 years old and was employed as a kitchen helper earning a net monthly salary of about $800. The appellant had been making regular contributions of between $50 to $150 per month to her estate in bankruptcy.

(e) The OA had completed the administration of the appellant's case.

7 On 13 November 2009, the court granted an order discharging the appellant from bankruptcy ("the Discharge Order") pursuant to s 124 of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("the BA"), without any conditions attached.

8 On 12 January 2010, the appellant attempted to claim the Monies from the Board. The Board did not accede to her claim. Instead, on 14 January 2010, the Board wrote to the OA again by e-mail. It referred to its previous letter on 18 September 2008 and e-mail on 26 June 2009, and requested the OA to give instructions for the transfer of the Monies to it if the appellant remained an undischarged bankrupt.

9 The OA responded immediately. On the same day (*ie*, 14 January 2010), the OA instructed the Board to forward the Monies to the OA. The Board then requested confirmation that the Monies were to be forwarded to the OA even though the appellant had already been discharged from bankruptcy. The OA confirmed that the Monies were to be forwarded to it for administration. Later that day, the Board informed the appellant that it had been instructed to release the Monies to the OA.

10 On 24 February 2010, the Board wrote to the OA informing the OA that the Monies, amounting to $102,614.84, had been transferred to its bank account. The Board expressed its belief that the Monies vested in the OA and that the appellant's discharge did not alter that position. This letter was copied to the appellant. On 2 March 2010, the Monies were received in the OA's bank account.

11 On 12 May 2010, the OA filed Summons No 600059 of 2010 ("the Summons") seeking, *inter alia*, an order that the Monies be divisible among the appellant's creditors and payable to them as dividends on the basis that the Monies were property which had devolved on the appellant on 14 March 2008 (the date of LLK's death), notwithstanding that the Monies were received by the OA *after* the appellant's discharge from bankruptcy.

The statutory provisions

12 Before we provide a summary of the Judge's decision and the issues raised in this appeal, it is convenient that we first set out the relevant statutory provisions. The relevant provisions in the CPFA at the time of LLK's death on 14 March 2008 were as follows:

Authorisation and conditions for withdrawal from Fund

15. —(1) No sum of money standing to the credit of a member of the Fund may be withdrawn

from the Fund except with the authority of the Board.

...

(5) ***After the death of a member of the Fund, a person nominated by that member in accordance with section 25(1) shall be entitled to withdraw*** , from the balance standing to the credit of that member in the Fund ... such portion of that balance as is set out in the memorandum executed in accordance with section 25 (1).

...

Withdrawals

20. —(1) Upon an application for the withdrawal of the sum of money standing to the credit of a member of the Fund by a person entitled thereto under section 15, ***the Board may authorise the payment*** to the applicant of such sum as the member is entitled to withdraw from the Fund ... or, if the applicant is ***a nominee appointed in accordance with section 25 (1), such portion of the sum as he is nominated to receive*** .

...

(3) All applications for withdrawal shall be supported by such evidence as may be prescribed and by such further evidence as the Board may reasonably require.

...

Moneys payable on death of member

25. —(1) Any member of the Fund ***may by a memorandum executed in the manner prescribed by the Board*** nominate a person or persons to receive in his or their own right such portions of the amount payable on his death out of the Fund under section 20 (1) or of any shares designated under section 26 (1) as the memorandum shall indicate.

[emphasis added in bold italics]

13 The relevant provisions in the BA at the time of LLK's death were as follows:

Interpretation

2. —(1) In this Act, unless the context otherwise requires —

...

"debt provable in bankruptcy" or "provable debt" means any debt or liability that is made provable in bankruptcy under this Act;

...

"property" includes money, goods, things in action , land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of or incidental to, property;

...

Review by court of Official Assignee's act, omission or decision

31. —(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of the Official Assignee in relation to the Official Assignee's administration of the bankrupt's estate, he may apply to the court to review such act, omission or decision.

(2) On hearing an application under subsection (1), the court may —

(*a*) confirm, reverse or modify any act or decision of the Official Assignee; or

(*b*) give such directions to the Official Assignee or make such other order as it may think fit.

...

Commencement and duration of bankruptcy

75. — The bankruptcy of any person who has been adjudged bankrupt by a bankruptcy order (whether made against him or against the firm in which he is a partner) shall —

(*a*) commence on the day when the bankruptcy order is made; and

(*b*) ***continue until he is discharged*** under Part VIII.

Effect of bankruptcy order

76. —(1) ***On the making of a bankruptcy order*** —

(*a*) ***the property of the bankrupt shall*** —

(i) ***vest in the Official Assignee without any further conveyance, assignment or transfer*** ; and

(ii) become divisible among his creditors;

...

Description of bankrupt's property divisible amongst creditors

78. —(1) ***The property of the bankrupt divisible among his creditors (referred to in this Act as the bankrupt's estate) shall comprise*** —

(*a*) ***all such property*** as belongs to or is vested in the bankrupt at the commencement of his bankruptcy ***or is acquired by or devolves on him before his discharge*** ; and

(*b*) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge.

...

Claims by unsatisfied creditors

118. —(1) A creditor who has not proved his debt before the declaration of any dividend shall not be entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved.

(2) When a creditor has proved his debt, he shall be entitled to be paid out of any money for the time available for the payment of any further dividend, any dividend or dividends which he has failed to receive.

(3) Any dividend or dividends payable under subsection (2) shall be paid before that money is applied to the payment of any such further dividend.

Final distribution

119. —(1) When the Official Assignee has realised all the bankrupt's estate ***or so much of it as can, in the opinion of the Official Assignee, be realised without needlessly protracting the proceedings in bankruptcy, he shall give notice in the prescribed manner of his intention to declare a final dividend*** .

(2) The notice under subsection (1) shall contain the prescribed particulars and ***shall require claims against the bankrupt's estate to be established by a date (referred to in this section as the final date)*** specified in the notice.

(3) The court may, on the application of any person, postpone the final date.

(4) After the final date, the Official Assignee shall —

(*a*) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate; and

(*b*) ***if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy*** .

...

Right of bankrupt to surplus

122. —(1) The bankrupt ***shall be entitled to any surplus remaining after payment in full of his creditors, with interest as by this Act provided, and of the costs, charges and expenses of the proceedings under the bankruptcy application*** .

...

Court's power to annul bankruptcy order

123. —(1) The court may annul a bankruptcy order if it appears to the court that —

(*a*) on any ground existing at the time the order was made, the order ought not to have been made;

(*b*) to the extent required by the rules, both the debts and the expenses of the

bankruptcy have all, since the making of the order, either been paid or secured for to the satisfaction of the court;

...

(2) The court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(3) Where a court annuls a bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by or under the authority of the Official Assignee or by the court shall be valid except that ***the property of the bankrupt shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms as the court may direct*** .

...

Discharge by court

124. —(1) The Official Assignee, the bankrupt or any other person having an interest in the matter may, at any time after the making of a bankruptcy order, apply to the court for an order of discharge.

...

(3) Subject to subsection (4) on an application under this section, the court may —

(*a*) refuse to discharge the bankrupt from bankruptcy;

(*b*) make an order discharging him absolutely; or

(*c*) ***make an order discharging him subject to such conditions as it thinks fit to impose, including conditions with respect to*** —

(i) ***any income which may be subsequently due to him; or***

(ii) ***any property devolving upon him, or acquired by him, after his discharge*** ,

as may be specified in the order.

...

Effect of discharge

127. —(1) ***Subject to this section and any condition imposed by the court under section 124 or 126, where a bankrupt is discharged, the discharge shall release him from all his debts provable in the bankruptcy but shall have no effect*** —

(*a*) ***on the functions (so far as they remain to be carried out) of the Official Assignee; or***

(*b*) ***on the operation, for the purposes of the carrying out of those functions, of the provisions of this Act.***

...

Discharged bankrupt to give assistance

128. —(1) ***A discharged bankrupt shall, notwithstanding his discharge, give assistance as the Official Assignee requires in the realisation and distribution of such of his property as is vested in the Official Assignee*** .

...

Duties of bankrupt

129. —(1) A bankrupt shall, in addition to any other duty specified in this Act —

...

...

(*i*) ***aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors*** ;

...

Disqualification of bankrupt

130. —(1) In addition to any disqualification under any other written law, a bankrupt shall be disqualified from being appointed or acting as a trustee or personal representative in respect of any trust, estate or settlement, except with leave of the court.

(2) ***Any disqualification to which a bankrupt is subject under this section shall cease when*** —

(*a*) ***the bankruptcy order against him is annulled or rescinded; or***

(*b*) ***he is discharged under Part VIII*** .

...

Disabilities of bankrupt

131. —(1) ***Where a bankrupt has not obtained his discharge —***

(*a*) ***he shall be incompetent to maintain any action, other than an action for damages in respect of an injury to his person, without the previous sanction of the Official Assignee; and***

(*b*) ***he shall not leave, remain or reside outside Singapore without the previous permission of the Official Assignee*** .

[emphasis added in bold italics]

Some of these provisions have since been amended but none of the amendments have altered the substance of the issues considered in this appeal or our decision on those issues.

The decisions below

14 At first instance, the Assistant Registrar ("the AR") granted the order sought by the OA (see [11] above). He explained that it was the *entitlement* to the Monies (*ie*, a chose in action) which was in issue, and not the Monies *per se*. He held that the appellant became entitled to the Monies when LLK died, and that therefore the chose in action vested in the OA due to the operation of s 78(1)(*a*) of the BA.

15 The Judge dismissed the appeal from the AR's decision. The appellant's first argument before the Judge was that the Monies did not devolve upon her immediately upon LLK's death. According to s 20(1) of the CPFA, the Monies could only be withdrawn if authorisation was granted by the Board. Such authorisation was not yet granted when she was discharged from bankruptcy. Therefore, the Monies fell outside the definition in s 78(1) of the BA of "property" which vested in the OA.

16 The Judge rejected this argument (at [15]–[26] of the Judgment). He noted that the appellant's focus on the actual transfer of the Monies to the OA on 24 February 2010 was misplaced because what was in issue was the *entitlement* to the Monies. The Judge found that this entitlement, which arose at the point of LLK's death, did fall within the definition of "property" which vested in the OA. Section 20(1) of the CPFA merely stipulates a procedural requirement of authorisation from the Board before withdrawal could be effected. This procedural requirement did not alter the nature of the appellant's entitlement to the Monies as a chose in action which fell within the ambit of s 78(1)(*a*) of the BA and therefore vested in the OA.

17 The appellant's second argument was based on s 24(4) of the CPFA, which provided that a CPF member's funds are not subject to his debts and will not vest in the OA upon his bankruptcy. The Judge rejected this argument (at [28] of the Judgment), stating that the protection conferred by s 24(4) was only intended to protect the savings *of a member* for his retirement from his creditors. There was no reason why Parliament would have intended the ambit of this protection to extend to *nominees*. Nominated CPF monies were in substance no different from other testamentary gifts. This argument was not pressed on appeal to this Court.

18 The appellant's final argument before the Judge was that her discharge had the effect of revesting the rights to the Monies in her. She relied on the case of *Chong Chee Keong v Official Assignee* [2005] 3 SLR(R) 546 ("*Chong Chee Keong*") as authority for this proposition. The Judge rejected this argument (at [31]–[32] of the Judgment), holding that *Chong Chee Keong* could be distinguished on the facts.

The issues in this appeal

19 The first issue to consider is whether the entitlement to the Monies constituted "property" within the ambit of s 78(1) of the BA and therefore vested in the OA at the point of LLK's death.

20 If the first issue is answered in the affirmative (*ie*, if the entitlement to the Monies vested in the OA at the point of death), the second issue which then arises is whether the appellant's *subsequent* discharge from bankruptcy had the effect of *revesting* that entitlement in the appellant.

The first issue: Whether the entitlement vested in the OA

Whether the entitlement arose upon death

Whether the entitlement arose upon death

21 Section 25 of the CPFA allows CPF members to nominate beneficiaries to receive their CPF funds upon death. Upon the death of a CPF member who had made such a nomination, s 15(5) provides that the nominee "shall be entitled to withdraw" the amounts stipulated by the deceased.

22 The appellant argues that a nominee's right to withdraw CPF funds that a member has nominated in his favour does not arise immediately upon the member's death. According to her, the Judge failed to recognise that s 15(5) provides that a nominee is entitled to withdraw CPF monies "after the death" of the member "in accordance with s 25(1)". Following on from that, she points out that s 25(1) refers to monies that are payable "under s 20(1)". Her contention is that because monies can only be *paid* to the nominee upon authorisation by the Board under s 20(1), the *entitlement* to withdraw the monies only arises upon such authorisation.

23 This argument is misconceived. As the OA rightly points out, the appellant has conflated, on the one hand, a nominee's *entitlement to withdraw* the monies and, on the other hand, the process which has to be complied with by the nominee in order to obtain *actual possession* of the monies. We agree with the Judge (at [23]–[26] of the Judgment) that s 20(1) was merely a procedural mechanism which was not relevant to the question of whether and when the *entitlement* to the Monies had crystallised. Section 15(5) of the CPFA is unambiguous: upon the death of LLK on 14 March 2008, the appellant became "entitled to withdraw" the Monies.

24 This interpretation of ss 15(5), 20(1) and 25 of the CPFA is supported by the decision of this Court in *Central Provident Fund Board v Lau Eng Mui* [1995] 2 SLR(R) 826, which concerned the interaction between a court order pursuant to what is now s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter") and a nomination pursuant to s 25 of the CPFA. The court stated (at [14]):

> *A nomination made under [s 25 of the CPFA] takes effect only on the death of the member* and *on the happening of such an event the provision of s 15(5) comes into operation*. Where an order has been made under [s 112 of the Women's Charter] giving to the spouse of the member a portion of the moneys in the latter's CPF account, the order takes effect immediately, and the member's balance to which he is entitled is diminished or reduced by the portion to which the spouse is entitled. *Hence, on his death his nominee can only take what the member had immediately before his death and would be entitled to the amount to which the member was then entitled* ... [emphasis added]

In other words, the time of death of the CPF member is the critical time at which the nomination under s 25 takes effect such that the nominee becomes *entitled* to receive the nominated CPF monies.

Whether the entitlement fell within s 78(1)(a) of the BA

25 The appellant's alternative argument is that even if the entitlement to withdraw the Monies pursuant to the CPFA arose upon LLK's death, that entitlement did not fall to be divided amongst her creditors under s 78(1)(*a*) of the BA. The appellant again, in support of this argument, relied upon the fact that s 20(1) of the CPFA required authorisation by the Board before a nominee may obtain payment of the monies which he is entitled to receive. As a result, the entitlement did not vest in the OA as part of the appellant's estate in bankruptcy.

26 Section 78(1)(*a*) of the BA provides that all "property" which is vested in the bankrupt at the commencement of his bankruptcy or is "acquired by or devolves on him" before his discharge forms

part of his estate in bankruptcy. We have already determined that the appellant's entitlement to the Monies arose at the time of LLK's death (see [23]-[24] above). Therefore, the entitlement to the Monies was acquired by or had devolved upon the appellant before her discharge from bankruptcy. The only remaining question which has to be considered is whether the statutory entitlement of a nominee to nominated CPF monies constitutes "property" as understood in the BA.

27 Section 2(1) of the BA provides that "property" includes choses in action. A chose in action is an expression used to describe "all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession": see *Torkington v Magee* [1902] 2 KB 427 at 430. The statutory entitlement of a nominee to nominated CPF monies falls squarely within this explanation of what constitutes a chose in action.

28 It is trite law that the existence of a chose in action does not depend upon immediate enforceability. In *Kwok Chi Leung Karl v Commissioner of Estate Duty* [1988] 1 WLR 1035, the Privy Council (on an appeal from Hong Kong) was faced with the issue of, *inter alia*, whether an obligation to pay a sum of money on demand after sixty days constituted an existing chose in action at the time when the obligation was entered into. Lord Oliver of Aylmerton (delivering the judgment of the court) held that the obligation was indeed an existing chose in action at the time when the obligation was entered into. He stated (at 1040E–G):

> A chose in action is no less a chose in action because it is not immediately recoverable by action …
>
> ... A debt which is payable in futuro is no less a debt ...

29 This reasoning was adopted by Ferris J in the case of *In re Landau (a bankrupt)* [1998] Ch 223 ("*Re Landau*") which was cited by the OA. This case dealt with the question of whether rights under a pension policy fell within a bankrupt's estate. At the age of 53, Mr Landau entered into an arrangement whereby he was entitled to an annuity for the rest of his life starting from when he turned 65. He was made a bankrupt when he was 61. He was discharged from bankruptcy when he was 64. When Mr Landau reached the age of 65 in 1994, he sought to obtain the benefits under the policy.

30 Ferris J held that the trustee in bankruptcy was entitled to receive all the sums payable under the policy, despite the fact that the benefits were only payable at a time when Mr Landau had already been discharged from bankruptcy, *ie*, in 1994 when Mr Landau turned 65. His reasoning was as follows (at 232B–G):

> As a matter of classification, Mr. Landau's bundle of contractual rights under the policy constitutes a chose in action and it had this character at the time of the bankruptcy order. On the face of it, therefore, it fell within the definition of "property" [in s 436 of the Insolvency Act 1986 (UK)]. Moreover the fact that, at the commencement of the bankruptcy, nothing was immediately payable under the policy does not alter this in any way. …
>
> …
>
> … At the commencement of his bankruptcy he had a present right to compel [the pensions provider] to make payments under the policy in the future. This was an immediate chose in action … Mr. Landau had, in relation to the policy, the same chose in action on the date of the bankruptcy order as he had when he attained the age of 65 and … the latter event did not result in anything being acquired by or devolving upon him.

31 We agree that this is the correct approach to view choses in action. The fact that there was no authorisation given by the Board to the appellant at the time of LLK's death (or at any point before the appellant's discharge) is therefore irrelevant. The appellant's reliance on s 20(1) of the CPFA conflates, on the one hand, the process by which the chose in action is *realised*, and, on the other hand, the conditions for the *existence* of the chose in action. The fact that the Monies were only paid out after the appellant was discharged from bankruptcy is also irrelevant, because such payment merely represents the realisation of the chose in action. *What is crucial is that the entitlement came into existence upon LLK's death and that the appellant was still an undischarged bankrupt at this time.*

32 Apart from the argument based on the mere fact that authorisation was required by s 20(1) of the CPFA for the withdrawal of the Monies, the appellant advanced a distinct but related argument based on the width of the *discretion* of the Board to authorise withdrawals. She submits that the lack of substantive criteria in s 20(1) indicates that the Board possesses a wide discretion as to whether or not to authorise withdrawals, and that therefore the entitlement should not constitute "property" within the BA. She also points out that s 20(1) merely states that the Board "may" authorise withdrawal by the nominee. We do not think that this argument assisted the appellant in any way. Any discretion, however wide or narrow, has legal limits: see *Chng Suan Tze v Minister for Home Affairs and others and other appeals* [1988] 2 SLR(R) 525 at [86]. Proceedings by way of judicial review could be brought against the Board if it wrongfully refused to authorise withdrawal of the monies. Furthermore, the word "may" is not infrequently held to mean "shall". In the context of the architecture of the CPFA, we do not think that the Board has the discretion to decline to effect payment to a person lawfully entitled to receive the monies in question.

33 To sum up, the appellant's entitlement to the Monies was a chose in action which came into existence at the point of LLK's death. Because the appellant was an undischarged bankrupt at that point in time, that chose in action, by operation of s 78(1)(*a*) of the BA, constituted part of the appellant's estate in bankruptcy. Consequently, it automatically vested in the OA by virtue of s 76(1)(*a*).

Whether the requirements of ss 78(1)(a) and (b) are conjunctive

34 The appellant's final argument on this issue is that even if s 78(1)(*a*) of the BA has been satisfied, it is necessary for both limbs of s 78(1) to be satisfied on the basis that the terms "and", and "shall comprise" are used in the section. The appellant goes on to argue that s 78(1)(*b*) is *not* satisfied because she is unable to withdraw the monies until authorised by the Board.

35 This argument is entirely without merit. First, as the OA points out, the word "and" may be used in a disjunctive sense, for instance, where the various paragraphs which are joined by the word merely set out a list of different objects or classes of objects, related only by the fact that they qualify to be in that list.

36 Secondly, the English and Australian courts have interpreted similar provisions in their respective bankruptcy statutes in a disjunctive manner. In *Cummings v Claremont Petroleum NL and another* (1996) 185 CLR 124, the High Court of Australia considered whether the right of appeal of a judgment debtor (the bankrupt) against the judgment formed part of the bankrupt's estate within the meaning of s 116(1) of the Bankruptcy Act 1966 (Cth), which is *in pari materia* with s 78 of the BA. Brennan CJ, McHugh and Gaudron JJ held that s 116(1)(*a*) was not satisfied because neither the obligation to comply with the judgment nor the right of appeal constituted "property". They applied *In re Rose; Trustee of the Property of E T Rose v Rose* [1904] 2 Ch 348 ("*Re Rose*") and held that s 116(1)(*b*) was intended to encompass powers of appointment in relation to "property" which could

be exercised for the bankrupt's benefit. As there was no "property" over which the powers could be exercised, they held that this limb was not satisfied (at 133).

37 The High Court of Australia did not treat both limbs of s 116(1) as having a conjunctive relationship. If both limbs were conjunctive, they need not, having held that s 116(1)(*a*) was not satisfied, have gone on to consider whether s 116(1)(*b*) was satisfied. The same approach has been taken by the English courts. In *Re Rose* itself, Farwell J stated (at 351–352):

> The question turns on the construction of the 44th section of the Bankruptcy Act, 1883. ... [T]he 2nd sub-section enacts that [the property of the bankrupt divisible amongst his creditors] shall comprise the following particulars: (i.) all such property as may belong to or be vested in the bankrupt at the commencement of his bankruptcy, or may be acquired by or devolve on him before his discharge; and (ii.) the capacity to exercise and take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge ... . These two heads comprise all the beneficial interests of the bankrupt *which are either property properly so called or general powers. ... I think the powers referred to are those powers which are familiar to all conveyancers and are powers properly so called*. [emphasis added]

38 The appellant's argument that s 78(1)(*b*) is not satisfied is actually correct because there are no powers of appointment in the present case. But that does not advance her case because s 78(1)(*a*) has been satisfied, and that alone is sufficient for the entitlement to constitute part of the appellant's estate in bankruptcy which vests in the OA.

The second issue: Whether the discharge revested the entitlement in the appellant

39 As we have explained (see [27]–[31] above), the entitlement to the Monies was a chose in action which vested in the OA at the point of LLK's death. The next issue is whether that entitlement revested in the appellant when she was subsequently discharged from bankruptcy. This issue requires the consideration of the following questions:

(a) Does a discharge *ipso facto* revest property in a discharged bankrupt?

(b) If a discharge does not *ipso facto* revest property, is the position different if the discharge is granted after a final dividend has been declared by the OA?

Whether a discharge ipso facto revests property

40 The appellant's most promising argument is based on the decision in *Chong Chee Keong* (see [18] above). The plaintiff was a shareholder of a company which was wound up on 13 August 1999. The Official Receiver ("the OR") was appointed as the liquidator. On 10 December 1999, the plaintiff was made a bankrupt. The OA, *qua* trustee in bankruptcy of the plaintiff, filed a proof of debt of $682,304 against the company on 21 April 2001. The plaintiff was discharged from bankruptcy on 30 June 2003. On 5 July 2004, the OR declared a dividend of 16.33% in the liquidation of the company. The plaintiff applied for a declaration that the money (about $111,420) should be paid over to him personally.

41 Choo Han Teck J granted the declaration. He accepted the OA's argument that the plaintiff's right to claim the dividend, *qua* chose in action, vested in the OA. He stated (at [2]):

> The Official Assignee disputed the claim on the ... basis that the whole of the plaintiff's property

and assets had been vested in the Official Assignee upon the bankruptcy of the plaintiff. ...

Counsel for the Official Assignee submitted that the phrase, "things in action" [in s 2(1) of the BA] meant "chose-in-action", and that denoted a right to claim property. *These statements are accurate and correc*t, but the issue was a narrower one and it was whether the Official Assignee was *still* entitled to money *claimed during bankruptcy (when the chose-in-action vested with him)*, but only due after the certificate of discharge had been given…

[emphasis added]

However, he went on to decide that the chose in action (which was vested in the OA) *reverted* to the plaintiff after his discharge. He stated (at [4]):

A preservation of [the right to any money that might be due after the certificate of discharge was granted] is important because the certificate of discharge is a statutory instrument that wipes the slate clean for the bankrupt so that he might carry on with his life afresh, free of past debts and liabilities. The certificate of discharge is a document that certifies and declares to the world at large that no more debt is owed by the discharged bankrupt. *Any residual rights must revert to the discharged bankrupt*. *That being the case, any money that comes subsequently into the Official Assignee's hands must be turned over to the discharged bankrupt unless the Official Assignee had expressly reserved that money as a condition to the discharge. ... Without that reservation, the Official Assignee can retain the money only if the certificate of discharge is set aside by the court.* [emphasis added]

42 We had some difficulty with this particular conclusion and therefore at the conclusion of the hearing on 13 April 2011 directed both parties to tender further submissions on (a) the effect (if any) of a discharge from bankruptcy on property rights which are vested in the OA, and (b) whether *Chong Chee Keong* was correctly decided. In its further submissions, the OA argues that *Chong Chee Keong* is wrong and should be overruled for the following reasons:

(a) The concept of an express reservation of rights by the OA is not contained in the BA and is inconsistent with ss 127 and 128 thereof.

(b) Choo J was correct to state that a discharge releases a bankrupt from almost all of the debts which were provable in his bankruptcy, and therefore wipes the slate clean for him so that he may carry on with his life afresh free of past debts and liabilities. However, it did not follow that "residual rights must revert to the discharged bankrupt". The concept of residual rights which reverted to the discharged bankrupt is not contained in the BA and is inconsistent with ss 127 and 128 thereof.

43 Section 127(1) of the BA provides that a discharge releases the bankrupt from *all* debts provable in his bankruptcy. The proviso, *viz*, "[s]ubject to this section and any condition imposed by the court under section 124 or 126", is a qualification to that broad proposition. In other words, the discharged bankrupt is *not* released from the following categories of provable debts: (a) debts specified in s 127 itself; and (b) debts which are specified by the court pursuant to its power under ss 124 or 126.

44 Section 127(1) goes on to state that the fact that the bankrupt is released from most debts provable in his bankruptcy does not have any effect on the functions of the OA (so far as they remain to be carried out). The appellant notes that the Discharge Order was an "absolute" order of discharge, *ie*, one without any conditions specified therein. She argues that because the Discharge

Order was absolute in nature, there were no residual functions of the OA to be discharged and that, therefore, the order had the effect of automatically revesting the entitlement to the Monies in her.

45 We do not accept this argument. The reference to conditions imposed by the court under ss 124 or 126 merely qualifies the general proposition that the bankrupt is discharged from all debts provable in his bankruptcy. In other words, *if* the court had specified that the appellant was not to be released from a particular debt or particular category of debts, then this condition would be given effect by virtue of the proviso to s 127(1). The *absence* of such a condition means that (if no debts specified in s 127 are in issue) the bankrupt is released from *all* debts provable in his bankruptcy. This does not answer the question of whether or not a discharge (whether absolute or conditional) has the *additional* effect of revesting property, over and above releasing the bankrupt from all debts provable in his bankruptcy. We pause here to note that apart from releasing the discharged bankrupt from most debts provable in his bankruptcy, a discharge also has the following beneficial effects:

(a) All property which is acquired by or devolves on him *after* discharge will belong to him: see ss 75(*b*), 78(1)(*a*).

(b) He is freed from the legal and practical disabilities of being an undischarged bankrupt: see ss 75(*b*), 130, 131.

46 We agree with the OA that a discharge in itself does not have the effect of revesting property in the bankrupt and that therefore *Chong Chee Keong* is wrong on this point. First, the statutory provisions plainly contemplate that the administration of the bankrupt's estate may still continue after discharge. While s 127(1) provides that the discharge has no effect on the functions of the OA (so far as they remain to be carried out), s 128(1) clearly contemplates, as the OA argues, that property remains vested in it because s 128(1) provides that a discharged bankrupt shall provide assistance in the realisation and distribution of "such of his property as is vested" in it. Reading both sections together, it can be concluded that certain functions of the OA may remain to be carried out in relation to the realisation and distribution of the bankrupt's estate even after the bankrupt has been discharged.

47 The other provisions of the BA also lend support to the view that a discharge does not automatically revest property. Although Parliament expressly provided in s 76(1)(*a*) that the property of the bankrupt *automatically vests* in the OA at the *onset* of bankruptcy, s 127(1) is significantly *silent* as to any revesting of property upon discharge which marks the *end* of bankruptcy. By contrast, the provisions on annulment *expressly* provide that an annulment has the effect of revesting property. An annulment may be granted (a) by a court order pursuant to s 123 of the BA, or (b) by a certificate of the OA pursuant to either ss 95A or 123A of the BA. All three sections provide that upon an annulment the "property of the bankrupt" will generally "revert to the bankrupt": see, for instance, s 123(3). In *Tan Teck Guan v Mapletree Trustee Pte Ltd (trustee of Mapletree Industrial Trust)* [2011] 3 SLR 1031 ("*Tan Teck Guan*"), Chan Seng Onn J held (at [14]), following English, Australian and Malaysian authorities, that annulment "has the effect of wiping out the bankruptcy altogether and putting the bankrupt in the same position as if there had been no bankruptcy order made against him". He added (at [15]) that this did not mean that annulment had retrospective effect for all intents and purposes, such as where exceptions to the general rule were created by the provisions of the BA. We agree with Chan J's analysis in *Tan Teck Guan*. Given that Parliament expressly provided that property would in general revest in the "bankrupt" upon an annulment, it is very unlikely that the *same* effect would be achieved by means of a *discharge* given that s 127 is silent on this point.

48 Apart from the difference in wording of the relevant provisions, the difference in the effect of

an annulment as compared to a discharge is also supported by the difference in the objectives of the two regimes. A discharge, while acknowledging that the bankrupt was rightly made a bankrupt, is intended to give him "a second chance in life": see *Re Siah Ooi Choe, ex parte Hongkong and Shanghai Banking Corp* [1997] 3 SLR(R) 706 at [9]. By contrast, an annulment "neither casts any aspersions nor provides any indication *vis-à-vis* the conduct of the person subject to the bankruptcy order": see *Tan Teck Guan* at [27].

49 Furthermore, s 122, which provides that the bankrupt "shall be entitled to any surplus remaining after payment in full of his creditors" with interest and of the bankruptcy expenses, contemplates that the bankrupt will obtain property from his estate only if "his creditors" have been paid in full. This phrase, *viz*, "his creditors", has been interpreted in *In re Ward* [1942] 1 Ch 294 ("*Re Ward*") at 297–298 by Farwell J to refer to all creditors who have proved in the bankruptcy, and not all creditors in general regardless of whether or not they have proved in the bankruptcy. Although it is not necessary to decide this point in this appeal, we think that Farwell J's approach is a sensible interpretation of s 122 which strikes an appropriate balance between the interests of the creditors and the bankrupt. Nonetheless, the point which is material in this appeal is that the revesting of property upon discharge will *in effect* circumvent s 122 because the discharged bankrupt will be obtaining property which constituted part of his estate without having paid off his creditors in full.

50 Secondly, the proposition that a discharge does not automatically revest property is supported by the objectives of the discharge regime. During the Second Reading of the Bankruptcy Bill, the then Minister for Law, Professor S Jayakumar stated as follows (*Singapore Parliamentary Debates, Official Report* (25 August 1994) vol 63 at cols 400–402):

> Let me, Sir, highlight, first, *the main weaknesses of the present legislation which the Bill seeks to address. Firstly, the difficulty in obtaining a discharge from bankruptcy*. It is now not possible for a bankrupt to be discharged unless he settles his debts in full or proposes a scheme of arrangement or composition which is acceptable to the creditors. Many creditors are also not prepared to accept realistic proposals for settlements. In short, there is very little incentive for the bankrupts to actively seek a discharge by disclosing their assets and cooperate with the Official Assignee in the administration of their estates.
>
> ...
>
> *The second main feature of this Bill is to encourage entrepreneurship where bankrupts who have become so through misfortune rather than malpractice will be subjected to a more practical and pragmatic regime of bankruptcy. A major innovation is the provision for a discharge by certificate of the Official Assignee*. Under this scheme, where proven debts do not exceed $100,000, a debtor can be discharged from bankruptcy after five years. However, unlike the position in the United Kingdom and Australia, there will not be any automatic discharge. In deciding whether to issue a certificate, the Official Assignee will be guided by a number of factors, including the circumstances in which the debt was incurred, the bankrupt's conduct and the extent of cooperation given to the Official Assignee.
>
> To facilitate easier discharges by the court in other cases, for example, beyond $100,000, the requirements for an application to the court have also been simplified and subject to certain safeguards.
>
> The existing scheme and procedures for the settlement of debts through a scheme of arrangement or composition offer have been rationalised and improved. *Hence, it will result in creditors recovering their moneys more quickly and will also expedite discharges.*

[emphasis added]

It is not unlikely that although the OA may not have completed the realisation and distribution of the estate in bankruptcy, he may yet be of the opinion that, after taking into account all relevant circumstances, a bankrupt is nonetheless deserving of discharge. Should a discharge have the effect of automatically revesting property, this consideration will militate against a decision to grant a discharge by the OA or the court. This would not be an interpretation of the BA which accords with its purpose of facilitating discharges where appropriate. It is no answer to this to say that the court can always impose conditions to prevent the revesting of property. As we have explained (see [44]–[45] above), the reference in s 127 to conditions imposed by the court under ss 124 or 126 is a qualification to the general principle that the bankrupt is released from all debts provable in his bankruptcy. These conditions are not relevant to the vesting of property, which is a distinct issue.

51 Thirdly, the courts in England and Australia have adopted the same interpretation of their respective bankruptcy statutes in relation to the effect of a discharge, *ie*, that it does not in itself have the effect of revesting property. These decisions are highly persuasive in so far as the relevant provisions are *in pari materia* with those in the BA. In *Pegler v Dale* (1975) 6 ALR 62, S and F had an interest in a mortgaged property. The mortgagee paid the balance of the monies from the sale of the property into court. S had been made a bankrupt on 23 April 1963 but was automatically discharged on 4 March 1971. S and F argued that the automatic discharge had revested S's share of the balance in her (at 63):

> The first and second defendants submit that the effect of s 153 ... after the automatic discharge of 1971, is to revest the property in the former bankrupt. Subsection (1) of s 153 appears to give some support to this contention, because it says that, subject to the section: "Where a bankrupt is discharged from a bankruptcy, the discharge operates to release him from all debts (including secured debts) provable in the bankruptcy ..."

Needham J rejected this argument (at 63–64):

> I was attracted to this argument until counsel for the plaintiff directed my attention to s 152(1) ... which reads as follows: "A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee reasonably requires in the realization and distribution of such of his property as is vested in the trustee." The only way that I can see that property of the bankrupt is vested in the trustee is by virtue of the sequestration order. *If property so vested in the trustee continues to be vested in the trustee after discharge, as s 152(1) indicates*, *then the operation of s 153 in discharging the bankrupt from debts cannot have the effect of revesting* in the bankrupt the property which was under the sequestration order vested in the trustee. [emphasis added]

52 *Pegler v Dale* was followed and applied by Barrett J in *Re Emilco Pty Ltd* [2001] NSWSC 1035, who stated (at [38]):

> Mr Jaa Jaa's discharge from bankruptcy did not cause the debt to re-vest in him. This is made clear by the decision of the Court of Appeal in *Daemar v Industrial Commission of New South Wales (No 2)* (1990) 22 NSWLR 178 approving the decision of Needham J in *Pegler v Dale* [1975] 1 NSWLR 265. The reason is that *nothing in the Bankruptcy Act effects any such re-vesting upon discharge. On the contrary*,*s 152, by dealing with duties to which a "discharged bankrupt" is, "even though discharged", subject in relation to "such of his or her property as is vested in the*

trustee", makes it plain that that property remains vested in the trustee after discharge. [emphasis added]

Although the Australian Bankruptcy Act 1966 (Cth) provides for an automatic discharge after a specified period of time, the BA does not. However, the reasoning of the Australian courts does not turn on the fact that discharges may occur automatically under their bankruptcy statute. Instead, their reasoning hinges on s 152(1) of the Bankruptcy Act 1966 (Cth) which is *in pari materia* with s 128 of the BA.

53 The English courts have also adopted the same position. In *In re A Debtor, Ex parte the Trustee of the Property of the Bankrupt v Clegg and others* [1968] 1 WLR 788, Stamp J stated (at 791F–H):

> It was held, in *In re Coulson* [[1934] 1 Ch 45], that the power under [s 25 of the Bankruptcy Act 1914 (UK) for the examination of a bankrupt] survived the discharge of the debtor from his bankruptcy. *A duty still remains on the trustee to collect, realise and distribute such of the debtor's assets as were vested, before the discharge, in the trustee* ...
>
> ... [T]he case ... is, in my judgment, a clear decision that section 25 survived the discharge of the bankrupt and can properly be invoked to assist the trustee to collect, realise and distribute *such of the debtor's assets as are vested in the trustee before the discharge*.
>
> [emphasis added]

Goff J agreed (at 801F–H):

> In my judgment, it is quite clear that the fact that the bankrupt had obtained his discharge does not prevent an order being made under section 25. In the first place, it was decided in *In re A Debtor* [[1939] 1 Ch 489] that *the discharge does not put an end to the bankruptcy for all purposes*. There, Sir Wilfred Green M.R. said:
>
> > "The court had jurisdiction in bankruptcy under the Act; the order of discharge did not take away the jurisdiction of the Court in Bankruptcy, because admittedly the *discharge of the bankrupt does not put an end to the bankruptcy regarded as a series of judicial and administrative acts and rights and powers*."
>
> [emphasis added]

54 In fact, an argument strikingly similar to that of the appellant was advanced in *Ex parte Waters; In re Waters* (1874) LR 18 Eq 701. In that case, a liquidation petition was filed by two partners. A creditors' meeting resolved that the partners should be discharged in respect of their partnership liabilities. Subsequently, the trustees in bankruptcy of the partnership discovered that one of the partners (one Robert Waters) had, after the order of discharge was granted, received about £188 on account of the partnership estate. The trustees obtained an order of court that he should pay that sum to them. Mr Waters failed to comply and an order of committal for contempt of court was made. He appealed, arguing *inter alia* that the money was received after the discharge was granted. Sir James Bacon CJ dismissed the appeal on the basis of s 19 of the Bankruptcy Act 1869 (c 71) (UK), which was as follows (at 702, footnote (2)):

> The bankrupt shall, to the utmost of his power, aid in the realization of his property, and the distribution of the proceeds amongst his creditors ...

Sir James Bacon CJ stated as follows (at 702–703):

> Between liquidation and bankruptcy there is for this purpose no distinction. *Nor is there any distinction by reason of the fact that the debtors' discharge had been granted before this money was misapplied*. The discharge only releases them from the debts provable in the liquidation, and not from the obligation to perform the duties prescribed by the statute during the liquidation. ... That it was the plain duty of this debtor *to assist the trustees to the utmost of his power in the realization and distribution of the estate*, no one can doubt. [emphasis added]

5 5 *Re Landau* (see [29]–[30] above) also stands for the proposition that a discharge does not in itself revest property in the bankrupt.

56 For these reasons, we hold that a discharge does not *ipso facto* revest property in the discharged bankrupt. The bankrupt's discharge releases "him" from the debts and does not affect the *debts* themselves. As Kala Anandarajah et al, *Law and Practice of Bankruptcy in Singapore and Malaysia* (Butterworths Asia, 1999) explains (at p 437):

> Discharge only *releases* the bankrupt from provable debts not expressly allowed to continue by statute or court order. Discharge does not, however, destroy the debts altogether as if they had never existed. [emphasis in original]

In other words, those creditors whose debts are provable in the bankruptcy and from which the bankrupt is released due to s 127 are left to prove in the bankruptcy against the bankrupt's estate, which is vested (and remains vested) in the OA for this purpose. In *Law Society v Shah* [2009] Ch 223, it was argued that the effect of a discharge was to "extinguish" debts provable in the bankruptcy. Floyd J rejected this argument (at 237A):

> It is only the *remedy of enforcement as against the bankrupt* which is extinguished, the creditor being left to the collective enforcement procedure under the [Insolvency Act 1986 (UK)] to secure satisfaction of the underlying cause of action *out of the estate in the hands of the trustee in bankruptcy*, perhaps only to the limited extent that he can. [emphasis added]

Discharge after final dividend has been declared

57 A possible argument that could have been advanced by the appellant is that even if a discharge does not automatically revest property, the discharge will have that effect *if* it is granted after a final dividend has been declared by the OA. Although s 127(1) provides that a discharge does not have any effect on the functions of the OA which remain to be carried out, no such functions remain to be carried out if the OA has already declared a final dividend. Such a declaration signifies the end of the administration of the bankrupt's estate, and therefore property should revest in the discharged bankrupt upon discharge.

58 On the facts of this appeal, the OA had given notice to the creditors that it *intended* to declare a first *and final* dividend, and the last day for creditors to come in to prove their debts had already expired (see [6] above). It, however, appears that the final dividend has not yet been declared: the Summons also contained a prayer to amend the Discharge Report to state that the OA will be able to declare a "first and final dividend of about 9.078%". Nonetheless, we are of the opinion that it would be desirable in the interest of legal certainty for the wider community to consider the applicable principles in the event that the final dividend *had* been declared by the OA.

59 Section 119(1) of the BA states that the OA shall declare a final dividend when it has realised

all the bankrupt's estate or so much of it as can, in its opinion, be realised without needlessly protracting the proceedings in bankruptcy. Section 119(2) states that the notice given by the OA "shall require *claims* against the bankrupt's estate *to be established* by a date ... specified in the notice" [emphasis added]. Section 119(4)(*b*) provides that, after the final date, the OA shall declare and distribute the final dividend "without regard to the claim of any person in respect of a debt not already proved in the bankruptcy".

60 In *Re Ward* ([49] above), Farwell J held (at 297–298) that where all the creditors who had proved in the bankruptcy had been paid in full, the residue of the bankrupt's estate constituted "surplus" within the equivalent of s 122 of the BA. The fact that there were other creditors who had not been paid was irrelevant because the Act "contemplates that there shall be finality" (at 297). This finding was made by Farwell J after having considered s 65 of the Bankruptcy Act 1914 (UK), which provided that a creditor who proves his debt after the declaration of a dividend is still entitled to be paid "any dividend or dividends he may have failed to receive". Section 65 is *in pari materia* with s 118 of the BA. We agree with Farwell J's analysis. It follows that the operation of s 118 is limited to interim dividends, *ie*, dividends which are not final.

61 Although the *ratio* of *Re Ward* is confined to a situation where the creditors who had proved in the bankruptcy had been paid in full, Farwell J's reasoning, *viz*, that there should be finality in terms of the identity of the creditors who are entitled to a portion of the bankrupt's estate, applies with equal force even where creditors who have proved in the bankruptcy have *not* been paid in full. The presence or absence of a "surplus" has no bearing on the question of whether a creditor has submitted his proofs of debt by the final date. If a creditor fails to submit his proofs of debt in time, such a creditor has only himself to blame. If there is property which comes to light after the final dividend has been declared, creditors who have not proved are *not* entitled (a) to rely on s 118(2) to claim a share of that property in satisfaction of the *past* dividends which they failed to receive, or (b) to claim *future* dividends which are declared from the realisation of that property. In other words, the class of creditors who are entitled to dividends is crystallised on the final date (or extended final date).

62 This interpretation of the effect of a final dividend is supported by a consideration of the legislative history of the BA and its associated subsidiary legislation. Forms 113 and 114 of the Bankruptcy Rules 1967 (S 64/1967) ("the 1967 Rules") are as follows:

> **No. 113**
>
> **NOTICE TO CREDITORS OF INTENTION TO DECLARE DIVIDEND**
>
> **(Title).**
>
> (A ["first" or "second" or "final" or as the case may be] dividend is intended to be declared in the above matter. You are mentioned in the debtor's statement of affairs, but you have not yet proved your debt.
>
> If you do not prove your debt by the day of , 19 , you will be excluded from this dividend.
>
> ...
>
> **No. 114**

NOTICE TO PERSONS CLAIMING TO BE CREDITORS OF INTENTION TO DECLARE FINAL DIVIDEND

(Title).

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to my satisfaction on or before the day of , 19 , or such later day as the Court may fix, *your claim will be expunged*, and I shall proceed to make a final dividend without regard to such claim.

...

[emphasis added]

Forms 113 and 114 are *in pari materia* with Forms 123 and 124 of the Bankruptcy Rules 1886 (UK). Form 113 merely states that a failure to prove by the stipulated date would exclude the creditor from "this dividend". By contrast, Form 114 is worded in stronger language. The use of the phrase "your claim will be expunged" is an indication that creditors who have not proven in the bankruptcy by the final date will not be able to subsequently come in and claim any dividends (whether past or future), because their claims against the estate will be treated as being non-existent for the purpose of the administration of the bankrupt's estate. It is telling that while Form 114 refers to a "claim" being expunged, ss 27 and 29 of the Second Schedule to the Bankruptcy Act (Cap 18, 1970 Rev Ed) refer only to a "proof" being expunged:

27. If the official assignee thinks that a proof has been improperly admitted the court may on his application, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

...

29. The court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere in the matter, or in the case of a composition or scheme upon the application of the debtor.

This interpretation is supported by Ian F Fletcher, *The Law of Insolvency* (Sweet & Maxwell, 2009, 4th Ed) at para 10-043:

Where there is to be a final dividend, s.330(3) [of the Insolvency Act 1986 (UK) which is *in pari materia* with s 119(3) of the BA] provides that the court may, on the application of any person, postpone the final date by which the trustee's notice requires claims against the bankrupt's estate to be established, but in the absence of such a postponement the insolvent administration enters its final phase, and the trustee will, after the final date has passed, defray any outstanding expenses of the bankruptcy (or liquidation) out of the funds remaining in his hands, and thereafter duly declare and distribute the final dividend among the proving creditors. *Thereafter, any creditor who has failed to establish his claim by lodging proof in time will receive nothing, although (in the case of bankruptcy) the debt, as one of the bankruptcy debts, will be discharged through the process of bankruptcy*. [emphasis added]

63 The present Form 37 in the Bankruptcy Rules (Rg 1, 2006 Rev Ed) is as follows:

NOTICE TO CREDITORS OF INTENTION TO DECLARE DIVIDEND

Take notice that a [first] [second] [final] dividend is intended to be declared in the above matter and that if you do not establish your claim to my satisfaction on or before the day of 20 you will be excluded from this dividend and I shall proceed to make the dividend without regard to your claim.

...

It is apparent that Form 37 is an amalgamation of the old forms, *viz*, Forms 113 and 114 of the 1967 Rules, without the phrase "your claim will be expunged". The absence of this phrase is not a sufficient indication of a legislative intention, over and above an intention to simplify the bankruptcy procedures, to alter the applicable legal principles governing the effect of a final dividend. Furthermore, the phrase was retained in Form 50 of the Companies (Winding Up) Rules (Rg 1, 2006 Rev Ed) which is *in pari materia* with the old Form 114 of the 1967 Rules.

64 Having considered the effect of a final dividend in principle, we now turn to the question of whether a discharge granted after a final dividend has been declared has the effect of revesting property. Where the discharge is granted after the final dividend falls short of satisfying the creditors who have proved in the bankruptcy before the final date in full, a revesting of property would *in effect* disrupt the statutory allocation of rights embodied in s 122 (see [49] above). This is because the discharged bankrupt would be obtaining property which formed part of his estate without having satisfied the conditions stipulated by s 122. For this reason, a discharge granted in such circumstances does not *ipso facto* revest property in the discharged bankrupt. Therefore, if any property which forms part of the estate in bankruptcy comes to light after discharge, that property must *prima facie* be realised by the OA in favour of the bankruptcy expenses and the creditors who have proved in the bankruptcy before the final date in so far as they have not yet been paid off in full. As for creditors who have not proved by the final date, they are not entitled to claim any share of such property: see [60]–[63] above.

65 Where the discharge is granted after a final dividend of 100%, *ie*, where all the creditors who had proved in the bankruptcy by the final date have been paid in full, the requirements of s 122 have been met. Any property which subsequently comes to light will be held by the OA on trust for the discharged bankrupt beneficially: see *Bird v Philpott* [1900] 1 Ch 822 at 828. This is not because of the discharge *per se* but because the purpose for which the property is held by the OA has been achieved.

Procedure for revesting to occur

66 We have held that a discharge does not revest property (which is vested in the OA) in the discharged bankrupt, regardless of whether the discharge occurs before or after the OA has declared the final dividend (see [40]–[65] above). If a discharged bankrupt desires that a particular item of property in his estate, or his entire estate, should revest in him for some reason, it would be prudent for him first to contact the OA to state his reasons and/or proposals. If the OA agrees with him, then it is for the OA to carry out the necessary steps for the transfer of title to the discharged bankrupt. If the OA disagrees, or imposes conditions with which the discharged bankrupt disagrees, then he should apply to the court pursuant to s 31 of the BA for review of the OA's decision.

67 Although the terms of s 31 of the BA leave it open to the discharged bankrupt to apply directly to the court without first contacting the OA, we think that it would be sensible for the course of action outlined above to be adopted. If the OA agrees with the discharged bankrupt's

representations, then the cost and time of the application and hearing would be saved.

Conclusion

68 For the above reasons, we dismiss the appeal. No order is made as to costs.

69 We observe that the letter of 18 September 2008 from the Board to the appellant (which appears to be the first time she was contacted by either the Board or the OA in connection with this matter) stated that the Monies would be released to the OA because she was an undischarged bankrupt. There were no subsequent representations made to the contrary to the appellant by the OA or the CPF Board. The fact that the Monies were only paid to the OA after the appellant's discharge from bankruptcy was due to an oversight on the OA's part. The appellant was not misled in any way by the OA and the Board. It follows that she did not rely to her detriment on any mistaken perception created by the OA or the Board that she was entitled to the Monies. In fact, it was incumbent on the appellant to aid to the utmost of her power in the realisation of her property and the distribution of the proceeds among her creditors by the OA: see s 129(1)(*i*) of the BA. Given that she was told by the Board that the Monies were due to the OA because she was an undischarged bankrupt at the time of LLK's death, she cannot then seek to take advantage of the OA's oversight by claiming ownership of the Monies.