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"I want to remove my Trustee in bankruptcy"

Frequently bankrupts complain about the actions of their trustee in bankruptcy. This can lead to a bankrupt asking how they can remove their trustee in bankruptcy. That was the claim made in the recent decision of Birdi v Price [2019] EWHC 291 (Ch).

Mr. Birdi had been made bankrupt in March 2012, and was on his second trustee in bankruptcy, the first having retired in 2014.

Mr. Birdi was a skilled Ferrari mechanic who embarked on numerous claims which he vigorously pursued through the courts against his trustee in bankruptcy. They included challenges to the way in which assets of his garage business and his tools of trade were sold. His latest application, - supported by several creditors, - to remove his trustee in bankruptcy from office. The justification for such a drastic step was based on a series of complaints which included the fact that there were no funds available to distribute to creditors, that there had been dishonesty and mis-management by the trustee, and in connection with the amount of remuneration paid to the trustee.

How do you remove a trustee in bankruptcy?

The power to remove a trustee in bankruptcy is contained in **s 298** of the **Insolvency Act 1986**. This says that a trustee in bankruptcy may be removed either by an order of the court or by the decision of the bankrupt's creditors. As an alternative, Mr. Birdi sought an order that a meeting of creditors be convened to consider a resolution to remove the trustee in bankruptcy.

S 298(4) provides the mechanism whereby if a trustee is appointed by the court, a creditors' decision procedure can be commenced to remove him if:

(a) a trustee thinks fit

(b) the court so directs; or

(c) the one of the bankrupt's creditors so requests with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request)

Note that there is no power given to the bankrupt to remove his trustee.

On the question of whether or not to remove the trustee, the court considered some earlier authorities.

In **Doffman & Isaacs v Wood & Hellard [2011] EWHC 4008 (Ch)** Proudman J stated:

> *"…The question of whether to remove an insolvency practitioner of any kind must therefore be measured by reference to 'the real substantial, honest interests' of the process, and to the purpose for which the office holder is appointed…"*

In **Birdi v Price** the Judge recognised that:

> *"ultimately the assessment is whether removal of the office holder is in the interests of the bankruptcy process as a whole."*

What sort of conduct would justify removal of a trustee in bankruptcy?

In **AMP Music Box Enterprises Ltd v. Hoffman [2002] EWHC 1899 (Ch)**, in considering the removal of a liquidator the court said it should have no hesitation in removing a liquidator if it is satisfied that he has failed to live up to the standards of being efficient, vigorous and unbiased in his conduct of the liquidation, unless the court can be reasonably confident that he will live up to those standards in the future.

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However in the same case the court provided a word of caution in stating that:

> *"It should not be seen to be easy to remove a liquidator merely because it can be shown that in one, or possibly more than one, respect his conduct has fallen short of the ideal."*

A further relevant factor in removing an office holder is that there will inevitably be undesirable consequences in terms of costs and delay.

In **Birdi v Price** the Judge recognised that the real issue was the trustee's remuneration. Whilst the applicants stated that the costs had been inflated unnecessarily and improperly, the Judge could find no proper basis for such complaint. Further, the Judge noted that creditors have a right to challenge the trustee's remuneration within eight weeks of the delivery of an Annual Report. Having delivered six Annual Reports without complaint, the Judge was unwilling to extend the time period for such a complaint to be lodged.

Should a decision procedure be commenced to consider removal of the trustee?

The court noted that even though a proper requisition may have been made by creditors for such a decision procedure, the court may override it because it would not be in the interests of the insolvency process and might serve no purpose other than to waste costs.

The Outcome

The conclusion in **Birdi v Price** was that the trustee should not be removed and there would be no point in commencing a further decision procedure to consider the removal of the trustee. Whilst the costs that had been incurred were substantial, the court considered this against the background of the numerous litigation claims made by Mr. Birdi, and his failure to disclose his assets accurately, including 9 bank accounts.

A further consideration was that if the trustee were removed, it was unlikely another trustee would be willing to step in. The Official Receiver had already confirmed by email that he did not wish to be appointed to deal with the bankruptcy estate.

There will be situations where a trustee in bankruptcy should be removed as a consequence of his/her failure to comply with the high standards required of their office. Those cases are rare, and any attempt to remove a trustee in bankruptcy will require clear evidence and justification for doing so.

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