IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHCR 4

Bankruptcy No 2325 of 2023

Between

Maybank Singapore Limited

… *Claimant*

And

Elavarasan s/o Manoharan

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law — Bankruptcy — Bankruptcy order]

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v
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6 March 2025

7 April 2025

AR Randeep Singh Koonar:

Introduction

1 In Bankruptcy No 2325 of 2023 ("**B 2325**"), I made a bankruptcy order against the defendant, Mr Elavarsan s/o Manoharan ("**Defendant**"), even though the Official Assignee ("**OA**") was still in the process of assessing the Defendant's suitability to be placed on the debt repayment scheme ("**DRS**") and had requested a further adjournment of the bankruptcy proceedings for this purpose.

2 In my brief oral judgment delivered at the hearing on 6 March 2025, I found that there was a lengthy delay in both the court proceedings and the DRS assessment. This delay was: (a) wholly attributable to the Defendant; (b) prejudicial to the petitioning creditor, Maybank Singapore Limited ("**Claimant**"); and (c) a clear abuse of process by the Defendant.

3 I now set out the grounds of my decision in full. I do so because the bankruptcy order was made in somewhat exceptional circumstances. To be fair to the Defendant, he should know why a bankruptcy order was made. It is also important to send a message to like-minded debtors that inexcusable delays and abuses of process will not be tolerated by the Courts.

Facts

Filing of B 2325

4 The facts leading to the filing of B 2325 are straightforward.

5 The Defendant was one of two co-guarantors of a loan granted by the Claimant to Saturday Studio Pte Ltd ("**SSPL**"). The Defendant was a director of SSPL. SSPL defaulted on repaying the loan. On 13 July 2023, the Claimant served a statutory demand ("**SD**") on the Defendant for the sum of $120,876.40. The Defendant did not comply with the SD. The Claimant filed B 2325 on 10 August 2023 and served the papers on the Defendant on 14 August 2023. As of 10 August 2023, the outstanding amount had increased to $121,360.50 as interest and late charges continued to accrue.

First five Court hearings

6 When B 2325 was filed, the Defendant was ineligible for the DRS because he was a partner in a limited liability partnership known as Slae Holdings LLP ("**SHL**"): see s 316(9)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**").

7 At the first hearing of B 2325 on 14 September 2023, the Defendant said he would: (a) take steps to have SHL struck off to make himself eligible for the DRS; and (b) separately attempt to negotiate a repayment plan with the

Claimant. Thereafter, B 2325 was adjourned four times between 14 September 2023 and 25 January 2024. While a repayment plan never materialised, the Defendant did end up having SHL struck off. The brief details of these hearings are as follows:

(a) At the first hearing on 14 September 2023, the Claimant's position was that a bankruptcy order should be made as SSPL had been wound up and no payment had been received from the Defendant and his co-guarantor. The Defendant said he needed more time to pay and could only pay a lower instalment amount than what the Claimant wanted. The Defendant also said he would close SHL to make himself eligible for DRS. The Court granted an adjournment for the Defendant to strike off SHL and make a repayment proposal to the Claimant.

(b) At the second hearing on 19 October 2023, the Claimant's position remained that a bankruptcy order should be made. Despite having been granted a one-month adjournment to, among other things, make a repayment proposal to the Claimant, the Defendant did not make any repayment proposal during that time. Instead, he proposed at the hearing for the first time that he and his co-guarantor each make monthly payments of $1,000. The Defendant had also applied to strike off SHL and he informed the Court that process would take approximately 90 days. The Court granted an adjournment, primarily for the Defendant to strike off SHL, and for the Claimant to formally consider the repayment proposal (although the Claimant's counsel had orally rejected this proposal at the hearing).

(c) At the third hearing on 23 November 2023, the Court was informed that the Claimant had rejected the Defendant's repayment proposal and made a counterproposal which the Defendant had not

responded to. The Court granted another adjournment as the process to strike off SHL was ongoing. The Court also reminded the Defendant and his co-guarantor to use the additional time to negotiate with the Claimant if they wished to do so.

(d) At the fourth hearing on 28 December 2023, the Defendant and his co-guarantor updated the Court that SHL would be struck off on 8 January 2024. It appears that by this time, all negotiations between the Claimant and the Defendant on a repayment proposal had ceased. The Court granted an adjournment to a date after 8 January 2024.

(e) At the fifth hearing on 25 January 2024, the Defendant and his co-guarantor updated the Court that SHL had been struck off. As the Defendant was now eligible for the DRS, the Court adjourned the hearing for six months, as it was obliged to do under s 316(9) of the IRDA, and referred the matter to the OA to determine whether the Defendant was suitable for the DRS.

The DRS assessment

8 After the matter was finally referred to the OA for the DRS assessment, the Defendant delayed the assessment at every turn. This resulted in the OA requesting various adjournments to properly assess the case. Between 3 July 2024 and 27 February 2025, *five such adjournments* were sought. Based on the OA's letters to the Court, the chronology of events relating to the DRS assessment was as follows:

(a) The Defendant was sent reminders to file his statement of affairs ("**SA**") on 26 January and 10 February 2024. On 14 February 2024, the Defendant requested, and was granted, an extension of time until 23

February 2024 to file his SA. The Defendant did not file his SA by the extended deadline.

(b) Some two months later, on 25 April and 9 May 2024, the Defendant called the OA, claiming he was unable to complete his SA and debt repayment plan ("**DRP**"). On 26 June 2024, the OA granted the Defendant a final extension until 10 July 2024 to submit the documents.

(c) The Defendant eventually submitted his SA on 15 July 2024 ("**First SA**"), which was after the 10 July 2024 deadline. Rather remarkably, the First SA *did not declare any creditors or liabilities*. The Defendant also did not submit all the documents required of him together with his SA. Instead, he drip-fed the remaining documents, submitting his DRP on 3 September 2024, and thereafter, his Income and Expenditure Statement ("**IES**") on 9 September 2024. The last of these documents was submitted two months after the 10 July 2024 deadline, which had already been extended twice. The OA gave the Defendant until 16 September 2024 to resubmit his SA with all the required documents.

(d) While this is not entirely clear from the documents before me, it appears that the Defendant resubmitted his SA on 16 September 2024 ("**Second SA**"). On 13 November 2024, the OA asked the Defendant to produce certain missing documents, which had not been submitted with the Second SA, by 26 November 2024. The Defendant sought another extension of time to do so. The OA granted an extension until 18 December 2024.

(e) The Defendant still did not comply with the OA's directions. In the OA's letter to Court dated 27 February 2025 ("**27 February 2025 Refixing Request**"), the OA informed that: (i) the Defendant had failed to submit all the documents requested of him; and (ii) the OA had written to the Defendant to request that he submit all the documents by 4 March 2025. The OA further requested that the hearing of B 2325 fixed on 6 March 2025, be adjourned for nine weeks to 8 May 2025, to allow the Defendant to respond and for the OA to assess the case.

9 I denied the 27 February 2025 Refixing Request because: (a) the case was first referred to the OA for a DRS assessment more than one year ago; and (b) it appeared that the multiple refixing requests were the result of the Defendant failing to submit required documents. I directed that the parties and the OA attend the hearing on 6 March 205.

6 March 2025 hearing and parties' submissions

10 I heard B 2325 on 6 March 2025. By then, the latest extended deadline for the Defendant to submit the outstanding documents had passed. However, the Defendant had still not submitted his rental agreement with the Housing and Development Board ("**HDB**") and his employment letter. As regards the rental agreement, the Defendant explained that the HDB had allowed him to stay in the flat but would not process the rental agreement until he cleared the arrears owing to them. As regards the employment letter, the Defendant claimed he had misplaced the original, and despite asking his employer for a copy in December 2024, his employer required more time.

11 Ms Goh Yin Dee ("**Ms Goh**"), who appeared for the OA, informed me that that the Defendant was not forthcoming in the DRS assessment. The Defendant missed deadlines for the submission of documents and had asked for

numerous extensions of time. Even when granted an extension of time, he submitted the documents in parts. Notwithstanding this, the OA had no objections to continuing with the DRS assessment. When queried by the Court, Ms Goh accepted that pursuant to s 316(10)(*b*) of the IRDA, it was within the Court's discretion to make a bankruptcy order although the DRS assessment was ongoing because a DRS had not commenced in respect of the debtor at the end of the preceding periods of adjournment. However, Ms Goh also said she had not come across a case where a bankruptcy order was made in these circumstances.

12 Ms Goh also raised a pertinent issue regarding the Second SA. Notably, the Defendant declared in the Second SA that he owed a debt of $21,000 to DBS Bank Ltd ("**DBS**"). But based on the proof of debt filed by DBS, the figure was $57,000 instead. This discrepancy was both material and conspicuous since based on the Defendant's figure, his total liabilities were about $145,000, which was just below the DRS threshold of $150,000. On DBS' figure, however, his total liabilities would be about $181,000, making him unsuitable for the DRS. The Defendant failed to provide a satisfactory explanation for this discrepancy. The Defendant claimed that he was under the impression that he had repaid one of his three loans with DBS, but he needed to check this. When I asked the Defendant whether he had filed the Second SA without bothering to first check on a point as basic as this, given that providing false information in a SA was a serious matter, the Defendant had no response but to repeat that he needed to check this with DBS. I will return to the significance of this later in my grounds.

13 The Claimant's counsel, Mr Ng Huan Yong ("**Mr Ng**"), submitted that the Court should exercise its discretion to make a bankruptcy order. While Mr Ng conceded that he, like Ms Goh, had not come across a case where a bankruptcy order was made while a DRS assessment was ongoing, he noted that

it was also rare for a bankruptcy application to be adjourned for a DRS assessment for such a long time. Mr Ng highlighted that multiple extensions of time were granted to the Defendant, but the Defendant was submitting the requested documents in dribs and drabs.

Decision

14 Having heard the parties, I exercised my discretion to make a bankruptcy order against the Defendant. My detailed reasons are as follows.

Background to the DRS

15 I start by considering the background to the DRS before discussing its governing statutory framework.

16 The DRS was introduced in 2009 by way of amendments to the Bankruptcy Act (Cap 20, 1995 Rev Ed). Its two broad aims are to: (a) help eligible debtors avoid bankruptcy by entering a DRP with his or her creditors; whilst (b) ensuring that debtor's creditors are not left worse off than if a bankruptcy order was made. This is evident from the following excerpts of the second reading speech for the amendment bill ("**Second Reading Speech**"), delivered by then Senior Minister of State for Law, Associate Professor Ho Peng Kee (see *Singapore Parliamentary Debates, Official Report* (19 January 2009) vol 85 at cols 1145 to 1146 and 1150):

> Where a debtor has a regular income and his debts are not large, a better alternative would be to have a non court-based approach that gives him a reasonable opportunity to pay off all or some of his debts through a repayment plan over a period of time. By avoiding bankruptcy through this debtor-driven scheme, the intention is that the debtor will keep his job and apportion part of his monthly income towards repaying his debts. The *aim is that creditors will receive no less than what they would have otherwise received, had the debtor gone into bankruptcy*. The *benefit for the debtor is that if he successfully*

> *meets his financial obligations under the repayment plan, he will avoid the stigma and restrictions of bankruptcy.* But the point is *he has to do his part; eg, adjust his lifestyle or spending habits so that repayments are made…*
>
> …
>
> In summary, the *Debt Repayment Scheme seeks a "win-win" outcome for both a debtor and his creditors….*
>
> [emphasis added]

Legislative framework

17 The DRS is governed by Part 15 of the IRDA. For present purposes (and insofar as they concern a creditor's bankruptcy application), the key provisions are as follows:

(a) When hearing a creditor's bankruptcy application where a bankruptcy order may otherwise be made, the Court *must*, instead of making the bankruptcy order, adjourn the bankruptcy application for a period of six months (or for such other period as the Court may direct) and refer the matter to the OA for the purpose of enabling the OA to determine whether the debtor is suitable for a DRS, if all the qualifying criteria are satisfied: s 316(9) of the IRDA. I highlight the use of the word "must", which makes it clear that it is mandatory to refer an eligible debtor for a DRS assessment. The Court sometimes encounters creditor's counsel seeking to persuade the Court to exercise its "discretion" not to refer a debtor for a DRS assessment, even though the qualifying criteria are satisfied. Such arguments are devoid of merit and should not be advanced.

(b) Where the Court refers an eligible debtor to the OA, the OA must review the suitability of the debtor for a DRS: s 289(1)(*a*) of the IRDA.

(c) For the OA to conduct the assessment, the debtor must submit the following documents to the OA: (i) a SA; (ii) a DRP; (iii) an IES; and (iv) any supporting documents: s 290(1) of the IRDA and reg 8(1) of the Insolvency, Restructuring and Dissolution (Debt Repayment Scheme) Regulations 2020.

(d) After receiving the debtor's SA, the OA must send a notice to every creditor disclosed in the SA, requiring the creditor to file a proof of debt: s 290(2) of the IRDA.

(e) The OA must then examine the SA, the DRP and the proofs of debt before convening a meeting of creditors to review the DRP. At or after the meeting of creditors, the OA may approve the DRP with or without any modification: ss 291(1) to 291(3) of the IRDA. The debtor or his creditors may appeal against the OA's approval of the DRP to the Appeal Panel. The Appeal Panel's decision is final: ss 291(4) and 291(5) of the IRDA.

(f) Under the approved DRP, the debtor may be required to make full or partial repayment of the debts included in the DRP. Further, the repayment period must not exceed five years: ss 291(6) and 291(7) of the IRDA.

(g) Once a DRP is approved and comes into effect, a DRS commences in respect of the debtor: s 292(1) of the IRDA. When this occurs, the creditor's bankruptcy application is deemed withdrawn on the date of the commencement of the DRS: s 316(11) of the IRDA. Further, while the DRS is in effect, no creditor has any remedy against the debtor or the debtor's property in respect of a debt provable under the DRS, and no action or proceedings may be proceeded with or

commenced against the debtor in respect of that debt, except with the permission of Court: s 293(1) of the IRDA.

18 It will be evident from the above that a DRS can amount to a significant incursion into creditor rights and interests. Apart from preventing the petitioning creditor from proceeding with the bankruptcy application, while a DRS is in effect, it also operates as a moratorium on actions against the debtor in respect of debts provable in the DRS. It is also noteworthy that *creditor approval* of a DRP is not required. Instead, the power to approve a DRP lies with the OA, and if there is an appeal against the OA's decision, the Appeal Panel.

19 This incursion into creditor rights is ostensibly justified on two main grounds. The first is that the creditors will not be left worse off than if a bankruptcy order is made, as a DRS can help improve a debtor's earning capacity and his ability to repay his debts. The second concerns the rehabilitation of the debtor. Apart from sparing the debtor the potentially draconian consequences of bankruptcy, the Second Reading Speech makes clear that debtors are expected to be committed towards repaying their debts. Absent such commitment, the DRS' aim to achieve "win-win" outcomes for debtors and creditors alike will be more theoretical than real.

20 It is therefore unfortunate (but perhaps unsurprising) that debtors sometimes abuse the protection afforded to them by the DRS. One example of such abuse, which manifests itself in the present case, concerns debtors delaying the DRS assessment process. The issue tends to be exacerbated in cases where the debtor engages a "DRS agent" to act for him or her (although there was no evidence of this being the case here). Putting aside the dubious role these "DRS agents" tend to play in the process, the involvement of intermediaries often results in broken lines of communication and a lack of personal accountability

on the debtor's part. Where deadlines are missed, it is common for debtors to seek extensions of time from the OA, who may in turn have to apply for an adjournment of the court proceedings. Even if the OA finds these debtors unsuitable for the DRS for failing to submit the required documents within the stipulated deadline, it is also common for these debtors to then plead with the Court to refer the case back to the OA for a DRS re-assessment. Such dilatory conduct unduly burdens public resources and unfairly prejudices the interests of creditors. It needs to be eradicated as far as possible.

Dealing with requests for further adjournments to complete a DRS assessment

21 As I mentioned at [17(a)] above, where a debtor meets all the qualifying criteria for the DRS, the Court must adjourn the bankruptcy application for a period of six months (or for such other period as the Court may direct) and refer the matter to the OA for a DRS assessment to be conducted: s 316(9) of the IRDA.

22 In some cases, the OA may require more than six months to complete the DRS assessment. If so, the OA would make a request to Court for the hearing of the bankruptcy application to be further adjourned. The Court may grant such an adjournment under s 316(12) of the IRDA, which provides that "[t]he Court may give such orders or directions as it thinks fit for the adjournment, hearing or disposal of a bankruptcy application mentioned in subsection (9)". In practice, such requests by the OA are *usually* granted by the Court.

23 In my judgment, an appropriate degree of deference should be given to the OA's assessment of whether an ongoing DRS assessment should be allowed to continue, even if there is evidence of delay by the debtor. First, the OA is the party entrusted under the legislative scheme to determine a debtor's suitability

for the DRS. Second, the OA deals directly with the debtors and is best placed to assess operational matters, including whether there are valid grounds for granting a debtor an extension of time to comply with his or her obligations during the DRS assessment. The Court should therefore be slow to second guess the OA's assessment.

24 But it does not follow that a request for a further adjournment *must* be granted, or granted *as a matter of course*, simply because a DRS assessment is ongoing. This is evident from s 316(12) of the IRDA, which also allows the Court to give orders or directions for the hearing or disposal of a bankruptcy application falling within s 316(9), as an alternative to granting an adjournment. It is reinforced by s 316(10)(*b*) of the IRDA, which provides as follows:

> (10) The *Court is to proceed to hear a bankruptcy application* adjourned under subsection (9) if —
>
> …
>
> (b) *at the end of the period of adjournment, a debt repayment scheme has not commenced* under Part 15 in respect of the debtor.
>
> [emphasis added]

25 It was common ground between Ms Goh and Mr Ng that s 316(10)(*b*) of the IRDA gave the Court discretion to proceed to hear a bankruptcy application, and possibly make a bankruptcy order at that hearing, even if the DRS assessment is ongoing. The more pertinent issue, however, concerns the circumstances in which the Court's discretion is properly exercised. While this is ultimately a fact-sensitive question, some broad principles can be laid down.

26 In my judgment, the Court's discretion may properly be invoked in two broad (but non-exhaustive) categories of cases. The first are cases where the debtor's conduct in the bankruptcy proceedings and the DRS assessment amounts to an abuse of process. An example of this is where there is inordinate

and inexcusable delay on the debtor's part. The second is where the debtor acts in a manner which prejudicial to the interest of his or her creditors. Apart from cases of delay, an example of this is where there is evidence showing that the debtor is dissipating assets or incurring new liabilities during the DRS assessment period.

27 In the cases described above, it would be entirely consistent with the purpose of the DRS and the legislative framework for the Court to intervene and hear the bankruptcy application even if the DRS assessment is ongoing. Doing so would uphold debtor accountability and safeguard the interests of creditors. It would also ensure that Court proceedings do not drag on indefinitely, while a debtor's suitability for the DRS is being assessed.

28 I add that the Court's discretion should only be exercised in clear cases. This flows firstly from the degree of deference that ought to be given to the OA's assessment on whether an ongoing DRS assessment should continue (see [23] above). As a corollary to this, it might further be said that the primary responsibility for guarding against such abuses lies with the OA, by issuing a notice of unsuitability. Hence, cases requiring the Court's intervention should be rare in practice.

Reasons for the decision

29 I now explain my reasons for denying the 27 February 2025 Refixing Request and making a bankruptcy order against the Defendant at the hearing on 6 March 2025.

The Defendant had committed an abuse of process by deliberately delaying the DRS assessment and the bankruptcy proceedings

30 To begin with, I found that the Defendant had committed an abuse of process by deliberately delaying the DRS assessment and the bankruptcy proceedings. I came to this view for the following reasons.

31 First, the DRS assessment process was extremely protracted. The matter was referred to the OA for the DRS assessment on 25 January 2024. Yet, despite *more than one year having passed* by the time of the hearing of 6 March 2025, it was clear that the DRS assessment was still at an early stage. Notably, the Defendant had still not submitted all the documents required by the OA to review his DRP and convene a meeting of creditors, as required under s 291(1) of the IRDA.

32 Second, the delay in the DRS assessment process was wholly attributable to the Defendant. This is evident from the chronology at [8] above, which shows that the Defendant had persistently: (a) failed to comply with the deadlines for submitting documents which were given to him by the OA; (b) drip-fed documents to the OA; and (c) submitted incomplete documents to the OA.

33 Third, the Defendant's delay was inexcusable. This was not a case where the Defendant had made good faith efforts to comply with the OA's directions but had genuine difficulty in doing so. On the contrary, given the Defendant's conduct, I had little doubt that he was *deliberately* delaying the process to avoid being found unsuitable for the DRS and being made bankrupt. I highlight the following:

(a) The Defendant took more than six months to even submit the First SA. When the Defendant finally submitted the First SA, he did not declare any creditors or liabilities in the First SA. This was inexplicable. Based on my observations of the Defendant at the hearing, he was clearly not an unsophisticated individual. On the contrary, the evidence showed that the Defendant was the director of four companies and involved in running two other businesses. In my view, the Defendant's omission to declare any creditors and the liabilities in the SA was not an honest oversight. Conversely, it was more likely to be a deliberate attempt to conceal the full extent of his liabilities to avoid being found unsuitable for the DRS.

(b) My belief that the Defendant had deliberately attempted to conceal his liabilities in his SA is fortified by the difference between the amount of the debt that the Defendant claimed to owe to DBS in his second SA, and the amount claimed in DBS' proof of debt. The Defendant did not challenge DBS' figure, nor did he provide any credible explanation for the difference, save to claim that he needed to check the figures. What is conspicuous is that if DBS' figure was correct, the Defendant's total liabilities would have exceeded $150,000, making him unsuitable for the DRS. In my view, the Defendant withheld this information from the OA to avoid an earlier determination of his unsuitability for the DRS.

34 Fourth, the Defendant's conduct during the court proceedings suggested he was not serious about repaying his debts, and he was simply trying to avoid being made bankrupt for as long as possible. As was discussed at [7] above, the Defendant had initially sought an adjournment of the 14 September 2023 hearing to propose a repayment plan. At the 19 October 2023 hearing, the

Defendant had not made any repayment proposal to the Claimant since the 14 September 2023 hearing, but claimed he could pay $1,000 a month to the Claimant. This turned out to be a hollow claim given the Defendant did not make *any payment* to the Claimant thereafter. The Court proceedings were also adjourned for a total of approximately four months for the Defendant to have SHL struck off and become eligible for the DRS. In my view, the events which followed during the DRS assessment show that the Defendant was never serious about being placed on the DRS or repaying his debts. In fact, given his total liabilities, he *could not* be placed on the DRS.

The Defendant's conduct was prejudicial to the interests of his creditors

35 Further, I found that the Defendant's conduct was prejudicial to the interest of his creditors, and in particular, the Claimant, who was the Defendant's largest creditor.

36 At the 6 March 2025 hearing, Mr Ng submitted that his client's instructions were to proceed with the application. While Mr Ng acknowledged that the DRS assessment had not been completed, Mr Ng submitted that it was also very rare for an application to be adjourned for a DRS assessment for such a long period of time. Mr Ng noted that the delay appeared to be caused by the Defendant submitting documents in dribs and drabs and he was not imputing fault to the OA.

37 I agreed with Mr Ng's submissions. It bears emphasis that the amount of the debt owed by the Defendant to the Claimant was substantial. As of 12 September 2023, the debt was $121,360.50. Interest would have continued to accrue since then. Since the SD was served on 13 July 2023, no payment was made. The Claimant had therefore been kept out of funds, and left without an effective remedy, for almost *two years*. During this time, the Defendant was free

to deal with his assets as he pleased and to incur new liabilities. The Defendant's dilatory conduct was clearly prejudicial to the Claimant.

The conditions for making a bankruptcy order against the Defendant were satisfied

38 For completeness, I was satisfied that the conditions for making a bankruptcy order under ss 310, 311 and 316 of the IRDA were satisfied. This was not disputed in any event. Having refused a further adjournment for the DRS assessment to continue, there was no other reason not to make the bankruptcy order.

Conclusion

39 For these reasons, I made a bankruptcy order against the Defendant and appointed Mr Leow Quek Shiong and Ms Seah Roh Lin as the joint and several trustees of the Defendant's estate in bankruptcy.

Randeep Singh Koonar
Assistant Registrar

Ng Huan Yong (Advent Law Corporation) for the claimant;
The defendant in person;
Goh Yin Dee (Insolvency & Public Trustee's Office) for the Official Assignee.