

ABSTRACT

Thesis Title : The Cancellation of the Juristic Acts or the
Performance Under the Bankruptcy Act B.E. 2483

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The main purpose of the Bankruptcy Law is to collect a whole asset of debtor and distribute to all creditors on a pro rata basis. The Bankruptcy Act B.E. 2483, therefore, provided that the receiver can file a motion not only for an order to cancel fraudulent acts pursuant to section 113 but for an order to cancel the transfers of asset or any acts concerning the debtor's asset pursuant to section 114 and 115 as well.

The problem on section 113 in Bankruptcy Act is when the one-year prescription should begin to run.

The Judges on Supreme Court, therefore, have 2 different opinions about that as follows:

The first group opined that such prescription should begin to run soon after the receiver knows the cause to cancel fraudulent acts. (The Supreme Court Decision No 1752/B.E. 2518)

The second group agreed that such prescription should begin to run soon after the creditor knows the cause to cancel fraudulent acts. (The Supreme Court Decision No 209/B.E. 2521, 7923/B.E. 2539)

If such one-year prescription should begin to run soon after the receiver knows the cause to cancel fraudulent acts as agreed by the first group, it will be unfair to the person who acquires a property because the one-year prescription will exist and re-run although the creditor knows that such property has been transferred or has been in a possession of the beneficiary for a long time and such prescription is almost expired. For the other group's opinion, the one-year prescription should begin to run soon after the creditor knows because the receiver acts on behalf of the creditor. However, due to unclear statute problem, it shall be researched in order to seek for the right path apply to the beneficiary or even to the receiver representing the creditor who would like to file a motion.

Section 113 of the Bankruptcy Act grants the right for receiver to file a motion for an order to cancel fraudulent acts, meanwhile both Bankruptcy act section 113 and the Civil and Commercial Code section 237 also do not prohibit the creditor to do so. As a result of unclear statute problem, the creditor should entitle to file a motion since it would not cause any damage to the mass of debtor's assets. On the contrary, it would help the receiver to get

the debtor's assets back to the mass of debtor's assets instead. Moreover if debtor raise a defense concerning a one-year prescription against the receiver who files the motion and the court dismiss the motion of the receiver, the receiver can not reclaim such prescription which still has not yet expired of another creditor to apply to another motion because it will be reclaimed or re-entered as the case may be but other creditors still have their rights to fill such motion. If other creditors whose case still have not expired yet is not liabilities to file such motion, the debtor will be released for its debt.

Section 113,114,115 do not provide method concerning the return of the debtor's asset but the supreme court decision stated that the return of the assets canceled shall comply with the law governing undue enrichment, as a result of which we shall have a special provision concerning the return of assets after an order to cancel and the provision on the undue enrichment shall apply i.e. the return of assets the adjudicated person which section 63, paragraph 2 states that the undue enrichment shall apply and apply the same to the return of the Khongman or Sinsod pursuant to Section 1437, paragraph 4.

In the event of tort, management of affairs without mandate, undue enrichment, done by the debtor during the three years prior to the application to adjudicate the debtor as bankrupt, may be canceled by order of the court upon the filing of a motion by the receiver pursuant to Section 115 and such person is entitled to file a claim for repayment of debt pursuant to Section 92 which is not unfair to a person who is committed by a wrongful act pursuant to

Section 420, the person who receive a payment from another person as a part of enrichment, the principal who has to return money to the person who take charge of an affair for the principal under section 395. All person as aforementioned shall receive a full repayment of debt but have to file a claim for repayment of debt and share with another creditor; for example, the debtor commits a wrongful act to Mr. A, the creditor, afterward the debtor pay the damages to the creditor within 3 months prior to the bankruptcy and with intention to give undue preference to the creditor, the receiver can file a motion for an order to cancel the repayment, the creditor is entitled to file a claim and share with another creditors. This point is considered that it is unfair for the person who is committed by a wrongful act and shall receive a repayment in full.