Form B6

Rule 4.02

Creditor’s petition

No.       of 20

Federal Court of Australia

District Registry: [State]

Division: General

**In the matter of [name of debtor or bankrupt estate]**

**[Name of Applicant(s)]**

Applicant[s]

**[Name of Respondent(s)]**

Respondent[s]

To the Respondent

of [address]

**Hearing of this petition**

This petition has been set down for hearing by the Court at the time, date and place shown in the Notice of Filing and Hearing attached.[Note: The Court will insert the Notice of Filing and Hearing as a coversheet when this petition is accepted for filing.] If you or your lawyer do not attend, then the Court may deal with the petition in your absence and make a sequestration order making you bankrupt.

You must file and serve a notice of appearance (Form B4) in the Registry before attending Court or taking any other steps in the proceeding.

**Opposing this petition**

If you wish to oppose this petition, you must:

1. file a notice of appearance (Form B4);
2. file a notice stating grounds of opposition to the petition (Form B5) and an accompanying affidavit supporting the grounds;
3. serve a copy of each document on the applicant creditor at the address for service stated below not less than 3 days before the date for the hearing of this petition stated on the attached coversheet (Notice of Filing and Hearing); and
4. attend at the Court on the date for the hearing.

**The Petition**

The applicant creditor [name and address of applicant creditor] applies to the Court for a sequestration order under section 43 of the *Bankruptcy Act 1966* against the estate of [name, address and occupation of respondent debtor].

1. The respondent debtor owes the applicant creditor the amount of [$ amount] for [statement of reason for, and details of, the debt, including details of any judgment debt].
2. [\*Either]The applicant creditor does not hold security over the property of the respondent debtor.

[\*or]

The applicant creditor holds security over the property of the respondent debtor to the value of [$ amount] and consisting of [statement of particulars of security], and:

* [\*]is willing to surrender this security for the benefit of creditors generally if a sequestration order is made against the respondent debtor;
* [\*or]the value of the property is [$ amount], which leaves an unsecured debt of [$ amount].

[Note If there is more than 1 applicant creditor, the form may be appropriately amended.]

1. At the time when the act of bankruptcy was committed, the respondent debtor: [Select one or more as appropriate and delete the others]

* [\*]was personally present in Australia;
* [\*]was ordinarily resident in Australia;
* [\*]had a dwelling house or place of business in Australia;
* [\*]was carrying on business in Australia either personally or by an agent or manager;
* [\*]was a member of a firm or partnership carrying on business in Australia by means of partners or agent or manager.

1. The following act of bankruptcy was committed by the respondent debtor within 6 months before presentation of this petition:

[Include the following paragraph if the act of bankruptcy is failure to comply with a bankruptcy notice]

The respondent debtor failed to comply on or before [date of act of bankruptcy] with the requirements of a bankruptcy notice served on [\*]him[\*or]her on [date of service of bankruptcy notice] or to satisfy the Court that [\*]he[\*or]she had a counter-claim, set-off or cross demand equal to or more than the sum claimed in the bankruptcy notice, being a counter-claim, set-off or cross demand that [\*]he[\*or]she could not have set up in the action in which the judgment referred to in the bankruptcy notice was obtained.

[If the act of bankruptcy is an act of bankruptcy mentioned in section 40 of the Bankruptcy Act 1966 (other than a failure to comply with a bankruptcy notice), give full details of the act of bankruptcy including details of any judgment.]

[\*Note Completion of paragraph 5 is optional. Please insert details, if known; or "unknown" or "inapplicable" as appropriate]

1. The applicant creditor provides the following information, to the extent it is known to the applicant creditor, for use by the Australian Financial Security Authority:
   * any alias used by the respondent debtor:
   * the date of birth of the respondent debtor:
   * the business name of the respondent debtor:
   * the business address of the respondent debtor:

Date: [eg 19 June 20..]

|  |
| --- |
| Signed by [Name]  [Insert capacity: Applicant / Lawyer for the Applicant] |

**Applicant creditor’s address for service**

The Applicant creditor’s address for service is:

Place:

Email:

**Affidavit verifying creditor’s petition**

On [date], I, [name, address and occupation of deponent], [\*either]say on oath [\*or]affirm:

* 1. [\*]I am the applicant.[\*or]I am a director of the applicant[\*or]I am a [occupation] of the applicant and, as such, have access to the books and records of the applicant and am authorised to make this affidavit on the applicant’s behalf].
  2. The statements made in paragraphs 1, 2 and 3 of the creditor’s petition are within my own knowledge true.
  3. In respect of the statements made in paragraph 4 of the creditor’s petition, I say the respondent failed, within 21 days after service of the bankruptcy notice, to pay the debt or make an arrangement to [\*]my[\*or]the applicant’s satisfaction for payment of the debt.

|  |  |  |
| --- | --- | --- |
| Sworn / Affirmed by the deponent  at [place]  in [State or Territory]  on [date]  Before me: | )  )  )  )  ) |  |
| Signature of deponent |
|  |  |  |

Signature of witness

[Name and qualification of witness]

*Notes*

1. If necessary, this affidavit, and any other affidavit verifying the petition, may be filed as a separate document in accordance with Form 59 of the *Federal Court Rules 2011* with the heading in Form B1. If this affidavit is filed as a separate document, a copy of the petition must be attached to it.
2. If the petition is founded on an act of bankruptcy mentioned in paragraph 40(1)(d) of the *Bankruptcy Act 1966*, the information required by rule 4.03 may be included in this affidavit (or, if an affidavit of the kind mentioned in Note 1 is filed, in that affidavit).
3. If the petition is founded on an act of bankruptcy mentioned in paragraph 40(1)(g) of the *Bankruptcy Act 1966*, the information required by rule 4.04 may be included in this affidavit (or, if an affidavit of the kind mentioned in Note 1 is filed, in that affidavit).
4. A creditor must give a copy of this petition to the Official Receiver within 2 working days after presentation. (see subregulation 13(a) of the Bankruptcy Regulations).

[\*delete if inapplicable]