

Sincere Watch Limited v Bakery Mart Pte Ltd (Ng Yew Hong, Third Party)
[2003] SGHC 85

Case Number : Suit 1057/2002, RA 58/2003

Decision Date : 10 April 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Roland Tong (Wong Tan & Molly Lim LLC) for the judgment creditor; Ng Yeow Khoon (Shook Lin & Bok) for the judgment debtor; Ismail Atan (Gabriel Peter & Partners) for the garnishee.

Parties : Sincere Watch Limited — Bakery Mart Pte Ltd — Ng Yew Hong

Civil Procedure – Judgments and orders – Enforcement – Garnishee proceedings – Whether loan repayable by garnishee to judgment debtor on demand can be garnished without prior demand by judgment debtor on garnishee

1 On 21 December 1992, the judgment creditor Sincere Watch Limited ("Sincere Watch") obtained judgment in the present action against the judgment debtor Bakery Mart Pte Ltd ("Bakery") for \$1,971,264.11 comprising a principal sum of \$1,930,000, interest and costs. Pursuant to the judgment, Sincere Watch applied for and obtained on 21 December 2002 a Garnishee Order To Show Cause against the garnishee, Ng Yew Hong, who is also known as Charles Ng ("NYH"). NYH was and is a director of Bakery.

2 The accounting records of Bakery showed that NYH was owing Bakery \$707,431. On the other hand, NYH was owed \$300,000 for director's fees and claimed to set-off the \$300,000 against what was supposedly owed by him to Bakery. In view of this claim of set-off, the Assistant Registrar who heard the matter when the Garnishee Order To Show Cause came up for hearing, deferred his decision on the \$300,000 but made a Garnishee Order Absolute in respect of the balance i.e. \$407,431. NYH then appealed and his appeal was heard by me. I dismissed his appeal. NYH has appealed to the Court of Appeal.

Reasons for decision

3 Before the Assistant Registrar, NYH relied on an affidavit of Lee Sung Fun. Lee is the auditor of Bakery but Lee said that he was signing his affidavit in his capacity as an accountant and not as an auditor. It is significant that all Lee said in his affidavit was that he had been informed by the directors of Bakery that entries made in Bakery's audited accounts were not reflective of the actual position of the amount due from NYH to Bakery and he was instructed to adjust the accounts. The intended adjustment was to reduce the sum owing by NYH and to pass on to others the amount or amounts by which NYH's debt was reduced.

4 After hearing arguments, the Assistant Registrar did not accept the intended adjustment and made the Garnishee Order Absolute I have mentioned.

5 Before me, Mr Ismail Atan, Counsel for NYH, orally sought leave to admit an affidavit of NYH which had been served on Sincere Watch's solicitors at 6.38pm of the day before the hearing. This was objected to by Sincere Watch's Counsel, Mr Roland Tong and Counsel for the Receiver & Manager of Bakery, Mr Ng Yeow Khoon.

6 This latest affidavit of NYH exhibited the latest audited accounts of Bakery as at 31 March 2002, purportedly signed on 31 January 2003. It purported to show a reduced sum of \$375,920 owing by NYH to Bakery which was different from the \$367,431 balance which would have resulted if the Assistant Registrar had accepted the intended adjustment.

7 Mr Atan sought to justify his oral application on the basis that the AGM of Bakery was on 28 February 2003 and Bakery's secretary was tasked to file the Accounts and Annual Returns with the Registry of Companies and Businesses but failed to do so. Accordingly, NYH had to file the same himself. Mr Atan sought to explain why, if the audited accounts had indeed been signed on 13 January 2003, Lee did not exhibit them in his affidavit which he had signed on 15 January 2003. Mr Atan's explanation was that he had at that time asked Lee whether the audited accounts were available and Lee had said that the audited accounts were with the directors. Mr Atan had tried to contact them but they were not contactable. However, even if this was so, NYH had himself filed an affidavit on 17 January 2003 but yet the audited accounts were not exhibited to his affidavit. In addition, the existence of these signed audited accounts were not disclosed to the Assistant Registrar at the hearing before him on 13 February 2003.

8 Therefore, I was of the view that the accounts were signed after 13 January 2003 and back-dated or, if indeed signed on or before 13 January 2003, they were deliberately withheld by NYH. NYH was trying to be clever in raising the signed audited accounts at the appeal stage before me in an attempt to overcome the Assistant Registrar's decision in rejecting the intended adjustment of the figures concerning his debt to Bakery. In any event, the audited accounts as at 31 March 2002 did not add anything material to what Lee had said in his affidavit. All they would show was that the intention to reduce the debt owing by NYH to Bakery by adjusting the accounts had been carried out. That did not mean that the adjustment had been validly done. In the circumstances, I refused to grant the leave sought by Mr Atan's oral application.

9 In the circumstances, Mr Atan no longer attempted to persuade me that the amount owing by NYH to Bakery should be reduced and confined his submission to arguing that there was no debt "due" or "accruing due" to Bakery from NYH as at the date of the Garnishee Order Nisi so as to avoid the making of a Garnishee Order Absolute.

10 Mr Ng Yeow Khoon and Mr Tong took an opposing position. Their respective clients had reached an agreement on what to do with the \$407,431 if a Garnishee Order Absolute was made in respect of this sum.

11 Mr Tong submitted that the audited accounts of Bakery as at 31 March 2001 (which was the then latest audited accounts filed with the Registry of Companies and Businesses) had described the monies owing by NYH as being "due" from NYH, that is:

(a) in the Director's Current Account, the following words are used, "Balance due by Charles Ng (meaning NYH) to Bakery Mart" (p 11 of Ling Daw Hoang Philip's affidavit filed on 24 December 2002),

(b) in the Balance Sheet, the debt from NYH is described as "Amount due from a director" (p 18 of Ling's said affidavit),

(c) in Note 10 to the Accounts the heading reads, "Amount Due From A Director".

12 On the other hand, Mr Atan submitted that under the heading for Note 10, the debt was described in the following terms:

The amount due from a director is unsecured, interest-free and repayable on demand

Mr Atan further submitted that at the hearing before the Assistant Registrar, Mr Tong had accepted that the debt from NYH was repayable on demand.

13 The arguments then focussed on the assumption that NYH's debt was repayable on demand. Mr Atan's point was that since the debt was repayable on demand, it could not be garnished in the absence of a demand by Bakery on NYH.

14 Mr Atan further submitted that Parliament had accepted the position that a debt payable on demand is not due until demand is made and because of that, O 49 r 1(3) of the Rules of Court had to be introduced. Order 49 rule 1(3) states:

In this order, "any debt due or accruing due" includes a current or deposit account with a bank or other financial institution, whether or not the deposit has matured and notwithstanding any restriction as to the mode of withdrawal.

15 Leaving aside the fact that it was not Parliament but the Rules Committee which made O 49 r 1(3), I accepted Mr Tong's submission that if O 49 r 1(3) did effect a change, it was not in the manner suggested by Mr Atan.

16 Under the common law, if there was a credit balance in the current account of a judgment debtor held in a bank, the balance could be garnished by the judgment creditor notwithstanding that there had been no prior demand made by the judgment debtor on the bank. The service of the Garnishee Order Nisi would constitute the demand, see (a) *Rekstir v Severo Sibirsko Gosudarstvennoe Akcionerhoe Obschestvo Komseverputj and The Bank for Russian Trade, Limited* [1933] 1 KB 47, (b) the judgment of Sir Raymond Evershed MR in *Bagley v Winsome and National Provincial Bank, Ltd* [1952] 2 QB 236 at p 639 and (c) *Arab Bank, Ltd v Barclays Bank* [1954] 2 All ER 226.

17 In so far as Mr Atan relied on a decision by Justice Rajendran in *CIC Video International v Forward International Singapore Pte Ltd and Wo Kee Hong (Singapore) Pte Ltd* (Suit No 1111 of 1998), the facts there were different. The garnishee's position was that there was an understanding between it and the judgment debtor that it would only pay the loan if and when it was able to do so. However, Rajendran J noted that the description of the loan was "interest free, unsecured and had no fixed repayment term". The judge then decided that when a loan is made without fixed repayment terms, it is generally repayable at once without any previous demand. The judge did not decide that if the loan was repayable on demand, a garnishee order could not be made without a prior demand by the judgment debtor on the garnishee.

18 Accordingly, under the common law, there was no difficulty in garnishing monies in a current account. In my view, a loan repayable on demand would likewise be liable to be garnished without the need for a prior demand by the judgment debtor on the garnishee. However, there was some difficulty about garnishing monies in a fixed deposit or time deposit account or an account where there was some restriction on the mode of withdrawal. An example of the latter is the case of *Bagley v Winsome* which I have mentioned.

19 In my view, O 49 r 1(3) was intended to ensure that as regards both a current and a deposit account, the same rule would apply notwithstanding that the deposit has not yet matured and notwithstanding any restriction as to the mode of withdrawal.

20 Therefore, I dismissed the appeal of NYH.

Appeal of garnishee dismissed.

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