IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 86

Originating Summons (Bankruptcy) 129 of 2019
Registrar's Appeal No 353 of 2019

Between

KOH KIM TECK

… *Plaintiff*

And

SHOOK LIN & BOK LLP

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law] — [Bankruptcy] — [Statutory demand]

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v
Shook Lin & Bok LLP

[2020] SGHC 86

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S Mohan JC
3 February 2020

29 April 2020

S Mohan JC:

Introduction

1 In Originating Summons (Bankruptcy) No 129 of 2019 ("OSB 129"), the plaintiff, Koh Kim Teck (the "plaintiff"), applied (a) for an extension of time to set aside a statutory demand dated 30 September 2019 (the "SD") served on him by the defendant, Shook Lin & Bok LLP (the "defendant"), and (b) to set aside the SD. The application was heard on 19 November 2019 and dismissed by the assistant registrar. The plaintiff appealed against the dismissal of his application and the appeal came before me.

2 After hearing arguments, I dismissed the appeal. Dissatisfied with my decision, the plaintiff has appealed. These are my grounds of decision.

Facts

Background to the dispute

3 The plaintiff is a former client of the defendant, a law firm. From sometime in early May 2013 till 22 January 2018, the defendant acted for the plaintiff in two consolidated suits heard in the High Court namely, Suit Nos. 942 of 2013 and 1123 of 2014 (the "Consolidated Suits"). Thereafter, the plaintiff discharged the defendant and appointed another firm of solicitors, Optimus Chambers LLC ("Optimus Chambers"),[1] to represent him in the Consolidated Suits in place of the defendant.

4 Two of the defendant's invoices issued to the plaintiff remained outstanding namely, Invoice No. 150722 dated 26 October 2017 (the "26 October invoice") and Invoice No. 152152 dated 13 March 2018 (the "13 March invoice").[2] Both invoices related to work done by the defendant when it represented the plaintiff in the Consolidated Suits. Following various communications between the defendant, the plaintiff and Optimus Chambers during the period March 2018 to November 2018, the defendant wrote to Optimus Chambers enclosing a statutory demand dated 29 November 2018 issued by the defendant against the plaintiff on the basis of the 26 October invoice.[3] The defendant enquired if Optimus Chambers had instructions to accept service of that statutory demand on the plaintiff's behalf. The defendant

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1 Defendant's Skeletal Submissions at paras 9 and 11; 1st Affidavit of Sarjit Singh Gill, S.C. (filed in HC/OS 67/2019) S.C. at pp 3 - 4

2 Defendant's Skeletal Submissions at para 16; 1st Affidavit of Sarjit Singh Gill, S.C. (filed in HC/OS 67/2019) at p 2

3 Defendant's Skeletal Submissions at paras 19 - 20; 1st Affidavit of Sarjit Singh Gill, S.C. (filed in HC/OS 67/2019) at pp 320 - 324

did not receive a response. No further steps were thereafter taken by the defendant with regard to this statutory demand.[4]

5 On 15 January 2019, Originating Summons 67 of 2019 ("OS 67") was filed by the plaintiff. In OS 67, the plaintiff applied for (a) leave to be granted for an order for taxation in respect of the 26 October invoice, and (b) an order for taxation in respect of the 13 March invoice.[5] The defendant contested OS 67 only in respect of the 26 October invoice, on the basis that more than 12 months had passed since delivery of the bill to the plaintiff and no special circumstances had been shown by the plaintiff justifying leave as required under s 122 Legal Profession Act (Cap 161, 2009 Rev Ed) ("Legal Profession Act").[6]

6 OS 67 was heard by Justice Aedit Abdullah on 27 March 2019. Abdullah J dismissed the prayer in OS 67 that sought leave for an order for taxation in respect of the 26 October invoice, on the ground that the plaintiff had not shown special circumstances.[7] The plaintiff did not seek to appeal that part of Abdullah J's order. An order for taxation in respect of the 13 March invoice was granted (that was in any event not objected to by the defendant).[8]

7 The defendant proceeded to file a Bill of Costs (BC 95/2019) on 23 July 2019 in respect of the 13 March Invoice (the "taxation proceedings"). The plaintiff appointed his current solicitors, Cairnhill Law LLC ("Cairnhill

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4 Defendant's Skeletal Submissions at para 21

5 Originating Summons (HC/OS 67/2019) filed on 15 January 2019 at para 2

6 Defendant's Skeletal Submissions at paras 24 - 25

7 Certified Transcript (HC/OS 67/2019) annexed to Defendant's Skeletal Submissions as Annex C, at p 7

8 Certified Transcript (HC/OS 67/2019) at p 7

Law"), for the taxation proceedings on 20 August 2019. The taxation proceedings were ongoing at the time of the appeal before me.

8 In respect of the 26 October invoice, the defendant issued a fresh statutory demand dated 10 May 2019 in relation to the same debt and sent it by registered post to the plaintiff at his last known address at 72 Bayshore Road, #26-15 Costa Del Sol, Singapore 469988 (the "last known address") but it was returned uncollected. The defendant also attempted substituted service on the plaintiff by sending an email to the plaintiff and LVM Law Chambers, the latter being the plaintiff's solicitors in his appeal against the trial judge's decision in the Consolidated Suits. However, the defendant did not receive any reply to the email.[9] Thereafter, no further steps were taken by the defendant in relation to this statutory demand.

9 The defendant then issued the SD in relation to the same debt. The SD was the subject of the appeal before me. The defendant decided to issue the SD instead of proceeding on the basis of the demand dated 10 May 2019 as the defendant had not received any response to its earlier email to the plaintiff and his solicitors LVM Law Chambers.[10] The defendant first attempted to serve the SD on the plaintiff personally, prior to commencing bankruptcy proceedings. On 30 September 2019 and 1 October 2019, the defendant's clerk attempted personal service on the plaintiff at the last known address but on each occasion the door to the premises was locked.[11] When those attempts at personal service were made, the defendant was already aware from a title search it had conducted

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9 Defendant's Skeletal Submissions at para 58

10 Defendant's Skeletal Submissions at para 59

11 Defendant's Skeletal Submissions at paras 34(a) - 34(b); 1st Affidavit of Brian Sta Maria (HC/B 2786/2019) at p 2

on 5 September 2019 that the plaintiff no longer owned the property at the last known address and that the owner was one Ye Fanghua. In contrast, a previous title search undertaken by the defendant in March 2019 showed that the plaintiff was the owner although I note that even in that search, Ye Fanghua had already lodged a caveat as a purchaser.[12] The defendant also conducted an Enhanced Individual Search on the plaintiff on 29 October 2019, which did not reveal any details of the plaintiff's residential address.[13]

10 Following the two unsuccessful attempts at personal service on the plaintiff, the defendant then placed an advertisement in the Straits Times on 4 October 2019 with a notice of the SD (the "advertisement").[14] The notice of the SD in the advertisement stated that it was given under r 96(4)(*d*) of the Bankruptcy Rules (Cap 20, R1, 2006 Rev Ed) ("BR"). The material parts of the notice were in the following terms:[15]

NOTICE OF STATUTORY DEMAND
UNDER RULE 96(4)(d) OF THE BANKRUPTCY RULES
STATUTORY DEMAND ISSUED ON THE
30th DAY OF SEPTEMBER 2019
UNDER SECTION 62 OF THE BANKRUPTCY ACT

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12 Defendant's Skeletal Submissions at para 34(c) and 50; 1st Affidavit of Brian Sta Maria (HC/B 2786/2019) at pp. 48 - 62

13 Defendant's Skeletal Submissions at para 34(d); 1st Affidavit of Brian Sta Maria (HC/B 2786/2019) at p 27

14 Defendant's Skeletal Submissions at para 34(e); 1st Affidavit of Brian Sta Maria (HC/B 2786/2019) at p 64

15 1st Affidavit of Brian Sta Maria (HC/B 2786/2019) at p 64

TO: **KOH KIM TECK**
72 Bayshore Road
#26-15 Costa Del Sol
Singapore 469988

TAKE NOTICE that a Statutory Demand under Section 62 of the Bankruptcy Act has been issued against you by **SHOOK LIN & BOK LLP**, a limited liability partnership incorporated in Singapore and having its registered office at 1 Robinson Road #18-00 AIA Tower Singapore 048542 ("the Creditor") on 30 September 2019, in which the Creditor claims against you the sum of **S$106,133.52** as at 30 September 2019 being the amount due and owing by you pursuant to the Creditor's Invoice No. 150722 dated 26 October 2017. The Creditor demands that you pay the above debt or secure or compound for it to the Creditor's satisfaction within 21 days from the date of publication of this Notice. If you fail to do so, the Creditor may file a bankruptcy petition against you.

If you wish to have this Statutory Demand set aside or otherwise deal with this demand you must make an application to the High Court and do so within 14 days from the date of publication of this Notice.

The Statutory Demand can be obtained or is available for inspection and collection during office hours from:-

SHOOK LIN & BOK LLP
No. 1 Robinson Road
#18-01 AIA Tower Singapore 048542
[Ref: SSG/JMS/2190134]
Dated the 4th day of October 2019

11 In addition to the advertisement, a copy of the notice of the SD as advertised was sent by the defendant to the plaintiff's solicitors in the taxation proceedings, Cairnhill Law, by an email on 4 October 2019 timed at 12.03pm (the "4 October 2019 email").[16] The defendant subsequently sent a copy of the SD itself to Cairnhill Law on 22 October 2019 by an email timed at 6.49pm (the "22 October 2019 email").[17] Prior to these emails and the issuance of the SD, the defendant had, on 18 September 2019, asked Cairnhill Law if it had instructions to accept personal service of process, including a statutory demand, on behalf of the plaintiff.[18]

12 The defendant filed the bankruptcy application (HC/B 2786/2019) against the plaintiff on 29 October 2019 based on the SD. On the same day, the defendant sent copies of the cause papers filed in the bankruptcy application to Cairnhill Law.[19] OSB 129 was filed by the plaintiff two days later, on 31 October 2019.

The parties' cases

13 The plaintiff submitted that should the court find that the advertisement constituted valid service of the SD, the defendant would be out of time to apply to set aside the SD and an extension of time should be granted to him. He argued that his application would, however, have been made in time if the court considered that valid service was only effected *via* the 22 October 2019 email.[20]

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16 1st Affidavit of Lin Ruizi (HC/B 2786/ 2019) at p 57

17 1st Affidavit of Lin Ruizi (HC/B 2786/ 2019) at p 61

18 Defendant's Skeletal Submissions at para 47; 1st Affidavit of Lin Ruizi (HC/B 2786/ 2019) at p 55

19 Defendant's Skeletal Submissions at para 7

20 Plaintiff's Submissions at paras 18 – 28

In any event, neither the advertisement nor the 22 October 2019 email (or for that matter, the 4 October email) constituted valid service. According to the plaintiff, the SD should be set aside for the following reasons:[21]

(a) the SD was not validly served;

(b) the debt was disputed on substantial grounds such that there were triable issues; and

(c) the plaintiff had a valid cross demand against the defendant which exceeded the debt.

14 The defendant, on the other hand, submitted that the SD was validly served on the plaintiff by the advertisement as well as the 4 October 2019 email, and an extension of time ought not to be granted to the plaintiff to apply to set aside the SD.[22] In any event, the plaintiff would not be entitled to dispute the debt and there was no basis for the plaintiff to assert that the defendant had any valid cross demand.

Decision below

15 It is worth mentioning that at the hearing below, the defendant relied only on the advertisement as its means of substituted service and argued that it was valid service under r 96(4)(*d*) BR. The assistant registrar dismissed the plaintiff's application on the grounds that there was valid service of the SD and that there were no merits in the plaintiff's arguments for the SD to be set aside.[23]

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21 Plaintiff's Submissions at para 25

22 Defendant's Skeletal Submissions at paras 60 - 66

23 Certified Transcript (HC/OSB 129/2019) annexed to Defendant's Skeletal Submissions as Annex A, at p 6

Issues to be determined

16 The issues to be determined by me are as follows:

(a) Whether there was valid service of the SD, and if so, when such service was effected.

(b) If there was valid service, whether the SD should be set aside on other grounds.

17 I will address each issue in turn.

Issue 1: Whether there was valid service of the SD, and if so, when service was effected

18 Rules 96(1) to 96(4) BR provide as follows:

> **96.**—(1) The creditor shall take all reasonable steps to bring the statutory demand to the debtor's attention.
>
> (2) The creditor shall make reasonable attempts to effect personal service of the statutory demand.
>
> (3) Where the creditor is not able to effect personal service, the demand may be served by such other means as would be most effective in bringing the demand to the notice of the debtor.
>
> (4) Substituted service under paragraph (3) may be effected in the following manner:
>
> > (*a*) by posting the statutory demand at the door or some other conspicuous part of the last known place of residence or business of the debtor or both;
> >
> > (*b*) by forwarding the statutory demand to the debtor by prepaid registered post to the last known place of residence, business or employment of the debtor;
> >
> > (*c*) where the creditor is unable to effect substituted service in accordance with sub-paragraph (*a*) or (*b*) by reason that he has no knowledge of the last known place of residence, business or employment of the debtor, by advertisement of the statutory demand in one or more

> local newspapers, in which case the time limited for compliance with the demand shall run from the date of the publication of the advertisement; or
>
> (*d*) such other mode which the court would have ordered in an application for substituted service of an originating summons in the circumstances.

19 In relation to an application to set aside a statutory demand, Rule 98 BR provides as follows:

> **98.**—(1) On the hearing of the application, the court may either summarily determine the application or adjourn it, giving such directions as it thinks appropriate.
>
> (2) The court shall set aside the statutory demand if —
>
> (*a*) the debtor appears to have a valid counterclaim, set-off or cross demand which is equivalent to or exceeds the amount of the debt or debts specified in the statutory demand;
>
> (*b*) the debt is disputed on grounds which appear to the court to be substantial;
>
> (*c*) it appears that the creditor holds assets of the debtor or security in respect of the debt claimed by the demand, and either rule 94(5) has not been complied with, or the court is satisfied that the value of the assets or security is equivalent to or exceeds the full amount of the debt;
>
> (*d*) rule 94 has not been complied with; or
>
> (*e*) the court is satisfied, on other grounds, that the demand ought to be set aside.
>
> (3) If the court dismisses the application, it shall make an order authorising the creditor to file a bankruptcy application either on or after the date specified in the order.

20 In relation to the advertisement, the plaintiff relied substantially on *Wong Kwei Cheong v ABN-AMRO Bank NV* [2002] 2 SLR(R) 31 ("*Wong Kwei Cheong*") in support of his case that the defendant had to advertise the entire

SD and not merely notice of the SD.[24] Further, the plaintiff argued that service by advertisement was not an option available to the defendant under r 96(4)(*d*) BR, as r 96(4)(*c*) BR makes express reference to service by advertisement.[25] The defendant also could not effect service under r 96(4)(*c*) BR since it knew the plaintiff's last known address, which was stated in the notice of the SD.[26]

21 In relation to the 4 October 2019 email and the 22 October 2019 email, the plaintiff submitted that substituted service by email correspondence to his solicitors would not be a mode of service that the court would have ordered in an application for substituted service of an originating summons in the circumstances under r 96(4)(*d*) BR.[27] The plaintiff referred to the Supreme Court Practice Directions, Part III, para 33(6), which provides:

> If substituted service is by electronic mail, it has to be shown that the electronic mail account to which the document will be sent belongs to the person to be served and that it is currently active.

22 The plaintiff argued that the email correspondence was sent to his solicitors and not to him as required under the Supreme Court Practice Directions. He also referred to an email sent by his solicitors Cairnhill Law to the defendant on 23 October 2019, informing the defendant that they did not have instructions to accept service of the SD.[28] In the circumstances, the defendant would have known that the SD may not be brought to the attention of

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24 Plaintiff's Submissions at paras 33-36

25 Certified Transcript (HC/RA 353/2019), at p 2

26 Plaintiff's Submissions at paras 37-40

27 Plaintiff's Submissions at paras 42-50; Certified Transcript (HC/RA 353/2019), at pp. 2 - 3

28 Plaintiff's Submissions at paras 47- 48; 1st Affidavit of Koh Kim Teck (HC/OSB 129/2019) at p 35

the plaintiff and therefore, email correspondence to the plaintiff's lawyers would not be a mode of service which the court would have ordered under r 96(4)(*d*) BR. By reason thereof, the plaintiff contended that service of the SD was not validly effected by the advertisement, the 4 October email or the 22 October email, and the SD should be set aside under r 98(2)(*e*) BR.

23 The defendant, on the other hand, submitted that service was validly effected by 4 October 2019 under r 96(4)(*d*) BR, relying on both the advertisement (that was placed in the Straits Times on 4 October 2019) and the 4 October 2019 email. The defendant submitted that the plaintiff's solicitors had confirmed during the hearing that the 4 October 2019 email was in fact brought to the attention of the plaintiff, and the plaintiff was therefore aware of the SD.[29] The defendant also argued that *Wong Kwei Cheong* did not apply to r 96(4)(*d*), and that the underlying rule (and overarching objective) of r 96 BR is set out in r 96(1) BR, *ie*, that the creditor shall take all reasonable steps to bring the statutory demand to the debtor's attention.[30] Finally, the defendant contended that it had taken all reasonable steps to bring the SD to the plaintiff's attention and that the plaintiff had spared no effort in evading service.[31]

Analysis and decision

24 I am of the view that r 96(4)(*c*) BR is inapplicable in the present case, since the defendant indicated that it did have the plaintiff's last known address. However, the defendant would not, for this reason, be barred from effecting valid service on the plaintiff by way of the advertisement and/or the 4 October

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29 Certified Transcript (HC/RA 353/2019), at p 6

30 Certified Transcript (HC/RA 353/2019), at p 5

31 Defendant's Skeletal Submissions at paras 44 - 59

email, under r 96(4)(*d*) BR. In the present case, both the advertisement and the 4 October 2019 email, individually or collectively, would, in my view, constitute valid service under r 96(4)(*d*) BR.

25 The underlying purpose of the service regime under the BR is to provide practical means for a creditor to effectually bring notice of a statutory demand to a debtor's attention. To this end, each limb under r 96(4) BR pertaining to the modes of substituted service is to be read disjunctively, providing a creditor with alternative modes of substituted service. Further, the individual limbs in r 96(4) BR are not, in my view, mutually exclusive. Subject to the caveat I mention at [27] below, a creditor can choose to effect substituted service using any mode permissible under r 96(4) BR, provided he is able to satisfy the requirements of the mode so chosen. In this regard, and as succinctly explained by VK Rajah J (as he then was) in Re *Rasmachayana Sulistyo (alias Chang Whe Ming),* ex parte *The Hongkong and Shanghai Banking Corp Ltd and other appeals* [2005] 1 SLR(R) 483 ("Re *Rasmachayana Sulistyo*") at [10], it is important to bear in mind that the requirements for service under the BR are "circumscribed by pragmatism and not by an overtly rigid and technical approach."

26 As such, a creditor would only be availed of service under r 96(4)(*c*) BR if he is able to meet the requirements under that provision, *ie,* the creditor must have been unable to effect substituted service in accordance with rr 96(4)(*a*) or (*b*) BR by reason of the creditor having no knowledge of the debtor's last known place of residence, business or employment. If the creditor, like the defendant in this case, is unable to meet the requirements under r 96(4)(*c*) BR, the statutory regime enables it to effect substituted service under r 96(4)(*d*) BR and it cannot, in those circumstances, be said to be circumventing r 96(4)(*c*) BR. Rule 96(4)(*d*)

BR, unlike r 96(4)(*c*) BR, does not contain any pre-requisite that the modes of service under the other sub-paragraphs are unavailable to the creditor.

27 There is a caveat to this, in that a creditor should, ordinarily, first avail itself of rr 96(4)(*a*) and (*b*) BR before choosing to effect service under r 96(4)(*d*) BR. The first two limbs in r 96(4) BR encapsulate the preferred methods of substituted service (*Re: Wong Kin Heng Ex-parte: Imperial Steel Drum Manufacturers Sdn Bhd* [1998] SGHC 237 ("*Wong Kin Heng*") at [29]). To this, I would add the gloss that the methods prescribed in rr 96(4)(a) and (b) BR should first be attempted *where practicable*, depending on the specific facts in each case. If, for example, a creditor is aware that the debtor sold the property that was his last known address and therefore no longer resided at that address, and yet purports to effect substituted service of a statutory demand under r 96(4)*(a)* or *(b)* BR at that address, that creditor might find it an uphill task to persuade a court, should the debtor subsequently challenge the service of the demand, that the method of substituted service so chosen was effective in bringing the statutory demand to the notice of the debtor.

28 Reverting to the case at hand, contrary to the plaintiff's submissions, I am of the view that r 96(4)*(c)* BR is not the only or exclusive provision under which service by way of an advertisement can constitute valid service of an SD. On its plain wording, r 96(4)*(d)* BR provides for service by such other mode as the court would have ordered in an application for substituted service of an originating summons in the circumstances. This can, and in my view does, encompass a mode of substituted service by advertisement *which does not fall within* r 96(4)(c) BR.

29 I agree with the defendant that in *Wong Kwei Cheong* ([20] *supra*) at [15], Rajendran J's comments that the statutory demand itself (and not just a

notice of it) had to be advertised were made only with reference to compliance with r 96(4)*(c)* BR. Counsel for the plaintiff, Mr Derek Kang, acknowledged that *Wong Kwei Cheong* only dealt with r 96(4)*(c)* BR but submitted that because express reference is made to service by advertisement in r 96(4)*(c)* BR, it cannot be permitted under r 96(4)*(d)* BR. Mr Kang further contended that the effect of *Wong Kwei Cheong* is that any creditor wishing to effect substituted service by advertisement must, and can only, rely on r 96(4)*(c)* BR[32]. I note that no arguments were raised nor was any discussion had in *Wong Kwei Cheong* on the application of r 96(4)(*d)* BR to the facts in that case. I do not read *Wong Kwei Cheong* as widely as Mr Kang urged me to. In *Wong Kwei Cheong*, Rajendran J reasoned at [15], that a creditor has to comply with the procedures specified under the BR to take advantage of the statutory regime relating to substituted service. In that context, r 96(4)(*c)* BR required the creditor to advertise the statutory demand itself and not only a notice of it. Whilst that conclusion was, in my view, correct given the plain wording of r 96(4)*(c)* BR, I disagreed with Mr Kang's submission that it follows that service by way of advertisement is exclusively governed by that provision.

30 As explained earlier at [24]-[28] of this judgment, r 96(4)(*c*) BR is inapplicable in the present case and the defendant is, in my view, entitled to avail itself of r 96(4)(*d*) BR. No authority was cited to me in support of the plaintiff's argument that substituted service by advertisement, in any shape or form, was only permitted under r 96(4)(*c*) BR.

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32 Certified Transcript (HC/RA 353/2019), at p 2

31 Where proceedings are commenced in court and the court makes an order for substituted service of a document (including an originating process) under O 62 r 5 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), advertising *a notice* that an action has been commenced against the defendant would be sufficient to constitute good and valid service (see, as an illustration, ROC Appendix A, Forms 136 and 138, para (e)). The authors of *Singapore Civil Procedure 2020, vol 1* (Paul Quan, gen ed) (Sweet & Maxwell Asia, 2019) at para 62/5/6, note that in relation to substituted service of a writ by advertisement under O 62 r 5 ROC, "… the court's order may direct that a copy of the writ be left at the defendant's place of business and last known residence, and that an advertisement be inserted to the effect that an action has been commenced, that the court has authorised service in such and such a manner, that the defendant is required to appear, and that in default of appearance, the action will proceed to judgment". There is no requirement, in the above example, that the contents of the entire writ (including any Endorsement of Claim or Statement of Claim endorsed thereon) are to also be reproduced in the advertisement. In my view, that would also be the case if substituted service of an originating summons by way of advertisement is ordered under O 62 r 5 ROC. The notice in the advertisement could be to the effect that an action has been commenced by originating summons against the defendant, that the court has authorised service in such and such a manner, that the defendant is required to appear, and that in default of appearance, the court will proceed to hear the originating summons. Similarly, I see no reason why a bankruptcy creditor would not, in an appropriate case, be able to validly serve a statutory demand under r 96(4)(*d*) BR by advertising notice of it and thereby bringing notice of the statutory demand to the debtor's attention. Ultimately, the court must be satisfied that the mode of substituted service employed by the creditor was sufficient, *on the facts before it*, and amounted to a reasonable step by the creditor to bring notice of

the statutory demand to the debtor's attention effectively. Accepting the plaintiff's submission would, in my view, amount to adopting an overtly and unduly technical and rigid approach to the methods of substituted service prescribed in r 96(4) BR.

32 Mr Kang also contended that to allow advertisement of a notice of the SD under r 96(4)(*d*) BR would render r 96(4)(*c*) BR redundant. I disagree with this submission as it presupposed, incorrectly, in my view, that each limb in r 96(4) BR applied to the mutual exclusion of the others. Even if there is an overlap between the first three limbs of r 96(4) and r 96(4)(*d*) BR, as I stated at [31] above, ultimately each case would depend on its facts. Therefore, it does not mean that a creditor could circumvent the requirements of r 96(4)(*c*) BR and choose instead to simply rely on r 96(4)(*d*) BR by only advertising notice of an SD. Depending on the facts, that creditor would risk the debtor being able to successfully challenge the validity of that mode of service. In the circumstances, I was not persuaded by the redundancy argument raised by the plaintiff.

33 On the facts of this case, the defendant had taken all reasonable steps to bring the SD to the plaintiff's attention and utilised a mode of substituted service that the court would have ordered in the circumstances, as required under rr 96(1) and 96(4) BR. The defendant had conducted the necessary investigations into the last known address of the plaintiff and knowing that the plaintiff was not likely to be reached at the said address, adopted, in my judgment, an appropriate and valid mode of substituted service to serve the SD on the plaintiff.

34 For the foregoing reasons, I found that the advertisement constituted valid service under r 96(4)(*d*) BR in the circumstances of this case and was effective in bringing notice of the SD to the plaintiff's attention.

35 Turning now to the 4 October 2019 email, I am of the view that it too constituted valid service under r 96(4)(*d*) BR, whether on its own or taken together with the advertisement. On the facts, sending the notice of the SD as advertised by email to the plaintiff's current solicitors was effectual in bringing notice of the SD to the plaintiff. Even though the plaintiff's solicitors did not have authority to accept service of the SD on behalf of the plaintiff, they were at the time acting for the plaintiff in the taxation proceedings that were ongoing. As such, it was reasonable in the circumstances for the defendant to presume that this method of substituted service would be effective in bringing the SD to the plaintiff's attention. The plaintiff's solicitors also confirmed that the plaintiff did in fact have notice of the SD at around the time the 4 October 2019 email was sent.[33] For tactical reasons, the plaintiff decided to wait until after the bankruptcy application had been filed before filing OSB 129.[34]

36 I did not think there was merit in the plaintiff's argument summarised at [21] above that the defendant's failure to adhere to paragraph 33(6) of the Supreme Court Practice Directions would invalidate the service of the SD by way of the 4 October 2019 email. While the Supreme Court Practice Directions on service by email should, if applicable, be adhered to, the issue before me was whether the 4 October 2019 email to the plaintiff's solicitors would meet the requirements under r 96(4)(*d*) BR as a valid mode of substituted service. As explained above, it was entirely reasonable for the defendant to presume that the 4 October 2019 email would be effective in bringing the plaintiff's attention to the SD, and the SD was in fact successfully brought to the plaintiff's attention. In *Wong Kwei Cheong* ([20] *supra*) at [14], Rajendran J accepted the debtor's

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33 Certified Transcript (HC/RA 353/2019), at p 3 ln 5-15

34 Certified Transcript (HC/RA 353/2019), at p 3 ln 5-15; p 5 ln 20-31

counsel's argument that in circumstances where the creditor was aware that the debtor was legally represented, it would be reasonable to expect the creditor or its solicitors to communicate a statutory demand to the debtor through the debtor's solicitors. This is precisely what the defendant did in this case by the 4 October email. It would therefore, in my opinion, have been a mode which the court would have ordered in an application for substituted service of an originating summons in the circumstances, irrespective of paragraph 33(6) of the Supreme Court Practice Directions. Further, I do not consider that paragraph 33(6) of the Supreme Court Practice Directions, or for that matter O 62 r 5(4) ROC, exhaustively set out the requirements of substituted service by way of electronic mail.

37 In reaching this conclusion, I also considered that the court may permit substituted service of originating process by way of social media, including Skype, Facebook and internet message boards (see *Storey, David Ian Andrew v Planet Arkadia Pte Ltd and others* [2016] SGHCR 7, in relation to substituted service under O 62 r 5 ROC). I hark back to VK Rajah J's comments in Re *Rasmachayana Sulistyo* ([25] *supra*) at [10] that the requirements for valid service of the statutory demand, whilst undoubtedly an important prerequisite to the commencement of bankruptcy proceedings, are circumscribed by pragmatism and not by an overtly rigid and technical approach. The emphasis of r 96 BR and the mischief it seeks to address is ensuring that the statutory demand is "brought to the *personal* attention of the debtor prior to the hearing of the petition" [emphasis in original] (*Re Rasmachayana Sulistyo* at [10] and [21]). The overarching intention of, or purpose underlying, the service requirements in civil proceedings in general, and under r 96 BR, is the efficacy of the mode of service (be it actual or deemed service) in bringing effective notice of the proceedings or the statutory demand, as the case may be, to the

defendant or the debtor respectively. In my view, the 4 October email more than met this purpose on the facts before me and was therefore a sufficiently reasonable step taken by the defendant. In my judgment, it constituted valid service under r 96(4)(*d*) BR, whether by itself or collectively with the advertisement.

38 For all the reasons given above, I dismissed the plaintiff's challenge to the validity of service of the SD. The SD was validly served on the plaintiff on 4 October 2019.

Issue 2: Whether there are any other grounds on which the SD should be set aside.

39 Having found that there was valid service of the SD, I then turned my attention to whether the SD should be set aside on any other grounds under r 98 BR.

No genuine triable issues on the 26 October invoice

The parties' cases

40 The plaintiff contended that the SD should be set aside under r 98(2)(*b*) BR on the basis that he disputed the quantum owed to the defendant. The plaintiff submitted that the facts surrounding the 13 March invoice (and the taxation proceedings) gave him reason to deduce that there may be inaccuracies in the 26 October invoice that was the subject of the SD, that the 26 October invoice did not provide a breakdown of time entries, and that the amount of professional fees claimed by the defendant was unreasonably excessive.[35] The

[35] Plaintiff's Submissions at paras 51-75

plaintiff also submitted that the SD should be set aside under r 98(2)(*a*) BR as he had a cross demand against the defendant for breach of contract for an amount that exceeded the amount of the debt specified in the SD. The essence of this last contention was that the defendant held deposits from the plaintiff that, according to the terms of the defendant's letter of engagement, were only to be utilised in payment of the defendant's final invoice (that, in this case, would have been the 13 March invoice). However, in breach of that term, the defendant proceeded to utilise the deposits in part payment of the 26 October invoice, which was the penultimate invoice issued by the defendant to the plaintiff. The plaintiff's cross demand against the defendant was for the total amount of deposits amounting to $176,025.30 alleged to have been wrongfully utilised by the latter.[36]

41 The defendant submitted that the plaintiff is no longer entitled to dispute the quantum of the debt, as taxation is the only judicial process by which a client can dispute the quantum of his solicitor's bill, citing as authority the decision of Vinodh Coomaraswamy J in *Kosui Singapore Pte Ltd v Thangavelu* [2015] 5 SLR 722 ("*Kosui*") at [56]–[57]. The plaintiff did not apply for an order for taxation within the time limit prescribed in the Legal Profession Act, and Abdullah J had found in OS 67 that there were no special circumstances justifying an order for taxation. As the plaintiff did not appeal the decision in OS 67, it had no other avenues available to it to challenge the quantum of the 26 October invoice. The present appeal before me, the defendant so argued, was a backdoor attempt by the plaintiff to circumvent the decision of Abdullah J and thereby, in effect, obtain an order for taxation. The defendant submitted that if the SD was set aside and it were to commence a suit to enforce the debt,

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36 Plaintiff's Submissions at paras 76-81

the court should similarly not go into the merits of whether the solicitor's fees were reasonable. If it did, it would be tantamount to opening a backdoor for the plaintiff to enable taxation proceedings, thereby denuding the protection offered to solicitors against their clients under s 122 of the Legal Profession Act.

42 In regard to the plaintiff's contention that it had a valid and genuine cross demand against the defendant, the defendant's explanation given to me by its counsel, Mr Goh Keng Huang ("Mr Goh"), was that there was an agreement reached during a telephone conversation between the defendant and the plaintiff's previous solicitors Optimus Law, that the defendant was to utilise the deposit in part payment of the 26 October invoice in order to stop or reduce interest running on that invoice. Following that agreement, the total deposit amounting to $176,025.30 was so utilised by the defendant, and the remaining sum due under the 26 October invoice was the amount demanded in the SD.

Legal principles

43 Rule 98(2)(*a*) BR provides that the court shall set aside a statutory demand if the debtor appears to have a valid counterclaim, set-off or cross demand that is equivalent to or exceeds the amount of the debt or debts specified in the statutory demand. Rule 98(2)(*b*) BR provides that the court shall set aside a statutory demand if the debt is disputed on grounds that appear to the court to be substantial. Additional guidance on these provisions has been given in paragraph 144(3) of the Supreme Court Practice Directions, which states that when a debtor claims to have a counterclaim, set-off or cross demand, or disputes the debt, the Court will normally set aside the statutory demand if, in its opinion, there is a genuine triable issue on the evidence. As the Court of Appeal explained in *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 at [30], it

will "not suffice for a debtor to raise spurious allegations in order to fend off bankruptcy proceedings..…".

No dispute that appears to the court to be substantial

44 I agreed with the defendant's submissions and found *Kosui* persuasive that taxation is the exclusive judicial recourse available to the plaintiff to any challenge he wished to mount over the quantum of the defendant's fees. The plaintiff had in fact attempted to avail himself of that very avenue of recourse *via* OS 67. The court had decided in OS 67 that the plaintiff was not entitled to an order for taxation for the 26 October invoice, from which order there was no appeal or attempt to do so by the plaintiff. That was, in my judgment, rightly the end of the matter in relation to whether the 26 October invoice could be challenged. The 13 March invoice, which was the subject of the taxation proceedings, was a separate matter from, and irrelevant to, the current proceedings. During the hearing before me, Mr Kang did not seek to distinguish *Kosui* or persuade me that it was inapplicable to the plaintiff's case. Whilst Mr Kang submitted that the plaintiff was not seeking to circumvent the order of Abdullah J in OS 67, it was clear to me that this was, in substance, a blatant attempt to do so. As an illustration of this, the second affidavit of the plaintiff filed in OSB 129 comprised more than 70 paragraphs detailing why the quantum of the 26 October invoice was unreasonable. These would be precisely the sort of objections one would expect to be raised in taxation proceedings. It was therefore difficult to accept the plaintiff's contention that he was not seeking a second bite of the cherry.

45 Finally, during the hearing before me, Mr Kang referred me briefly to the decision of Mavis Chionh DJ (as she then was) in *Engelin Teh Practice LLC formerly known as Engelin Teh and Partners v Tan Sui Chuan* [2006] SGDC 2

("*Engelin Teh Practice*"). *Engelin Teh Practice* involved an appeal by the plaintiff law firm against the refusal to grant it summary judgment against the defendant, a former client. The appeal was allowed and judgment entered against the defendant by the judge. The defendant was granted leave by the judge to appeal to the High Court, and its appeal to the High Court was subsequently dismissed without any written grounds delivered.

46 Pertinently, in *Engelin Teh Practice*, it was held that as the defendant there had not objected to the bill for more than two years since the bill was delivered and no application had been made to tax the bill, the defendant was precluded from challenging the bill or seeking an order for taxation in the summary judgment proceedings.

47 Mr Kang referred me to a passage in *Engelin Teh Practice* where the judge was referred to an English Court of Appeal decision in *Turner & Co (a firm) v O Paloma SA* [1999] 4 All ER 353 ("*Turner & Co*"). Mr Kang relied on that passage in support of his argument that the plaintiff could, in OSB 129, still dispute the quantum of the defendant's fees notwithstanding that the plaintiff was no longer entitled to have the 26 October invoice taxed.

48 The English Court of Appeal in *Turner & Co* held that where a solicitor sued a client for unpaid charges, the client was entitled to challenge the reasonableness of the sum claimed under common law notwithstanding that the period for invoking the taxation procedure under the relevant English legislation (the 1974 Solicitors Act (c 47) (UK)) had expired. Mr Kang submitted that following *Turner & Co*, there was no bar to the plaintiff seeking to dispute the reasonableness of the 26 October invoice in OSB 129.

49 I did not find *Turner & Co* persuasive and in any event, I decline to follow it in light of the decision of Coomaraswamy J in *Kosui* ([41] *supra*). Indeed, it appeared to me that the *ratio decidendi* in *Engelin Teh Practice* (summarised at [46] above) was in fact consistent with *Kosui*. Further, *Turner & Co* was, in my opinion, distinguishable from the facts before me. There was, for example, nothing to suggest that the defendant in *Turner & Co* had applied to the court for an order for taxation and failed, like the plaintiff in this case.

50 In my view, the plaintiff had failed to raise any genuine triable issue with regard to the quantum of the debt under the 26 October invoice and therefore, there was no basis for the SD to be set aside under r 98(2)(*b*) BR.

No valid or genuine cross demand

51 Whilst the explanation given by Mr Goh at [42] above was not on affidavit, I saw no reason to disregard it or to disbelieve Mr Goh's explanation. In this case, the defendant's counsel was from the same entity as the defendant who had issued the SD. In the circumstances and based on the explanation given, which I was prepared to accept, I rejected the plaintiff's contention that it had a valid or genuine cross demand against the defendant to justify setting aside the SD under r 98(2)(*a*) BR.

Extension of time

52 Given my decision that the advertisement and the 4 October 2019 email constituted valid service of the SD, whether individually or collectively, it was not necessary for me to consider if service by way of the 22 October 2019 email was valid. In my view, valid substituted service of the SD was effected on 4 October 2019. Under r 97(1)(*a*) BR, an application to set aside an SD was required to be made within 14 days from the date of actual or deemed service

of the SD. The plaintiff's application in OSB 129 (filed on 31 October 2019) was thus out of time as it should have been filed by 18 October 2019. The plaintiff would have to obtain an extension of time, under r 97(3) BR, to apply to set aside the SD.

53 The plaintiff submitted that it had made its application to set aside the SD after only a short delay and with no prejudice to the defendant. Mr Kang cited *Liew Kai Lung Karl v Ching Chiat Kwong* [2015] 3 SLR 1204 ("*Liew Kai Lung Karl*") to make the case that the threshold to obtain an extension of time was not a particularly high one, and also argued that the plaintiff had strong grounds on which to apply for the SD to be set aside. The defendant submitted that the plaintiff had not given the court any explanation for the delay and should not be granted an extension of time.

54 The factors that the court should take into consideration when an application is made for an extension of time to set aside an SD are set out in *Rafat Ali Rizvi v Ing Bank NV Hong Kong Branch* [2011] SGHC 114 at [32]. The factors are as follows:

(a) the period of the delay;

(b) the reasons for the delay;

(c) the grounds for setting aside the statutory demand; and

(d) the prejudice that may result from an extension of time.

but the weight to be given to each factor is dependent on the specific facts of each case.

55 On the facts before me, the application was filed almost two weeks late, which I found to be not insubstantial given that the plaintiff was aware of the SD on or around 4 October 2019. Further, the plaintiff did not give any reasons for the delay and in fact it appears that he made a deliberate, tactical decision to wait until HC/B 2786/2019 was filed before taking any action.[37] In addition, as I have found above, the grounds for setting aside the SD are also unmeritorious. However, since one of the reasons relied on by the plaintiff to set aside the SD was that he was not validly served, my decision on the date of valid service could conceivably affect his application for an extension of time. I thus proceeded to consider if there were other grounds on which the SD could be set aside. In any event, as I found the plaintiff's application to set aside the SD to be without merit, whether an extension of time should be granted was ultimately rendered moot. This was, in essence, also the approach taken in *Liew Kai Lung Karl* at [8].

Conclusion

56 I found that: (a) there was valid service of the SD on the plaintiff on 4 October 2019 by way of the advertisement and the 4 October email, whether viewed individually or collectively; (b) there was no dispute on the debt that appeared to the court to be substantial; and (c) there was no valid cross demand that was equivalent to or exceeded the debt. For these reasons, I dismissed the plaintiff's appeal with costs.

57 On the issue of costs, Mr Goh for the defendant sought to persuade me that costs should be ordered against the plaintiff on an indemnity basis and

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[37] Certified Transcript (HC/RA 353/2019), at p 3 ln 8-15

referred me to the decision of Justice Chan Seng Onn in *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103 at [49]. Mr Goh submitted that the conduct of the plaintiff in evading service and attempting, in OSB 129, to circumvent Abdullah J's order in OS 67 amounted to sufficiently improper conduct warranting an order of indemnity costs against the plaintiff. On the other hand, Mr Kang submitted that it could not be said that OSB 129 was taken out without any basis or that the appeal before me had been conducted in an inappropriate or utterly baseless manner and therefore, costs of the appeal should only be awarded against the plaintiff on the standard basis.

58 I agreed with the plaintiff. I did not think that the conduct of the plaintiff in OSB 129 or in the appeal before me could be construed as improper, warranting a departure from the usual basis on which costs are ordered against an unsuccessful party. This was not an appropriate case for costs against the plaintiff to be ordered on an indemnity basis. Accordingly, I ordered that the plaintiff pay the defendant costs of the appeal on the standard basis (inclusive of disbursements), which I fixed at $4,000.

S Mohan
Judicial Commissioner

Derek Kang Yu Hsien and Ashok Kumar Rai (Cairnhill Law LLC) for the plaintiff;
Goh Keng Huang and Leong Woon Ho (Shook Lin & Bok LLP) for the defendant;