Re Lee Kim Kiat
[2007] SGHC 146

Case Number : B 50/1999, RA 600003/2007

Decision Date : 10 September 2007

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Lim Seng Siew (Ong, Tay & Partners) for the bankrupt; Zero Nalpon (Nalpon & Co) for the claimant

Parties : —

10 September 2007

Andrew Ang J:

Introduction

1 This was an appeal against the decision of the learned assistant registrar ("AR") dismissing the claimant's application to reverse or vary the rejection by the Official Assignee ("the OA") of the claimant's proof of debt in the amount of $300,000 in the bankruptcy of Lee Kim Kiat ("LKK").

2 LKK was made a bankrupt on 23 March 1999. She was discharged from her bankruptcy with conditions on 25 January 2007, one of which was the final determination of the claims of the claimant.

3 The claimant had filed with the OA his proof of debt for a total of $420,000 on 10 May 2006 some seven years after LKK was made a bankrupt. In support of the proof, the claimant had tendered two notes signed by LKK. The first note was dated 8 May 1997 and was entitled "Promissory Note" although, as we shall see, it was wrongly described. It indicated that LKK owed $300,000 to the claimant "being the advance to me for the use of my businesses". The second note was dated 11 December 1998 and was appropriately entitled "Acknowledgement of Debt". It indicated that LKK owed $120,000 to the claimant, that sum "being personal loan to me for the payment of my personal expenses".

4 The OA admitted the claimant's proof in relation to the $120,000 debt but not that for $300,000.

5 Being dissatisfied with the OA's decision, the claimant applied to the AR to reverse or vary the OA's rejection of the claimant's poof in respect of the $300,000. Against her decision declining to do so, the claimant appealed to this court.

6 Before going into the substantive arguments, I should make some observations with regard to the claimant's tardiness in the matter.

7 First, the claimant filed his proof of debt substantially out of time, some seven years after the bankruptcy order. Under r 174(1) of the Bankruptcy Rules (Cap 20, R1, 2006 Rev Ed), the claimant is required to file his proof of debt within three months of the making of the bankruptcy order. Rule 174(1) states:

> Every creditor must prove his debt within 3 months after the making of a bankruptcy order by

lodging with the Official Assignee or the trustee, as the case may be, a proof of debt.

8 Secondly, the claimant had also delayed the adjudication hearing, by stating, during the first meeting with the OA on 30 June 2006, that he needed time to apply to the Hong Kong courts for an order to compel his banks in Hong Kong to produce documents that would support his proof of debt. On 7 July 2006, M/s Nalpon & Co wrote to the OA saying that he needed two months to do so.

9 The OA gave the claimant until 15 September 2006 to produce the documents. The claimant was unable to do so. A further extension to 4 October 2006 was granted by the OA. The claimant was still unable to produce the documents.

10 The OA granted yet another extension to 20 October 2006 for the claimant to produce documents.

11 On 20 October 2006, the claimant produced six documents to support his proof of debt. It is noteworthy that the claimant in fact did not make any application to the Hong Kong court for the documents, notwithstanding repeated statements that he would do so. Somewhat curiously, the explanation offered at the hearing before me was that his Hong Kong solicitors refused to do so.

12 The claimant sought to substantiate his claim for $300,000 by listing out three disbursements alleged to have been made by him. They are as follows:

(a) HK$1m on 2 May 1997 from North American Container Lines ("NACL") to Green Singapore Pte Ltd ("GSPL");

(b) US$100,000 on 15 June 1995 to GSPL; and

(c) $25,000 on 11 September 1995.

13 As pointed out by LKK, the claimant produced no evidence of the second and third alleged disbursements listed above. As for the first, the claimant produced a copy of a bank statement dated 14 May 1997 pertaining to NACL's account with The China & South Sea Bank Ltd which merely showed that HK$1m was disbursed from NACL's bank account on 2 May 1997; there was no evidence provided by the claimant as to whom the money was paid to.

14 LKK, on the other hand, produced documents ("NACL Documents") which she said evidenced inter-company loans from NACL to GSPL. She contended that the NACL Documents showed that the $300,000 claimed were in fact loans made by NACL to GSPL. The NACL Documents are as follows:

(a) A letter dated 8 May 1997 from NACL to GSPL (the same date as the "Promissory Note" referred to in para 3 above) in effect confirming their readiness to grant a loan of $200,000 by way of telegraphic transfer upon GSPL returning a copy of that letter duly acknowledging its terms.

(b) A similar letter dated 28 October 1997 from NACL to GSPL confirming their readiness to grant a loan of $100,000. (It will be noted that the date of this letter is after the date on the "Promissory Note").

(c) A letter dated 28 November 1999 from NACL to GSPL demanding repayment of $300,000.

15 LKK further alleged that the NACL Documents superseded the "Promissory Note" which the

claimant had said he would destroy but failed to do so.

16 On his part, the claimant maintained that the NACL loans were separate and distinct from the loan evidenced by the "Promissory Note". It was pointed out that the NACL letter of 8 May 1997 referred to a loan to be made only after confirmation by GSPL by return facsimile. It was argued therefore that such loan could not have been the one the indebtedness for which was acknowledged by the "Promissory Note" of the same day. Similarly, the letter of 28 October 1997 from NACL to GSPL confirming their readiness to lend $100,000 was long after the "Promissory Note". In my view, whilst it was possible that GSPL could have accepted NACL's offer of $200,000 on the very day NACL's letter was written (*ie*, 8 May 1997), the $100,000 offered on 28 October 1997 could not possibly have taken place on the date of the "Promissory Note", *ie* 8 May 1997. Therefore, LKK's contention that the NACL Documents were in relation to the "Promissory Note" was, at best, only partially plausible.

17 However, the burden was on the claimant to furnish evidence in support of his proof. Under r 174(3) of the Bankruptcy Rules, every proof of debt is required to state, *inter alia*, particulars of how and when the debt was incurred by the bankrupt. Rule 174(4) further requires documents substantiating the claim to accompany the proof. Rule 174(7) empowers the OA at any time to call for further evidence of the claim to be furnished. It was evident that he failed to furnish evidence to the satisfaction of the OA.

18 As pointed out by LKK's counsel, it is significant to note that the claimant's position concerning disbursements relating to the "Promissory Note" changed after LKK produced the NACL Documents.

19 Earlier, his solicitors, Nalpon & Co's letter of 19 June 2006, had identified nine disbursements. Although the letter did not categorically say so, the clear implication was that they could be in relation to the "Promissory Note". However, after LKK's disclosure of the NACL Documents on 17 August 2006, the claimant changed his position. Nalpon & Co's letter of 20 October 2006 then contended that a HK$1m remittance on 2 May 1997 formed part of the disbursements to the note of 8 May 1997. Even so, it was not at all clear to me how that sum, together with the other two amounts referred to in para 12 could add up to $300,000, given that HK$1m was equivalent to $200,000 approximately. Moreover, whereas the "Promissory Note" acknowledged the $300,000 as having been advanced by the claimant to LKK for the use of her business, the three disbursements identified by the claimant were by NACL in favour of GSPL.

20 In this state of affairs, the OA could not be faulted for rejecting the claimant's proof in regard to the "Promissory Note". However, the OA seemed to have gone further to say that the "Promissory Note" was not an acknowledgment of a personal debt but of an inter-company debt. If that was what he intended to say, I must respectfully disagree. Be that as it may, the outcome was, in my view, entirely correct for the reasons outlined above.

21 Counsel for the claimant argued that the OA should not have required the claimant to furnish any further evidence beyond production of the "Promissory Note". That argument, to my mind, was premised upon a misapprehension as to the nature of the "Promissory Note". As earlier mentioned, it was not in truth a promissory note. As defined in s 92(1) of the Bills of Exchange Act (Cap 23, 2004 Rev Ed) a promissory note is –

> [A]n unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

If the document was truly a promissory note, I would agree that the OA need not have required

further evidence. But it was not.

22 I should perhaps add a few words about *Re Ice-Mack Pte Ltd* [1989] SLR 876. Counsel for LKK cited this case as authority for the proposition that it was incumbent upon the claimant to "go to the root of the matter and produce proper evidence" of the disbursements made to LKK. In particular, he quoted the following passage (at 882):

> It may well be that, in what might be called a straightforward case, documents such as those produced by the applicant might be accepted as sufficient evidence to prove a debt obligation. But, in this case, once the validity of the claim was challenged, it was incumbent on the applicant to go to the root of the matter and to produce proper evidence of the various 'loans and payments for and on behalf of the company' which added up to the figure of $2,428,418.49 and which it claimed to have made. There should have been the proofs indicated by r 81, specifying the credit and debit notes, the vouchers and receipts, and other documentary evidence by which these loans and payments for and on behalf of the company could be substantiated.

23 I agree with the claimant that the passage should be read in its proper context. In that case, the company in winding up and the company seeking to prove the debt were both controlled by one person. Understandably, the documents which had been filed by the creditor called for closer scrutiny than would have been necessary otherwise. This is not to say, however, that in our case, where LKK had disputed the claim, it was not open to the OA to call for further evidence as he was plainly entitled to do under the Bankruptcy Rules.

24 In the result, given the lack of evidence, the AR was clearly right to dismiss the claimant's application to reverse or vary the OA's rejection of the claimant's proof. Accordingly, I dismissed the appeal with costs.