IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 95

Civil Appeal No 213 of 2020

Between

Lakshmanan Shanmuganathan
(also known as L Shanmuganathan)

… *Appellant*

And

(1) L Manimuthu
(2) L Vengatesan
(3) L Siva Subramaniam
(4) L Mohanasundram

… *Respondents*

In the matter of Originating Summons (Bankruptcy) No 31 of 2020
(Registrar's Appeal No 279 of 2020)

In the matter of the Bankruptcy Act (Cap 20, 2009 Rev Ed)

And

In the matter of Rule 97 of the Bankruptcy Rules (2002 Rev Ed)

Between

Lakshmanan Shanmuganathan
(also known as L Shanmuganathan)

… *Plaintiff*

And

(1) L Manimuthu
(2) L Vengatesan
(3) L Siva Subramaniam
(4) L Mohanasundram

… *Defendants*

GROUNDS OF DECISION

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

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Tay Yong Kwang JCA, Belinda Ang Saw Ean JAD and Chao Hick Tin SJ
2 July 2021

7 October 2021

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 This appeal arose from an application by the appellant to set aside a statutory demand ("the Second SD") served on him by the respondents, who are his brothers. The backdrop to the Second SD was a compromise agreement among the brothers pertaining to their late father's assets which included properties in India ("the Compromise Agreement"). In 2012, the respondents commenced HC/S 141/2012 ("Suit 141") against the appellant over moneys owed to them under the Compromise Agreement. The High Court allowed the respondents' claim. The High Court also ordered the respondents to transfer to the appellant six properties in India that were allocated to him under the Compromise Agreement ("the Six Properties").

2 The debt claimed in the Second SD was the judgment sum in Suit 141 with accrued interest, taxed costs and disbursements. The Second SD specified that the respondents held the Six Properties belonging to the appellant. However, the values ascribed to the Six Properties were the values reflected in the Compromise Agreement rather than their actual or current values. The appellant applied to set aside the Second SD on the basis that the respondents failed to comply with r 94(5) of the Bankruptcy Rules (2002 Rev Ed) ("BR") by not specifying the current values of the Six Properties in the Second SD. He further argued that he had a valid counterclaim exceeding the debt claimed, by virtue of his entitlement to the Six Properties.

3 The application was heard and dismissed by an assistant registrar ("the AR"). The appellant's appeal against the AR's decision was dismissed by the High Court judge ("the Judge") in *Lakshmanan Shanmuganathan (alias L Shanmuganathan) v L Manimuthu and others* [2020] SGHC 263 ("the Judgment"). The appellant appealed against the Judge's decision.

4 After hearing the appellant, we decided to dismiss the appeal without calling on the respondents to reply. We now provide our reasons for our decision.

Facts

The Compromise Agreement

5 The parties' late father owned various properties in India. He also owned a moneylending business and a share in a property in Singapore ("the Singapore Property"). Following their father's death, the parties entered into the Compromise Agreement on 29 December 2010 to resolve all disputes relating

to the distribution of their parents' assets. The key terms of the Compromise Agreement were as follows:

(a) Seven of the 26 properties in India would be allocated to the appellant while the remaining properties were allocated to the respondents. Each of the 26 properties was valued in the Compromise Agreement.

(b) The share in the Singapore Property would be sold. The appellant would keep 20% of the sale proceeds and pay the remaining 80% to the respondents within a year of the execution of the Compromise Agreement.

(c) The appellant would pay each of the four respondents $262,500 (totalling $1,050,000) within 12 months of the execution of the Compromise Agreement.

6 The share in the Singapore Property was subsequently sold but the appellant retained the total sale proceeds amounting to $84,295.89, contrary to the terms of the Compromise Agreement. The appellant also failed to pay the sum of $1,050,000 to the respondents as agreed.

Suit 141

7 In 2012, the respondents commenced Suit 141 against the appellant to claim the sum of $1,050,000 as well as their 80% share of the sale proceeds of the share in the Singapore Property. The appellant made a counterclaim for, among other things, his share of his parents' estates due to him under the Compromise Agreement.

8 The High Court found that the Compromise Agreement was valid and enforceable (see *L Manimuthu and others v L Shanmuganathan* [2016] 5 SLR 719 ("*L Manimuthu*") at [12] and [23]). Accordingly, the court ordered the appellant to pay the respondents the sum of $1,050,000 plus interest and 80% of the sale proceeds of the share in the Singapore Property (see *L Manimuthu* at [31(a)] and [31(c)]).

9 The court also allowed the appellant's counterclaim in part and ordered the respondents to transfer the Six Properties to the appellant (see *L Manimuthu* at [29] and [31(e)]). The seventh property allocated to the appellant under the Compromise Agreement was a property in Coimbatore District, Tamil Nadu, that had been sold by the respondents ("the Seventh Property"). As such, the respondents were ordered to return all the documents relating to the sale of the Seventh Property and the entire sale proceeds of the Seventh Property to the appellant (see *L Manimuthu* at [29], [31(d)] and [31(e)]). The High Court's decision was upheld on appeal.

The first statutory demand

10 Following the decision in *L Manimuthu*, the respondents transferred the relevant documents pertaining to the sale of the Seventh Property to the appellant. The respondents also offered to pay the appellant the sale proceeds of the Seventh Property (amounting to about $10,000) and to transfer the Six Properties to him. However, the appellant did not appear to show any meaningful interest in proceeding with the transfer. He also failed to pay the judgment sum to the respondents.

11 On 23 May 2018, the respondents served a statutory demand on the appellant ("the First SD"). The debt claimed in the First SD was a sum of

$2,104,440.80. Subsequently, the respondents commenced bankruptcy proceedings against the appellant.

12 On 12 November 2018, the appellant applied to set aside the First SD by way of HC/SUM 5330/2018 ("SUM 5330") on the following grounds:

(a) The respondents failed to disclose the Six Properties in the First SD. The First SD therefore did not comply with r 94(5) and was liable to be set aside under r 98(2) of the BR.

(b) The First SD did not disclose that the respondents had been ordered in Suit 141 to pay the appellant the sale proceeds of the Seventh Property.

(c) The collective value of the Six Properties exceeded the amount of the debt claimed in the First SD.

13 An assistant registrar ("AR Wong") allowed SUM 5330 and set aside the First SD for the following reasons:

(a) The First SD did not comply with rr 94(5) and 94(6) of the BR as the respondents failed to disclose that they held the Six Properties on the appellant's behalf. This alone was a sufficient basis to set aside the First SD.

(b) There was some evidence that the Six Properties were worth about $2,250,000 as at June 2018. The appellant had thus raised a triable issue that he had a valid counterclaim, set-off or cross demand that exceeded the amount of the debt specified in the First SD (*ie*, $2,104,440.80). Accordingly, the First SD ought to be set aside pursuant to r 98(2)(*a*) of the BR.

(c) The First SD did not disclose that the respondents held the sale proceeds of the Seventh Property on the appellant's behalf.

14 The respondents' appeal against AR Wong's decision was dismissed by the Judge in HC/RA 7/2019 ("RA 7"). The Judge held that the First SD was defective for want of compliance with r 94 of the BR.

The Second SD

15 On 14 February 2020, the respondents served the Second SD on the appellant, claiming a debt of $2,084,013.55. The respondents did not and do not owe the appellant any money, save for the sale proceeds of the Seventh Property which was disclosed in the Second SD and accounted for by its deduction from the debt claimed.

16 The Compromise Agreement was mentioned in the Second SD as the factual background to explain why the respondents were still holding the Six Properties. The Second SD listed the Six Properties together with their values "based on the amount stated in the Compromise Agreement" in Indian rupees and their equivalent values in Singapore dollars as follows:

> (10) Properties held by the [respondents] belonging to the [appellant] pursuant to the Compromise Agreement dated 29 December 2010, which ought to be transferred to the [appellant] pursuant to the Court's Order on 25 May 2016 are stated below. The [respondents] have offered to transfer these properties to the [appellant]. The values of the properties given below are based on the amount stated in the Compromise Agreement entered into by the [respondents] and the [appellant] on the 29 December 2010;

S/No.	Property	Value of the Properties as Expressed in the Compromise Agreement in Indian Rupees (RS)	Equivalent value of the said Indian Rupees in Singapore Dollars (S$)
i.	(No. 21) House at Plot No. 87, ShastriNagar, Dindigul, Tamil Nadu India, Postal Code 624001	2,000,000.00	$39,940.00
ii.	(No. 7) Coconut Grove patta No. 417518 at Panniyaamalai Taluk, Tamil Nadu, Postal Code 624401	1,000,000.00	$19,472.00
iii.	(No. 22) Vacant Site at Plot No. 37 SKDS Mani Nagar, Ponnagaram, Dindigul, Tamil Nadu, India, Postal Code 624003	445,000.00	$8,664.32
iv.	(No. 26) Vacant Site 5000 sqf at Plot. 174 VGP Sri Ramanjeur Nagar part 1, Sriperumpudur, Kanjeepuram District, Tamil Nadu, India Postal Code 600063	500,000.00	$9,735.79

v.	(No. 13) Vacant site at Plot No. 17 Munu Aadhi Street, Peekkangarai, Chennai, Tamil Nadu, India Postal Code 600063	1,800,000.00	$35,047.87
vi.	(No. 18) Vacant site at Plot No. 16 Silappadi, Dindigul, Tamil Nadu, India, Postal Code 624005	250,000.00	$4,868.03
Total Proceeds		**5,995,000.00 (IRS)**	**S$114,270.40**

[emphasis in original in bold and bold underline]

17 The appellant applied to set aside the Second SD on three main grounds. First, he contended that issue estoppel arose by virtue of AR Wong's decision in SUM 5330 so that the values to be ascribed to the Six Properties in the Second SD were their current values rather than the values reflected in the Compromise Agreement. Second, he submitted that the Second SD did not comply with r 94(5) and ought to be set aside under r 98(2)(*c*). Specifically, he argued that the Second SD ought to have stated the current values of the Six Properties as well as disclosed the judgment of an Indian court pertaining to his share of his parents' estates ("the Indian judgment"). Third, he asserted that he had a valid counterclaim which exceeded the debt specified in the Second SD – namely, the Six Properties, which the respondents were obliged legally to transfer to him. The appellant contended that this was sufficient ground for setting aside the Second SD under r 98(2)(*a*).

The AR's decision

18 The AR dismissed the appellant's application to set aside the Second SD. He gave two reasons why issue estoppel did not arise on the facts. First, only the Judge's decision in RA 7 and not AR Wong's decision in SUM 5330 was capable of giving rise to issue estoppel. An appeal from an assistant registrar to a judge in chambers was by way of a rehearing of the application and the Judge would treat the matter afresh as though it had come before him for the first time. Accordingly, the relevant decision for the purposes of determining if issue estoppel arose was the Judge's decision in RA 7. Second, the Judge set aside the First SD in RA 7 because it did not state that the respondents were holding the Six Properties and the sale proceeds of the Seventh Property and thus failed to comply with r 94(5). Since the Judge did not decide whether the First SD ought to be set aside for failing to state the current values of the Six Properties, that issue was not fundamental to his decision in RA 7 and therefore did not give rise to issue estoppel.

19 The AR held further that the respondents had complied with r 94(5). First, the respondents had rectified the precise instances of non-compliance with r 94(5) identified by the Judge in RA 7 – namely, their failure to state in the First SD that: (a) they were holding the Six Properties and the sale proceeds of the Seventh Property and (b) the court had ordered them to transfer the Six Properties to the appellant. Second, the current values of the Six Properties were irrelevant. The expression "property of the debtor" in r 94(5) referred to property of the debtor held by a creditor, the value of which the creditor was entitled to deduct from the full amount of the debt under r 94(6). However, the respondents could not realise the value of the Six Properties and deduct that value from the debt claimed in the Second SD because they had been ordered to transfer the Six Properties to the appellant (see *L Manimuthu* at [31(e)]).

20 Finally, the AR held that the appellant did not have a valid counterclaim under r 98(2)(*a*) as the purported counterclaim was not a *bona fide* one. The AR observed that the appellant had taken no steps to claim the Six Properties from the respondents or to effect the transfer of the same, even though the judgment in *L Manimuthu* was issued more than four years ago. The AR was of the view that the appellant was not entitled to assert that he had a valid counterclaim in respect of the Six Properties while refusing to co-operate with the respondents to effect the transfer of those properties to him.

The Judge's decision

21 The appellant appealed against the AR's decision. The Judge dismissed the appeal for largely the same reasons given by the AR.

22 First, the Judge held that AR Wong's decision in SUM 5330 did not give rise to issue estoppel (see the Judgment at [15] and [18]). When AR Wong held that the appellant was "entitled to rely on an actual valuation of the [Six Properties]", she was considering whether the appellant could assert that he had a valid counterclaim. Accordingly, the issue addressed by AR Wong was not identical to the issue at hand, which was whether the Second SD ought to have stated the actual or current values of the Six Properties or the values reflected in the Compromise Agreement (see the Judgment at [15]). Further, the relevant decision to consider for the purposes of issue estoppel was not AR Wong's decision but the Judge's decision in RA 7 (see the Judgment at [16]). In RA 7, the Judge did not consider, much less decide, whether the First SD ought to be set aside for failing to state the actual values of the Six Properties (see the Judgment at [16] and [17]). For these reasons, the Judge held that no issue estoppel arose as to whether the Second SD ought to have reflected the actual values of the Six Properties.

23 Second, the Judge held that the respondents did not breach r 94(5) of the BR by failing to indicate the actual values of the Six Properties (see the Judgment at [23] and [34(b)]). Relying on *Ramesh Mohandas Nagrani v United Overseas Bank Ltd* [2016] 1 SLR 174 ("*Mohandas*") at [29], the Judge held that although a creditor was obliged, under r 94(5), to disclose the value of any property of the debtor that he was holding, such value had to be that which the creditor was entitled to deduct from the debt claimed in a statutory demand (see the Judgment at [23]). In this case, the respondents were not entitled to apply the actual values of the Six Properties towards the payment of the debt claimed as they were required by the judgment in Suit 141 to transfer the Six Properties to the appellant. Moreover, the respondents had stated clearly in the Second SD that: (a) they were required to transfer the Six Properties to the appellant; (b) they had offered to transfer the Six Properties to the appellant; and (c) the values ascribed to the Six Properties were the values reflected in the Compromise Agreement. In the circumstances, their use of the values stipulated in the Compromise Agreement was "reasonable and justified" (see the Judgment at [24] and [25]).

24 Third, the Judge rejected the appellant's argument that he had a valid counterclaim. The Judge found that the appellant's counterclaim was not a *bona fide* one (see the Judgment at [32] and [34(c)]). Several years after the court's decision in *L Manimuthu*, the Six Properties still remained with the respondents due to the appellant's inaction and lack of responsiveness to the respondents' attempts to transfer the Six Properties to him. This suggested that the appellant had no genuine intention to pursue his counterclaim. In addition, if the Six Properties were in fact worth more than the debt owed by the appellant to the respondents, he would have been proactive and enthusiastic in facilitating the transfer of the Six Properties to his name (see the Judgment at [32]).

25 The Judge also held that there was no need for the respondents to disclose the Indian judgment in the Second SD as that judgment merely declared each party's entitlement and did not deal with the liabilities among the parties. Lastly, the Judge stated that the appellant appeared to be relying on all the grounds in r 98(2) of the BR except r 98(2)(*d*) to set aside the Second SD. He held that none of the other grounds for setting aside a statutory demand under r 98(2) was applicable in this case (see the Judgment at [33] and [34(d)]).

The parties' cases on appeal

26 On appeal before us, the appellant abandoned his arguments in respect of issue estoppel. He also did not proceed with the contention that the Second SD ought to have disclosed the Indian judgment. Instead, he proceeded on only these two contentions:

(a) The Judge erred in finding that the Second SD complied with r 94(5) even though it did not indicate the actual values of the Six Properties. On this basis, the appellant submitted that the Second SD ought to be set aside under r 98(2)(*c*).

(b) The Judge erred both in fact and in law in concluding that the appellant did not have a valid counterclaim against the respondents. Accordingly, the appellant urged this court to set aside the Second SD, pursuant to r 98(2)(*a*).

27 In response to the appellant's submissions, the respondents submitted as follows:

(a) They reiterated the Judge's finding that under r 94(5), "property" held by the creditor referred to assets that the creditor would be entitled

to apply towards payment of the debt. Since they were not entitled to apply the Six Properties in satisfaction of the debt claimed in the Second SD, there was no reason why the Second SD had to state the current values of the Six Properties.

(b) They contended that the appellant's counterclaim was not *bona fide* and therefore was not "valid" for the purposes of r 98(2)(*a*). They emphasised their efforts to transfer the Six Properties to the appellant, including: (i) obtaining an Indian legal opinion on how the transfer of the Six Properties should be effected; and (ii) inviting the appellant to participate in the transfer of the Six Properties at the Land Registry in India.

The issues to be determined

28 Based on the parties' submissions, the following two issues arose for our determination:

(a) For the purposes of r 94(5)(*b*), were the respondents required to disclose the actual values of the Six Properties in the Second SD? If so, should the Second SD be set aside pursuant to r 98(2)(*c*)?

(b) Should the Second SD be set aside under r 98(2)(*a*) on the ground that the appellant had a valid counterclaim exceeding the amount of the debt claimed in the Second SD?

Whether the Second SD ought to have disclosed the actual values of the Six Properties

29 We first consider whether the Second SD complied with r 94(5) even though it reflected the values of the Six Properties set out in the Compromise

Agreement rather than the actual or current values of those properties. In our judgment, this was a case where disclosure of the values of the Six Properties, whether as previously agreed or the actual values, was ultimately immaterial.

30 The relevant sub-provisions of rr 94 and 98 of the BR are set out below:

> **Form and contents of statutory demand**
>
> (5) If the creditor holds any property of the debtor or any security for the debt, there shall be specified in the demand —
>
> (*a*) the full amount of the debt; and
>
> (*b*) the nature and value of the security or the assets.
>
> (6) The debt of which payment is claimed shall be the full amount of the debt less the amount specified as the value of the security or assets.
>
> **Hearing of application to set aside statutory demand**
>
> (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.

31 In *Mohandas*, which the Judge relied on, the court held (at [27]) that the phrase "property of the debtor" in r 94(5) meant property of the debtor that the creditor was entitled to apply towards payment of the debt claimed in a statutory demand. This was because the creditor was required under r 94(6) to deduct the value of the property from the full amount of the debt and was only entitled to claim the balance (see *Mohandas* at [29]). Based on *Mohandas*, the Judge reasoned that the value of such property that had to be disclosed in a statutory demand was that which the creditor was entitled to deduct from the debt claimed. Since the respondents were required to transfer the Six Properties to the appellant by virtue of the judgment in Suit 141, they were not entitled to sell the properties and apply the actual values thereof towards the payment of the debt claimed. According to the Judge, therefore, the respondents did not breach r 94(5) by failing to indicate the actual values of the Six Properties (see the Judgment at [23]).

32 We agreed with the Judge's finding. In our view, there was no need for the respondents to state the actual or current values of the Six Properties in the Second SD as they were not entitled to apply those properties towards payment of the debt claimed in the Second SD. The respondents were bound by the judgment in Suit 141 to transfer the Six Properties to the appellant and would be in breach of that judgment if they tried to sell or otherwise dispose of the Six Properties. As the respondents would not have been able to deduct the actual values of the Six Properties from the debt owed by the appellant, there was no reason for the respondents to incur the wholly unnecessary expense of obtaining up-to-date valuations of those properties.

33 There was another flaw with the appellant's case. As mentioned at [31] above, a creditor is required under r 94(6) to deduct the value of the property that he held for the debtor from the full amount of the debt and was only entitled

to claim the balance (see *Mohandas* at [29]). The appellant contended that the current value of the Six Properties was $2,250,000 in total, that the respondents ought to have disclosed this value in the Second SD and that they ought to have deducted that value from the debt claimed. However, so long as the judgment in Suit 141 stood, the respondents remained precluded from realising the value of the Six Properties. Any attempt to do so would be in contempt of the court which issued the judgment. If the appellant's contention was that the respondents were required to stipulate the actual values of the Six Properties in order to comply with r 94(5) although they could not deduct those values from the debt claimed anyway, then the respondents would have expended time and money on the valuation of the Six Properties in vain.

34 Before us, the appellant made three main arguments. First, he agreed that under r 94(5), only property of the debtor which the creditor could apply in satisfaction of the debt claimed needed to be disclosed in a statutory demand. On this basis, the appellant suggested that since the Judge had held in RA 7 that the respondents ought to have disclosed in the First SD that they held the Six Properties for him, the Judge had effectively held that the Six Properties were properties which the respondents could apply towards payment of the debt that he owed. We rejected this argument. The reasoning in *Mohandas* was clear. Only property of the debtor that the creditor could apply towards payment of the debt had to be disclosed under r 94(5). The appellant was assuming, quite wrongly, that the respondents could somehow apply the Six Properties towards payment of the debt that he owed because of the Judge's ruling in RA 7. However, that ruling did not purport to set aside or vary the judgment in Suit 141 in any way.

35 One could argue about the utility of the decision in RA 7 in so far as it held that the Six Properties had to be disclosed in the First SD when it was clear

that the Six Properties had to be transferred by the respondents to the appellant and could not be used to set off any amounts owing by the appellant to the respondents. As the court noted in *Mohandas* at [29], there was simply no use in requiring a creditor to specify property that he was not entitled to apply towards payment of the debt (see also *Goh Chin Soon v Oversea-Chinese Banking Corporation Limited* [2001] SGHC 17 ("*Goh Chin Soon*") at [11]). In effect, the property of a debtor that has to be disclosed under r 94(5) would be only property of a value that could and would be deducted from the total amount of the debt pursuant to r 94(6) (see *Mohandas* at [29]). There was no appeal against the decision in RA 7.

36 On the peculiar facts of this case, perhaps the decision in RA 7 was concerned with full and frank disclosure in making a statutory demand. If that was the concern, the respondents had complied amply with this duty in the Second SD where they explained in some detail how the Six Properties came to be in their control, the values as agreed in the Compromise Agreement, that they had been ordered by the judgment in Suit 141 to transfer those properties to the appellant and that they had made numerous attempts to do so but without success due to the appellant's refusal to co-operate in the transfers. In any case, as indicated earlier, disclosure of the values of the Six Properties, whether current or as agreed in the Compromise Agreement, was ultimately immaterial since neither of those values could be realised in diminution or in satisfaction of the debt claimed by the respondents against the appellant.

37 The appellant's second contention was that *Mohandas* concerned only the issue of which properties of a debtor ought to be disclosed by the creditor in a statutory demand and not whether the creditor had to disclose the current values of the debtor's properties that they held. This argument was plainly

unmeritorious. In our view, the Judge's reasoning was the only logical conclusion of *Mohandas*.

38 Third, the appellant stressed repeatedly that the respondents could apply to vary the judgment in Suit 141 to set off the debt that he owed against the current values of the Six Properties. While it was open to the respondents to apply to vary the judgment in Suit 141, they did not exercise this option at the time that they issued the Second SD and therefore did not have any right of set-off then. Further, although the appellant asserted that he had always been willing to consent to the respondents' application for the judgment in Suit 141 to be varied, this was never stated in any of his affidavits filed in the proceedings. There was also no evidence that the appellant had informed the respondents that he was prepared for them to hold the Six Properties as security for his debt and/or to dispose of those properties, notwithstanding the judgment in Suit 141. In any case, the appellant had no right to dictate to the respondents what they should do with the judgment in Suit 141, a judgment which he had applied for and succeeded in obtaining.

39 By issuing the Second SD, the respondents had made clear their intention to comply with the terms of the judgment in Suit 141. Although they had acknowledged the possibility of executing against the Six Properties in RA 7, that was on the premise that they first apply for a variation of the judgment in Suit 141. However, the respondents were not obliged to apply to vary the judgment in Suit 141. The facts showed that the appellant was hindering the respondents in their attempts to comply with the judgment in Suit 141. As the Judge held, the Six Properties had yet to be transferred to the appellant to date because of the appellant's lack of responsiveness to the respondents' many attempts to effect the transfers (see the Judgment at [30] and [32]). Clearly, the appellant was the party responsible for the present impasse.

Since the respondents were not seeking to apply the Six Properties in diminution or in satisfaction of the debt claimed against the appellant, there was no reason for them to state the current values of those properties in the Second SD.

40 The facts showed that the appellant was never keen in having any of the Six Properties transferred to him and paying the respondents what they had all agreed in the Compromise Agreement more than a decade ago. In Suit 141, the appellant even challenged the Compromise Agreement on the ground that he was forced to sign it under duress, an allegation which the court rejected (see *L Manimuthu* at [14]). Consistent with his conduct in Suit 141, the appellant remained reluctant to abide by the terms of the Compromise Agreement to date. This, however, could not afford him any basis to demand that the respondents apply to vary the judgment in Suit 141 or to dictate that all parties agree not to abide by the said judgment. The respondents were therefore entirely justified in commencing the bankruptcy proceedings against him.

41 For the above reasons, we held that the Second SD complied with r 94(5) of the BR. There was no need for the respondents to specify the actual or current values of the Six Properties in the Second SD. Consequently, we rejected the appellant's argument that the Second SD ought to be set aside under r 98(2)(*c*).

Whether the appellant had a valid counterclaim exceeding the debt owed

42 We next considered if the appellant had a valid counterclaim exceeding the debt owed, such that the Second SD ought to be set aside under r 98(2)(*a*). The appellant submitted that his "counterclaim" was for the Six Properties which he was entitled to by virtue of the court's decision in *L Manimuthu*. We agreed with the Judge that the appellant's counterclaim was not a *bona fide* one

and that it was therefore not a "valid" counterclaim that warranted the setting aside of the Second SD.

43 Rule 98(2)(*a*) provides that the court shall set aside a statutory demand if 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. In *Goh Chin Soon* at [7], the court made the following observations on r 98(2)(*a*):

> … Rule 98(2)(a) provides that the court shall set aside the SD if the debtor appears to have a valid counterclaim, set-off or cross demand which exceeds the amount of the debts in the SD. The word 'valid' is placed there for good reason. It requires the court to examine the alleged counterclaim, set-off or cross demand to see if the debtor has a *bona fide* claim against the creditor that, if successful, would enable him to pay the debt the subject of the statutory demand. If all that rule 98(2)(a) requires were the mere existence of such a claim, no matter how spurious, then it will be only too easy for a debtor to make such a claim in order to stave off bankruptcy proceedings. … [emphasis in original in underline]

44 Up to the time that the appeal was before us, the Six Properties remained in the respondents' control and were not transferred to the appellant. We agreed with the Judge that the delay in the transfers was attributable wholly to the appellant (see the Judgment at [30]). Between 20 June 2016 and 5 July 2016, the respondents made at least three offers to transfer the Six Properties to the appellant. Further, the respondents obtained a legal opinion from an Indian solicitor on how the Six Properties ought to be transferred to the appellant. A copy of this legal opinion was extended to the appellant. As the transfer of the Six Properties required all parties to be present physically at the Land Registry in India, the respondents invited the appellant to participate in the transfer in India but the appellant remained un-cooperative and unresponsive.

45 The appellant explained that there were settlement negotiations among the parties after the decision in *L Manimuthu* and that the respondents had sought to impose new conditions on the transfer of the Six Properties. However, the correspondence relating to those "without prejudice" negotiations was expunged because of an earlier application by the appellant. Accordingly, the appellant was foreclosed from raising the negotiations among the parties in this appeal.

46 As we noted above, the appellant had shown that he did not wish to have the Six Properties transferred to him and that he did not wish to abide by the terms in the Compromise Agreement. In our judgment, it was ironic that he should keep on insisting that he had a valid counterclaim to the Six Properties when he was unwilling to take possession of those properties over the years. The appellant's counterclaim in relation to the Six Properties was determined in his favour in Suit 141. It was clear that the intransigence in the transfer of those properties was due entirely to him. We therefore agreed with the Judge that the appellant did not have a valid counterclaim under r 98(2)(*a*) that justified the setting aside of the Second SD.

47 In our view, there was a further reason why the appellant could not avail himself of r 98(2)(*a*). There was no evidence that the current values of the Six Properties exceeded the amount of the debt claimed in the Second SD. Although r 98(2)(*a*) only requires the court to determine if there is a genuine triable issue in respect of the alleged counterclaim, the debtor must provide sufficient material to the court to justify the existence of a triable issue. The court is not obliged to dismiss bankruptcy proceedings merely because a triable issue, however shadowy, has been raised (see *iTronic Holdings Pte Ltd v Tan Swee Leon* [2018] 4 SLR 359 at [55] and [56]; *Mohd Zain bin Abdullah v Chimbusco*

International Petroleum (Singapore) Pte Ltd and another appeal [2014] 2 SLR 446 at [31]).

48 The appellant's sole basis for asserting that the current values of the Six Properties exceeded the debt claimed in the Second SD was a set of valuation reports dated June 2018 ("the 2018 valuations"), in which the Six Properties were valued collectively at INR112,500,000 or about $2,250,000. He had adduced these valuation reports in SUM 5330 in order to have the First SD set aside. The Compromise Agreement valued each of the Six Properties at between INR250,000 and INR2,000,000. In contrast, the value attributed to each of the Six Properties in the 2018 valuations ranged from INR15,000,000 to INR20,000,000. Although the appellant submitted that the values of the Six Properties "would have appreciated" since June 2018, this was purely speculative.

49 The appellant did not take any steps to transfer the Six Properties to his name despite his assertion about their present-day values. As the Judge observed, if the Six Properties were worth more than the debt owed by the appellant to the respondents, the appellant would have made greater efforts to facilitate the transfer of those properties to his name (see the Judgment at [32]).

50 For these reasons, we found that the appellant failed to establish that he had a valid counterclaim which exceeded the debt that he owed to the respondents. Accordingly, there was no cause to set aside the Second SD under r 98(2)(*a*).

Conclusion

51 We therefore dismissed the appeal. We ordered the appellant to pay the respondents costs fixed at $30,000, inclusive of disbursements. The usual consequential orders would apply.

52 Under r 98(3) of the BR, if the court dismisses an application to set aside a statutory demand, it shall make an order authorising the creditor to file a bankruptcy application either on or after the date specified in the order. We ordered that if the respondents wished to proceed with the bankruptcy proceedings, they would have to file a bankruptcy application within three weeks from the dismissal of the appeal.

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

Chao Hick Tin
Senior Judge

A Rajandran (A Rajandran) (instructed) and Mohan Das Naidu (Mohan Das Naidu & Partners) for the appellant;
Palaniappan Sundararaj (K&L Gates Straits Law LLC) for the respondents.