IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 240

Bankruptcy No 2105 of 2017
Registrar's Appeal No 232 of 2019

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

And

In the matter of Chua Seng Kiat

Between

Standard Chartered Bank, Singapore Branch

… *Plaintiff*

And

Chua Seng Kiat

… *Defendant*

And

Lim Peng Liang David Llewellyn

… *Intervener*

GROUNDS OF DECISION

[Insolvency Law] — [Bankruptcy] — [Annulment of bankruptcy order]

TABLE OF CONTENTS

Standard Chartered Bank, Singapore Branch
v
Chua Seng Kiat
(Lim Peng Liang David Llewellyn, intervener)

[2019] SGHC 240

High Court — Bankruptcy No 2105 of 2017 and Registrar's Appeal No 232 of 2019
Chan Seng Onn J
26 August 2019

9 October 2019

Chan Seng Onn J:

Introduction

1 This is an appeal against the decision of Assistant Registrar Norine Tan Yan Ling ("AR Tan") to annul a bankruptcy order which was made against the respondent, Mr Chua Seng Kiat, before all of the debts in the bankruptcy had been proven. Security was furnished by the respondent on two debts allegedly owed to the appellant, Mr Lim Peng Liang David Llewellyn, but these had yet to be admitted or proven before the bankruptcy order was annulled. The appellant appealed on the basis that the bankruptcy order should not have been annulled in these circumstances. The factual matrix of this case is particularly unusual and it is useful to first set out its procedural history.

Procedural History

Bankruptcy Order

2 On 20 September 2017, in the matter of Bankruptcy No 2105 of 2017 ("HC/B 2105/2017"), the plaintiff, Standard Chartered Bank, Singapore Branch ("Standard Chartered (SG)"), made a bankruptcy application against the defendant in that matter, Mr Chua Seng Kiat (*ie*, the respondent in the present appeal). On 16 November 2017, a bankruptcy order was granted by Assistant Registrar Li Yuen Ting ("AR Li") against the respondent.[1]

Stay of Execution

3 An order for a stay of the execution of the said bankruptcy order was made on 19 December 2017 in Summons No 5568 of 2018,[2] pending the outcome of an appeal filed by the respondent on 27 November 2017 against AR Li's decision to grant the bankruptcy application (Registrar's Appeal No 347 of 2017 ("HC/RA 347/2017")). The said appeal, which was heard by Lee Seiu Kin J, was adjourned numerous times over the course of more than a year to allow parties (*ie*, the petitioning creditor and the bankrupt) to settle.

Leave to Intervene and Variation of Order for Stay of Execution

4 Two proofs of debts were filed by the appellant against the respondent. The first was filed on 8 February 2018 for the sum of S$283,087.02, and the second was filed on 3 September 2018 for the sum of US$125,901.37 ("Alleged

---

1 HC/ORC 7577/2017 dated 16 November 2017

2 HC/ORC 8328/2017 dated 19 December 2017

Debts").[3] On 25 February 2019, the appellant filed a summons for leave to intervene to assert his rights and interest as a creditor of the respondent (Summons No 907 of 2019). This was heard and dismissed by Lee J on 8 May 2019.[4]

5 At the same hearing, in relation to HC/RA 347/2017, Lee J also varied the order for a stay of execution to allow the trustee to adjudicate on the appellant's proof of debt, with all other proceedings in the bankruptcy to remain stayed.[5]

Annulment of Bankruptcy Order

6 On 12 April 2019, the respondent filed an application in Summons No 1923 of 2019 to annul the said bankruptcy order on the basis that he had fulfilled the requirements set out under s 123(1)(*b*) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("Bankruptcy Act"). The respondent had settled all the respective debts with his creditors but the appellant's Alleged Debts, which the respondent disputed.[6]

7 The respondent secured the Alleged Debts by furnishing the sum of the Alleged Debts to his solicitors.[7] The respondent's solicitors provided an undertaking as security for the respondent to pay the appellant the owed sums

---

3 Appellant's Written Submissions ("AWS") at para 3; Respondent's Bundle of Documents at Tab D and E

4 Minute Sheet (SUM 907/2019 & RA 347/2017) dated 8 May 2019

5 Minute Sheet (SUM 907/2019 & RA 347/2017) dated 8 May 2019

6 Chua Seng Kiat's 5th Affidavit dated 12 April 2019 at paras 8, 10

7 Chua Seng Kiat's 5th Affidavit dated 12 April 2019 at para 10

in the event that a court decided that the said sums were respectively due and payable to the appellant.[8] The petitioning creditor in HC/B 2105/2017, Standard Chartered Bank (SG), was fully paid and did not object to the annulment. The private trustee in bankruptcy, Ms Brenda Chow ("Private Trustee"), also did not object to the annulment.[9] The only party who objected to the annulment was the appellant. On 22 July 2019, AR Tan annulled the said bankruptcy order ("the Annulment Order"), ordering for costs to be paid by the appellant.[10] The present appeal is against AR Tan's decision to annul the bankruptcy order against the respondent.

The decision below

8 In coming to her decision to annul the bankruptcy order, AR Tan noted that the requirements to be met before a bankruptcy order may be annulled were enumerated under s 123(1)(*b*) of the Bankruptcy Act:

> **Court's power to annul bankruptcy order**
>
> **123.**—(1) The court may annul a bankruptcy order if it appears to the court that —
>
> (a) on any ground existing at the time the order was made, the order ought not to have been made;
>
> (b) *to the extent required by the rules, both the debts and the expenses of the bankruptcy have all, since the making of the order, either been paid or secured for to the satisfaction of the court*;
>
> …
>
> [emphasis added]

---

8 Chua Seng Kiat's Solicitor's Letter of Undertaking dated 22 July 2019 at para 2; Minute Sheet SUM 1923/2019 dated 28 May 2019 at p 3

9 Minute Sheet (SUM 1923/2019) dated 28 May 2019 at p 1

10 HC/ORC 5126/2019

9 AR Tan also took into consideration r 237A of the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed) ("Bankruptcy Rules"), which sets out the extent to which debts and expenses of a bankruptcy are to be paid or secured for the purposes of s 123(1)(*b*) of the Bankruptcy Act, and the manner in which the security is to be given:

> **237A.**—(1) This rule sets out the extent to which debts and expenses of a bankruptcy are to be paid or secured for the purposes of section 123(1)(*b*) of the Act, and the manner in which security is to be given.
>
> (2) For the purposes of section 123(1)(*b*) of the Act, all debts of the bankruptcy which have been proved, and all expenses of the bankruptcy, must be —
>
> (a) paid in full;
>
> (b) secured in full; or
>
> (c) paid in part or secured in part such that no part of any debt or expense is neither paid nor secured.
>
> (3) ***If a debt is disputed***, or a creditor who has proved a debt can no longer be traced, ***the bankrupt must give such security as to satisfy any sum that may subsequently be proved to be due to the creditor and any expenses of the bankruptcy related to the debt as may be incurred.***
>
> …
>
> (5) For the purposes of paragraphs (2) and (3), debts, expenses or any other sum may be secured by payment of money into court, a bond entered into with a surety or ***an undertaking by a solicitor.***
>
> [emphasis added in bold italics]

She found that r 237A(5) of the Bankruptcy Rules unequivocally permits a solicitor's undertaking, which is the form of security in the respondent's case, to secure the appellant's debt under the bankruptcy regime.[11]

---

11 Minute Sheet (SUM 1932/2019) dated 22 July 2019 at p 2

10 As for the issue of whether an annulment may be granted where security had been given in relation to a debt which had yet to be proven (and all other debts have been paid and no other creditors are opposing), AR Tan found that the first situation enumerated in r 237A(3) of the Bankruptcy Rules was applicable: where the debt is *disputed*, "the bankrupt must give such security as to satisfy any sum that may subsequently be proved to be due to the creditor". She found that there is no express requirement that such a debt is one which has been proven.[12] She also acknowledged that the words "sum that may subsequently be proved" left some room for doubt as to whether the adjudication of the Alleged Debts had to be within the bankruptcy regime or the civil regime and supported the appellant's submissions on its face that the debt referred to was within the bankruptcy regime.

11 However, she found that the omission of the requirement for the debt to be first proven had equally cut against the appellant's case. She found that the appropriate reading of the statutory language in r 237A(3) of the Bankruptcy Rules ought to have been that it applies to a debt that is *disputed*, regardless of whether the debt is one which has been *proven*.[13] As a result, the Alleged Debts fell within that category and she allowed for an annulment order to be made, once the requirement of security had been satisfied.

12 AR Tan also found the conflicting English authorities supporting both the appellant's and respondent's positions to be from coordinate jurisdictions

---

12 Minute Sheet (SUM 1932/2019) dated 22 July 2019 at p 3

13 Minute Sheet (SUM 1932/2019) dated 22 July 2019 at p 3

and not binding on the present case, noting that the English and Singapore bankruptcy rules, though similar, were not entirely the same.[14]

13 Finally, AR Tan held that r 197 of the Bankruptcy Rules, which states that "[t]he Official Assignee or the trustee … shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part or require further evidence in support of it", could not mean that a bankruptcy cannot be annulled until all proofs of debt have been decided.[15] AR Tan also found that the principle of *pari passu* did not assist the appellant's case, noting that the principle did not require all debts of creditors to have to first be proven within the bankruptcy regime.[16]

My decision

Statutory Language

14 From the outset, I start by analysing the statutory language of the relevant provisions under the Bankruptcy Act and the Bankruptcy Rules that govern the annulment of a bankruptcy order.

15 The appellant submitted that the words in r 237A(1) of the Bankruptcy Rules "debts and expenses of a bankruptcy are to be paid or secured" mirror those in s 123(1)(*b*) of the Bankruptcy Act and would therefore only make sense

---

14 Minute Sheet (SUM 1932/2019) dated 22 July 2019 at p 4

15 Minute Sheet (SUM 1932/2019) dated 22 July 2019 at p 4

16 Minute Sheet (SUM 1932/2019) dated 22 July 2019 at p 4

if the word "debt" refers to debts which have been admitted or proven in the bankruptcy.[17] I rejected this proposition for the following reasons.

16 First, I agreed with AR Tan's interpretation of the statutory language in r 237A(3) of the Bankruptcy Rules, that it applies to a debt that is *disputed*, regardless of whether the debt is one which has been *proved*. This proposition is supported by the omission of an express requirement for the debt to first be proved, as AR Tan rightly pointed out. Moreover, r 237A(2) clearly pertains to debts which have been proved, while r 237A(3) pertains to debts which are disputed, which "may subsequently be proved". Rule 237A(3) only requires the bankrupt to "give such security as to satisfy any sum" relating to the *disputed* debts for the purposes of s 123(1)(*b*) of the Bankruptcy Act.

17 Additionally, r 235(1) of the Bankruptcy Rules states:

> **235.**—(1) This rule applies when a person other than the Official Assignee applies for an annulment of a bankruptcy order under section 123 of the Act or for the discharge of a bankrupt under section 124 of the Act.
>
> (2) The affidavit supporting the application must state the following:
>
> (*a*) whether the bankrupt has filed his statement of affairs;
>
> (*b*) the number of creditors and ***whether they have proved their debts or not***;
>
> …
>
> [emphasis in original; emphasis added in bold italics]

Rule 235(2)(*b*) of the Bankruptcy Rules states that under the affidavit supporting the application for an annulment of a bankruptcy order under s 123

---

17 AWS at para 21

of the Bankruptcy Act, the applicant must provide information on the number of creditors and whether they have *proved their debts or not*. This would suggest that an annulment of a bankruptcy order is not conditional upon all debts having been proven, and merely requires all debts, whether proved or not, to be reflected in an affidavit supporting the application. Read with s 123(1)(*b*) of the Bankruptcy Act, the court only needs to be satisfied that the debts, *proved or not*, have all either been paid or secured for to the satisfaction of the court. The respondent has evidently satisfied this requirement by securing the appellant's Alleged Debts by way of a solicitor's undertaking (see r 237A(5) of the Bankruptcy Rules) and settling the respective debts with all his other creditors.

18 As regards r 197 of the Bankruptcy Rules, I concurred with AR Tan's decision that the ambit of the effect of r 197 is not so wide such that no bankruptcy can ever be annulled until the adjudication of *all* proofs of debt have been completed. It is inconceivable that the annulment of any bankruptcy order must be conditional upon the adjudication of all proofs of debts by an Official Assignee or trustee.

19 Finally, I found that AR Tan's interpretation is consistent with the golden thread that runs through bankruptcy proceedings: the court does not endeavour to maintain a bankruptcy order when the bankrupt has paid or secured all debts of the bankruptcy. It cannot be envisaged that the bankrupt would be prevented from annulling his or her bankruptcy order even though the bankrupt has secured the disputed debts, simply because of a lack of adjudication by an Official Assignee or trustee, which could be for a variety of reason, such as workload issues. The bankruptcy regime allows for an annulment of a bankruptcy order as long as debts which have been *proved* are paid or secured: r 237A(2) of the Bankruptcy Rules. There is no logical rationale

for differential treatment of debts that are *disputed but not proved* (such as the Alleged Debts) and debts *which have been proved*. An annulment of a bankruptcy order should be allowed as long as such debts, whether proved or not, have all been paid or secured.

Adjudication by Private Trustee and pari passu principle

20 The appellant also took issue with the fact that the Private Trustee had granted the bankrupt (*ie,* the respondent) free rein to make payment to whoever the respondent had chosen, even though the Private Trustee had not adjudicated upon the debts, and in particular, the appellant's Alleged Debts.[18] The appellant submitted that the consequence of the Annulment Order was that the appellant would no longer be able to pursue the proof of the Alleged Debts within the bankruptcy regime, but would now have to sue the respondent in a fresh civil suit, simply because the respondent had chosen to pay all its creditors but the appellant.[19] Accordingly, the respondent should not have the capacity and right to determine who should or should not be paid. Instead, this should have been determined via a regulated administration process laid out under the Bankruptcy Act and regulated by the Private Trustee.[20] The appellant also submitted that allowing the respondent to furnish security on a debt that had not been admitted or proved was at odds with the principle of *pari passu*, since all creditors must be treated equally and no preference must be shown to any creditor.[21] The

---

18 AWS at para 18

19 AWS at para 8

20 AWS at para 19

21 AWS at paras 15 to 17

appellant averred that all the creditors who had been paid were shown preference, to the detriment of the appellant.

21 I agreed with AR Tan that the principle of *pari passu* did not assist the appellant in this instance. The principle does not require all debts of all creditors to have to be proven within the bankruptcy regime. Given that the respondent had the money to secure the Alleged Debts and pay his creditors, he had the autonomy to decide which debts he wished to dispute (but still secure by way of a solicitor's undertaking), and which debts he wished to settle. As the saying goes, money talks. In fact, the appellant's Alleged Debts are debts which have yet to be proved. As the respondent rightly pointed out, having secured the Alleged Debts by way of a solicitor's undertaking, the appellant's status was elevated to one of a secured creditor.[22] The only foreseeable prejudice suffered by the appellant would be his having to sue the respondent under the civil regime instead of proving the debt under the bankruptcy regime. As such, the prejudice faced by the appellant was also, at best, minimal.

Conclusion

22 For the foregoing reasons, I was not satisfied that sufficient grounds had been furnished by the appellant to establish that AR Tan had erred in her decision to annul the bankruptcy order. As such, I dismissed the appeal in Registrar's Appeal No 232 of 2019. I ordered costs of $3,500.00 inclusive of disbursements against the appellant.

---

22 Respondent's Submissions at para 32

Chan Seng Onn J
Judge

Yeo Choon Hsien Leslie and Jolene Tan (Sterling Law Corporation) for the appellant;
Gabriel Peter and Loh Jia Le (Gabriel Law Corporation) for the respondent.