

Ang Tin Gee v Pang Teck Guan
[2015] SGHC 241

Case Number : Suit No 697 of 2010 (SUM No 6145 of 2013)
Decision Date : 14 September 2015
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean J
Counsel Name(s) : Lai Mun Onn (Lai Mun Onn & Co) for the plaintiff; Yeo Choon Hsien Leslie (Sterling Law Corporation) for Defendant.
Parties : ANG TIN GEE — PANG TECK GUAN

Civil Procedure – Judgment and orders – Effect of order that money be held by stakeholder for judgment creditor’s benefit

14 September 2015

Belinda Ang Saw Ean J:

Introduction

1 Summons No 6145 of 2014 (“SUM 6145/2014”) was the plaintiff’s application for payment out of a sum of \$545,277.42 (“the stake money”) that was held by a firm of lawyers as a stakeholder pursuant to an Order of Court dated 14 August 2012 (“the Stakeholder Order”). The defendant objected to the payment out application on the ground that the stake money was not ring-fenced to pay his judgment debt in favour of the plaintiff. Rather, the stake money formed part of the defendant’s estate to be administered and distributed by the Official Assignee.

2 The defendant’s objection was inspired by Bankruptcy No 2279 of 2014, a bankruptcy application filed by his wife on 6 November 2014, nine days after he agreed to a Consent Order made in Registrar’s Appeal Nos 383 and 384, both of 2013 (“the Appeals”). This Consent Order, made on 28 October 2014, was in respect of the defendant’s Appeals against the orders made by Assistant Registrar Justin Yeo (“AR Yeo”) on 7 November 2013 and 19 November 2013 respectively. These decisions are collectively referred to hereafter as “AR Yeo’s 2013 decisions”.

3 No adjudication order has been made against the defendant. The plaintiff is separately contesting the veracity and credibility of the bankruptcy application which she saw as nothing more than tactical manoeuvring by the defendant and his wife to stymie her right to the stake money as the defendant’s judgment creditor in this action, Suit No 697 of 2010/A (“Suit 697/2010”).

4 Payment out of the stake money to the plaintiff’s solicitors was ordered on 21 May 2015. Notably, a determination of SUM 6145/2014 was not limited to construing the scope and effect of the Stakeholder Order. Linked to the Stakeholder Order was the defendant’s successful application to stay execution of AR Yeo’s 2013 decisions including costs taxed on 26 November 2013 pending the outcome of the Appeals. An order to stay execution was granted on 24 January 2014 (“the Stay of Execution Order”). An analysis of the Stakeholder Order would be incomplete without considering the effect of the Stay of Execution Order. The principal questions to be answered in SUM 6145/2014 were: (a) whether the bankruptcy application would affect the court’s power to release the stake money to the plaintiff; and (b) whether the effect of the Stakeholder Order and/or Stay of Execution

Order gave the plaintiff what could fairly be characterised as conditional payment of, and/or security for, the various sums in AR Yeo's 2013 decisions including costs taxed on 26 November 2013 pending the outcome of the Appeals.

5 The defendant has appealed against my Order of 21 May 2015. I now publish the reasons for my decision.

History of the proceedings

6 Suit 697/2010 was a partnership dispute that was concluded in favour of the plaintiff in 2011 after a nine-day trial. The facts and disputes are detailed in my written Judgment (*Ang Tin Gee v Pang Teck Guan* [2011] SGHC 259) handed down on 2 December 2011 ("the 2011 Judgment").

7 Pursuant to the 2011 Judgment, a series of pre-trial conferences in relation to the taking of accounts of the partnership were held between 7 February 2012 and 27 November 2012. Eventually an Account and Enquiry was heard before AR Yeo over an intermittent period of 11 days commencing on 17 January 2013 after which AR Yeo rendered his decisions on 7 November 2013 and 19 November 2013 respectively.

8 I now come to the two relevant interlocutory applications, namely Summons No 2481 of 2012 ("SUM 2481/2012") and Summons No 6231 of 2013 ("SUM 6231/2013").

SUM 2481/2012 and the Stakeholder Order

9 Whilst the parties were preparing for the taking of accounts (see [7]), the plaintiff learned that the defendant was selling his flat ("the Kemaman Property") which she believed to be his "only substantial asset". On 21 May 2012, the plaintiff filed Summons No 2481/2012 for the following orders:

- (a) An injunction preventing the defendant from dealing with or diminishing the net sale proceeds of the Kemaman Property.
- (b) The net sale proceeds are to be held by a neutral stakeholder "to secure the rights and interests of the [p]laintiff pursuant to the [2011 Judgment]".
- (c) To facilitate items (a) and (b), the defendant furnishes an account of the sale proceeds from the disposal of the Kemaman Property within seven days from the date of order or such time as the court deems fit to impose.

10 The defendant did not object to the application in SUM 2481/2012. His counsel, Mr Leslie Yeo ("Mr Yeo"), merely pointed out that, logically speaking, the defendant should only be required to provide an account of the sale proceeds two weeks before completion of the sale, and not from the date sought in item (c) above. I agreed with the defendant's counsel, Mr Yeo, on that point. I allowed the plaintiff's application in amended terms. For present purposes, I set out the order made in relation to prayer (b) which is known here as the Stakeholder Order:

That the net sale proceeds ... from the sale of the Kemaman Property ... be held by [the solicitors representing the defendant in the sale of the Kemaman Property, being a designated neutral stakeholder] ... either wholly or in such amounts as may be fair, just and necessary to secure the rights and interests of the Plaintiff pursuant to the [the 2011 Judgment] ...

11 As stated, the defendant did not oppose SUM 2481/2012 and, naturally, there was no appeal against the Stakeholder Order.

SUM 6231/2013 and the Stay of Execution Order

12 I now come to the application for stay of execution pending: (a) the appeal of AR Yeo's 2013 decisions (see *Ang Tin Gee v Pang Teck Guan* [2013] SGHCR 26); and (b) the Review of the costs order of 26 November 2013. As a result of AR Yeo's 2013 decisions and the costs taxed on 26 November 2013, the quantified sum that the defendant was required to pay to the plaintiff as a judgment creditor was computed at \$607,756.69 (excluding interest).

13 I should mention Bill of Costs No 186 of 2012 ("BC 186") which was the plaintiff's Bill of Costs in respect of the 2011 Judgment that was taxed by another Assistant Registrar on 26 November 2013. Party and party costs in BC 186 were taxed as follows:

- (a) \$200,000 (section 1 costs);
- (b) \$2,000 (section 2 costs); and
- (c) \$51,567.80 (section 3 costs).

14 Following AR Yeo's 2013 decisions and taxation of BC 186 on 26 November 2013 (see [13] above), the plaintiff's counsel, Mr Lai Kwok Seng ("Mr Lai"), called upon the stakeholder to release the stake money (*ie*, \$545,277.42). That prompted the defendant to file his application for stay of execution pending appeal on 2 December 2013 (*ie*, SUM 6231/2013).

15 Prayer 2 of SUM 6231/2013 was for an order that the same law firm in the Stakeholder Order "holds the sum of \$545,277.42 as stakeholders pending the final disposal of the appeals" against the AR Yeo's decisions including the costs order of 26 November 2013. In the defendant's supporting affidavit, he stated that maintaining the status quo would not "prejudice" the plaintiff's position "in any way". The Assistant Registrar, Ms Lim Sai Nei ("AR Lim"), granted the order for a stay of execution on 24 January 2014 ("the Stay of Execution Order"). AR Lim further ordered that:

M/s De Souza & Goh LLP holds the sum of \$545,277.42 as stakeholders pending the final disposal of the appeals against [AR Yeo's 2013 decisions] and the [costs order] dated 26 November 2013.

16 AR Lim's order set out in [15] above is significant. I will elaborate of this specific order later in this written decision. In the meantime, I propose to set out extracts of AR Lim's Notes of Evidence to show the parties' stance before AR Lim.

S No 697 of 2010 (SUM No 6231 of 2013)

24 January 2014 9am

- DC: This is my application for a stay pending the appeal. Which is coming up on 4 March. I filed an affidavit in support. Don't believe LF has filed a reply. No right?
- PC: [Nods]
- DC: ... Long history. ... Ang J declared equal partnership and ordered accounts to be taken. Accounts finally came to be taken by AR Justin Yeo. We have filed an appeal against both his decision on the account and costs. ...

Appeal is going to be heard in a month's time. Para 7 of Df's affidavit. Sum of money being held by De'Souza Lim & Goh LLP. So effectively Pf's position is secured pending the hearing of the appeal.

Court: Is the money still with De'Souza? When was it supposed to be held until?

DC: ***Still with the solicitors. It is essentially to secure the monies of the Df.*** No automatic stay.

But this case is special because of the amount being secured. And we are talking about one month to the appeal

Court: So the sum held by the law firm is more than the amount ordered by the AR?

PC/DC: Yes.

...

PC: ... What is before YH is whether you should exercise your discretion to grant a stay. Tab 6 – letter dd 27 Nov 2013 from PC to DC showing amount owing from Df is \$876,935.98. So the sum of \$545,277.42 held by De'Souza is not enough to cover.

[Goes through written submissions]

Pf mortgaged her house to pay monies on behalf of the partnership. There are no special circumstances.

Court: But it will only be for 4 weeks before the appeal will be heard. Even if she gets the money now, surely she wouldn't use it to pay the mortgage.

PC: My conclusion is that the stay application be dismissed. No reason for stay. ...

Court: ...

PC: ... Bring YH to authorities.

Tab 1 – *Lee Sian Hee* [1992] 1 SLR 77 – pg 78. A stay will be granted if it can be shown by affidavit that, if the damages and costs are paid, there is no reasonable probability of getting them back, if the appeal succeeds. If you look at D's affidavit, no such assertion. Pg 79 of same case, when judgment is granted after a full trial of the issues, general rule is that stay will not be granted unless there are special circumstances. Pg 80 of the same case, nothing to show us that we should exercise our discretion to grant a stay. *Lian Soon Construction Pte Ltd* [1999] 1 SLR(R) 1053. In that case, grave risk that the developer would not be able to recover any money paid to the main contractor.

Lee Kuan Yew v JBJ (No. 2) [1991] 1 MLJ 83.

Ask YH to dismiss the application.

DC: ... ***LF said that if the monies were paid into Pf's account, then she will be comforted. Whether it will be held by him or De Souza is the same. Effect is the same – his client should be comforted.*** ... But YH will see that ***all the cases that a successful litigant should not be deprived of the fruits of success but in this case the fruit is already secured. When we are speaking of special circumstances, we are talking about cases where the money is with the losing party. The money is already out of Df's hands.***

Since the fruits have been secured, the timing is important. In this case, the principle to be applied is a balance of convenience. Who is going to be prejudiced more? It is the Df. Even more so if Pf uses it to discharge her mortgage.

Court: How about his point that you don't have evidence that the Pf will not be able to pay the Df if the appeal fails?

PC: No evidence. I have to concede that. ...

...

DC: Disagree also with PC's submission that any reading of the grounds and reasons will show that there is little or no likelihood of success in the appeal.

PC: ...

First principle is that the successful litigant must not be deprived of fruits.

No evidence that Pf cannot repay any surplus to Df.

On established principles, I urge YH to dismiss this application.

[Stands down]

Court: I have considered both parties' submissions and balancing the various factors raised by the parties, I have decided to grant a stay pending appeal.

OIT Prayers 1 and 2.

...

Court: No order as to costs.

Sgd Lim Sei Nei

Assistant Registrar

[emphasis added in bold and bold italics]

17 Before AR Lim, counsel for the defendant, Mr Yeo, accepted that the plaintiff's "fruits of the litigation" were secured by the stake money held by the stakeholders pursuant to the Stakeholder Order. In this important way, the Stakeholder Order and the Stay of Execution Order are intertwined.

18 Furthermore, the defendant's position before AR Lim was consistent with what the defendant's counsel, Mr Yeo, was telling the court at the hearing of the Appeals that the stake money was sufficient to satisfy the plaintiff's claims. As stated, the Appeals were subsequently settled by consent. There was a subsequent Review of the costs taxed where the total quantum was revised downwards ("Costs Review"): section 1 costs were reduced to \$160,000 and section 3 costs were reduced to \$36,867.80. The Costs Review was concluded on 28 October 2014. The upshot of the Consent Order of 28 October 2014 was that the total judgment sum against the defendant inclusive of the Costs Review was in excess of \$600,000.

19 The plaintiff did not appeal against the Stay of Execution Order.

Interpleader summons

20 I will briefly touch on the defendant's interpleader application (Summons No 53 of 2015) that was filed on 5 January 2015, two days before the date listed for the hearing of SUM 6145/2014. In particular, the defendant's supporting affidavit is relevant for present purposes. The defendant quite categorically stated on affidavit that he claimed no interest in the stake money. The interpleader summons was dismissed by Assistant Registrar Nicholas Poon ("AR Poon") because the defendant was not the proper party to bring the application. AR Poon commented in passing that the application is questionable in that: (a) the defendant's wife's target was the stake money alone and nothing else; and (b) the defendant and his wife were still living together as a married couple and yet the wife had taken out proceedings to bankrupt the defendant.

Whether the stake money was ring-fenced to secure or satisfy the plaintiff's judgment by the Stakeholder Order and/or the Stay of Execution Order

The arguments

21 Mr Lai explained in his written submissions that SUM 6145/2014 was taken out by the plaintiff as judgment creditor and in light of the Stakeholder Order that secured and guaranteed the plaintiff's interests in the stake money and the terms of the Stay of Execution Order. He suggested there that the Stay of Execution Order "expired" upon final disposal of the Appeals and the stake money ought to be released to the plaintiff accordingly. Although Mr Lai's use of the word "expired" was inapt, Mr Lai was not wrong in his view that the stake money in the hands of the stakeholder was to await the occurrence of the event as between the two parties, and in this case, the triggering event was the outcome of the Appeals. What was required of the plaintiff following the Consent Order in her favour was to obtain a further order to "release" the stake money. In essence, Mr Lai's contention was that the stake money held by the stakeholder was ring-fenced to secure the interest of the plaintiff. As such, the stake money was not subject to other third party claims.

22 In contrast, Mr Yeo argued that the wording of the Stakeholder Order merely prevented the defendant from receiving the net sale proceeds; it did not ring-fence the stake money to the exclusion of other creditors like the defendant's wife. Furthermore, the plaintiff was not a secured creditor within the meaning of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("the Bankruptcy Act"). Hence, the stake money formed part of the defendant's estate to be administered and distributed by the Official Assignee.

Decision on the effect of the Stakeholder Order and the Stay of Execution Order

23 As I alluded to earlier, it is necessary to examine both the Stakeholder Order and the Stay of Execution Order. A determination of SUM 6145/2014 would be incomplete if one were to consider the scope and effect of the Stakeholder Order alone. However, whilst related, the Stakeholder Order and the Stay of Execution Order are nonetheless freestanding orders. For practical purposes, as the same stakeholder held the stake money, payment out of the same may be made under either order.

24 At first blush, there is some attractiveness in Mr Yeo's argument that the wording of the Stakeholder Order had the limited effect of preventing the defendant from receiving the net sale proceeds. But there is *ex post facto* reasoning in his argument. I accept that the Stakeholder Order was the other part of an injunction order made in SUM 2481/2012 that restrained the defendant from dealing with or diminishing his share of the net sale proceeds pending, amongst other things, the taking of accounts. However, over and above that restraining order, the defendant's share of net sale proceeds were ordered to be held by De Souza & Goh LLP, the solicitors representing the defendant in the sale, as stakeholder to secure the rights and interests of the plaintiff pursuant to the 2011 Judgment. Moving forward, it is important to see what Mr Yeo had to say to AR Lim in 2014 where he

openly agreed that the plaintiff's "fruits" of the litigation were secured by the stake money that was held by the stakeholders pursuant to the Stakeholder Order. In my view, any shortcoming, ambiguity or doubt that impinged on the meaning of the Stakeholder Order was separately and independently redressed and taken care of by the Stay of Execution Order.

25 An appeal does not operate as a stay of execution of AR Yeo's 2013 decisions and the costs order of 26 November 2013. The grant or refusal of a stay pending appeal is discretionary. AR Lim's specific order set out in [15] above is significant. In my view, that order could operate as a conditional payment to the plaintiff in that the stake money would be the payment to the plaintiff if she succeeded in the Appeals. Equally, the effect of AR Lim's order in the terms that De Souza & Goh LLP were to hold the sum of \$545,277.42 as stakeholder pending a triggering event, in substance, amounted to the giving of security to the plaintiff for the various sums payable under AR Yeo's 2013 decisions and the costs order of 26 November 2013. All in all, the effect of the terms of AR Lim's stay order as described was a consequence of the exercise of AR Lim's discretion to stay execution pending appeal after balancing the interest of both sides. On the one side, prejudice to the defendant if a stay was not granted could lead to the Appeals being stifled. For example, that might occur where the plaintiff moved to bankrupt the defendant for an overdue judgment. At that time, there was no evidence of the plaintiff's inability to repay the receipts of her judgment debt after a successful appeal. In contrast, a party who had succeeded at trial was generally entitled to the benefit of the judgment. An obvious prejudice to the plaintiff if a stay was granted would be, after an unsuccessful appeal, the plaintiff's inability to enforce the judgment where the defendant's largest single asset (*ie*, \$545,277.42) was out of the plaintiff's reach without AR Lim's specific order in [16] above. In short, a stay of execution was granted on condition as to payment. Leaving the money with the stakeholder was a convenient alternative to payment into court. With the stay ordered, there was a recalibration of the basis upon which the stake money was expressly held by the stakeholder.

26 I now turn to examine whether money held by a stakeholder pursuant to a court order is safe from third party claims against the defendant, and is equally protected from contingencies like the defendant's subsequent bankruptcy. In my view, the character of the money ordered to be paid to a stakeholder account as a convenient alternative to payment into court should by and large have the same effect as a payment into court. The authorities discussed below support the view that where a party has paid money into court or into a stakeholder account, whether voluntarily or by order of court, which is intended to preserve the money for the benefit of the other party's claim, the other party is considered a secured creditor to the extent of the sum paid into court or into the stakeholder account, and he or she is allowed to retain the benefit of that security despite the payee's subsequent bankruptcy.

27 I begin with the effect of payment into court. It is settled law that when money is paid into court voluntarily under O 22 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court"), on condition of leave to defend under O 14 r 4, or as security for costs of appeal under O 57 r 3(3), the payee no longer has full title to that money, and the money is not available for the payee's estate in the event of the payee's insolvency. This was made clear by the Court of Appeal in *Cheng Lip Kwong v Bangkok Bank Ltd* [1992] 1 SLR(R) 941 ("*Cheng Lip Kwong*") in its analysis of O 57 r 3(3) of the Rules of the Supreme Court 1970 ("RSC"). In *Cheng Lip Kwong*, the appellant had been made a bankrupt before the hearing of the appeal and the Official Assignee did not consent to pursuing the appeal. The Court of Appeal had to consider whether the sum of \$2,500 which had been paid by the appellant into court as security of costs for the appeal pursuant to O 57 r 3(3) of the RSC was secured for the respondent's benefit. The Court of Appeal referred to a number of English authorities on voluntary payment of money into court under O 22 (payment into court), or as a condition for leave to defend under O 14 r 4, and held that the respondent was a secured creditor to the extent of

the security paid into court, or such part that would be sufficient to satisfy the respondent's taxed costs. Chao Hick Tin J (as he then was) stated (at [17]):

The sum once deposited ceases to belong to the appellant. The money becomes subject entirely to the outcome of the appeal and any order the Court of Appeal may make in the matter unless the respondents consent to a withdrawal of the appeal by the appellant. In this respect, we are unable to see any distinction between such a payment and a payment in ordered by the court under O 14 or a voluntary payment in under O 22.

28 I pause here to explain that O57 r 3(3) of the RSC on security for costs of appeal has been updated in the Rules of Court to reflect an increase to the amount of security for costs. The short point is that the statements of principle enunciated in *Cheng Lip Kwong* are still good law.

2 9 *In re Gordon, ex parte Navalchand* [1897] 2 QB 516 ("*In re Gordon*") was a case cited in *Cheng Lip Kwong*. The facts in that case concerned the voluntary payment of money into court under the equivalent of O 22 in the English Rules of the Supreme Court (UK) by the defendant. The defendant was subsequently made bankrupt, and Vaughan Williams J held that the plaintiff was a secured creditor to the extent that his proof of debt was admitted by the trustee in bankruptcy. The rationale behind Williams J's decision is as follows (at 520):

The money paid into court, even with a plea denying liability, *has become subject to the plaintiff's claim by the act of the defendant*, who thereby agrees that the sum paid in shall remain in court subject to the conditions of O XXII r 6. It is not a question of execution at all, but a conventional charge. *It is in effect a conditional payment to the plaintiff. The money is to be the money of the plaintiff if he succeeds in establishing his title to it.* [emphasis added]

3 0 *In Re Ford, ex parte The Trustee* [1900] 2 QB 211, another case cited in *Cheng Lip Kwong*, related to whether money paid into court as a condition of leave to defend amounted to security for the plaintiff. Wright J's stated his rationale for holding that the money was the plaintiff's security as follows (at 213):

... it is settled that where money is ordered to be paid into court to abide the event it must be treated as security that the plaintiff shall not lose the benefit of the decision of the Court in his favour ... *The very object of such an order is that the plaintiff shall be in as good a position, so far as the money paid in extends, against contingencies such as bankruptcy as if he had got an immediate judgment* ... [emphasis added]

31 Although the authorities referred to by the Court of Appeal in *Cheng Lip Kwong* dealt with payment of money into court, the character of the money ordered to be paid to a stakeholder account as a convenient alternative to payment into court should by and large have the same effect.

32 In *Halvanon Insurance Co Ltd v Central Reinsurance Corporation and another* [1988] 1 WLR 1122 ("*Halvanon*"), the defendants were given leave to defend on the condition that the whole sum claimed by the plaintiff be paid into a joint account in the names of parties' solicitors. The plaintiff subsequently changed its solicitors, and both the plaintiff and defendants applied for the money in the joint account to be released for placement in a separate joint account in the names of the new solicitors. The plaintiff's former solicitors contested the application on the basis that to make the order would deprive them of their lien for legal fees. Hobhouse J referred to the authorities on the payment of money into court, and stated (at 1128):

In the present case the money has not been paid into court but into a joint account in the name

of the parties' then solicitors "to abide the event of the action." I consider that the use of this phrase is intended to create a situation which is equivalent to that where the money has been paid into court to the credit of an action. The difference is simply a *ministerial difference* for the convenience and benefit of the parties. It reduces the formality ... But it does not in my judgment give the two firms of solicitors any interest or rights over the fund. They are officers of the court and are bare trustees. They are not entitled to deal in any way with the money save pursuant to an order of the court. ... [emphasis added]

33 Sir Donald Nicholls VC's decision in *Re Mordant, Mordant v Halls* [1996] BPIR 302 ("*Re Mordant*") is also instructive. This case related to ancillary relief proceedings in the divorce of Mr and Mrs Mordant. In the proceedings, a substantial lump sum would have to be paid by Mr Mordant to Mrs Mordant: Mr Mordant had suggested £250,000 while Mrs Mordant had asked for £450,000.

34 Along the way, a motion to commit Mr Mordant to prison for breaching an undertaking not to sell a matrimonial property was filed. Mr Mordant apologised for his contempt, and Rattee J ordered that a sum equivalent to the selling price of the property be paid into a bank account in the joint names of Mr Mordant and his solicitors ("the stakeholder account") so that the sum could be available to meet Mrs Mordant's claims for ancillary relief. It also emerged later that Mr Mordant had further sums standing to his credit in another bank account. Rattee J ordered that these sums be paid into the stakeholder account. Pending Rattee J's final judgment, a creditor of Mr Mordant, the building society – which had also intervened in the divorce proceedings – commenced bankruptcy proceedings against Mr Mordant. Rattee J was informed of the pending bankruptcy before he delivered his judgment. In his judgment, he awarded £385,000 to Mrs Mordant. Rattee J also observed that Mr Mordant was dishonest about his financial position, and that the bankruptcy proceedings against him were within his control as he had the means to pay off the building society had he wanted to. In other words, Mr Mordant was using the non-payment of his debt to the building society to delay or defeat payment to Mrs Mordant.

35 Mr Mordant was subsequently made a bankrupt, and the sum in the stakeholder account was paid to the interim receiver. Mrs Mordant then applied under s 284(1) of the Insolvency Act 1986 (UK) ("*Insolvency Act*") for the court's approval of £385,000 to be disposed to her in full. Section 284 of the Insolvency Act is *in pari materia* to s 77(1) of the Bankruptcy Act. For ease of reference, I set out s 77(1) of the Bankruptcy Act:

Where a person is adjudged bankrupt, any disposition of property made by him during the period beginning with the day of the making of the bankruptcy application and ending with the making of the bankruptcy order shall be void except to the extent that such disposition has been made with the consent of, or been subsequently ratified by, the court.

36 The question before Nicholls VC was whether the sum in the stakeholder account when the bankruptcy petition was first presented was still Mr Mordant's "property" for the purposes of s 284(1) of the Insolvency Act. Nicholls VC held that the money, once paid into the stakeholder account, no longer formed part of Mr Mordant's assets and explained (at 309):

In my view, when making this order the purpose of [Rattee J] was to afford the wife protection in respect of her claim similar to the protection she would have enjoyed had he ordered payment of the money into court. I consider, further, that the judge's order was apt to achieve the purpose. Indeed, payment to the husband's solicitors was put forward by the wife's counsel as an alternative to payment into court. I do not think that, when he ordered payment to the solicitors rather than into court, the judge was intending to affect the nature of the wife's protection. *Payment to the solicitors, as officers of the court, would in practice be as secure as payment*

into court. ... The money would be earmarked as the source for any lump sum payment just as much as a payment made into court in satisfaction of an order giving leave to defend conditional upon the provision of security. [emphasis added]

37 In summary, what these authorities show is that where money is paid into court or into a stakeholder account, the purpose is to preserve the money for the benefit of the other party's substantive claim or claim for costs, and in these circumstances, the other party is considered a secured creditor to the extent of the sum paid into court or into the stakeholder account, and he or she is allowed to retain the benefit of that security despite the payee's subsequent bankruptcy. This is so even where the other party's entitlement to the money is conditional upon establishing the validity and/or quantum of his or her claim.

38 The principles outlined above are squarely applicable to the present case. The effect of the Stakeholder Order and the Stay of Execution Order are directly analogous to a payment of money into court under O 14 r 4, O 22 and O 57 r 3(3) of the Rules of Court: such payments are meant to be security for the plaintiff's claims; title to the stake money is conditional on the outcome of trial or appeal; the stake money is protected from contingencies like the defendant's subsequent bankruptcy. On the present facts, although the payment was not made into court, the fact that the moneys are held by stakeholders instead of having been paid into court should make no material difference. Borrowing the words of Hobhouse J in *Halvanon* (see [32] above), this difference is merely a ministerial one.

39 In my view, the plaintiff was a secured creditor to the extent of the stake money. The Stakeholder Order followed by the Stay of Execution Order ring-fenced the stake money in favour of the plaintiff pending the outcome of the Appeals. I would go further to add that the effect of the Stay of Execution Order that directed the stakeholder to hold the stake money pending the outcome of the Appeals was a conditional payment to the plaintiff. The triggering event had occurred – the stake money was to be the money of the plaintiff if she succeeded in the Appeals. It was therefore appropriate to allow the stake money to be paid out to the plaintiff's solicitors.

Whether the bankruptcy application would fetter the court's discretion

40 Having concluded that the stake money was ring-fenced for the reasons stated above, it is strictly not necessary to discuss the effect of the bankruptcy application *per se*. However, as the parties had made submissions on this issue, I propose to briefly touch on the effect of the bankruptcy application, if any, on the court's power to order payment out assuming that the stake money was not ring-fenced.

41 The significance of a bankruptcy application was entirely overstated by Mr Yeo who submitted that the Official Assignee should be the party to administer the stake money in light of the bankruptcy application filed by the defendant's wife on 6 November 2014. Prior to the bankruptcy order, the property of the bankrupt remains vested in the debtor and is at the debtor's – and not the Official Assignee's – disposal. Section 76(1)(a)(i) of the Bankruptcy Act provides that the property of the bankrupt shall vest in the Official Assignee without any further conveyance, assignment or transfer on the making of the bankruptcy order. In fact, under s 105(1) of the Bankruptcy Act, a creditor of the bankrupt who has issued enforcement proceedings against the bankrupt may retain the benefit of the enforcement if execution was completed before the date of the bankruptcy order (see also *Jeyaretnam Joshua Benjamin v Indra Krishnan* [2007] 3 SLR(R) 433 at [44]). As stated, the defendant has not been adjudicated a bankrupt. Until then, there cannot be any suggestion that the stake money should be administered by the Official Assignee.

42 I am mindful that the making of a bankruptcy application can, nonetheless, produce certain legal consequences. A bankruptcy application may be indicative of a debtor's financial position, and there are legal principles that provide a framework to preserve the assets of a debtor for the general body of creditors in the event of the debtor's bankruptcy. Accordingly, s 74(1) of the Bankruptcy Act provides that the court may by order, stay proceedings against the person or property of a debtor at any time after the making of a bankruptcy application. Section 77(1) of the Bankruptcy Act also provides that, when a person is adjudged bankrupt, any disposition of property made by him in the period beginning with the making of the bankruptcy application and ending with the making of the bankruptcy order shall be void, unless the disposition of property was made with the consent, or subsequent ratification, of the court (see generally *Cheo Sharon Andriesz v Official Assignee of the estate of Andriesz Paul Matthew, a bankrupt* [2013] 2 SLR 297 where the Court of Appeal commented on the application and interpretation of s 77 of the Bankruptcy Act).

43 In the present case, the bankruptcy application was filed long after the Stakeholder Order and Stay of Execution Order. Besides, there was no proper application by the defendant's wife to stay further proceedings (for *eg*, by stopping the payment out application) under s 74(1) of the Bankruptcy Act. There was nothing to engage the bankruptcy jurisdiction of the court.

Conclusion

44 For the reasons above, I ordered the stake money to be paid out to the plaintiff's solicitors. Costs of SUM 6145/2014 were fixed at \$2,500.

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