Mohd Nizam B Ismail *v* Comptroller of Income Tax
[2014] SGHCR 3

Case Number	: Originating Summons Bankruptcy No 90 of 2013
Decision Date	: 29 January 2014
Tribunal/Court	: High Court
Coram	: Wong Shi Hui Janice AR
Counsel Name(s)	: Mr See Chern Yang (Premier Law LLC) for the plaintiff; Ms Teh Ee-Von (Infinitus Law Corporation) for the defendant.
Parties	: Mohd Nizam B Ismail — Comptroller of Income Tax

Insolvency Law – Bankruptcy – Statutory demand

29 January 2014 Judgment reserved

Janice Wong Shi Hui AR:

1 A man drawing a considerable income finds himself in financial difficulty. He negotiates with the tax authority over his unpaid taxes and he says they reached an agreement. Under that agreement, the tax authority promised him a revised instalment plan for two months, and thereafter they will meet to discuss in good faith and reach a reasonable agreement for the future instalments. He also says that he was entitled to, and did, rely upon that promise and ordered his affairs with his other creditors in a particular way, so now the tax authority should not go back on that promise. It is on these facts that this court is asked to decide if a statutory demand served by the tax authority should be set aside.

Background

2 This is an application by the plaintiff to set aside a statutory demand served on him by the defendant. The statutory demand was served in respect of an amount of $111,716.92, being unpaid taxes for the Years of Assessment 2010, 2011 and 2012.

3 The plaintiff deposed in his affidavit that since January 2012, he had been in touch with a Mr Sundramoorthy of the Inland Revenue Authority of Singapore ("IRAS"), in relation to a repayment plan over his unpaid taxes. In the course of those meetings, an instalment repayment plan was agreed, which the plaintiff adhered to throughout 2012. It is the plaintiff's evidence that he had difficulties paying his taxes, due to liabilities pursuant to a divorce in 2011 and debts owed to various financial institutions. These difficulties were openly shared with Mr Sundramoorthy, and Mr Sundramoorthy did not raise objections to the plaintiff's proposed repayment plans to IRAS as well as his other creditors.

4 On 15 January 2013, the plaintiff was retrenched by his former employer. The plaintiff informed Mr Sundramoorthy of the change of his employment status, and informed him that he would have difficulties adhering to the same repayment plan for 2013.

5 On 27 February 2013, the plaintiff met Mr Sundramoorthy, and it was agreed that IRAS would grant the plaintiff a revised instalment plan of $1,000 a month until March 2013. It was also agreed that they would meet again in March 2013 to discuss in good faith and reach a reasonable agreement regarding the future instalments. The plaintiff adhered to the revised plan.

6 On 20 March 2013, the plaintiff met Mr Sundramoorthy. The plaintiff deposed in his affidavit that it was agreed that:

(a) IRAS would grant [the plaintiff] another revised instalment plan until May 2013; and

(b) [they] would again meet in May 2013 to discuss in good faith and reach a reasonable agreement for the future instalments in light of any new employment status.

(the "Agreement").

(a) The plaintiff again adhered to the revised plan.

7 On 2 May 2013, the plaintiff was informed by Mr Sundramoorthy that a new case officer, Mrs Kwan-Cho Seah Moi, had been assigned to his case. On the same day, Mrs Kwan sent an email to the plaintiff, stating that further extended or temporary instalment payment plans would not be considered. In her email, she also told the plaintiff to maintain sufficient funds in his bank account to make payment by Giro of his tax arrears on 6 May and 6 June 2013, failing which recovery action including legal proceedings would be taken against him.

8 On 13 May 2013, the defendant sent a letter to the plaintiff, asking him to maintain sufficient funds in his bank account to meet the full payment by Giro of $117,716.92, by 6 June 2013. The letter also stated that if payment was not made by 6 June 2013, actions to recover the outstanding amounts including legal proceedings would be taken against him.

9 On 16 May 2013, the plaintiff wrote a letter to the defendant. The plaintiff made reference to the Agreement, and stated that he would not be able to make payment of his tax arrears. On 28 May 2013, the defendant wrote to the plaintiff. The defendant noted that despite the plaintiff's high assessable income for the Years of Assessment 2010 to 2013, his outstanding income tax and penalties were unpaid. The defendant reminded the plaintiff to pay the outstanding amounts by 6 June 2013, failing which actions to recover the outstanding amounts including legal proceedings would be taken against him.

10 On 10 June 2013, the defendant informed the plaintiff that his tax arrears of $117,716.92 had not been paid on 6 June 2013, and offered a final extension of two weeks for the amount to be paid. The plaintiff was told to make payment by 24 June 2013, failing which, bankruptcy proceedings or other legal action would be taken against him.

11 In his next letter of 18 June 2013, the plaintiff again made reference to the Agreement, and stated that he would not be able to pay his tax arrears in June 2013. The defendant in its response of 8 July 2013 offered to allow the plaintiff to pay his tax arrears by way of three monthly payments of around $39,238.97, from July 2013 to September 2013. It was reiterated that bankruptcy proceedings or other legal action would be commenced if this was not paid.

12 In the meantime, on 1 July 2013, the plaintiff secured employment as a partner of a law firm. His monthly income as a partner was $18,000.

13 On 22 August 2013, the defendant wrote to the plaintiff, informing him of a final payment plan: that he would be allowed to pay his tax arrears, and in addition his Year of Assessment 2013 tax, by way of monthly instalments of $13,000 a month. This payment plan envisaged instalment payments starting from 6 September 2013, with the last instalment of $5,769.32 to be paid in September 2014.

It was reiterated that if the plaintiff failed to comply with this arrangement, bankruptcy proceedings or other legal action would be commenced against him.

14 On 5 September 2013, the defendant wrote to the plaintiff's solicitors, informing them that the plaintiff would have an extension of time until 20 September 2013 to pay the first monthly instalment of $13,000. The defendant also gave the plaintiff up to 20 September 2013 to propose an alternate payment proposal.

15 On 20 September 2013, the plaintiff, through his solicitors, proposed to make monthly instalment payments of $6,000 from September 2013 to October 2015, and to make a final instalment payment of $5,769.32 in November 2015. On the same day, the plaintiff made payment of $6,000 to the defendant which was payment for the month of September 2013.

16 The plaintiff's proposal was rejected by a letter from the defendant dated 3 October 2013. The defendant made reference to the many attempts to accommodate the plaintiff but said that it could not agree to the plaintiff's proposal, given that the tax arrears had long been outstanding. The defendant indicated that it would commence proceedings to recover the tax arrears.

17 The defendant subsequently served a statutory demand on the plaintiff on 7 October 2013.

The application

18 The plaintiff filed this application on 21 October 2013 pursuant to r 97 of the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed) ("Bankruptcy Rules") to set aside the defendant's statutory demand. The plaintiff relied on rr 98(2)(b) and (e) of the Bankruptcy Rules. These rules provide that the court shall set aside a statutory demand, if the underlying debt is disputed on grounds which appear to the court to be substantial; or if the court is satisfied, on other grounds, that the demand ought to be set aside.

19 It is trite law that the test to be applied in an application to set aside a statutory demand is no different from the test to be applied for the grant of summary judgment pursuant to O 14 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), *ie*, whether or not there are triable issues to go to trial: *Tan Eng Joo v United Overseas Bank Ltd* [2010] 2 SLR 703 ("*Tan Eng Joo*"). The threshold for the court is whether there is "some real doubt about the question, thus, a triable issue, upon which further evidence or arguments [are] required": *Wee Soon Kim Anthony v Lim Chor Pee* [2006] 2 SLR(R) 370 at [19]; *Tan Eng Joo* at [5].

20 The plaintiff submitted that there are triable issues pertaining to the question of whether the debt was immediately due and payable to the defendant because:

(a) There was a compromise agreement through an oral agreement between the parties on 20 March 2013 that, amongst others, the plaintiff and defendant would meet in May 2013 to discuss in good faith and reach a reasonable agreement for the future instalments of the debt in light of any new employment status of the plaintiff;

(b) The defendant was estopped from claiming on an immediate full repayment of the debt by reason of the Agreement and/or events surrounding the same; and/or

(c) The certificate issued by the defendant under s 89(4) of the Income Tax Act (Cap 134, 2008 Rev Ed) ("Income Tax Act") was not applicable.

21 The point at [20(c)] above relating to the certificate may be disposed of fairly quickly. The defendant had, in its affidavit resisting the application, exhibited a certificate setting out the total amount of tax owed by the plaintiff. This certificate was issued under s 89(4) of the Income Tax Act, which provides that:

> In any suit under this section, the production of a certificate signed by the Comptroller giving the name and address of the defendant and the amount of tax, interest or penalty due by him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

22 The defendant submitted that the certificate was incontrovertible evidence of the amount due, and gave authority to the court to grant judgment. In other words, the plaintiff could not, in the face of a certificate signed by the Comptroller of Income Tax and pursuant to s 89(4) of the Income Tax Act, dispute the underlying debt and the court should grant judgment based on the certificate.

23 However, the fact that there was a certificate under s 89(4) of the Income Tax Act does not indicate that triable issues do not exist. Whilst it may have been "sufficient evidence" of the underlying debt, it does not dispose of the question of whether there are triable issues as to the Agreement between the parties and as to estoppel preventing the defendant from claiming full repayment of the debt. The certificate does not even address the points raised by the plaintiff as to the Agreement or as to estoppel, but merely sets out the amount owed. In any event, the plaintiff does not dispute the quantum of the debt, which is not in issue here.

24 The defendant also submitted that pursuant to s 85 of the Income Tax Act, tax assessed is payable within one month of service of the notice of assessment notwithstanding any objection or appeal by the taxpayer. The defendant submitted that the plaintiff was not entitled to pay in instalments, and there could not therefore be any issue with the defendant demanding payment for the entire balance upon default of any payment. Counsel for the defendant stopped short of saying that the defendant could rely on s 85 of the Income Tax Act to disregard any agreement or estoppel arguments that may be raised by the plaintiff.

25 There is a good reason why the counsel for the defendant did not extend the argument to what would have been the logical conclusion. Section 85(2) of the Income Tax Act provides that the Comptroller of Income Tax has the power to extend the time limit within which payment is to be made. Section 85 of the Income Tax Act is set out in full below:

> **Time within which payment is to be made**
>
> 85.—(1) Subject to section 91, tax for any year of assessment levied in accordance with the provisions of this Act shall, notwithstanding any objection or appeal against the assessment on which the tax is levied, by payable at the place stated in the notice given under section 76 within one month after the service of the notice.
>
> (2) The Comptroller may, in his discretion and subject to such terms and conditions, including the imposition of interest, as he may impose, extend the time limit within which payment is to be made.

26 Therefore s 85 of the Income Tax Act does not entitle the Comptroller to resile from any extension of time that he has agreed to give or promised to give, as the time limit under s 85(1) is stated to be subject to any extension granted under s 85(2). Moreover, I am not convinced that s 85 of the Income Tax Act addresses the question of whether there are triable issues raised in relation to

the Agreement and estoppel. I now turn to these issues.

The Agreement

27 The plaintiff submitted that there is a triable issue as to whether the debt was due and payable in light of the Agreement. Alternatively, there is a triable issue as to whether the defendant's proposals of settlement were reasonable and in good faith, and in accordance with the Agreement. The plaintiff submitted that the defendant had breached the Agreement, as there was no good faith meeting between the parties to discuss repayment, and the proposals for repayment put forward by the defendant were not reasonable.

28 The defendant raised several arguments in response. First, there was a suggestion by the defendant that there was no binding agreement between parties, but merely a payment arrangement. The defendant submitted that the plaintiff would probably have represented to the defendant that he had insufficient funds and many outstanding debts, and there could have been a temporary arrangement given to the plaintiff to make payments of smaller sums. However, such arrangements could not be seen as binding agreements, as the law was that tax had to be paid within one month.

29 I do not accept the submission made by the defendant. As stated above, pursuant to s 85(2) of the Income Tax Act, the Comptroller has the power to extend the time limit within which payment is to be made. Further, the defendant had not adduced any evidence on the alleged Agreement, or more importantly, to contradict the plaintiff's averred facts as to the Agreement. The affidavit filed on behalf of the defendant did not contain any account of what took place between the plaintiff and Mr Sundramoorthy. There is therefore no evidential basis for the defendant's version of facts set out at [28] above, and I accept the plaintiff's version of events as to the Agreement.

30 Second, the defendant submitted that the alleged Agreement was not complete and certain as it was only an agreement to agree. The defendant submitted that the terms of "good faith" and "reasonable agreement" (see [6] on the Agreement) were subjective and the Agreement was thus too uncertain to be enforced.

31 The plaintiff on the other hand submitted that the Agreement was enforceable. He relied on the Court of Appeal decision of *HSBC Institutional Trust Services (Singapore) Ltd (trustee of Starhill Global Real Estate Investment Trust) v Toshin Development Singapore Pte Ltd* [2012] 4 SLR 738 ("*Toshin*") to support his argument.

3 2 *Toshin* involved a dispute between a landlord and tenant over a contractual rent review mechanism in the lease agreement between them. The rent for each new rental term after the first rental term was to be determined by agreement between the parties or, failing agreement, by three international firms of licensed valuers appointed either jointly by the parties or by the President or other designated officer of the Singapore Institute of Surveyors and Valuers. The relevant part of the clause in the contract provided that the parties shall "in good faith endeavour to agree on the prevailing market rental value of the Demised Premises" (*Toshin* at [6]). The Court of Appeal held that this clause was valid. The plaintiff submitted that, applying the decision in *Toshin*, the Agreement was similarly enforceable.

33 I am of the view that *Toshin* dealt with a different factual situation. The facts of *Toshin* related to a contractual mechanism to negotiate in good faith in respect of rent review, within the confines of a concluded long-term lease. On the present facts, there was no such contractual framework. Notwithstanding this, I accept that *Toshin* stands for the general proposition that an enforceable agreement does arise from a clause that obliges parties to negotiate in good faith.

34 However, the Agreement went beyond merely obliging parties to negotiate in good faith. The Agreement also provided for parties to reach a reasonable agreement on future instalments. I am of the view that a term that required parties to reach a "reasonable" agreement is too uncertain to be enforced. This was not a situation where most of the terms relating to future instalments had already been agreed, leaving only minor points to be determined between parties. Here, the Agreement required parties to reach a "reasonable" agreement on an issue which was critical to each party, namely, how future instalments were to be paid. There was no clarity nor any agreed criteria as to what would amount to such a "reasonable" agreement. There was no agreed process or mechanism to resolve matters, if negotiations between the parties proved unsuccessful or if the parties disagreed as to what instalment plan was reasonable. It would be odd indeed if the Agreement required the defendant to indefinitely hold its hands until and unless a "reasonable" agreement had been reached, despite the lack of an agreed process to resolve disputes over the instalment plan. I consider that to the extent that the Agreement required a "reasonable" agreement to be reached, it is unworkable and void for uncertainty.

35 For completeness, I now deal with the third argument raised by the defendant. The defendant submitted that there was no consideration for the Agreement, because this case fell within the situation where there was a promise to perform an existing duty imposed by law. The defendant sought to rely on the general rule that the mere performance of a public duty imposed by law does not, without more, constitute sufficient consideration in law for the promisor's promise. If, however, something extra is furnished by the promisee, this would constitute sufficient consideration in law: *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [105]. The defendant submitted that the plaintiff had a legal duty to pay his debts, and larger policy considerations were involved when there was a duty imposed by law. A taxpayer should not be allowed to hold IRAS to ransom over the tax he is obliged at law to pay.

36 On the other hand, the plaintiff submitted that this case fell within the situation of a promise to perform an existing contractual duty owed to the promisor. This brought it within the ambit of the principles set down by notable cases such as *Stilk v Myrick* (1809) 2 Camp 317, *Williams v Roffey Bros & Nicholls (Contractors) Ltd* [1991] 1 QB 1 ("*Williams*") and *Foakes v Beer* (1884) 9 App Cas 605 ("*Foakes*"), and took it outside the cases relating to the performance of a public duty.

37 I do not accept the argument by the defendant set out at [35] above. Chitty opines that the cases in the category of "public duty" are more readily explained on grounds of public policy: *Chitty on Contracts*, vol 1 (H G Beale gen ed) (Sweet & Maxwell, 31st Ed, 2012) at para 3-062. In other words, where public policy does not militate against the enforcement of a promise made, this line of cases should not be applied. It seems to me that whilst public policy would be against a public servant receiving payments for carrying out his duty, it should not affect the enforceability of agreements made or promises given by a public body.

38 Assuming IRAS had clearly agreed with an individual on the timing of payment of tax and the instalment amounts, I do not consider that it is open to IRAS to argue that such agreement is unenforceable on grounds of public policy. I do not consider that public policy engages in such a case. I note that the plaintiff had pointed to a decision by the English Court of Appeal involving somewhat similar facts, as falling within the situation of a promise to perform an existing contractual duty owed to the promisor: *Re Selectmove Ltd* [1995] 1 WLR 474.

39 Further, I find that there was consideration in the form of practical benefit to the defendant. *Williams*, which stands for the principle that a factual benefit or detriment can constitute sufficient consideration in law, is generally accepted as being part of the law of Singapore: *Fong Holdings Pte Ltd v Computer Library (S) Pte Ltd* [1991] 1 SLR(R) 834; *Sharon Global Solutions Pte Ltd v LG*

International (Singapore) Pte Ltd [2001] 2 SLR(R) 233; *Teo Seng Kee Bob v Arianecorp Ltd* [2008] 3 SLR(R) 1114. I accept the plaintiff's submission that the Agreement would have led to practical benefits to the defendant in the form of payments made pursuant to an agreed schedule. Further, with the Agreement in place, the defendant would not have to go through the cost and trouble of commencing proceedings to recover the debt, or take the risk of whether or when the debt could ever be recovered from a bankrupt plaintiff. Such agreements can clearly be of practical value to creditors, as can be seen in creditors' willingness to negotiate with debtors for recovery of outstanding debts. Such agreements are also consistent with commercial reality.

40 In the circumstances, there was practical benefit and I find that there was consideration for the Agreement. However, the plaintiff ultimately failed to convince me that the debt was disputed on substantial grounds and he was entitled to set aside the statutory demand. As stated at [34] above, the Agreement was too uncertain insofar as it required parties to reach a reasonable agreement. The position might have been different if the Agreement had provided a clear and workable process for the parties to arrive at an instalment plan for tax arrears. I therefore decline to set aside the statutory demand on the ground of the Agreement.

Estoppel

41 The plaintiff's second principal argument was that the defendant was estopped from claiming the debt in full as it would be inequitable for the defendant to resile from the promise made by Mr Sundramoorthy on 20 March 2013.

42 The plaintiff submitted that the promise was essentially the cornerstone of the Agreement, that is, the defendant would, instead of claiming for the full amount of the debt, agree to an instalment plan and meet with the plaintiff in good faith in May 2013 to reach a reasonable agreement for the future instalments in light of the plaintiff's new employment status. The plaintiff submitted that he had changed his position by making part payments in accordance with the Agreement; he had structured and entered into compromise agreements with his other creditors; and he had obtained loans from third parties to help to pay off those other creditors and the defendant. Having made those commitments, the plaintiff said that he was unable to restore himself to his position prior to the promise that was made.

43 The defendant submitted that no representation had been made to the plaintiff that he could take time to pay his debts. Rather, the plaintiff had represented that he was unable to pay and, because of that, the plaintiff was allowed time to pay. The defendant also submitted that the alleged promise was too vague to constitute an unambiguous representation that the defendant would not enforce its rights. Further, the defendant submitted that there was no reliance on any representation made by the defendant, and it had not behaved in an inequitable manner.

44 As no evidence has been put forward by the defendant to explain the Agreement or what had transpired between Mr Sundramoorthy and the plaintiff, I do not accept the defendant's submission that no representation had been made by the defendant. On the evidence, it is not disputed that there was a representation by the defendant. One part of that related to negotiations, and I find that there was a promise that the parties would negotiate in good faith. But I am not convinced that the promise was that the debt would not be enforced until negotiations culminated in a reasonable agreement between the parties. There was no clear promise that the defendant would not pursue its legal rights until a reasonable agreement was reached, nor was it clear at all how such an agreement was intended to be reached or how disagreements between the parties (including as to what was "reasonable") were to be dealt with. The promise was therefore not sufficiently unambiguous, clear and certain for estoppel to be invoked: *Woodhouse AC Israel Cocoa Ltd SA and another v Nigerian*

Produce Marketing Co Ltd [1972] AC 741; *Wardley Ltd v Bestland Development Pte Ltd (in liquidation) and another and other appeals* [1992] 3 SLR(R) 275.

45 In any event, I note that by the time the first email of 2 May 2013 was sent by the defendant to the plaintiff, the plaintiff would have had notice that the promise was off the cards. Promissory estoppel is generally suspensory in effect, in that a promisor may resile from his promise by the giving of reasonable notice, which gives the promisee a reasonable opportunity of resuming his position. The promise only becomes final and irrevocable if the promisee cannot resume his position: *Emmanuel Ayodeji Ajayi (trading under the name and style of The Colony Carrier Co) v R T Briscoe (Nigeria) Ltd* [1964] 1 WLR 1326; *Ramnani Kishinchand Bulchand v Personal Representatives of the Estate of Roop Vaswani, deceased* [1994] 2 SLR(R) 287.

46 The defendant's email of 2 May 2013 informed the plaintiff to maintain sufficient funds in his bank account to make payment by Giro in May and June 2013, failing which actions would be taken to recover the outstanding amounts. Subsequent letters written by the defendant contained a similar warning that enforcement action would be taken if payment was not made. A total of five such letters were written by the defendant, on 13 May 2013, 28 May 2013, 10 June 2013, 8 July 2013 and 22 August 2013. On 3 October 2013, the defendant informed the plaintiff that it could not agree with the plaintiff's proposal for payment, and said that recovery action would be commenced against the plaintiff.

47 I do not accept the plaintiff's argument that the defendant did not make clear its intention of resiling from its promise until the statutory demand was served. I am of the view that the defendant, in its letters from 2 May 2013 onwards, had repeatedly made it very clear that enforcement action would be taken if payment of tax arrears was not made. Further, the plaintiff would have known this from the correspondence with the defendant leading up to service of the statutory demand. The defendant's intentions were therefore made known to the plaintiff in the correspondence starting 2 May 2013, whilst the statutory demand was served only on 7 October 2013. The plaintiff would have had reasonable notice that the defendant intended to enforce its strict legal rights, and would have had a reasonable amount of time to make the necessary adjustments.

48 The plaintiff however argued that the defendant's promise was final and irrevocable, as he had ordered his affairs in a particular way and could not resume his original position. The plaintiff submitted that he had relied on the promise made by the defendant, and structured his repayment plan to the defendant and his other creditors accordingly. In particular, he had made payments for the maintenance of his ex-wife and children, obtained friendly loans from relatives and friends to repay his debts to certain financial institutions, and made composite arrangements with other financial institutions to repay them a total of $1,900 per month. Having committed to these financial arrangements, he was unable to return to his original position as the funds that were once available to him for repayment to the defendant had been paid to third parties.

49 I am not convinced by the plaintiff's argument that, in reliance on the promise, he had changed his position such that he was unable to resume his original position. On the facts presented, the plaintiff's obligations relating to maintenance were pursuant to consent orders made in February and June 2012, long before the promise by the defendant was made in March 2013. I am also not convinced that the plaintiff had borrowed money and paid off his other creditors based on reasonable reliance on the defendant's promise. In my view, the plaintiff had various creditors, some of whom had commenced actions in court to recover their debts, and the plaintiff had to fight off various fires raging at his doorstep. It appears that he fought off the most pressing fires by borrowing money to pay off those creditors. The plaintiff must have known that, in relation to the debt owed to the defendant, he could buy some time, but actions to recover the debt would ultimately be brought

against him. By May 2013, the plaintiff would have known that the defendant intended to enforce its strict legal rights. I note that there was a marked lack of detail in the plaintiff's evidence as to when the composite agreements were made with his other creditors, when payments were made to his other creditors, how much was paid, how much money was borrowed from friends and relatives, and why he was now unable to resume his earlier position. By 1 July 2013, the plaintiff had the added advantage of securing employment as a partner of a law firm, earning a monthly income of $18,000. I was unconvinced by the submission made by the plaintiff that he had altered his position in such a way that he was not able to resume the position prior to the promise being made, and I reject that submission.

50 I am therefore not satisfied that a triable issue has been raised as to whether the defendant should be estopped from claiming on an immediate full repayment of the debt.

51 I should add that the defendant also submitted that the doctrine of estoppel, which is essentially a remedy available in private law, was unsuitable for application to matters involving a public authority carrying out its public duties as was the case on the present facts. However, as this argument was raised for the first time in further submissions filed by the defendant and the plaintiff did not have a chance to address this argument, I did not consider this argument in coming to my decision. In any case, given my views above, it is not necessary for me to do so.

Conclusion

52 For the reasons set out above, I do not think that the Agreement was enforceable, or that the defendant was estopped from claiming the debt from the plaintiff. I therefore decline to set aside the statutory demand under r 98(2)(b) or (e) of the Bankruptcy Rules. The defendant is authorised to file a bankruptcy application against the plaintiff, pursuant to r 98(3) of the Bankruptcy Rules.

53 I thank counsel for their detailed submissions. I will hear parties on costs.

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