

Ng Siam Khui and another v Ang Meng Lee
[2010] SGHC 103

Case Number : Bankruptcy No 2488 of 2009 (Registrar's Appeal No 29 of 2010)
Decision Date : 05 April 2010
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Hui Choon Wai (Wee Swee Teow & Co) for the plaintiffs/respondents; Alvin Chang (M & A Law Corporation) for the defendant/appellant.
Parties : Ng Siam Khui and another — Ang Meng Lee

Insolvency law

5 April 2010

Woo Bih Li J:

Introduction

1 The plaintiffs, Ng Siam Khui and See Tji Kiong, have the benefit of an order from the Court of Appeal ("CA") in an action for payment to them of an aggregate sum of \$1,740,755.87 ("the Debt") but the CA also directed an inquiry for accounts to be taken on certain other matters as between the parties. The plaintiffs' position was that the payment of the Debt had to be made first but the position of the defendant, Ang Meng Lee ("AML"), was that the amount payable to the plaintiffs was disputed because the Debt was subject to the inquiry on accounts as directed in the other parts of the order from the CA.

2 The issue as to whether AML had to pay the Debt first was resolved in various proceedings in lower courts in favour of the plaintiffs. Accordingly, the plaintiffs presented an Originating Summons No B2488/2009 which was a bankruptcy application against AML based on the Debt. AML applied to set aside the bankruptcy application in Summons No 183 of 2010 on the basis that the Debt need not be paid first. The application was dismissed by an Assistant Registrar. AML appealed and I dismissed the appeal. AML is appealing against my decision.

Background

3 The background was set out in the written submission for the plaintiffs which I reiterate below.

Background

1. Suit 563/2005/N

After the trial of this suit before the Honourable Justice Lai Siu Chiu, Ang Meng Lee's ("AML") claim against Ng Siam Khui ("NSK") and See Tji Kiong ("STK") was dismissed on 28 November 2008 and NSK/STK obtained judgment on their counterclaim for \$3,306,496.22, an order allowing monies that had been paid into Court to be paid out the [sic] NSK/STK and orders for accounts and inquiry proceedings against AML.

2. CA 209/2008/Z

Upon AML's appeal, the CA refined the Learned Trial Judge's orders as follows:

1. The Appellant (AML) shall pay the Respondents (NSK/STK) the sum of \$3,306,496.22;
 2. The Appellant (AML) and 1st Respondent (NSK) shall each be entitled to one-half of the sum of \$3,109,298.15 plus accrued interest previously paid into Court under Originating Summons No.665 of 2005;
 3. The Appellant (AML) shall pay the Respondents (NSK/STK) the costs of the counterclaim;
 4. The Appellant (AML) and the 1st Respondent (NSK) shall each be entitled to one-half of the rent received in respect of 20B Nassim Road. The Appellant (AML) shall account to the 1st Respondent (NSK) in respect of the rent received from 20B Nassim Road, less the sums paid by the Appellant (AML) to service the loans. In the event that the net amount of rent so determined is more than \$3,306,496.22, half of this excess shall be paid by the Appellant (AML) to the 1st Respondent (NSK). However, in the event that the net amount of rent is less than \$3,306,496.22, the 1st Respondent (NSK) shall repay half the deficit to the Appellant (AML);
 5. The Appellant (AML) is accountable to the 1st Respondent (NSK) for half the sale proceeds of 19 Second Avenue Singapore less the amount of \$600,000 utilised to purchase 20B Nassim Road;
 6. The Appellant (AML) and the 1st Respondent (NSK) shall bear equally all reasonable expenses incurred by the Appellant (AML) in the management and upkeep of 20B Nassim Road Singapore and the 1st Respondent (NSK) shall reimburse the Appellant (AML) as to half thereof;
 7. An inquiry shall be held by the Registrar to ascertain the amounts due to each of the parties under paragraphs (2), (4), (5) and (6) hereof;
 8. The costs of the inquiry shall be reserved to the Registrar hearing the inquiry; and
 9. There shall be no order as to the costs of this Appeal. The Respondents shall pay the Appellant her disbursements incurred in relation to this Appeal to be agreed or taxed.
3. Under B2488/2009/Q, NSK/STK are claiming a debt of \$1,740,755.87. Under CA Order 1, AML is liable to pay NSK/STK \$3,306,496.22 forthwith. Under CA Order 2, the effect would be that NSK/STK becomes liable to pay AML half of the sum paid out by the Court to NSK/STK [ie \$3,131,480.70 ÷ 2]. This sum is indisputable. The net figure payable by AML to NSK/STK is therefore \$1,740,755.87 ("the Debt").

AML's application

4. The ground of AML's application to set aside the Bankruptcy application is that the amount claimed by NSK/STK is disputed. AML's sole basis for disputing this is her interpretation of the CA

Order, which is, that the payment under CA Order 1 (of \$3,306,496.22) is subject to the deductions of items under CA Orders 4, 5 and 6 ("the 3 Items"). At Para 7 of AML's affidavit filed in this summons, AML states:

"7. It is my contention that the terms of the Order of the Court of Appeal make it clear that the sum of \$3,306,496.22 which is payable pursuant to paragraph 1 of the Order is subject to the following deductions, which are set out in paragraphs 4 to 6 of the Order of the Court of Appeal-

(a) Firstly the net amount of rent received by me in respect of 20B Nassim Road (see paragraph 4 of the Order of the Court of Appeal);

(b) Secondly, the sale proceeds of a property at 19 Second Avenue received by me, less the amount of \$600,000 utilised to purchase a property at 20B Nassim Road (see paragraph 5 of the Order of the Court of Appeal); and

(c) Thirdly, the reasonable expenses incurred by me in the management and upkeep of 20B Nassim Road (see paragraph 6 of the Order of the Court of Appeal)."

5. The amounts in respect of the 3 Items shall only be determined at the conclusion of the accounts and inquiries proceedings which is pending.

6. AML's position is that after the 3 Items have been determined, a sum larger than \$1,740,755.85 would be payable by NSK/STK to her. As the accounts and inquiries proceedings are still pending, these sums remain undetermined, and the Debt disputed.

7. As the Debt is disputed, AML says the bankruptcy application should be set aside.

Our response

The Debt is not subject to deductions

8. The terms of the CA Order are clear and unambiguous. CA Order 1 is a straightforward judgment of a liquidated sum. There are no expressed terms and conditions to the payment. Payment has to be forthwith.

9. There is no co-relation between CA Order 1 and the 3 Items under CA Orders 4, 5 and 6.

10. Under CA Order 4, AML is to account to NSK half the rent collected by AML in respect of 20B Nassim Road. CA Order 4 sets out the formula to work out what further sums may be payable between the parties from AML to NSK or NSK to AML, depending on the determination at the accounts and inquiries proceedings of what the net amount of rent is. There is no condition imposed that the payment of \$3,306,496.22 is to be suspended until after net amount of rent under CA Order 4 is determined.

11. Under CA Order 5, AML has to account to NSK half the sales proceeds of the 19 Second Avenue property less \$600,000. Again, there is nothing stated that the payment of \$3,306,496.22 is subject to the deduction of this item. In fact this item would be a sum payable by AML to NSK and would not be a deduction.

12. Under CA Order 6, NSK is to reimburse AML half of the expenses for maintenance and upkeep of the property to be determined at the accounts and inquiries proceedings. This has

nothing to do with the \$3,306,496.22.

13. On plain reading of the CA Orders, \$3,306,496.22 is an indisputable judgment debt which is to be paid forthwith and which is not subject to deductions of the 3 Items.

Res Judicata

14. In fact, this is not the first time AML is attempting to stall execution of the Judgment by using the accounts and inquiries proceedings.

15. SUM 3930/2009/R under Suit 563/2005/N

In July 2009, AML filed an application for stay of execution pending the inquiry [SUM3930/2009/R under Suit 563/2005/N]. Her application was dismissed with costs by Justice Chan Seng Onn on 6 August 2009. In AML's affidavit in support of that application, she had set out the ground of that application:

"8. I had been advised and I verily believe that the terms of the CA Order clearly provide that the payment of the sum of \$3,306,496.22 pursuant to paragraph 1 of the CA Order is subject to the inquiry to be held pursuant to paragraph 7 of the same Order. The inquiry is necessary in order to determine the parties' entitlement to the following amounts –

(a) the rent received in respect of 20B Nassim Road pursuant to paragraph 4 of the CA Order;

(b) the sale proceeds of 19 Second Avenue less the amount of \$600,000 utilised to purchase 20B Nassim Road, pursuant to paragraph 5 of the CA Order; and

(c) the reasonable expenses incurred in the management and upkeep of 20B Nassim Road, pursuant to paragraph 6 of the CA Order;

before a final determination can be made as to the net amounts owing from the Defendants to me, or vice-versa."

16. This is the same ground which AML now relies on in this summons. The ground had already been rejected by Justice Chan in the previous application.

17. OSB34/2009/R

After failing to obtain a stay, in August 2009, AML filed an application to set aside the Statutory Demand [OSB34/2009/R]. Her application was dismissed with costs by the Assistant Registrar Ms Daphne Chang on 3 September 2009. In AML's affidavit in support of that application, she had set out the grounds of that application.

18. Firstly, that the amount claimed by NSK/STK is disputed and at Para 7 she states:

"7. Firstly, it is clear from the terms of the CA Order that the sum of \$3,306,496.22 which is payable pursuant to paragraph 1 of the CA Order is subject to a deduction of the following amounts (which are dealt with at paragraphs 4 to 6 of the CA Order)-

(a) Firstly the rent received in respect of 20B Nassim Road pursuant to paragraph 5 of the

CA Order;

(b) Secondly, the sale proceeds of 19 Second Avenue less the amount of \$600,000 utilised to purchase 20B Nassim Road, pursuant to paragraph 5 of the CA Order;

and

(c) Thirdly, the reasonable expenses incurred in the management and upkeep of 20B Nassim Road, pursuant to paragraph 6 of the CA Order.”

19. This is a repeat of the same ground used in SUM3930/2009/R under Suit 563/2005/N set out above.

20. Secondly, AML states at Paras 11 and 12 of her affidavit:

“11. From the above summary, it can be clearly seen that, subject to the inquiry, the amounts due to me under paragraphs 4 to 6 of the CA Order exceeds the amounts due to Defendants at paragraphs 1 and 2 of the CA Order.

12. Given the aforesaid circumstances, it is clear that the amounts due under paragraphs 1 and 2 of the CA Order are disputed. Further or alternatively, I have a cross-claim against the Defendants or a right of set-off for a sum which exceeds their claims under paragraphs 1 and 2 of the CA Order.

21. The learned Assistant Registrar found that:

(a) the sum of \$3,306,496.22 was a judgment debt which was payable forthwith and that there was no basis for AML to dispute the \$3,306,496.22 on substantial grounds. [Pages 8 and 9 of Notes of Evidence dated 1 September 2009]

(b) the Plaintiff (AML) cannot prove that there appears to be a valid counterclaim, set off or cross claim against the Defendants (NSK/STK) on a “genuine triable issue basis” [Pages 11 and 12 of the said Notes of Evidence]

22. RA 342/2009 (under OSB34/2009/R)

At AML’s appeal heard on 1 October 2009, Judicial Commissioner Quentin Loh agreed with the learned Assistant Registrar and dismissed the appeal with costs.

23. AML has already raised the same argument on 3 separate occasions and had failed. On each occasion, the judge/assistant registrar had found that the payment of \$3,306,496.22 was not subject to deductions of the 3 Items. AML should not be allowed to re-litigate the issue any further.

...

4 I agreed that there was issue estoppel against AML. Justice Chan Seng Onn (“Chan J”) had already ruled against her contentions when he dismissed her application for a stay. If AML was not satisfied with that decision, she should have appealed against it. She did not.

5 Moreover, the issue was canvassed again in her application to set aside the plaintiffs’ statutory demand. The latest ruling in respect of the statutory demand was the decision of Judicial

Commissioner Quentin Loh ("JC Loh") on 1 October 2009. Even if she was not bound by the decision of Chan J, she would have been bound by the decision of JC Loh. However, there was again no appeal by her.

6 It was therefore too late for her to resurrect this issue this time in the context of the bankruptcy application.

7 It was not open to me to reach a different decision from that of Chan J or of JC Loh.

8 In fact, if there was a genuine dispute as to the interpretation of the order of the CA, *ie*, whether AML must first pay the Debt without waiting for the inquiry to be concluded, then what either side should have done was to write to the CA in CA 209/2008/Z for clarification instead of taking the point by way of argument in the courts below. The approach the parties have taken has resulted in a waste of time and money. If either party still insisted on their/her interpretation, notwithstanding the clarification, then at least the lower courts would have had the benefit of the clarification without having to consider what the CA's order meant.

9 AML raised one other point. She asserted that based on an affidavit filed by the plaintiffs themselves for the accounting, the eventual amount to be paid to them (after taking into account the Debt) would be no more than \$1,545,129.24, which was less than \$1,740,755.87. The amount claimed by the plaintiffs was therefore erroneous. However, AML was not offering to pay the \$1,545,179.24.

10 It is a well-established principle that a creditor may initiate or continue with bankruptcy proceedings, even if the sum demanded is excessive, so long as there is a sum due to the creditor which exceeds the minimum sum requirement to proceed with such proceedings (see *Tan Siew Ling v United Overseas Bank Ltd* [2010] SGHC 43 and *Goh Chin Soon and anor v Vickers Capital Ltd* [2000] 3 SLR(R) 977).

11 In the circumstances, I dismissed AML's appeal.

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