

Re Lim Lye Hiang, ex parte the Official Assignee
[2010] SGHC 299

Case Number : Bankruptcy No 2066 of 1997 (Registrar's Appeal No 600001 of 2010)
Decision Date : 11 October 2010
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Foo Soon Yien (Bernard & Rada Law Corporation) for the appellant; Lim Yew Jin for the Official Assignee.
Parties : Re Lim Lye Hiang, ex parte the Official Assignee

Insolvency Law

11 October 2010

Judgment reserved.

Chan Seng Onn J:

Introduction

1 This is an appeal against the decision of Assistant Registrar Leong Kwang Ian ("assistant registrar") ordering that a sum of money from the Central Provident Fund ("CPF") which was paid to the Official Assignee as the trustee in bankruptcy of the appellant, Mdm Lim Lye Hiang ("LLH"), be divisible among and payable to her creditors.

Background Facts

2 On 9 January 1998, a bankruptcy order was made against LLH. On 18 September 2008, the CPF Board sent a letter to LLH to inform her that she had been nominated to receive the CPF monies and the Singtel discounted shares of her late sister, Mdm Lim Lye Keow ("LLH's nominated CPF monies"). Mdm Lim Lye Keow had passed away on 14 March 2008. This letter was copied to the Official Assignee, who has no record of having received this letter at that time. It is unclear from the record when Mdm Lim Lye Keow made the nomination. Almost a year later, on 26 June 2009, the CPF Board sent an email to the Official Assignee's officers, requesting for the Official Assignee's instruction on the transfer of LLH's nominated CPF monies. The Official Assignee similarly has no record of having received this email.

3 On 13 November 2009, LLH was discharged by an order of court made pursuant to s 124 of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("Bankruptcy Act"). At the time of the application for discharge, because the Official Assignee remained unaware that LLH had become entitled to LLH's nominated CPF monies, it failed to alert the court to the same. However, due to the objection of a creditor, for reasons which are not relevant to the present appeal, the Official Assignee delayed the distribution of her assets to her creditors and the sending of a notification to LLH of the fact that she had been discharged by the court.

4 Thereafter, on 14 January 2010, the CPF Board again emailed the Official Assignee referring to its previous letter dated 18 September 2008 and email dated 26 June 2009, and requested for instructions to transfer LLH's nominated CPF monies to the Official Assignee. The monies amounting to \$102,614.84, which included money standing to Mdm Lim Lye Keow's credit during her lifetime, and

the proceeds from the sale of her Singtel discounted shares, were eventually transferred to the Official Assignee on 2 March 2010.

5 On 12 May 2010, the Official Assignee filed a summons seeking an order, *inter alia*, in the following terms:

1) That [LLH's nominated CPF monies] be divisible among her creditors and payable to them as dividends, on the basis that they are property which had devolved on [LLH] on 14 March 2008 (which was the date of her sister's death and before [LLH]'s discharge from bankruptcy) notwithstanding that the CPF monies were received by the Official Assignee after her discharge.

.....

At the hearing before the assistant registrar on 25 June 2010, the Official Assignee contended and the assistant registrar accepted that, pursuant to s 15(5) of the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("CPF Act"), LLH had become *entitled to withdraw* LLH's nominated CPF monies upon Mdm Lim Lye Keow's death on 14 March 2008, which was before LLH's discharge. Having regard to:

- (i) Section 78(1) of the Bankruptcy Act, which provides that all property that devolves on the bankrupt before his discharge is divisible; and
- (ii) the definition of property in s 2 of the Bankruptcy Act, which includes "money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of or incidental to, property",

the assistant registrar held that the right to withdraw LLH's nominated CPF monies constituted "property" which devolved on LLH before her discharge and therefore vested in the Official Assignee and became divisible among her creditors.

The legal significance of a bankrupt's discharge on the vesting of assets in the Official Assignee

6 By way of background, it is useful to first set out the relevant provisions of the Bankruptcy Act. Section 75(a) of the Bankruptcy Act provides that the bankruptcy of a person who has been adjudged bankrupt by a bankruptcy order commences on the day on which the bankruptcy order is made. Section 75(b) provides that bankruptcy terminates upon a bankrupt's discharge. Sub-sections 76(1)(a) and (b) of the Bankruptcy Act are of particular relevance to the present appeal, and they provide that:

Effect of bankruptcy order

76. —(1) On the making of a bankruptcy order —

(a) the property of the bankrupt shall —

- (i) vest in the Official Assignee without any further conveyance, assignment or transfer; and
- (ii) become divisible among his creditors;

(b) the Official Assignee shall be constituted receiver of the bankrupt's property;

...

7 In s 2 of the Bankruptcy Act, "property" is defined non-exhaustively to include things in action, and also every description of interest, whether present or future or vested or contingent, arising out of or incidental to property. Reading the definition of "property" in s 2 with s 76(1)(a) of the Bankruptcy Act, anything which falls within the definition of "property" in s 2 belonging to a bankrupt on the date of the making of a bankruptcy order will vest in the Official Assignee and become available for distribution among his creditors.

8 Sub-sections 76(1)(a) and (b) should also be read together with s 78(1) of the Bankruptcy Act, which describes the property which is divisible among a bankrupt's creditors, subject to certain exceptions listed in s 78(2) of the Bankruptcy Act (which are irrelevant to the present appeal). Section 78 of the Bankruptcy Act provides as follows:

Description of bankrupt's property divisible amongst creditors

78. —(1) The property of the bankrupt divisible among his creditors (referred to in this Act as the bankrupt's estate) shall comprise —

(a) all such property as belongs to or is vested in the bankrupt at the commencement of his bankruptcy *or is acquired by or devolves on him before his discharge*; and

(b) the *capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property* as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy *or before his discharge*.

(2) Subsection (1) shall not apply to —

(a) property held by the bankrupt on trust for any other person;

(b) the tools, if any, of his trade;

(c) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family; and

(d) property of the bankrupt which is excluded under any other written law.

[emphasis added]

The effect of ss 76(1)(a) and 78(1)(a) is that property which (a) belongs to the bankrupt at the commencement of bankruptcy (which, according to s 75(a) of the Bankruptcy Act, is the date of the bankruptcy order) and which vests in the Official Assignee upon the court making a bankruptcy order as a result of the operation of s 76(1)(a)(i); or (b) is acquired by or devolves upon the bankrupt before his or her discharge will be divisible among the bankrupt's creditors. Section 78(1)(b) clarifies that things in action form part of the property of the bankrupt which are divisible in bankruptcy among creditors.

9 Subject to certain exceptions (which are not applicable here), a discharge from bankruptcy has the effect of releasing the bankrupt from all debts provable in bankruptcy, but does not have the

effect of rendering the Official Assignee's functions spent. Section 127(1) of the Bankruptcy Act provides that:

Effect of discharge

127. —(1) Subject to this section and any condition imposed by the court under section 124 or 126, where a bankrupt is discharged, the discharge shall release him from all his debts provable in the bankruptcy but shall have no effect —

(a) on the functions (so far as they remain to be carried out) of the Official Assignee; or

(b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Act.

Thus, even after the bankrupt's discharge, the Official Assignee remains duty-bound to continue to collect all the assets of the bankrupt which are divisible among creditors (as set out in ss 76(1)(a) and 78(1)(a) and (b)) and to distribute the proceeds from the realisation of such property to creditors who have proved their debts. The law imposes a legal obligation on the bankrupt to assist in the fulfilment of the Official Assignee's functions even after his discharge on pain of a fine or revocation of his discharge. The discharged bankrupt's obligation is provided for in s 128 of the Bankruptcy Act, which provides that:

Discharged bankrupt to give assistance

128. —(1) A discharged bankrupt shall, *notwithstanding his discharge*, give assistance as the Official Assignee requires in the *realisation and distribution of such of his property as is vested in the Official Assignee*.

(2) If the discharged bankrupt fails to give assistance to the Official Assignee under subsection (1) —

(a) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000; and

(b) the court may, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done subsequent to the discharge, but before its revocation.

[emphasis added]

The parties' arguments

10 LLH's main argument in this appeal is that LLH's nominated CPF monies did not devolve upon LLH immediately upon the death of Mdm Lim Lye Keow. Counsel for LLH submits that in the absence of authorisation from the CPF Board for the withdrawal of the monies prior to LLH's discharge, LLH's nominated CPF monies were not payable to LLH, and therefore did not amount to property within the meaning of s 78(1) of the Bankruptcy Act. Counsel for LLH contends that since LLH's nominated CPF monies only devolved upon LLH after the date of her discharge, they did not vest in the Official Assignee and were not divisible among LLH's creditors. Alternatively, even if LLH had become entitled to LLH's nominated CPF monies prior to her discharge from bankruptcy, counsel for LLH submits that s 24(4) of the CPF Act, which provides that a bankrupt's CPF contributions shall not be subject to his

debts in bankruptcy, applies to LLH's nominated CPF monies. Therefore, LLH's nominated CPF monies did not pass to the Official Assignee. Finally, counsel for LLH submits that since the Official Assignee had given LLH an unconditional discharge, the Official Assignee had lost its right to claim that LLH's nominated CPF monies was divisible among creditors, being property which was acquired by or devolved upon LLH during her bankruptcy.

11 In contrast, the Official Assignee essentially argues that the assistant registrar's decision was correct. The Official Assignee urges this court to take the view that LLH's entitlement to withdraw LLH's nominated CPF monies was a type of property which had accrued on 14 March 2008, the date on which Mdm Lim Lye Keow passed away, and that the date on which the relevant monies were paid out by the CPF Board to the Official Assignee was irrelevant to the question of whether the monies had vested in the Official Assignee before LLH's discharge.

The issues raised

12 To my mind, the parties' submissions are at cross purposes because their submissions are not in relation to the same kind of property. It appears to me that the arguments made by counsel for LLH assume that the Official Assignee was *only* claiming the right to distribute to creditors the *actual monies* paid out to the Official Assignee on 2 March 2010, which was subsequent to her discharge on 13 November 2009. However, that assumption seems mistaken given that the thrust of the Official Assignee's submission is that it is asserting that as LLH's trustee in bankruptcy, it had the right to exercise LLH's *entitlement to withdraw LLH's nominated CPF monies*, which LLH had acquired during her bankruptcy on 14 March 2008, twenty months prior to the date of her discharge.

13 As mentioned earlier, the definition of property in s 2 of the Bankruptcy Act is framed widely, to include "money, goods, *things in action*, land and every description of property wherever situated and also obligations and *every description of interest, whether present or future or vested or contingent*, arising out of or incidental to, property". By virtue of s 78(1)(a) of the Bankruptcy Act, anything falling within the definition of "property" in s 2 is divisible among creditors if it belongs to the bankrupt at the commencement of bankruptcy or is acquired by or devolves upon the bankrupt before her discharge (see above, at [8]). Thus, the first issue arising in this appeal should be framed as: whether LLH's entitlement to withdraw LLH's nominated CPF monies, which arose during the period of her bankruptcy, was property divisible among creditors within the meaning of s 78(1), read with the definition of "property" in s 2 of the Bankruptcy Act. The fact that LLH's entitlement to withdraw was exercised by the Official Assignee on LLH's behalf after her discharge had no impact on the question of whether such entitlement to withdraw amounted to property divisible among the creditors. Nothing in the Bankruptcy Act provides that where the *proceeds* from divisible property (within the meaning of s 78(1) of the Bankruptcy Act) are realised *after* a bankrupt's discharge, such proceeds are no longer divisible among the creditors even though the property in question may have been acquired by or devolved upon the bankrupt *during* the bankruptcy.

14 If the first issue is answered in the affirmative, *ie*, that LLH's entitlement to withdraw LLH's nominated CPF monies constituted property divisible amongst creditors of the bankrupt for the purposes of s 78(1) of the Bankruptcy Act, a second issue arises, *viz*, whether s 24(4) of the CPF Act prevents LLH's entitlement to withdraw LLH's nominated CPF monies from vesting in the Official Assignee during LLH's bankruptcy. Finally, this appeal raises the issue of whether the Official Assignee's decision to grant LLH an unconditional discharge barred it from thereafter seeking to claim the property in the form of LLH's entitlement to withdraw LLH's nominated CPF monies, which was acquired by or had devolved upon LLH during her bankruptcy and prior to her discharge.

Whether LLH's entitlement to withdraw LLH's nominated CPF monies constitutes property

within the meaning of s 78(1) of the Bankruptcy Act

15 It is necessary to examine the relevant sections in the CPF Act to determine whether LLH's entitlement to withdraw LLH's nominated CPF monies had the character of property for the purposes of s 78(1) of the Bankruptcy Act. Section 25(1) of the CPF Act provides that:

Moneys payable on death of member

25. —(1) Any member of the Fund may by a memorandum executed in the manner prescribed by the Board nominate a person or persons to receive in *his or their own right* such portions of the amount *payable on his death out of the Fund* under section 20(1) or of any shares designated under section 26(1) as the memorandum shall indicate.

[emphasis added]

16 Section 15(5) of the CPF Act, which provides that after the death of a member of the CPF, the nominee nominated in accordance with s 25(1) of the CPF Act shall be entitled to withdraw from the balance standing to the credit of that nominating member after deducting certain sums (which are not relevant to the present appeal) ("nominated CPF monies"), reads as follows:

(5) Subject to section 25(3), after the death of a member of the Fund, a person nominated by that member in accordance with section 25(1) *shall be entitled to withdraw*, from the balance *standing to the credit of that member* in the Fund after deducting —

(a) any sum withdrawn, or to be withdrawn, under section 16A;

(b) any sum credited, or to be credited, to the account of another person under section 19(2) or 19A(2); and

(c) any sum transferred or paid, or to be transferred or paid, to another person under section 27B,

such portion of that balance as is set out in the memorandum executed in accordance with section 25(1).

[emphasis added]

A nomination made under s 25(1) of the CPF Act (previously s 26(1) of the Central Provident Fund Act (Cap 36, 1991 Rev Ed)) becomes effective upon the death of the nominating member, and s 15(5) thereafter comes into operation: *The Central Provident Fund Board v Lau Eng Mui* [1995] 2 SLR(R) 826 at [14].

17 The entitlement of the nominee to make a withdrawal upon the death of a nominating member arises out of the testamentary effect of a nomination, *ie*, a nomination is capable of passing property to the nominee upon the death of the nominating member. In *How Yew Hock (Executor of the estate of Yee Sow Thoo, deceased) v Lembaga Kumpulan Wang Simpanan Pekerja* [1996] 2 MLJ 474, the Malaysian Federal Court considered the issue of whether a nomination made under the Malaysian equivalent of the CPF Act was a testamentary document which had to satisfy the requirements of the Wills Act 1959 (Malaysia). While the issue which arose in that case is different from the present, the Federal Court cited with approval the following passage from Mellows, *The Law of Succession* (Butterworths, 4th ed, 1983) which helpfully elucidates the legal nature of nominations:

A nomination is a direction to a person who holds funds on behalf of another to pay those funds in the event of death to a nominated person. In many cases, nominations operate by statute... However, there can also be non-statutory nominations, particularly in connection with pension schemes. The rules of many pension schemes provide, in essence, that if the employee dies during the course of his employment the amount of contributions will be paid to a person nominated by the employee in writing, and in the absence of any nomination, to the employee's personal representatives. Where a nomination is made, it does not operate as a will. *While the document does affect the devolution of property on death, the property passes directly from the fund to the nominee, and at no time forms part of the estate.* The nomination operates by virtue of the rules of the scheme and not as a will, and it does not, therefore, have to satisfy the requirements of the Wills Act.

[emphasis added]

18 In *Re Barnes, Ashenden v Heathe* [1940] Ch 267 at p 273, Farwell J stated that a document executed to effect the nomination of a recipient of monies deposited in a society registered under the Industrial and Provident Societies Act, 1893 (c 39) (UK) has the characteristics of a testamentary document:

I say, 'in its nature testamentary', because it has all the characteristics of a testamentary document, that is to say, it is a nomination which has no effect at all until the death of the nominator who is left completely free during his lifetime to deal with his share irrespective of it. The nominee would have no right to complain of, nor could he take any steps to prevent, the nominator dealing with his interest during his lifetime. The nomination has no operation and is not intended to have any operation until the death of the nominator. Whether or not it then operates depends upon whether or not the nominator has during his lifetime either revoked it or used the money which he purported to nominate for his own purposes, by withdrawing it from the society or in some other way. The result, as I said, is that the nature of the nomination in a case of this sort is clearly testamentary.

19 Clearly, a nomination made pursuant to s 25(1) the CPF Act operates differently from a will. Unlike other property belonging to a testator during his lifetime, nominated CPF monies do not form part of the deceased's estate. Rather, the nominee immediately acquires the right to withdraw the nominated CPF monies: see s 25(1) of the CPF Act. If the monies had already been paid out to another party before a nominee has withdrawn the monies, s 24(3A) comes to the protection of the nominee by impressing upon the nominated CPF monies a statutory trust in the nominee's favour. Section 24(3A) provides that:

(3A) Subject to subsection (3B), sections 16A, 27N and 57C and any regulations made under section 27Q or 57F, all moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of —

- (a) the person or persons nominated under section 25 (1) by the deceased member, if any;
or
- (b) the person or persons determined by the Public Trustee in accordance with section 25 (2) to be entitled thereto,

but shall, without prejudice to the operation of the Estate Duty Act (Cap. 96), be deemed not to form part of the deceased member's estate or to be subject to his debts.

Given the testamentary nature of a CPF nomination and the effect of ss 15(5), 25(1) and 24(3A) of the CPF Act, nominated CPF monies become immediately payable to the nominee upon the death of the nominating member.

20 I turn now to consider s 20(1) of the CPF Act, which counsel for LLH relies heavily upon in support of the argument that the nominated CPF monies do not devolve upon a nominee until the CPF Board's authorisation has been given for the withdrawal of those monies:

Withdrawals

20. —(1) Subject to section 25(3), upon an application for the withdrawal of the sum of money *standing to the credit of a member of the Fund* by a person entitled thereto under section 15, the Board may *authorise the payment* to the applicant of such sum as the member is entitled to withdraw from the Fund and any interest calculated in accordance with section 6 (4) and (4B) up to the date of the authorisation or, if the applicant is a nominee appointed in accordance with section 25 (1), such portion of the sum as he is nominated to receive.

[emphasis added.]

In reliance on s 20(1), counsel for LLH submits that the Official Assignee's failure to make an application to the CPF Board for the withdrawal of the nominated CPF monies before LLH's discharge meant that the monies were *not payable* to LLH, and therefore was not property which devolved upon or was acquired by LLH during her bankruptcy. This argument is unsustainable in the light of the preceding discussion. As stated above (at [15]-[19]) a nomination, having testamentary characteristics, operates upon the death of the nominating member. Section 25(1) of the CPF Act provides that upon the death of a nominating member, nominated CPF monies and designated shares subject to the nomination become payable or transferable out of the CPF to the nominee in his own right.

21 LLH's entitlement to withdraw LLH's nominated CPF monies in my view constitutes property divisible among LLH's creditors within the meaning of s 78(1)(a) read with s 2 of the Bankruptcy Act. An entitlement to withdraw nominated CPF monies also falls within the definition of "property" in s 2 of the Bankruptcy Act, which includes things in action, every description of property and also obligations and every description of interest, whether present or future or vested or contingent, arising out of or incidental to, property. In my view, LLH's entitlement to withdraw LLH's nominated CPF monies also readily falls within s 78(1)(b) of the Bankruptcy Act, because an entitlement to withdraw the nominated CPF monies is a type of "*capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property*" [emphasis added] (see above, at [8]).

22 Thus, the fact that the actual payment out of nominated CPF monies is contingent upon the CPF Board's authorisation of a nominee's application for withdrawal did not detract from its character as property divisible among creditors in bankruptcy for the purposes of ss 78(1) of the Bankruptcy Act. In the present appeal, since LLH's nominated CPF monies became payable to LLH upon Mdm Lim Lye Keow's death on 14 March 2008, LLH's entitlement to withdraw the nominated CPF monies in this case devolved upon LLH on the same date. It therefore fell within the ambit of ss 78(1)(a) and (b) of the Bankruptcy Act.

23 Also, I am of the view that s 20(1) merely lays down a procedural requirement of a prior authorisation from the CPF Board before nominated CPF monies may be withdrawn by persons who have become legally entitled to withdraw from the CPF within the meaning of s 15 of the CPF Act. Section 20(1) does not stipulate any substantive criteria which must be satisfied, failing which an

application for the withdrawal of monies which an applicant had become entitled to withdraw within the meaning of s 15 of the CPF Act would be rejected. A procedural requirement that prior authorisation be obtained cannot alter the nature of a nominee's entitlement to withdraw nominated CPF monies as property divisible among creditors, by operation of ss 78(1)(a) and (b) of the Bankruptcy Act.

24 If there were additional substantive criteria imposed by s 20(1) on the nominee's rights to withdraw nominated CPF monies from the CPF, one would imagine that those criteria would apply with equal force to the transfer of the Singtel discounted shares purchased with CPF monies to nominated recipients. In the case of the Singtel discounted shares, s 26(2) of the CPF Act envisages an outright transfer by the CPF Board to the nominated recipient of the Singtel discounted shares purchased using the deceased's CPF monies, and if that is not feasible, ss 26(3) and (4) envisage that the shares are to be sold and the proceeds therefrom transferred to the nominee, without additional substantive conditions:

Power of Board to distribute and dispose of certain shares on death of member

26. —(1) Upon the death of a member of the Fund who has executed a memorandum under section 25(1), such shares or class of shares in any approved corporation as the Minister may designate belonging to the member at the time of his death which were purchased from moneys withdrawn under this Act shall, notwithstanding any written or other law, vest in the Board and shall not form part of the estate of the deceased member.

(2) The Board shall, as soon as practicable and subject to such terms and conditions as the Board may impose, transfer the shares vested in the Board under subsection (1) to the person or persons nominated by the deceased member to receive in his or their own right such portions of the shares as indicated in the memorandum executed under section 25(1) and the receipt of such person or persons shall be a discharge to the Board in respect of the shares.

(3) Where the Board is for any reason not able to transfer any shares to a person who is entitled to receive them under subsection (2), the Board shall sell those shares in such manner and at such time as may be prescribed.

(4) Where the Board has sold any shares under subsection (3), the Board shall as soon as practicable pay the proceeds of sale of the shares to the person referred to in that subsection, and the receipt by such person of those proceeds shall be a discharge to the Board in respect of the shares.

25 Also, in the light of what was discussed recently in *Singapore Parliamentary Debates, Official Report* (16 August 2010) vol 87 at col 0, there are ample reasons for taking the view that Parliament had intended s 20(1) of the CPF Act to perform no more than a procedural function. Minister for Manpower, Mr Gan Kim Yong stated at the second reading of the Central Provident Fund (Amendment) Bill that:

Madam, we are also refining the disbursement of CPF assets of deceased members. Currently, CPF savings have to be disbursed directly to the nominees upon the death of a member. Some members have requested for their CPF savings to be transferred directly to their nominees' CPF accounts instead so as to help provide for their healthcare and retirement needs. I think this is a sensible request. Therefore, sections 15, 20 and 25 will be amended to offer members this option. This option will become available from 1st January 2011 onwards.

Mr Gan stated that the CPF Board was generally reluctant to hold nominated CPF monies, and aims to expeditiously pay out nominated CPF monies to nominees upon the death of the nominating member (*ibid*):

Madam, the next area of change concerns unclaimed CPF monies. This includes monies of deceased members which have not been claimed by the beneficiaries, which the CPF Board is currently required to hold indefinitely. This is not desirable as the assets should be disbursed to beneficiaries as far as possible.

We are, therefore, amending sections 15 and 20 to allow the CPF Board to automatically disburse a member's CPF monies to his nominees, once it is notified of his demise. CPF Board will no longer need to wait for nominees to apply for the bequeathed monies before they can be disbursed. Nevertheless, some CPF monies may continue to remain unclaimed for various reasons, for example, nominees with incomplete or inaccurate details on record may not be contactable. We will streamline how such CPF monies are managed.

...

In the last five years, the CPF Board has been able to locate and make payment to nominees in 98% of all such cases. 2% of the cases remain outstanding, despite the Board's efforts to locate the nominees and disburse the monies. These include cases when nominees either did not respond to CPF Board letters or could not be located because insufficient or inaccurate information provided by the member on the nomination form, or some nominees might have relocated overseas.

Admittedly, these proposed changes have not yet been brought into effect. However the above statements by Mr Gan suggest that CPF Board authorisations are usually given as a matter of course to nominees entitled to withdraw within the meaning of s 15(5), and that s 20(1) of the CPF Act does not impose further substantive criteria before a nominee may withdraw nominated CPF monies.

26 Whatever the underlying rationale for statutorily requiring an application for CPF Board authorisation to be made, it seems abundantly clear that s 20(1) only provides for the process by which withdrawals are requested by persons qualified to do so pursuant to s 15 of the CPF Act. The Official Assignee's omission to make an application pursuant to s 20(1) of the CPF Act prior to LLH's discharge did not change the nature of LLH's entitlement to withdraw LLH's nominated CPF monies, or prevent it from becoming property divisible among a bankrupt's creditors, since it had been acquired by or devolved upon LLH before LLH's discharge.

Whether the protection afforded by s 24(4) of the CPF Act to a bankrupt's contributions extends to nominated CPF monies

27 I turn now to address another argument relied upon by counsel for LLH in the alternative, in support of the argument that LLH's nominated CPF monies shall not be subject to LLH's debts on her bankruptcy, because under s 24(4) of the CPF Act, "no contribution to the Fund or interest thereon" shall pass to the Official Assignee on bankruptcy. Section 24(4) of CPF Act provides that:

(4) Subject to sections 27N and 57C and any regulations made under section 27Q or 57F, *no contribution to the Fund or interest thereon shall be subject to the debts of the member of the Fund, nor shall the contribution or interest pass to the Official Assignee on the bankruptcy of the member.*

[emphasis added]

Counsel for LLH argues that the phrase “standing to the credit of the member” was used in other provisions such as ss 27(1), 21(1), 22(1) and 32(5) of the CPF Act to distinguish monies standing to the credit of a particular member from monies in the fund generally. Since s 24(4) does not include the words “standing to the credit of a member”, counsel for LLH submits that it ought to be interpreted to include the nominated CPF monies passing to a nominee upon the death of nominating member.

28 However, in my view, this argument should also be rejected. Section 24(4) is intended for the protection of CPF monies standing to the credit of *the bankrupt*, against his *own creditors*. Money standing to the credit of a member is accumulated over time, through contributions to his or her credit. Contributions by employers are mandated by s 7 of the CPF Act, as well as contributions from the employee’s wage if the employee’s remuneration exceeds \$500 per month. Alternatively, they may be made voluntarily under s 13B of the CPF Act. Section 12(2)(a) of the CPF Act states that every contribution paid to the CPF for a member shall be credited to the member by the CPF Board:

Contributions to be paid into Fund

12. —(1) All sums recovered or collected on account of contributions to the Fund under this Act shall be paid into or carried to the Fund in such manner as may be prescribed.

(2) The Board shall cause to be credited to each member of the Fund —

(a) the amount of every contribution paid to the Fund for him;

(b) the interest payable to him under section 6(4); and

(c) any additional interest payable to him under section 6(4B).

Section 2(1) defines a “member” or “member of the fund” to mean:

... *any person to whose credit any amount is standing in the Fund*, or for whom any account in the Fund is maintained for any of the purposes of this Act, and includes a person who contributes to the Fund voluntarily in accordance with section 13B...

[emphasis added]

I am of the view that nominated CPF monies which have passed after the death of a nominating member to a nominee do not fall within the meaning of the word “contribution” which is the subject-matter of the protection conferred by s 24(4). The purpose of the “immunity” conferred by s 24(4) of the CPF Act is to protect *the savings of a member* for his retirement from his creditors: see *Singapore Parliamentary Debates, Official Report* (18 March 1986) vol 47 at col 571, Mr Lee Yock Suan (Acting Minister for Labour). The nominated CPF monies in this case are the CPF contributions by the deceased (and not by LLH), which stood to the credit of the deceased, for the deceased’s retirement. Since the deceased had passed away before those monies were withdrawn by the deceased, the rationale underlying s 24(4) is inapplicable to those monies. There is to my mind no reason why Parliament would have intended the ambit of the protection provided by s 24(4) of the CPF Act to be extended to nominated CPF monies, which are in substance no different from other testamentary gifts which would become divisible among creditors of the nominee in the event of the nominee’s bankruptcy. Thus, I am of the view that LLH’s entitlement to withdraw LLH’s nominated CPF

monies was property divisible among LLH's creditors, since it was property which was acquired by or devolved upon LLH during her bankruptcy.

Whether LLH's nominated CPF monies devolved upon LLH before she was discharged from bankruptcy

29 Finally, counsel for LLH argues that the case of *Chong Chee Keong v Official Assignee* [2005] 3 SLR(R) 546 ("*Chong Chee Keong*"), in which Choo Han Teck J held that a dividend in bankruptcy which was paid to the bankrupt after his discharge from bankruptcy was not divisible among the bankrupt's creditors, should be followed because it is on all fours with the present case. In particular, counsel for LLH relies strongly on the following passage in Choo J's judgment (at [4]):

... the certificate of discharge is a statutory instrument that wipes the slate clean for the bankrupt so that he might carry on with his life afresh, free of past debts and liabilities. *The certificate of discharge is a document that certifies and declares to the world at large that no more debt is owed by the discharged bankrupt. Any residual rights must revert to the discharged bankrupt.* That being the case, any money that comes subsequently into the Official Assignee's hands must be turned over to the discharged bankrupt unless the Official Assignee had expressly reserved that money as a condition to the discharge. [emphasis added]

30 The above paragraph ought to be read in the light of the facts of *Chong Chee Keong*. In that case, the plaintiff was the shareholder and managing director of a company, which was wound up on 13 August 1999 and the Official Receiver was appointed as liquidator. A few months later, on 10 December 1999, the plaintiff was adjudicated bankrupt. On 21 April 2001, the Official Assignee filed a proof of debt of \$682,304.00 against the company in liquidation on the plaintiff's behalf. Subsequently, on 30 June 2003, the plaintiff was discharged by a certificate of discharge issued by the Official Assignee. Thereafter, on 5 July 2004, the Official Receiver declared a dividend of 16.33% in the liquidation of the company. Thus, the plaintiff was entitled to 16.33% of \$682,304.00, which amounted to \$111,420.24. The Official Assignee argued before Choo J that the debt owing from the company to the plaintiff had been the plaintiff's property prior to the commencement of her bankruptcy, and the monies therefore vested in the Official Assignee upon the making of a bankruptcy order. The plaintiff argued that since an unconditional discharge had been given to the plaintiff with the consent of creditors, the Official Assignee could not lay claim to the money after the discharge. Ultimately, Choo J held in favour of the plaintiff on the ground that the money had not been due and payable to the Official Assignee until after the discharge. Choo J appeared to have been particularly influenced by the following in coming to his conclusion (at [4]):

Without that reservation [of right], the Official Assignee can retain the money only if the certificate of discharge is set aside by the court. But that is a separate matter and requires an application to be made by the Official Assignee, and I expect that in the course of such an application, the circumstances in which the plaintiff's creditors had given their consent [to the issuance of the certificate of discharge] among other issues (not presently relevant) might be relevant. *Since the plaintiff is a discharged bankrupt, the burden is not on him to explain the whys and wherefores of his discharge - unless he had been expressly told or knew clearly that the money now due to him has to be disbursed to past creditors.* That is not the case here. *A person in the plaintiff's circumstances could have committed himself financially after learning that money was due to him. That person would be put in an impossible situation if the Official Assignee were entitled, as a principle of law, to the money in such circumstances.*

[emphasis added]

31 I am of the view that *Chong Chee Keong* was decided on the facts of that particular case, and that each case turns on its own facts. In this regard, I refer to the following passage in Ian Fletcher, *The Law of Insolvency* (Sweet & Maxwell, 4th ed, 2009) at para 8-001:

In accordance with the general proposition that the bankruptcy law enables the debtor to be freed from the claims of his creditors in return for giving up substantially the whole of his assets, the proprietary effects of adjudication, broadly speaking, are that the bankrupt will be divested of his property which will automatically become vested in his trustee in bankruptcy upon the latter's appointment... Moreover in the interest of ensuring that full justice is done, the trustee's right to claim the property of the bankrupt is not limited only to such assets as may happen to belong to him or her at the very moment of adjudication, but is capable of extension both backwards and forwards from that moment in time. Conversely, certain items of the bankrupt's property are excluded from the effects of adjudication and remain his in law, whilst, under certain conditions, it is possible for the trustee's title to other assets to undergo curtailment. Thus, the actual extent to which property will become available for realisation and eventual distribution to the creditors in the form of dividends is a matter which will depend on the particular circumstances of each case...

[emphasis added]

It is incumbent on this court to take into account the underlying rationale for the rule that only a bankrupt's property which had been acquired before and during her bankruptcy fall to be divided among her creditors. Unlike *Chong Chee Keong*, the present case concerns monies which had become due and payable to the bankrupt before she was discharged. Furthermore, the reasoning in *Chong Chee Keong*, viz, that it was unfair to allow the Official Assignee to assert its entitlement to the monies after it had granted an unconditional discharge despite having full knowledge that a chose in action worth \$682,304.00 had vested in it during the plaintiff's bankruptcy, is not applicable to the present case. In the present case, the Official Assignee's failure to make the recovery of LLH's nominated CPF monies and division among creditors a condition for discharge stemmed from its ignorance (prior to the discharge) that LLH's nominated CPF monies due to the bankrupt existed and had been vested in it. Apparently, the Official Assignee failed to receive the letter dated 18 September 2008 and the email dated 26 June 2009 from the CPF Board informing it of LLH's nominated CPF monies. How that could have happened is not clear to me.

32 I also note that counsel for LLH has overstated her case by citing *Chong Chee Keong* for the proposition that upon the grant of an unconditional discharge, all the assets which have vested in the Official Assignee during the bankruptcy would re-vest in the discharged bankrupt, for the following reasons. There is nothing in the Bankruptcy Act to the effect that property which has vested in the Official Assignee during the bankruptcy would re-vest in the bankrupt upon a discharge. In fact, ss 127 and 128 of the Bankruptcy Act contemplate a continuation of the role of the Official Assignee in collecting assets which have vested in it upon the making of a bankruptcy order and assets which have been acquired by or devolved upon the bankrupt during her bankruptcy for distribution to creditors who have proved their debts in the bankrupt's bankruptcy (see above at [\[9\]](#)).

Conclusion

33 In the light of the foregoing, LLH's appeal is dismissed. However, given that this case would not have arisen but for the delay on the part of the Official Assignee, I make no order as to costs.

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