

Lee Chee Wei v Tan Hor Peow Victor
[2011] SGHC 175

Case Number : Bankruptcy No 36 of 2011 (Registrar's Appeal No 168 of 2011)
Decision Date : 22 July 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Chia Tze Yung Justin and Jasmin Kaur Saini (Harry Elias Partnership LLP) for the plaintiff; Ng Lip Chih (NLC Law Asia LLP) for the defendant.
Parties : Lee Chee Wei — Tan Hor Peow Victor

Insolvency Law – Bankruptcy

22 July 2011

Judgment reserved.

Choo Han Teck J:

1 The plaintiff, a judgment creditor of the defendant, failed to effect service of bankruptcy process on the latter. The process of service began on 11 January 2011 when the plaintiff served the bankruptcy papers at the defendant's last known residence at 82 Jalan Angin Laut. The defendant's brother said to the process server that the defendant was not in. Another attempt was made on 16 January 2011. This time the defendant's brother said that the defendant no longer lived there.

2 Thus, on 18 January 2011, the plaintiff's solicitors applied for substituted service by advertising in the Straits Times and exhibiting a sealed copy of the order of court on the Notice Board of the High Court. On the previous day, the defendant's brother, Michael Tan, sent a letter to inform the plaintiff's solicitors that the defendant now works in China.

3 On 19 January 2011 the plaintiff's solicitors were directed to effect substituted service by post instead of advertisement. This order was affirmed on 24 January 2011 when Michael Tan's letter was brought to the court's attention. On 31 January 2011 the court order that substituted service be effected by posting the bankruptcy papers on the front door of the defendant's address at 82 Jalan Angin Laut was extracted and service was effected accordingly on 2 February 2011.

4 On 30 May 2011 the defendant applied to set aside the service of process. This application was dismissed by AR Nathaniel Khng ("AR Khng"). The defendant appealed before me to set aside AR Khng's dismissal of his application and that the bankruptcy application be set aside.

5 Mr Ng Lip Chih ("Mr Ng"), counsel for the defendant submitted that the house at Jalan Angin Laut belonged to Michael Tan and the plaintiff knew that the defendant was now living in China, and that the order by AR Khng was wrong for thinking that substituted service at 82 Jalan Angin Laut was the proper order to make. Mr Ng argued that the plaintiff had not taken reasonable steps to determine whether the defendant was in fact living in China, and had instead proceeded in the belief that the defendant was still residing in Singapore. Mr Ng relied on rule 111 of the Bankruptcy Rules (Cap 20, R1, 2006 Rev Ed) ("rule 111") which provides as follows—

- (1) If the court is satisfied by affidavit or other evidence on oath that prompt personal service cannot be effected because the debtor is keeping out of the way to avoid service of a

creditor's bankruptcy application, or for any other cause, the court may order substituted service to be effected in such manner as it thinks fit.

- (2) If the debtor is not in Singapore, the court may order service to be made within such time and in such manner and form as it thinks fit.
- (3) Where an order for substituted service has been carried out, the bankruptcy application shall be deemed to have been duly served on the debtor

6 Mr Ng relied on the authority of *Re Peh Kong Wan, ex p United Malayan Banking Corp Bhd* [1992] 2 MLJ 292 ("*Re Peh Kong Wan*") in which VC George J commented that it was pointless to have ordered that there be a posting of the legal process on the front door of a debtor's home if it was known that the debtor no longer lived there. *Re Peh Kong Wan* was not laying down any general rule that would detract from the court's powers under rule 111. In *Re Peh Kong Wan's* case, the judgment creditor attempted to enforce its judgment debt almost 12 years after it obtained judgment. An order for substituted service was granted but on appeal, VC George J cautioned against such an order when no reasons were given as to what basis the judgment creditor had for supposing that the debtor was still in Malaysia when the evidence showed that he was likely to be in Jakarta.

7 I agree with VC George J that bankruptcy imposes a change of status with severe consequences on the bankrupt and that the courts must be strict in ensuring that the procedural steps are complied with. Rule 111 (2) provides the court with very broad discretionary powers in respect of the service of process on a debtor who is not in Singapore. In this present case, it appears that the defendant may not be in Singapore. This meant that the caution expressed by VC George J must constantly be held in mind, but just because a debtor is known to be out of jurisdiction does not mean an order for substituted service in Singapore cannot be effected. The difference between *Re Peh Kong Wan* and this case is threefold.

8 First, in this case, there was sufficient evidence that justified a conclusion that the defendant was evading service. There was evidence that he attempted to convince the plaintiff that he was in Brazil, and then, subsequently, in China. Secondly, there was evidence before AR Khng that indicated that the defendant was still in touch with his brother Michael Tan who lives in 82 Jalan Angin Laut. AR Khng was justified in dismissing the defendant's application because anyone would reasonably have concluded that in the circumstances of this case a bankruptcy notice against the defendant posted on the door of the 82 Jalan Angin Laut house would have been swiftly brought to the defendant's attention. Thirdly, the plaintiff sought to enforce his judgment debt expeditiously.

9 The defendant's appeal is therefore dismissed.

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