

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 263

Originating Summons (Bankruptcy) No 31 of 2020 (Registrar's Appeal
No 279 of 2020)

Between

Lakshmanan Shanmuganathan
(alias L Shanmuganathan)

... Plaintiff

And

- (1) L Manimuthu
- (2) L Vengatesan
- (3) L Siva Subramanian
- (4) L Mohanasundram

... Defendants

EX TEMPORE JUDGMENT

[Insolvency Law] — [Bankruptcy] — [Statutory demand]

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Lakshmanan Shanmuganathan (alias L Shanmuganathan)

v

L Manimuthu and others

[2020] SGHC 263

High Court — Originating Summons (Bankruptcy) No 31 of 2020 (Registrar's Appeal No 279 of 2020)

Tan Siong Thye J

1 December 2020

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Tan Siong Thye J:

Introduction

1 The plaintiff, Lakshmanan Shanmuganathan, and the defendants, L Manimuthu, L Vengatesan, L Siva Subramanian and L Mohanasundram, are brothers. On 3 March 2020, the plaintiff filed an application for the court to set aside a statutory demand dated 14 February 2020 issued by the defendants to the plaintiff (“the SD”). On 11 November 2020, the learned assistant registrar Navin Anand (“AR Anand”) dismissed the plaintiff’s application. On 12 November 2020, the plaintiff filed a notice of appeal against AR Anand’s decision.

Brief background facts

2 The background facts leading up to the plaintiff’s application to set aside the SD are pertinent to appreciating the arguments made by the parties. Therefore, I shall set out the relevant facts in brief.

The Compromise Agreement

3 The parties’ late father owned, *inter alia*, several properties in India as well as a moneylending business and a share in a property in Singapore. After their late father’s death, the parties reached a compromise agreement (“the Compromise Agreement”), which was executed on 29 December 2010.¹ The relevant terms of the Compromise Agreement were as follows:²

(a) Seven out of the 27 properties in India would be allocated to the plaintiff, while the rest were allocated to the defendants. Specific valuations were attributed to each of the 27 properties.

(b) The share in the property in Singapore would be sold. The plaintiff would keep 20% of the sale proceeds whereas the remaining 80% would be paid by the plaintiff to the defendants.

(c) The plaintiff was to pay to each of the defendants the sum of \$262,500, amounting to \$1,050,000 in total within 12 months following the execution of the Compromise Agreement.

¹ Affidavit of L Vengatesan, filed on 24 March 2020 (“LV”), at paras 6–8.

² LV, at paras 9–13; Affidavit of L Shanmuganathan, filed on 21 October 2020 (“LS2”), at paras 12–14.

4 Subsequently, the share in the property in Singapore was sold and the total sale proceeds amounted to slightly less than \$100,000, which was held by the plaintiff. The plaintiff also failed to pay the sum of \$1,050,000 to the defendants.³

The court proceedings on the Compromise Agreement

5 In 2012, the defendants commenced an action in the Singapore High Court against the plaintiff to claim for the sum of \$1,050,000 and their share of the sale proceeds of the share in the property in Singapore. The plaintiff resisted the defendants' claim and instituted a counterclaim. On 25 May 2016, the High Court found that the Compromise Agreement was valid and allowed the defendants' claim, ordering the plaintiff to pay to the defendants the sum of \$1,050,000 and 80% of the sale proceeds of the share in the Singapore property as claimed, as well as interest of 5.33% *per annum* from 25 May 2012 ("the Judgment Sum") (see *L Manimuthu and others v L Shanmuganathan* [2016] 5 SLR 719 at [31]). The High Court also allowed the plaintiff's counterclaim, ordering the defendants to transfer to the plaintiff six out of the seven properties allocated under the Compromise Agreement ("the Six Properties"). For the remaining property that had been sold by the defendants ("the Seventh Property"), the High Court ordered the defendants to return to the plaintiff the relevant documents and the sale proceeds amounting to \$10,000. On appeal, the Court of Appeal upheld the High Court's decision.⁴

6 Following the High Court's decision, the defendants provided the plaintiff with the documentation regarding the sale of the Seventh Property. The

³ LV, at para 14.

⁴ LV, at paras 15–18; LS, at paras 21 and 27.

defendants also offered to transfer the Six Properties to the plaintiff as well as pay the plaintiff the sale proceeds of the Seventh Property amounting to \$10,000. The defendants also demanded that the plaintiff pay them the Judgment Sum, which amounted to more than \$2m because of the accumulated interest accrued. However, the plaintiff failed to do so.⁵

The First SD

7 As a result, the defendants served a statutory demand on the plaintiff (“the First SD”) on 23 May 2018 in respect of the Judgment Sum. On 6 September 2018, the defendants subsequently commenced bankruptcy proceedings against the plaintiff. On 12 November 2018 the plaintiff applied in HC/B 2074/2018 to set aside the First SD on three main grounds:⁶

- (a) the defendants had failed to disclose in the First SD the Six Properties, which they held in their names or in their parents’ names;
- (b) the defendants failed to disclose in the First SD that they had been ordered by the High Court to pay to the plaintiff the sale proceeds of the Seventh Property; and
- (c) the Six Properties that had been allocated to the plaintiff were valued at more than \$2m, therefore, the plaintiff could not be said to be indebted to the defendants.

8 On 4 January 2019, the learned assistant registrar Wong Baochen (“AR Wong”) granted the plaintiff’s application to set aside the First SD.

⁵ LV, at paras 19–20.

⁶ LV, at paras 21–22.

AR Wong found that the defendants had failed to disclose that they held certain assets belonging to the plaintiff, including the Six Properties and the sale proceeds of the Seventh Property. Furthermore, the plaintiff had raised a triable issue that the Six Properties were worth more than \$2m such that he could rely on this to assert that he had a valid counterclaim exceeding the amount specified in the First SD. On 17 October 2019, I dismissed the defendants' appeal against AR Wong's decision.⁷

The present SD

9 On 14 February 2020, the defendants served on the plaintiff a fresh SD in respect of the Judgment Sum which is the subject matter of the present application.⁸ On 3 March 2020, the plaintiff applied to set aside the SD. The basis for the plaintiff's application included: (a) issue estoppel arose such that the value ascribed to the Six Properties should be the current value and not the value reflected in the Compromise Agreement; (b) the defendants failed to comply with r 94(5) of the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed) ("the Bankruptcy Rules") by failing to disclose the current value of the Six Properties and the fact that the Indian court had declared the plaintiff entitled to one-fifth of their late father's estate; and (c) the plaintiff had a valid counterclaim against the defendants by virtue of his entitlement to the Six Properties.

10 On 11 November 2020, AR Anand dismissed the plaintiff's application. I shall now consider the plaintiff's appeal against AR Anand's decision.

⁷ LV, at paras 22–23; LS2, at paras 32–33.

⁸ LV, at para 24.

My decision

The issues

- 11 The following issues arise for determination:
- (a) Whether issue estoppel applies such that the value to be ascribed to the Six Properties for the purpose of the SD should be their current value rather than the value reflected in the Compromise Agreement.
 - (b) Whether the defendants failed to comply with r 94(5) of the Bankruptcy Rules because the SD was based on the value of the Six Properties reflected in the Compromise Agreement and/or the SD failed to disclose a judgment of the Indian court dated 9 April 2018.
 - (c) Whether the plaintiff has a valid counterclaim which exceeds or is equivalent to the debt specified in the SD.

Whether issue estoppel arises

12 The first issue is whether issue estoppel arises regarding the value to be ascribed to the Six Properties for the purposes of the SD. The plaintiff relies on the decision of AR Wong to submit that this issue had already been determined by the court. In delivering oral judgment, AR Wong had held as follows:⁹

... Further, the [plaintiff] has adduced evidence that these assets have been valued, as at June 2018, at around S\$2,250,000. The [defendants] however dispute the valuation on the basis that the value of the assets had already been agreed to by the parties previously. *In my view, the [plaintiff] is also entitled to rely on an actual valuation of the properties for the purpose of asserting that he has a valid counterclaim, set-off or cross demand which is equivalent to or exceeds the*

⁹ Affidavit of L Shanmuganathan, filed on 3 March 2020 (“LS1”), at p 56.

amount of the debts specified in the Statutory Demand, pursuant to r 98(2)(a) BR, under which all that the [plaintiff] needs to show is a triable issue. ... [emphasis added]

13 It is trite that in order for issue estoppel to arise, the following requirements must be satisfied (see *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 at [165], citing *Lee Tat Development Pte Ltd v MCST Plan No 301* [2005] 3 SLR(R) 157 at [14]–[15]):

- (a) there must be a final and conclusive judgment on the merits of the issue which is said to be the subject of an estoppel;
- (b) that judgment must be by a court of competent jurisdiction;
- (c) the parties in the two actions that are being compared must be identical; and
- (d) there must be identity of subject matter in those two actions.

14 In relation to the final requirement at [13(d)] above, it was explained by Sundaresh Menon JC (as he then was) in *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 at [34] that “the issues must be identical in the sense that the prior decision must traverse the same ground as the subsequent proceeding”.

15 Having regard to these principles, I do not find that the passage from AR Wong’s decision supports the plaintiff’s argument that issue estoppel arises in this case. This is for two reasons. First, there is no identity between AR Wong’s decision in the passage cited above and the present issue regarding which valuation the defendants should have stated in the SD. It is clear from the passage cited above that although AR Wong was considering the actual valuation of the Six Properties produced by the plaintiff, she was doing so in

relation to the issue of *whether the plaintiff could assert that he had a valid counterclaim*. It was not in relation to the defendants' failure to disclose relevant information. On that issue, AR Wong only held that it was "apparent on the face of the [First SD] that the [defendants] have not disclosed that they hold certain assets on the [plaintiff's] behalf".¹⁰ AR Wong made no finding in relation to whether, in disclosing their holding of the Six Properties, the defendants should have referred to the Six Properties' actual value or the value reflected in the Compromise Agreement. Thus, the issue in the present case and the issue addressed in AR Wong's decision are not identical, and no issue estoppel arises.

16 Secondly, even if there are identical issues, issue estoppel does not arise because the relevant decision to consider is *this court's* decision on the First SD, in which there was no consideration of whether the First SD should be set aside for failing to state the actual valuation of the Six Properties. In this regard, I agree with AR Anand's decision below. As AR Anand observed, an appeal from an assistant registrar to a judge in chambers is "by way of an actual rehearing of the application and the judge treats the matter afresh as though it came before him the first time" (see *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] 2 SLR(R) 685 at [12]). Thus, the relevant decision for the purposes of considering whether issue estoppel arises is this court's decision on the First SD. However, in that decision, there was no consideration, much less any decision, on whether the First SD should be set aside for failing to state the actual valuation of the Six Properties. It would be useful to set out my decision for the dismissal of the defendants' appeal against AR Wong's decision in respect of the First SD:¹¹

¹⁰ LS1, at p 56.

¹¹ LS1, at p 81.

... [I]n relation to this appeal, I'm [of] the view that the statutory demand is defective as indicated by the AR, and that there's ... non-compliance [with] [r] 94 of the Bankruptcy Rule[s]. So accordingly, I am going to disallow this appeal ...

17 By way of background, in addition to AR Wong's observations regarding the plaintiff's counterclaim, she had also found that the First SD should be set aside on the basis of the defendants' failure to disclose the fact that they held certain assets (*ie*, the Six Properties) on the plaintiff's behalf. This was also not disputed by the defendants' counsel. It is clear from my decision cited above that I decided the appeal on this ground of non-disclosure.¹² There was no mention of which valuation of the Six Properties should have been reflected on the First SD. Indeed, the plaintiff himself acknowledges that in upholding the setting aside of the First SD on the ground that the Six Properties had not been disclosed, there was "no need" for the court to deal with the value of the Six Properties.¹³

18 For these reasons, I reject the plaintiff's submission that issue estoppel arises regarding whether the value of the Six Properties should be their actual value or the value reflected in the Compromise Agreement.

Whether the defendants complied with the Bankruptcy Rules

19 I turn now to the next issue of whether the SD should be set aside on the basis of non-compliance with r 94(5) of the Bankruptcy Rules. Rule 98(2)(c) of the Bankruptcy Rules provides that the court shall set aside a statutory demand if it appears that the creditor holds assets of the debtor or security in respect of

¹² DWS, at paras 4 and 44.

¹³ Plaintiff's Written Submissions ("PWS"), at para 33.

the debt claimed by the demand and the creditor fails to disclose them as required under r 94(5) of the Bankruptcy Rules. Rule 94(5) states as follows:

(5) If the creditor holds any property of the debtor or any security for the debt, there shall be specified in the demand –

(a) the full amount of the debt; and

(b) the nature and value of the security or the assets.

20 The plaintiff makes two submissions in relation to this point. First, that the defendants failed to specify in the SD the value of the Six Properties as they used the value of the Six Properties reflected in the Compromise Agreement rather than their actual value. Secondly, the defendants failed to disclose that they hold the plaintiff's one-fifth share of the estate of their late parents, as was declared by the Indian court. I shall address each of these submissions in turn.

The value of the Six Properties

21 I find that in relation to the value of the Six Properties, the SD was compliant with r 94(5) of the Bankruptcy Rules.

22 In *Ramesh Mohandas Nagrani v United Overseas Bank Ltd* [2016] 1 SLR 174, Chua Lee Ming JC (as he then was) held at [29] as follows:

Rule 94(6) is clear – the value of the security or property is to be deducted from the full amount of the debt and only the balance can be claimed in the statutory demand. It stands to reason that the expression 'property of the debtor' in r 94(5) means property of the debtor that the creditor is entitled to apply towards payment of the debt, since he is required by r 94(6) to deduct the value of the property from the total amount of the debt and is only entitled to claim the balance. ...

23 In his decision, Chua JC dealt with the *property* which a creditor must disclose in a statutory demand, reasoning that such property must be property that the creditor is entitled to apply towards payment of the debt. By extension

from Chua JC’s reasoning, the *value* of such property must also be that which the creditor is entitled to deduct from the debt claimed in a statutory demand. However, in the present case, the defendants would *not be entitled* to apply the *actual* value of the Six Properties towards the payment of the Judgment Sum. That is because there is a court order requiring the defendants to transfer to the plaintiff the Six Properties (see [5] above). If the defendants sold the Six Properties, they would be in breach of the court order. In other words, they would not be entitled to apply these sums towards the payment of the Judgment Sum.¹⁴ Therefore, the defendants were not in breach of r 94(5) of the Bankruptcy Rules by failing to indicate the actual valuation of the Six Properties in these circumstances.

24 In contrast, the defendants made clear that the properties indicated in the SD were:¹⁵

Properties held by the [defendants] belonging to the [plaintiff] pursuant to the Compromise Agreement dated 29 December 2010, which ought to be transferred to the [plaintiff] pursuant to the Court’s Order on 25 May 2016 ... The [defendants] have offered to transfer these properties to the [plaintiff]. The values of the properties given below are based on the amount stated in the [C]ompromise [A]greement entered into by the [defendants] and the [plaintiff] on the 29 December 2010 ...

25 Hence, the defendants’ use of the value of the Six Properties reflected in the Compromise Agreement was reasonable and justified. Being unable to deduct the actual value of the Six Properties, they were left only with the value of the Six Properties as agreed by the parties under the Compromise Agreement.

¹⁴ DWS, at paras 48–49.

¹⁵ LS1, at p 23.

The decision of the Indian court

26 In relation to the decision of the Indian court, I also find that there was no breach of r 94(5) of the Bankruptcy Rules because there was no need to disclose the Indian court’s decision in the first place. By way of background, upon the plaintiff’s application, the Indian court had declared that the plaintiff and the defendants “are entitled to get the 1/5th share each in the suit property”, such property being the estate of the parties’ late parents.¹⁶ However, as AR Anand observed, the Indian court’s decision merely declared each party’s entitlement in respect of the estate; it did not deal with the liabilities between the parties *inter se*. Accordingly, there was no reason for the defendants to disclose the Indian court’s decision in the SD.

Whether the plaintiff has a valid counterclaim

27 I turn now to the final issue of whether the plaintiff has a valid counterclaim by virtue of the fact that the defendants are legally obligated to transfer to him the Six Properties and the sale proceeds of the Seventh Property. Again, I agree with the observations of AR Anand in his reasoning below and find that the plaintiff does not have a *bona fide* and valid counterclaim.

28 In this regard, r 98(2)(a) of the Bankruptcy Rules provides as follows:

(2) The court shall set aside the statutory demand if –

(a) the debtor appears to have a valid counterclaim, set-off or cross demand which is equivalent to or exceeds the amount of the debt or debts specified in the statutory demand;

¹⁶ LS1, at paras 33–35; p 130.

29 In *Goh Chin Soon v Oversea-Chinese Banking Corporation Limited* [2001] SGHC 17, Lee Seiu Kin JC (as he then was) observed at [7] that:

... Rule 98(2)(a) provides that the court shall set aside the SD if the debtor appears to have a *valid* counterclaim, set-off or cross demand which exceeds the amount of the debts in the SD. The word ‘valid’ is placed there for good reason. **It requires the court to examine the alleged counterclaim, set-off or cross demand to see if the debtor has a *bona fide* claim** against the creditor that, if successful, would enable him to pay the debt the subject of the statutory demand. If all that rule 98(2)(a) requires were the mere existence of such a claim, no matter how spurious, then it will be only too easy for a debtor to make such a claim in order to stave off bankruptcy proceedings. ... [emphasis in italics in original, emphasis added in bold]

30 I concur with AR Anand that the plaintiff’s counterclaim in this case is not a *bona fide* one. Even after several years since the High Court’s decision (upheld by the Court of Appeal) allowing the plaintiff’s counterclaim for the Six Properties and the sale proceeds of the Seventh Property (see [5] above), the Six Properties still remain with the defendants. This is not due to any fault of the defendants. Instead, it appears that the plaintiff is the one responsible for such delay. The defendants sent the plaintiff several solicitors’ letters between 20 June 2016 and 5 July 2016 offering to transfer to the plaintiff the Six Properties. The defendants also sought legal advice on the transfer of the Six Properties (which are located in India), conveying such legal advice to the plaintiff as well.¹⁷ However, it appears that the plaintiff was non-responsive and did not take any steps to effect the transfer of the Six Properties and the sale proceeds of the Seventh Property. In the plaintiff’s affidavit filed in the present proceedings, he merely asserted that such matters “are entirely irrelevant” and that he “dispute[d] the [defendants’] distorted portrayal of the true facts”.¹⁸

¹⁷ LV, at para 20; pp 34–40.

¹⁸ LS2, at para 28.

However, he did not produce any evidence or explanation to support this assertion.

31 I shall deal briefly with the plaintiff’s submission on appeal that AR Anand had relied on “extraneous matters” which concerned failed negotiations between the parties and which had been the subject of an application by the plaintiff to expunge certain paragraphs and pages from the affidavit filed on behalf of the defendants.¹⁹ With respect, this submission is wholly unmeritorious. The plaintiff’s application for portions of the second defendant’s affidavit to be expunged was heard by the learned assistant registrar Chan Lay Koon Jean (“AR Chan”), who allowed the plaintiff’s application *in part*. While she ordered paragraphs 23 and 24 as well as pages 42–125 of the second defendant’s affidavit to be expunged, she dismissed the plaintiff’s application in relation to paragraph 20 and pages 34–41 of the second defendant’s affidavit.²⁰ AR Chan found that the contents of paragraph 20 and pages 34–41 concerned how the High Court’s decision on the Compromise Agreement could be given effect, rather than discussions between the parties to compromise their position. It is clear that in AR Anand’s decision he did not refer to those portions of the second defendant’s affidavit which had been expunged. Instead, he relied on those portions that AR Chan had declined to expunge, as I have in my analysis above.

32 In these circumstances, I find that the plaintiff’s counterclaim is not a *bona fide* one. Pursuant to the High Court’s decision on the Compromise Agreement, the defendants are liable to transfer the Six Properties to the plaintiff

¹⁹ PWS, at paras 20, 87–88.

²⁰ NEs, 16 September 2020, at p 2, line 29 to p 3, line 5; p 3, line 32 to p 4, line 2.

and the plaintiff can seek enforcement of the same.²¹ However, it is telling that even after about four years since the High Court's decision, the plaintiff has not taken steps to enforce such judgment. If he genuinely intended to enforce his counterclaim in respect of the Six Properties and the sale proceeds of the Seventh Property, he would have done so well before the present proceedings. His inaction and lack of responsiveness to the defendants' attempts to transfer to him the Six Properties suggest to me that he does not genuinely intend to pursue this counterclaim. If the Six Properties are worth more than the debt owing by the plaintiff to the defendants, the plaintiff would have been proactive and enthusiastic in facilitating the transfer of the Six Properties to his name. For this reason, I find that the plaintiff does not have a valid *bona fide* counterclaim against the defendants in respect of the debt claimed in the SD.

33 For completeness, given that the plaintiff appears to be relying on all the grounds in r 98(2) of the Bankruptcy Rules except r 98(2)(d) to set aside the SD,²² I find that none of the other grounds for setting aside a statutory demand are applicable in this case.

Summary of findings

34 In summary, I make the following findings:

(a) Issue estoppel does not arise regarding whether the value of the Six Properties reflected in the SD should be their actual value or the value reflected in the Compromise Agreement. This specific issue was not addressed by AR Wong in her decision regarding the First SD.

²¹ PWS, at para 82.

²² PWS, at paras 25 and 49.

Furthermore, the relevant decision to consider for the purposes of issue estoppel is this court's decision on the First SD. In that decision, there was no consideration, much less any finding, regarding whether the First SD should be set aside for failing to state the actual valuation of the Six Properties.

(b) The SD in this case served by the defendants complied with r 94(5) of the Bankruptcy Rules. In relation to the valuation of the Six Properties, the defendants did not need to indicate the actual value of the Six Properties because they could not apply such amounts to the payment of the Judgment Sum claimed in the SD. If they had sold the Six Properties and attempted to apply the sale proceeds of the Six Properties towards the payment of the Judgment Sum, they would have been in contempt of the court order made in relation to the Compromise Agreement. Hence, the defendants' use of the value of the Six Properties reflected in the Compromise Agreement was reasonable and justified. In relation to the Indian court's decision, there was also no need for the defendants to disclose this in the SD as the Indian court's decision merely declared each party's entitlement and did not deal with the liabilities between the parties *inter se*.

(c) The plaintiff does not have a genuine and valid counterclaim against the defendants because his purported counterclaim is not a *bona fide* one. This is evident from the plaintiff's inaction and lack of responsiveness to the defendants' many attempts to transfer the Six Properties to him. Thus, the Six Properties continue to remain with the defendants even up till today.

(d) None of the other grounds in r 98(2) of the Bankruptcy Rules for setting aside a statutory demand are applicable in this case.

Conclusion

35 For the above reasons, I dismiss the plaintiff's appeal. I shall now hear the parties on costs.

Tan Siong Thye
Judge

A Rajandran (A Rajandran) (instructed) and Naidu Mohan Das
(Mohan Das Naidu & Partners) for the plaintiff;
Palaniappan Sundararaj (K&L Gates Straits Law LLC) for the
defendants.
