Chong Chee Keong v Official Assignee
[2005] SGHC 119

Case Number : OS 38/2005

Decision Date : 06 July 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Mohan Singh and Jorita Koh (K K Yap and Partners) for the plaintiff; Kamala Ponnampalam (Assistant Official Assignee) for the defendant

Parties : Chong Chee Keong — Official Assignee

Insolvency Law – Bankruptcy – Discharge – Official Assignee filing proof of debt on bankrupt's behalf against company in liquidation – Dividend from liquidated company declared in favour of bankrupt after bankrupt discharged from bankruptcy – Whether Official Assignee entitled to dividend to pay bankrupt's creditors

6 July 2005 *Judgment reserved.*

Choo Han Teck J:

1 The plaintiff is 73 years old. He was a shareholder and managing director of a company called Lip Sin Construction Pte Ltd, a company incorporated in 1972. Its main business was to provide engineering and construction services. It was wound up on 13 August 1999 and the Official Receiver was appointed the Liquidator of its assets in liquidation. A few months later, on 10 December 1999, the plaintiff was himself adjudicated a bankrupt on a petition by OCBC Finance Ltd ("OCBC"). OCBC filed a proof of debt of $79,157.58. Another creditor, Lonpac Insurance Bhd ("Lonpac"), filed a claim for $23,170.17, making the total sum claimed $102,327.75. The Official Assignee, in turn, filed a proof of debt of $682,304.00 on 21 April 2001, on the plaintiff's behalf against the company in liquidation. Nothing further of significance occurred until 30 June 2003 when the plaintiff received a letter from the Official Assignee stating that pursuant to s 125 of the Bankruptcy Act (Cap 20, 2000 Rev Ed), the Official Assignee had discharged the plaintiff from his bankruptcy on 30 June 2003. The certificate of discharge was given together with the letter of 30 June 2003. It should be noted that the plaintiff's debts were not paid in full but his creditors did not oppose his discharge. They agreed, however, to accept, and did receive, the costs of the bankruptcy petition, as well as dividends of 0.42%.

2 On 5 July 2004, the Official Receiver wrote to inform the plaintiff that a dividend of 16.33% was declared in the liquidation of the company, and a sum of $111,420.24 was due to the plaintiff, being his entitlement. This was confirmed by another letter dated 30 July 2004. On 10 August 2004, the Official Assignee was of the view that the money vested in the Official Assignee and would be used to pay the plaintiff's creditors, and thus asked that the Official Receiver to pay the sum of $111,420.24 to him instead for the stated purpose. Consequently, the plaintiff instituted this Originating Summons for a declaration that the money should be paid over to him. The Official Assignee disputed the claim on the said basis that the whole of the plaintiff's property and assets had been vested in the Official Assignee upon the bankruptcy of the plaintiff. The Official Assignee submitted that:

> The subsequent payment on the claim by [the company] is but merely the realization of this claim ie. the conversion of this asset into cash. This claim is clearly not property acquired [or] devolved on the plaintiff after his discharge.

To sustain this argument, the Official Assignee relied on the definition of "property" in s 2(1) of the Bankruptcy Act, which defines "property" as follows:

> "property" 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;

Counsel for the Official Assignee submitted that the phrase, "things in action" meant "chose-in-action", and that denoted a right to claim property. These statements are accurate and correct, but the issue was a narrower one and it was whether the Official Assignee was still entitled to money claimed during bankruptcy (when the chose-in-action vested with him), but only due after the certificate of discharge had been given. The Official Assignee took the view that the money due, if traced, would lead back to the time when the right to claim it against the company was vested with him (the Official Assignee), and he had already lodged the proof of debt as holder of that chose-in-action at that material time. Consequently, it was argued that the money must be paid over to him.

3 Mr Mohan Singh, counsel for the plaintiff, submitted that the certificate of discharge was granted unconditionally, and as such, the Official Assignee could not now lay claim to money due after the certificate had been issued. I find, however, that although the certificate of discharge was a plainly but clearly worded document of discharge, and nothing more was stated there, the certificate was not, in fact, issued unconditionally. In the covering letter of the same date, the Official Assignee stated:

> Please be informed that a discharge by certificate will not release you from debts:
>
> (i) due to the government e.g. Comptroller of Income Tax, Central Provident Fund Board;
>
> (ii) arising from personal injuries caused to a person; and
>
> (iii) arising from any order made in proceedings under the Women's Charter relating to family matters.

In the circumstances, the money in question was not due to the Official Assignee even if he was deemed to be representing the "government" in the same way that the Comptroller of Income Tax was in the Official Assignee's letter above. The money was merely being claimed by the latter, but was, in the context of the Official Assignee's stand in this matter, clearly due to other creditors. The omission of any express reservation of rights to such money was obvious, and, in my opinion, crucial. The money was claimed by the Official Assignee exercising a right (the said chose-in-action) that hitherto belonged to the plaintiff, for the benefit of the plaintiff as well as the creditors of the plaintiff. The creditors had given their consent to the issuance of the certificate of discharge, and there was no evidence that that was done subject to a reservation of their right to any money that might be due after the certificate was granted.

4 A preservation of that right is important because 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. The letter from the Official

Assignee that accompanied the certificate of discharge expressly laid down certain conditions. A reservation of right to the money in question was not one of them. Without that reservation, 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 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.

5 The plaintiff's claim is therefore allowed and there will be an order in terms of prayers 1 and 2. I shall hear the question of costs at a later date if parties are unable to agree on costs.