IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 254

Bankruptcy No 2376 of 2015
Registrar's Appeal No 235 of 2016

In the matter of the Bankruptcy Act (Cap 20, 2009 Rev Ed)

And

In the matter of Ling Lee Soon

Between

Lembaga Tabung Angkatan Tentera (Malaysia)

… *Plaintiff/Appellant*

And

Ling Lee Soon

… *Defendant/Respondent*

GROUNDS OF DECISION

[Insolvency law] – [Bankruptcy] – [Annulment of bankruptcy order]

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v
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Woo Bih Li J
25 July; 29 August; 5 October 2016

16 November 2016

Woo Bih Li J:

Introduction

1 The Plaintiff is Lembaga Tabung Angkatan Tentera (Malaysia) ("LTAT"). It is also known as the Armed Forces Fund Board of Malaysia. LTAT commenced bankruptcy proceedings in Singapore against the Defendant Ling Lee Soon ("Ling"), a Malaysian citizen, who contested the proceedings.

Background

The Malaysian Proceedings

2 LTAT obtained a judgment against Ling on 18 August 2014 in the High Court of Malaya at Kuala Lumpur, Malaysia (the "Malaysian Judgment"). The Malayan High Court ordered Ling to pay LTAT the following sums:

(a) RM 55,000,000;

(b) interest on RM 55,000,000 at the rate of 5% per annum from 18 August 2014 until the date of full payment; and

(c) costs of RM 150,000.

3 On 22 April 2015, LTAT commenced Originating Summons No 358 of 2015 ("OS 358") in the High Court of the Republic of Singapore ("the Singapore High Court") to register the Malaysian Judgment in Singapore under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed).

4 On 14 May 2015, the Singapore High Court ordered the Malaysian Judgment to be registered as a judgment of the Singapore High Court ("the Singapore Judgment") in OS 358.

5 On 30 June 2015, an Assistant Registrar ("AR") of the Singapore High Court granted an order allowing LTAT to serve the Singapore Judgment and other related papers ("the OS 358 Documents") on Ling by posting the OS 358 Documents on the front door/gate of an apartment known as 61 Grange Road,

Beverly Hill, #03-03, Singapore 249570 ("#03-03"). This was an apartment in a condominium known as Grange Road Residence. That apartment was the last known address of Ling in Singapore.

6 On 3 July 2015, Haron bin Salim ("Haron"), the appointed process server of Morgan Lewis Stamford LLC ("MLS") who were and are the Singapore solicitors of LTAT, served the OS 358 Documents on Ling by posting them on the front door/gate of #03-03.

The statutory demand

7 On 13 July 2015, Robert Wang & Woo LLP ("RWW"), who were the Singapore solicitors acting for Ling, wrote to MLS about some negotiations for a settlement.

8 On 5 August 2015, MLS replied to say that there was no negotiation and to ask whether RWW had instructions to accept service of a statutory demand on behalf of Ling by 13 August 2015.

9 On the same day, MLS issued a statutory demand dated 5 August 2015 against Ling for the sum of RM 57,802,084.79 ("the Debt") which included principal, interest and costs.

10 RWW did not confirm that they had instructions to accept service of the statutory demand on behalf of Ling by 13 August 2015.

11 On 14 August 2015, MLS instructed Haron to personally serve the statutory demand on Ling. Haron made three attempts to personally serve the statutory demand on Ling at #03-03.

12 As the attempts were unsuccessful, Haron effected substituted service of the statutory demand by posting a copy of the statutory demand on the front door of #03-03 on 17 August 2015 under rules 96(3) and 4(a) of the Bankruptcy Rules (Cap 20, 2009 Rev Ed).

13 On 21 August 2015, RWW confirmed that they had instructions to accept service of the statutory demand on behalf of Ling.

14 On 27 August 2015, MLS informed RWW that the statutory demand had been served on Ling on 17 August 2015. MLS enclosed the statutory demand in its letter to RWW.

15 On 1 September 2015, RWW wrote to MLS. RWW's letter stated that Ling was "unable to satisfy the judgment sum in OS 358…".

The Singapore Bankruptcy Proceedings and a Malaysian Bankruptcy Order

16 LTAT then commenced bankruptcy proceedings in Bankruptcy No 2376 of 2015 ("B 2376") in Singapore against Ling on 27 November 2015.

17 Personal service of B 2376 on Ling was attempted on three separate occasions between 1 to 3 December 2015. The attempts were unsuccessful.

18 On 5 December 2015, one Sir Al-ameen Staromana Marcos ("Al-ameen") wrote to Datuk Zakaria bin Sharif ("Datuk Zakaria") of LTAT to

request LTAT to withdraw bankruptcy proceedings against Ling. Al-ameen requested LTAT to "instruct LTAT's lawyer in Singapore, Morgan Lewis, to withdraw immediately this case filed for [B 2376] in Singapore and to remove the case from the Register of Credit Bureau of Singapore so that both parties will move forward with mutual benefit". Al-ameen's letter was sent on the letterhead of "The First International Bank (Maldives) Pte Limited" although Al-ameen referred only to his company "Dragon Progress Holdings Limited" in his letter. This request was not acceded to.

19 On 18 December 2015, Ling was adjudged a bankrupt in Malaysia on an application made by another creditor.

20 On 5 January 2016, LTAT filed a substituted service application for an order to serve the court papers of B 2376 by posting the documents on the front door/gate of #03-03. An AR granted the substituted service order on 6 January 2016.

21 Haron served the B 2376 court papers on Ling by posting them on the front door/gate of #03-03 on 11 January 2016.

22 According to MLS, the hearing date of B 2376 was fixed for 11 February 2016 and Ling was informed of the hearing of 11 February 2016 on two occasions, *ie* on 19 January 2016 and 3 February 2016.

23 A formal Notice of Appointment of Solicitors for Ling was filed on 10 February 2016. That notice stated that RWW was acting for him. On 11 February 2016, B 2376 was adjourned. Thereafter, Ling filed and served three affidavits and LTAT filed and served the fourth and fifth affidavits of its

Deputy Chief Executive Datuk Zakaria (his first three affidavits having been filed before 11 February 2016).

24 LTAT's application for a bankruptcy order was eventually heard on 10 June 2016 by an AR ("the AR") who dismissed the application with costs awarded to Ling.

25 On 23 June 2016, LTAT filed a notice of appeal to a judge in the Singapore High Court. The appeal was heard by me. Eventually on 5 October 2016, I allowed the appeal and set aside the decision of the AR made on 10 June 2016. I made a bankruptcy order against Ling and appointed the Official Assignee (of Singapore) as trustee of Ling's estate. I awarded costs in favour of LTAT. Ling has filed an appeal to the Court of Appeal against my decision. I set out my reasons below.

The issues

26 Ling raised the following issues to contest the bankruptcy application against him:

(a) The provisions of s 60(1) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("BA") had not been satisfied.

(b) A bankruptcy order against Ling would be subject to annulment under s 123 BA in any event and hence, it should not be made.

(c) LTAT's bankruptcy application served no useful purpose and was an abuse of process.

The arguments

Section 60(1) BA

27 Section 60(1) BA states:

> **60**.—(1) No bankruptcy application shall be made to the court under section 57(1)(*a*) or 58(1)(*a*) against an individual debtor unless the debtor —
>
> (*a*) is domiciled in Singapore;
>
> (*b*) has property in Singapore; or
>
> (*c*) has, at any time within the period of one year immediately preceding the date of the making of the application —
>
> (i) been ordinarily resident or has had a place of residence in Singapore; or
>
> (ii) carried on business in Singapore.

28 It was not in dispute that the above provisions are disjunctive. This meant that LTAT had to satisfy the court that Ling met any one of the requirements in s 60(1) BA. The main limb which LTAT relied on was s 60(1)(*c*)(i), that is, that Ling had been ordinarily resident or had a place of residence in Singapore within one year immediately preceding the date of the application, *ie*, one year before 27 November 2015.

29 LTAT also relied on s 60(1)(*c*)(ii), that is, that Ling carried on business in Singapore within that same one year period or that Ling had property in Singapore. For the former, LTAT relied on the letter dated 5 December 2015 from Al-ameen requesting the withdrawal of bankruptcy proceedings against Ling. I need focus only on the arguments in respect of s 60(1)(*c*)(i).

30 LTAT submitted that it was not in dispute that a person may be ordinarily resident or that he may have a place of residence in more than one jurisdiction. LTAT relied on the following reasons to submit that Ling had met this requirement in that he was ordinarily resident or was living in Singapore at some time during the one year period.

31 First, in the course of legal proceedings in the High Court of Malaya, Ling had given evidence on 20 February 2013, that he resides ordinarily in Singapore. The relevant transcript for that case, *ie*, Case No D-22NCC-1184-2010 reads:

> Judge
>
> 68 years old. Your address?
>
> DW3
>
> Residential address…
>
> Judge
>
> Is it as per your identification card?
>
> DW3
>
> Yes, this is the KL address, but I also stay in Singapore.
>
> Judge
>
> No I want to know where you reside.
>
> DW3
>
> I reside ordinarily in Singapore.

Judge

Would you like to give us that address please?

DW3

0306, Beverly Hill Mansion, 61 Grange Road, Singapore.

Judge

What is the postcode there please?

DW3

I am sorry, Yang Ariff, I can't remember the postcode.

32 I should mention that the unit number stated in the transcript was "03-06" and not the "03-03" number which LTAT used for the purpose of service of various documents. According to a search done by LTAT, it appeared that #03-06 does not exist, and it is therefore likely that Ling had made an error and he had intended to refer to the #03-03 address. In any event, the main point for LTAT was that Ling had himself said in February 2013 that he was ordinarily resident in Singapore at a unit at the Grange Road Residence condominium.

33 Secondly, the fourth affidavit of Datuk Zakaria of 17 March 2016 said that when Haron made several attempts in May and June 2015 to serve various papers on Ling, Haron had learned from a security guard at the condominium and a domestic helper from Ling's household and from Ling's wife that Ling resides at #03-03.

34 The relevant affidavit of Haron which Datuk Zakaria referred to was the one affirmed on 12 June 2015 filed in respect of OS 358. This was for the registration of the Malaysian Judgment in Singapore.

35 In that affidavit, Haron said the following at paras 2, 3 and 4:

(a) On 20 May 2015, he went to #03-03 at 8.35pm to serve the relevant papers on Ling. On his arrival, he asked to see Ling but he was told by Ling's domestic helper that Ling was away on a business trip outside Singapore and was not physically at #03-03.

(b) On 27 May 2015, Haron went to #03-03 at 8.15pm to serve the relevant papers on Ling. He was told by Ling's wife that Ling was away on a business trip outside Singapore and was not physically at #03-03.

(c) On 6 June 2015, Haron went to #03-03 at 9.15am to serve the relevant papers on Ling. He was told by a female Chinese from Ling's household that Ling was in Singapore but not physically at #03-03.

36 At para 5 of Haron's affidavit, Haron stated that Ling's wife, domestic helper and the security guard working at Ling's condominium had confirmed to Haron that Ling continues to reside at #03-03.

37 It seemed to me that para 5 was not entirely accurate. First, there was no mention of a security guard speaking to Haron in the earlier paragraphs 2, 3 and 4. Secondly, each of the persons who spoke to Haron had not explicitly

said that Ling was residing at #03-03 although that might have been a fair inference to make.

38 In another affidavit from Haron affirmed on 12 October 2015, Haron stated that he went to #03-03 on 14 August 2015 at 7.50pm, 15 August 2015 at 11.30am and 17 August 2015 at 10.25am to serve a copy of the statutory demand on Ling. Each time he was told by a female through the intercom that Ling was not at #03-03.

39 In yet another affidavit from Haron affirmed on 5 January 2016, he stated that he went to #03-03 on 1 December 2015 at 8.05pm, 2 December 2015 at 7.50pm and 3 December 2015 at 8.05pm to serve various bankruptcy papers on Ling. Each time he was told by Ling's domestic helper that Ling was not in.

40 LTAT asked the court to infer that Ling was avoiding service and also that Ling was residing or has a place of residence at #03-03 because no one there actually said that Ling was not staying there.

41 Thirdly, Ling's immediate family are ordinarily resident and/or domiciled in Singapore:

(a) Ling's wife (a Singapore citizen) is a joint owner of #03-03 and also owns another unit at #07-04 of the same condominium.

(b) Ling's son, Adrian, resides at #03-03.

(c) Ling's daughter, Anastasia, resides in another place of residence in Singapore.

(d) Ling's daughter, Amanda is a joint owner of #03-03.

42 Fourthly, Ling possesses a long-term visit pass issued by the Immigration and Checkpoints Authority of Singapore. According to the relevant government website, such a pass is meant for persons who intend to stay in Singapore for a period of more than 89 days in a single visit. The duration of such a pass may range from three months to five years. Ling's pass is for the maximum duration of five years.

43 Fifthly, Ling seeks medical treatment in Singapore for a deteriorating degeneration of a spinal disc. He had cited opinions from three medical practitioners in Singapore. One of them had advised Ling to undergo weekly special therapy sessions at a Singapore hospital until Ling undergoes surgery.

44 Ling also receives Chinese acupuncture treatment in Singapore at least four times a week. This was a statement which he made in his letter dated 30 January 2016 to the Malaysian Department of Insolvency, a copy of which he exhibited in his first affidavit sworn on 1 March 2016.

45 Ling's response was as follows. First, he said that the transcript which LTAT was relying on was of a hearing on 20 February 2013. That was more than one year before 27 November 2015. He alleged that he is ordinarily resident in Kuala Lumpur, Kuching and Sibu in Malaysia. Also, Ling has been providing his Malaysian addresses in various documents pertaining to the writ in Malaysia and the bankruptcy application in Singapore.

46 Secondly, any information allegedly conveyed to Haron by Ling's wife, domestic helper and security guard about Ling's ordinary residence or

place of residence was hearsay evidence and should be disregarded. This argument was based on the proposition enunciated in *Tjong Very Sumito v Chan Sing En* [2011] 2 SLR 360 ("*Tjong*") by the High Court at [11] that, "It is the state of mind of the "propositus" that is paramount in determining ordinary residence".

47 Thirdly, Ling alleged that he resides separately from his wife whom he has separated from since 2011. When he visits Singapore, he stays with his youngest daughter, Amanda.

48 Fourthly, the long term visit pass was to enable Ling, a 71-year-old retiree, to visit relatives who reside and work in Singapore occasionally.

49 Fifthly, Ling had ceased formal treatment in Singapore since 2013 and only seeks acupuncture treatment from a traditional Chinese medical practitioner four times a year (and not four times a week).

50 Sixthly, Ling is not a resident in Singapore for the purposes of tax. This is because Ling has not received any Notice of Assessment from the Inland Revenue Authority of Singapore ("the IRAS") and is not required to pay any tax in Singapore.

51 I note that *Tjong* was a case where a defendant was seeking security for costs from various plaintiffs who were alleged to be ordinarily resident outside Singapore. According to the High Court, two aspects of the state of mind of the "propositus" were particularly relevant in the court's determination of whether a person was ordinarily resident in a certain jurisdiction. First, the place of residence should be adopted voluntarily as

opposed to enforced presence by reason of kidnapping or imprisonment etc. Secondly, there should be a degree of settled purpose. For that point, the High Court referred to the judgment of Lord Scarman in *Regina v Barnet London Borough Council, Ex parte Nilish Shah* [1983] 2 AC 309 where Lord Scarman stated at p 344 that the stay need not be indefinite. A purpose for a limited period may nevertheless be a settled purpose. A person may have one or several such purposes. Examples of such purposes are: education, business or profession, employment, health, family or merely love of the place. All that is necessary is a sufficient degree of continuity for the purpose to be properly described as settled.

52 In my view, *Tjong* is not authority for the proposition that the evidence of other persons is irrelevant. First, the fact that a person stays or did stay in Singapore physically has to be established. That may be proved by evidence from others. Secondly, a person's wife or a domestic helper in the family may be able to shed light on his state of mind. The weight to be given to such evidence is, of course, an issue to be considered separately.

53 It is significant that no one at #03-03 actually stated that Ling was not staying there. The response that Haron consistently received when he visited #03-03 was simply that Ling was not in. The proper inference to be drawn from such a response was *not* that Ling did not stay at #03-03, but rather that he was simply not within #03-03 at the time of contact. This is reinforced by one important point. When the various papers, whether they be in respect of the registration of the Malaysian Judgment in Singapore or the statutory demand or the Singapore bankruptcy proceedings, were posted on the front door or gate of #03-03 each time in order to effect substituted service of the

same on Ling, there was no protest by any of the occupants, such as his wife or his son. Surely, one of them would have informed MLS that there was no point posting legal documents on the front door or gate since Ling was not residing there if Ling indeed did not reside at #03-03. This was not done.

54 Moreover, in para 12 of Ling's first affidavit affirmed on 1 March 2016, Ling stated that he was shocked to learn on 2 July 2015 that the Malaysian Judgment was registered as the Singapore Judgment when MLS "served a letter to [him]" enclosing the relevant papers. Actually the service was on 3 July 2015, according to an affidavit of Haron. However, the date of the cover letter from MLS was dated 2 July 2015. In any event, the point was that Ling did not claim that the service was ineffective to bring the facts to his attention. Indeed, he knew those facts immediately after service was effected.

55 Secondly, Ling's allegation that he had separated from his wife since 2011 was not supported by an affidavit from the wife or any of his children. There was no suggestion that he was estranged from his children. Indeed, he claimed that he stays with his youngest daughter Amanda when he comes to Singapore. I add that he omitted to state where Amanda's residence is. Furthermore, if Amanda's residence is not at any apartment at the Grange Road Residence condominium, he failed to explain why he mentioned an address there when he gave evidence on 20 February 2013 in Malaysia.

56 Consequently, whether or not Ling had used a Malaysian address for the proceedings there or the bankruptcy proceedings in Singapore, the fact is that he had said something else on 20 February 2013 and there was no elaboration as to when he ceased residing in Singapore after that. His position

was that he was not residing in Singapore since 2011. This was untenable in the light of his own evidence to the court in Malaysia in 2013.

57 The long term visit pass was another factor supporting LTAT's submission. In my view, it was unlikely that Ling would bother to get such a pass if he was making occasional visits to relatives in Singapore.

58 As for Ling's acupuncture treatment, he had initially said in his letter dated 30 January 2016 to the relevant Malaysian authorities that he was undergoing such treatment four times a *week*. However, in para 12 of his second affidavit sworn on 13 April 2016 in the Singapore bankruptcy proceedings, he alleged that it was four times a *year* instead. Yet, he did not address the point as to why he had said something else to the Malaysian authorities. It was clear to me that he had contradicted himself when he said the treatment was four times a year in Singapore.

59 As for the point that Ling is not paying any income tax in Singapore, this was neither here nor there. There was no evidence that he had informed the IRAS that he was receiving any income from Singapore or that the IRAS was aware of such income or his residence in Singapore.

60 In the circumstances, I was of the view that Ling clearly had had a place of residence in Singapore in the one year period before 27 November 2015 and that he had also been ordinarily resident in Singapore in that period.

Sections 123, 65(2)(e) and 152 BA

61 Ling's reliance on s 123 BA requires consideration of various provisions in the BA.

62 Sections 123(1)(*a*), (*c*) and (*d*) BA state:

> 123.—(1) The court may annul a bankruptcy order if it appears to the court that —
>
> (*a*) on any ground existing at the time the order was made, the order ought not to have been made;
>
> (*b*) …;
>
> (*c*) proceedings are pending in Malaysia for the distribution of the bankrupt's estate and effects amongst the creditors under the bankruptcy law of Malaysia and that the distribution ought to take place there; or
>
> (*d*) a majority of the creditors in number and value are resident in Malaysia, and that from the situation of the property of the bankrupt or for other causes his estate and effects ought to be distributed among the creditors under the bankruptcy law of Malaysia.

63 Section 65(2)(*e*) BA states:

> (2) The court may dismiss the application if —
>
> …
>
> (*e*) it is satisfied that for other sufficient cause no order ought to be made thereon.

64 Section 152 BA states:

> 152.—(1) The Minister may, by notification in the *Gazette*, declare that the Government of Singapore has entered into an agreement with the government of Malaysia for the recognition by each government of the Official Assignees in bankruptcy appointed by the other government.

> (2) From the date of that notification where any person has been adjudged a bankrupt by a court in Malaysia, such property of the bankrupt situate in Singapore as would, if he had been adjudged bankrupt in Singapore, vest in the Official Assignee of Singapore, shall vest in the Official Assignee appointed by the government of Malaysia, and all courts in Singapore shall recognise the title of such Official Assignee to such property.
>
> (3) Subsection (2) shall not apply where a bankruptcy application has been made against the bankrupt in Singapore until the application has been dismissed or withdrawn or the bankruptcy order has been rescinded or annulled.

65 It will be recalled that the AR had dismissed LTAT's bankruptcy application. The AR was of the view that in ascertaining whether there was sufficient cause to decline making a bankruptcy order, s 123, and in particular, ss 123(1)(*c*) and (*d*), would come into play. He stated, "This makes eminent sense because a bankruptcy order which a court will annul should not be made in the first place".

66 As for LTAT's submission that bankruptcy proceedings were necessary because there was circumstantial evidence that Ling has assets in Singapore, the AR took the view that since bankruptcy proceedings were afoot in Malaysia and considering the reciprocal arrangements in place between the Official Assignees in both countries, LTAT must "at the very least make an effort to ascertain if [Ling] has any assets in Singapore such that it would be efficacious for bankruptcy proceedings to proceed in Singapore … What [LTAT] should have done was to file an [Examination of Judgment Debtor] application to ascertain if [Ling] has any assets in Singapore, rather than to attempt to invoke the bankruptcy jurisdiction of this court".

67 The AR found that ss 123(1)(*c*) and (*d*) BA were both satisfied and distribution ought to take place in Malaysia because all the creditors are Malaysian entities and LTAT had not shown adequate proof that Ling has assets in Singapore.

68 The first limb of s 123(1)(*c*) BA refers to proceedings "pending" in Malaysia for the distribution of the bankrupt's estate and effects. In my view, it is arguable that s 123(1)(*c*) BA applies only if the bankruptcy proceedings in Malaysia have reached the stage where distribution is being contemplated.

69 However, even if that were so, the first limb of the next provision, *ie*, s 123(1)(*d*) BA would appear to be satisfied, *ie*, a majority of Ling's creditors in number and value were resident in Malaysia. On the evidence available so far, it appeared that *all* of Ling's creditors are residents in Malaysia because there was no evidence to establish that he has creditors in Singapore. As for the second limb of s 123(1)(*d*) BA about the situation of the property of the bankrupt, it appeared so far that Ling's assets would be in Malaysia. There was at present insufficient evidence to establish that Ling also has assets in Singapore although there was circumstantial evidence that he might have assets in Singapore. The point about "other causes" in s 123(1)(*d*) BA is immaterial for present purposes.

70 Accordingly, it appeared that the initial requirements of s 123(1)(*d*) BA were met, even if s 123(1)(*c*) BA did not apply because proceedings were not pending in Malaysia for the distribution of Ling's estate. Therefore, the remaining question under s 123(1)(*d*) BA, was whether distribution ought to take place in Malaysia.

71 Ling relied on an AR's decision in *Tang Yong Kiat Rickie v Sinesinga Sdn Bhd and others* [2014] SGHCR 6 to submit that in addition to the requirements stated in ss 123(1)(*c*) or (*d*), the court must also be satisfied that the bankruptcy order ought to be annulled when all relevant circumstances are considered. In my view, the latter was merely another way of making the point that the court has a discretion whether to annul a bankruptcy order even if the elements in ss 123(1)(*c*) or (*d*) are met. In any event, it is important to remember that the opening words of s 123(1) are that the court "may" annul a bankruptcy order. They do not say that the court "will" annul a bankruptcy order even if the elements in the two sub-provisions are met. It seemed to me that the AR had erred because he had assumed that a court "will" annul a bankruptcy order if the elements were met (see [65] above).

72 The second point to note is that s 123(1) comes into play when a bankruptcy order has already been made by a Singapore court, not before. The question which arose was whether the court can and should take into account the matters stated in ss 123(1)(*c*) and (*d*) in order to decide whether to dismiss a bankruptcy application for cause under s 65(2)(*e*) BA. I was of the view that in deciding whether to exercise the court's power to dismiss a bankruptcy application for cause under s 65(2)(*e*), a court is entitled to take into account any factor and this includes the factors stated in ss 123(1)(*c*) and (*d*). In other words, these factors can still be considered for the purpose of deciding whether to make a bankruptcy order in the first place and are not merely relevant to a situation where a bankruptcy order has already been made and an annulment of the order is being sought. Nevertheless the stage of the bankruptcy proceedings in Singapore, as well as the stage of the bankruptcy

proceedings in Malaysia, is still relevant for the purpose of considering how much weight is to be given to the factors in ss 123(*c*) and (*d*).

73 Furthermore, even though a bankruptcy order made by a court in Malaysia will ordinarily vest the bankrupt's property in Singapore in the Official Assignee of Malaysia, the vesting provision in s 152(2) is still subject to s 152(3), which states that the former provision shall not apply where a bankruptcy application has been made against the bankrupt in Singapore until the application has been dismissed or withdrawn or the bankruptcy order has been rescinded or annulled. In other words, the Singapore court is not obliged to dismiss the bankruptcy application every time there is a prior bankruptcy order made against the same person by a court in Malaysia. It is still for the Singapore court to decide whether to dismiss or allow the application. Therefore, Ling's suggestion that the dismissal must follow whenever there is a prior bankruptcy order made in Malaysia was not correct.

74 Alternatively, Ling also submitted that s 152(3) only applies where the bankruptcy application in Singapore was filed *before* the bankruptcy order in Malaysia was made. If it also applies to a situation where the bankruptcy application in Singapore was filed *after* the Malaysia bankruptcy order, that would be chaotic. This was because if the Singapore court subsequently made a bankruptcy order on such an application, the initial vesting of the Singapore assets in the Official Assignee of Malaysia under s 152(2) would be revoked.

75 In my view, the alleged chaos was more theoretical than real. The vesting provision in s 152(2) BA does not mean that the Official Assignee of Malaysia will always immediately recover the bankrupt's property in

Singapore. The reality is that he will take some time, firstly, to uncover the assets in Malaysia, before turning to the assets in Singapore. He will also take some time to recover the bankrupt's assets. If indeed he has already uncovered and recovered assets in Singapore and it would be chaotic for the assets to be re-vested in the Official Assignee of Singapore, it is open to him to oppose the bankruptcy application in Singapore. In my view, this course of action makes practical sense and diminishes the strength of the argument that the Singapore court's hands are tied and that it must dismiss the bankruptcy application if a bankruptcy order has already been made in Malaysia before the bankruptcy application in Singapore is filed. I see no justification for adopting such a narrow interpretation of s 152(2). The scheme of the statutory provisions suggests that the Singapore court's power to allow or dismiss a bankruptcy application is not meant to be fettered in the way suggested by Ling.

76 Furthermore, if chaos would indeed result, then it is irrelevant whether the bankruptcy application in Singapore is filed before or after the Malaysian bankruptcy order is made. The important cut-off date then is not the date the bankruptcy application is filed but rather the date of the Malaysian bankruptcy order. The distinction which Ling sought to draw between a bankruptcy application which is filed in Singapore before a Malaysian bankruptcy order and one which is filed after such an order is artificial.

77 I agreed with LTAT's submission that s 152(2) does not preclude the making of concurrent bankruptcy orders in Malaysia and Singapore. If that was the intention of Parliament, then the wording of s 152(3) would simply have been that a bankruptcy application in Singapore *must be dismissed*

(regardless of when it is filed) if there is a prior bankruptcy order made in Malaysia.

78 It may be that the purpose of the vesting provision in s 152(2) is as suggested by LTAT, *ie*, to preclude a Malaysian creditor from seeking to enforce his judgment against the bankrupt's assets in Singapore and gain an unfair advantage against other creditors in Malaysia. LTAT referred to *Amos William Dawe v Development & Commercial Bank (Ltd) Bhd* [1981] 1 MLJ 230. In that case, a bank had obtained a judgment in Malaysia not knowing that the debtor had already been adjudged a bankrupt in Singapore. When that information came to light, the bank agreed that the Malaysian judgment could not stand and the judgment was set aside by the Federal Court who referred to s 104 of the Malaysian Bankruptcy Act 1967 which is the equivalent of s 152 BA. However, as there was no detailed discussion of the Malaysian provision in that case, it is not necessary for me to say whether I agree with LTAT's submission about the purpose of s 152(2). I have already said that I agree that s 152(2) does not preclude the making of concurrent bankruptcy orders in Malaysia and Singapore and that is sufficient for present purposes.

79 Therefore, coming back to the facts before me, it was important to bear in mind that it was not the Official Assignee of Malaysia who was opposing the bankruptcy application. Neither did any creditor of Ling oppose. Ling was the only one who was opposing the application. I will now come to other reasons which he used to oppose the application, including those for the third issue.

Whether the present proceedings served no purpose and constituted an abuse of power

80 First, Ling stressed that he had no assets in Singapore, but that allegation was disputed. While there was at present only circumstantial evidence about his assets in Singapore, it was too soon to conclude that he has, in fact, no assets in Singapore. Indeed, the purpose of the bankruptcy application was to appoint the Official Assignee of Singapore to investigate the existence of any asset that he might have in Singapore. On this point, it is worthwhile to bear in mind that when the AR said that it was incumbent on LTAT to file an Examination of Judgment Debtor application in Singapore, *ie*, to examine a judgment debtor to ascertain if he has any assets in Singapore, this was in the context of LTAT's argument that Ling has assets in Singapore for the purpose of s 60(1)(*b*) BA. Since LTAT could succeed in establishing that Ling came within s 60(1)(*c*)(i) BA to establish the jurisdiction of the Singapore bankruptcy court, there was no need for LTAT to further establish that Ling has assets in Singapore at present. Furthermore, after a bankruptcy order is made in Singapore, the Official Assignee will have wider power to investigate the existence of Ling's assets in Singapore than a creditor applying to examine a judgment debtor.

81 Would the appointment of the Official Assignee of Singapore mean that Ling and his creditors would have to bear two sets of costs in Singapore and Malaysia with no reasonable prospect of recovering additional assets in Singapore? This was one of Ling's arguments. However, the cost of investigating his assets in Singapore would probably still have to be incurred one way or the other. If the Official Assignee of Malaysia was minded to investigate the existence of Ling's assets in Singapore, it is likely that he too

would have to seek the help of the Official Assignee of Singapore. So those costs would be incurred in any event. Indeed, one may think that a consistent, if not a unified, approach should be taken in Malaysia and Singapore by the relevant authorities.

82 I had also asked the Official Assignee of Singapore for his views. I was informed that although a bankruptcy order by a court in Malaysia would vest the bankrupt's property in Singapore in the Official Assignee of Malaysia by virtue of s 152(2) BA, that was the limited extent of s 152(2) BA. The Official Assignee of Malaysia would have no power to take other steps in Singapore which the Official Assignee of Singapore would be able to take, such as:

(a) the power to subject the bankrupt and other persons to examination by the court (see s 83 BA);

(b) the power to seize the bankrupt's property (see s 108 BA); and

(c) the power to set aside transactions at an undervalue or preference (see ss 98 and 99 BA).

83 I add that if no asset in Singapore is uncovered, the cost of that futile exercise would likely be borne by LTAT as the creditor who had taken the step to obtain a bankruptcy order against Ling in Singapore. It is not likely that such costs would have to be paid out of Ling's assets in Malaysia.

84 Accordingly, Ling's argument about two separate sets of costs being incurred was not sufficiently strong to persuade the court to abstain from making a bankruptcy order in Singapore.

85 I also did not agree with Ling's argument that LTAT's real aim was to embarrass him with the Singapore bankruptcy proceedings rather than to recover a debt from him. Ling was already made a bankrupt by virtue of an order in Malaysia. I did not agree that LTAT would deliberately throw good money after bad just to embarrass him.

86 Eventually, after the bankruptcy order is made by a Singapore court, it may still be set aside under s 123 BA. In the meantime, the Official Assignee of Singapore will exercise his powers. In other words, the making of a bankruptcy order in Singapore was not an academic exercise.

Summary

87 In the circumstances, I allowed LTAT's appeal and made a bankruptcy order against Ling.

Woo Bih Li
Judge

Adrian Tan, Ker Yanguang and Hari Velluri (Morgan Lewis Stamford LLC) for the appellant/plaintiff;
Roy Lim and Alison Lee (Robert Wang & Woo LLP) for the respondent/defendant;
Beverly Wee, Christopher Eng and Tris Xavier for the official assignee.