**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2025] SGHC 88**

Originating Application No 1339 of 2024

Between

Shim Wai Han

… *Applicant*

And

(1) Lai Seng Kwoon
(in his capacity as the joint and several trustee of the bankruptcy estate of Ng Yu Zhi)
(2) Chan Kwong Shing, Adrian
(in his capacity as the joint and several trustee of the bankruptcy estate of Ng Yu Zhi)

… *Respondents*

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# JUDGMENT

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[Insolvency Law — Bankruptcy — Proof of debt — Whether proof can be rejected for factual complexity — Section 345 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]
[Insolvency Law — Bankruptcy — Proof of debt — Whether proof can be rejected such that all claims dealt with in co-defendant company's liquidation

— Section 345 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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# Shim Wai Han
# v
# Lai Seng Kwoon (in his capacity as the joint and several trustee of the bankruptcy estate of Ng Yu Zhi) and another

**[2025] SGHC 88**

General Division of the High Court — Originating Application No 1339 of 2024
Philip Jeyaretnam J
19 March 2025

13 May 2025 Judgment reserved.

**Philip Jeyaretnam J:**

1 The trustee in bankruptcy steers the debtor from financial ruin to a fresh start. Appointed by the court, the trustee is tasked to admit or reject proofs of debt, playing a quasi-judicial role that demands not only fairness to the creditor whose proof is being adjudicated but also to the body of creditors as a whole. This requires him to be efficient, economical and proportionate in drawing upon the limited resources of the bankrupt's estate.

2 This matter raises two issues relating to the admission of proofs by a trustee in bankruptcy. One is the extent to which complexity of the claim affords a ground for rejection. The other is whether the existence of a parallel or overlapping claim against a different insolvent estate is a ground for rejection

on the basis either of orderly administration or the operation of the *pari passu* principle.

3 The applicant is Shim Wai Han ("Ms Shim"). The respondents are Lai Seng Kwoon and Chan Kwong Shing, Adrian, the joint and several trustees in bankruptcy of the bankruptcy estate of Ng Yu Zhi ("NYZ"). This is Ms Shim's application to reverse or vary the respondents' decision to reject her proof of debt ("POD") lodged on 22 March 2023 for the amount of $12,014,931.79 (the "Sum"), and for the Sum to be admitted to proof in the bankruptcy estate.

4 The applicant's POD is based on claims against NYZ in the tort of deceit and/or unlawful or lawful means conspiracy.[1] She alleges that NYZ fraudulently made false representations to her concerning purported nickel trades, thereby inducing her to make investments with certain companies associated with NYZ (the "Envy Companies").[2] Further and/or alternatively, she alleges that NYZ and the Envy Companies conspired to defraud her.[3]

5 Thus, in respect of her loss, Ms Shim has claims against both NYZ and the Envy Companies.

6 The Envy Companies are now in liquidation (the "Envy Liquidations"). Their liquidators (the "Envy Liquidators") have brought their own claims

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1 Applicant's written submissions dated 12 March 2025 ("AWS") at paras 4, 18.

2 Shim Wai Han's 1st Affidavit filed on 24 December 2024 ("Shim's 1st Affidavit"), Exhibit "SWH-1", Tab 1, Statement of Claim in HC/OC 108/2022 ("SOC in OC 108") at paras 4–8.

3 SOC in OC 108 at paras 10–13.

against NYZ that include claims on behalf of the defrauded investors of the Envy Companies.[4]

7 The respondents rejected the applicant's POD on the grounds that (a) the claim should properly be made against the Envy Companies and not NYZ, (b) the claim against the Bankrupt is subsumed under the claim against the Envy Companies brought by the Envy Liquidators on behalf of the defrauded investors, and (c) because the claim is so subsumed, it would be detrimental to the orderly administration of NYZ's bankruptcy estate to adjudicate the claims in the bankruptcy estate as this would lead to an increase in time and costs.[5]

8 In these proceedings, the following two issues arise for my consideration:

(a) Are the respondents correct to reject the POD due to the complexity of the underlying claims?

(b) Are the respondents correct to reject the POD in NYZ's bankruptcy estate on the grounds that, in the interests of orderly administration, the applicant's claims should be administered in the Envy Liquidations?

**Applicable Principles**

9 The present appeal is brought under r 127 of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020, which stipulates at r 127(1) that:

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4 Shim's 1st Affidavit at p 799, Notice of Rejection of Proof of Debt.

5 Shim's 1st Affidavit at p 799, Notice of Rejection of Proof of Debt.

> If a creditor of a bankrupt is dissatisfied with the decision of the trustee of the bankrupt's estate in rejecting the creditor's proof (in whole or in part), the Court may, on the application of the creditor (called in this rule the applicant), reverse or vary the decision of the trustee.

10 The court, hearing an appeal against the private trustee's rejection of a proof of debt, applies the same rules as those applied to liquidators. It undertakes a *de novo* review of the validity of the proof of debt (*SME Care Pte Ltd v Chan Siew Lee Jannie and another matter* [2025] SGHC 27 (*"SME Care*") at [15]).

11 The relevant principles for a private trustee's adjudication of proofs of debt can be readily transposed from those applied to liquidators, as articulated in the Court of Appeal's decision in *Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 ("*Fustar*") (*SME Care* at [14]). In particular, the private trustee has a duty to ensure that the assets of the bankrupt's estate are only distributed to creditors who have debts that have been genuinely created and remain legally due. He has extensive powers to go behind documents – including judgments and compromise agreements – but must have a reasonable basis on which to query a debt that appears to be genuine (*Fustar* at [20]). The level of scrutiny required by the liquidator to discharge his duty ultimately depends on the circumstances of the case (*Fustar* at [21]).

## Complexity

### *Parties' cases*

12 The respondents submit that they are in no position to adjudicate the applicant's claims, which are factually and legally complex and cannot be summarily determined in the adjudication process.[6]

13 The applicant submits that it cannot be the case that where a claim requires facts to be proved or disproved through the court process, that provides a basis for the claim to be rejected.[7] Section 345(5) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) provides that claims may be estimated. In addition, the hindsight principle, which requires the taking into account of events that have occurred after the commencement of liquidation which would assist in making a better estimate of the loss or remove the need to estimate the contingent debt or liability, is a helpful guide in valuing contingent claims (*Rich Construction Co Pte Ltd v Greatearth Construction Pte Ltd (in liquidation) and others and another matter* [2024] 5 SLR 570 at [42]–[43]).[8] In any event, the applicant denies the claim is factually complex.[9]

### *My decision*

14 The respondents rely on *ERPIMA SA v Chee Yoh Chuang and another* [1997] 1 SLR(R) 923 ("*ERPIMA*") at [5], in which Lai Kew Chai J said, in the context of judicial management:

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6 Respondent's written submissions dated 12 March 2025 ("RWS") at para 5.2.8.

7 AWS at para 46.

8 AWS at para 47.

9 AWS at para 47.

> The entire process of proof, admission or rejection is … quite fast and certainly not as formal as a court trial. [The judicial manager] does not have to deliver a reasoned judgment. One exception is where a proof of debt involves *controversial disputes of facts, where the company under the judicial management on the facts known has to oppose the admission of a claim* and where interpretation of agreements is involved. A judicial manager in those cases is not expected to adjudicate upon the matter. He is perfectly entitled to reject the proof of debt and the creditor is not without remedy. Such a creditor may appeal under reg 80.
>
> [emphasis added]

15 The respondents also cite *Kyen Resources Pte Ltd (in compulsory liquidation) and others v Feima International (Hongkong) Ltd (in liquidation) and another matter* [2024] 1 SLR 266 ("*Kyen*") at [52]–[53], where Kannan Ramesh JAD held, at [53]:

> We agree with the Judge that, if the claim and cross-claim are not disputed and a set-off is available, it is then a matter of simple arithmetic in setting off the cross-claim against the claim to arrive at a net position on the claim. We also agree with the Judge that where the cross-claim is *substantially disputed and factually complex*, it may be inappropriate for the liquidator to summarily deal with it in the adjudication process. In such circumstances, the liquidator ought to seek directions from the court on the manner or mode by which the cross-claim should be resolved.
>
> [emphasis added]

16 Those passages discussed situations where the claim is not just factually complex but substantially disputed, or where the judicial manager "on the facts known has to oppose the admission of a claim". Neither case stands for the proposition that mere factual complexity is sufficient grounds for the rejection of a proof of debt. On the contrary, if the underlying claim is not substantially disputed, then even if some degree of factual complexity is involved, the adjudication of the claim still remains a matter of simple arithmetic. The private trustees may take more time and incur higher costs. But that is an unavoidable by-product of adjudicating proofs of debt of different degrees of complexity. It

is not, in itself, a reason to reject proofs of debt entirely. The private trustee's duty is ultimately to recognise debts that have been genuinely created and remain legally due. They must have a reasonable basis on which to query a debt that appears to be genuine (*Fustar* at [20]).

17 The applicant sought to rely on Aidan Xu J's comment in Re *Medora Xerxes Jamshid (in his capacity as the private trustee in bankruptcy of Tan Han Meng) (Planar One & Associates Pte Ltd (in liquidation), non-party)* [2024] 5 SLR 1006 (at [82]) that the complexity of a claim is "an important consideration" in determining whether it can be resolved within the proof of debt regime. However, Xu J's formulation differed from the submission of counsel in *Xerxes* that the "main determinant" ought to be the complexity of the claim, a phrase which the applicant in this case appears to have borrowed.[10] I would agree with Xu J's formulation and reject that of counsel.

18 In any event, the complexity of a matter is related to the degree to which there are substantial disputes that have to be resolved before determining the outcome. In the present case, the respondents do not substantially dispute the applicant's claim and, in any event, overstate the degree of complexity involved.

19 First, the respondents simply assert that the claims in deceit and conspiracy are grave and complex, and thus require cross-examination to establish the elements of the claims, particularly those that have to do with NYZ's state of mind.[11] They did not provide a satisfactory explanation for why cross-examination would be necessary to deal with these supposed features of the claim, and I disagree with their submission. The applicant has annexed her

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10 RWS at para 5.2.7.

11 RWS at paras 5.2.9–5.2.13.

statement of claim filed in related court proceedings to her affidavit.[12] In 15 pages, it straightforwardly lays out her allegations, which are essentially that she was induced into making purported investments by the fraudulent misrepresentations of NYZ. The Envy Liquidators have brought their own claims against NYZ in respect of the same purported investment scams and obtained summary judgment. The respondents have admitted those claims in NYZ's bankruptcy estate. Before me, they confirmed that they have no positive defence to the applicant's claims.[13]

20 The respondents highlight the fact that the applicant set up a group of companies, one of which was allegedly used by NYZ to convey the impression that the purported nickel trading was genuine.[14] This fact does not seem relevant. The respondents themselves disclaim any allegation that the applicant was complicit in the scheme.[15] The applicant also denies any such allegation.[16] This fact therefore does not result in any dispute over the validity of the applicant's claims.

21 Finally, the respondents also raise the possibility that the applicant may not beneficially own the entire sum she claims.[17] They base this on the fact that there were sub-investors who invested through some of the other investors, with the result that many of the investors claiming against the Envy Companies

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12 SOC in OC 108.

13 Minutes of hearing in HC/OA 1339/2024 on 19 March 2025 ("19 Mar Minutes") at p 3.

14 RWS at para 5.2.14.

15 RWS at para 5.2.15.

16 AWS at para 48.

17 RWS at para 5.2.21.

allegedly do not beneficially own all of their investments.[18] They say the Envy Liquidators are the ones in possession of the Envy Companies' records and, hence, best placed to verify this issue.[19] Once again, however, the respondents have proffered no evidence that *the applicant* does not beneficially own her claim. The possibility they raise is a speculative one. It is also not clear to me that the applicant would not be entitled to recover on behalf of purported sub-investors, depending on the nature of the arrangement. But this is, in any event, hypothetical. The applicant has stated on affidavit that the Sum is due to her personally.[20] The respondents have provided no reasonable basis to doubt this. I also note that the respondents had previously liaised with the Envy Liquidators and thus do have a line of communication with them should the need to reach out to them arise.[21]

22 Accordingly, I find that the PODs should not be rejected simply on the grounds of factual or legal complexity. I now turn to the respondents' other ground for rejecting the POD, namely, orderly administration.

## Orderly administration

### *Parties' cases*

23 The respondents submit that, in the interests of orderly administration, all claims arising from contracts between the defrauded investors and the Envy Companies ought to be dealt with within the Envy Companies' liquidation, and

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18 RWS at para 5.2.17.

19 RWS at para 5.2.22.

20 AWS at para 50; Shim's 1st Affidavit at para 6.

21 Chan Kwong Shing, Adrian's 1st Affidavit filed on 27 January 2025 ("Chan's 1st Affidavit") at para 4.1.3.

not within NYZ's estate.[22] None of the defrauded investors should be allowed to recover from both NYZ's estate and the liquidations of the Envy Companies, as that would allow them to steal a march on the other defrauded investors and profit at their expense.[23] Investors who could not frame claims against NYZ directly in tort because they never dealt with him directly would be disadvantaged and recover a smaller share.[24] Instead, the Envy Liquidators should recover the sums from NYZ, and then amalgamate the assets and distribute them to all defrauded investors on a *pari passu* basis.[25]

24 Additionally, the costs of administering claims at both the levels of NYZ's estate and the Envy Companies' liquidations would reduce the distributable pool of assets and delay the administration of both estates.[26]

25 The applicant submits, first, that rejecting a POD in the interest of an "orderly administration" has no basis in statute or case law.[27] Second, as to costs, the costs of the liquidations of the Envy Companies, which are separate legal entities, should not be of concern in the administration of NYZ's bankruptcy.[28] Third, as to the respondents' concern that allowing the applicant's POD would encourage the filing of duplicate proofs in NYZ's estate and the Envy Companies' liquidations, the applicant says that if other defrauded Investors had legitimate claims against NYZ, they should be entitled to prove it in NYZ's bankruptcy proceedings. The liquidations of the Envy Companies are distinct

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22 RWS at para 5.3.1.

23 RWS at para 5.3.16.

24 RWS at para 5.3.22.

25 RWS at para 5.3.20.

26 RWS at para 5.3.23.

27 AWS at para 35.

28 AWS at para 40.

and should not be of concern to the respondents.[29] Moreover, the issue of double proof is better dealt with at the dividend stage than the proof stage.[30]

***My decision***

26 The strongest point in favour of the respondents is that, were the POD to be admitted, the applicant would steal a march on the claimants and obtain double recovery for what is in substance the same debt.

27 I agree that, in principle, there must not be double *recovery* for the same debt. However, the question is whether the prevention of double recovery requires rejection at the proof stage or is instead something that should be addressed at the dividend stage. In other words, instead of preventing PODs which may appear to overlap from being admitted in the first place, should such PODs be admitted first with the actual amounts to be paid out adjusted later by updating the admitted PODs to ensure that there is no double recovery?

28 The respondents say that they cannot deal with this problem at the dividend stage. Once the applicant's POD is admitted, they say, they would be obliged to pay her the dividend. If, for instance, the dividend in NYZ's estate is $0.10 on the dollar, they would be obliged to pay the applicant at that rate, similar to other creditors in NYZ's estate. However, since the applicant has not recovered her principal debt in full, the Envy Companies' liquidators would subsequently be obliged to distribute dividends to her as well. She would, in this sense, obtain double recovery.[31]

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29 AWS at para 41.

30 AWS at para 43.

31 19 Mar Minutes at p 3.

29 The applicant finds support for her suggestion that this issue should be dealt with at the dividend stage in *Re Swiber Holdings Ltd and another matter* [2018] 5 SLR 1130 ("*Swiber*"). In that case, Kannan Ramesh J (as he then was) considered the position where a creditor realises a third-party security after lodging a proof of debt. Ramesh J (at [57]) summarised the position as follows:

> (a) *Proving in the insolvency of the principal debtor*: The creditor is entitled to maintain its proof for the full value of the debt unless:
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> > (i) it receives the full value of the debt, whereupon it is not entitled to maintain its proof and the surety may prove in the insolvency for an indemnity or under the right of subrogation; or
> >
> > (ii) it receives the full value of the part of the debt guaranteed, in which case it must reduce its proof accordingly and the surety will be entitled to lodge a proof for the value of that sum.
>
> The cut-off date is the day before the date of payment of dividends (if any). Proofs should be updated by the time on the cut-off date set by the liquidator or judicial manager.
>
> (b) *Proving in the insolvency of the guarantor*: The creditor must update its proof to reflect the reduced value of the principal debt until the day before the date of payment of dividends (if any), by the time on the cut-off date set by the liquidator or judicial manager.

30 In arriving at this position, Ramesh J considered two key issues. The first issue is under what circumstances a creditor is required to reduce its proof of debt in the insolvency of the principal debtor.

31 In cases involving an insolvent principal debtor, a creditor and a surety, only one proof of debt may be filed, by either the creditor or the surety, in respect of the debt due to the creditor for which the surety is liable (*Swiber* at [48]). This arises from the rule against double proof, also known as the rule against double dividends, that there may only be one proof for the same debt in

one insolvent estate. If there were more than one proof, this might lead to a doubling-up of dividends in breach of the *pari passu* principle (*Swiber* at [47]).

32 However, the surety may only file a proof if the creditor has received payment from the surety for the guaranteed debt *in full* (*Swiber* at [48]). It may seem odd that the creditor is not required to reduce its proof whenever and to the extent that it receives a part-payment of the debt. But the reason for this is that *the surety has undertaken to be responsible for the full sum guaranteed*, and thus cannot prove in the insolvent debtor's estate for a sum paid by him to the creditor until he has paid the guaranteed debt *in full*. If the creditor were required to give credit for a part payment by the surety, neither of them could prove for the amount of such payment and the other creditors would be unjustly enriched (*Swiber* at [49]). This discussion in *Swiber* was restricted to cases involving a principal debtor, a creditor and a surety (who is a guarantor) (*Swiber* at [45]). It is not directly applicable to the present situation, which does not involve a surety or guarantor.

33 The second issue is more pertinent for present purposes. It concerns *when* the proofs should be updated, if they are to be so updated. There were two principal reasons for the cut-off date to be the date of payment of dividends. First, the purpose of the rule against double proof is to prevent a doubling-up of dividends, and the date of payment of dividends is the point at which the concern must be addressed. Second, it would be arbitrary for the cut-off date to be the date of lodgement of proof because such lodgement is a mere procedural step in the insolvency without any substantive significance. However, to address the practical difficulties in setting the cut-off date as the date on which the dividends are paid, the cut-off date may be set as the day before the date of the payment of dividends (*Swiber* at [52]).

34 Considering the approach outlined in *Swiber*, I accept that the issue of double recovery can in principle be addressed at the dividend stage. The concern regarding double recovery is not a concern that goes to the substantive validity of the applicant's underlying claim. It is a concern regarding the payment of dividends on the basis of that claim. This concern can be addressed by the private trustees or the liquidators, as the case may be, ensuring that the proofs of debt are updated at the time of payment of dividends in the bankruptcy estate or liquidation respectively. The proofs of debt could be updated to account for any proofs in respect of the same debt that have already been admitted and in respect of which a dividend has already been paid. Reference may be made to the discussion of the practicalities of the dividend process in *Swiber* (at [52]).

35 It is true that, unlike the situation of claims against a principal debtor's estate by both the obligee and the surety, there are here two insolvent estates and hence there will be the added costs and complexity of coordination between the administrators of those two estates when dealing with the proofs filed separately in each estate but covering broadly the same loss. However, this is only a matter of practicalities. I do not accept that this concern affords any legal basis to limit the creditor who has claims against both estates to proof only against one of them. While it may be more convenient, as a *practical* matter, to consolidate the distribution of dividends, that does not provide a *legal* basis for rejecting the applicant's POD. Ultimately, it remains the private trustee's duty to ensure that the assets in the bankruptcy estate are distributed to creditors who have debts that have been genuinely created and remain legally due (see *Fustar* at [20]).

36 Indeed, that the issue here was proof in two different estates of claims in respect of the same loss (unlike the situation in *Swiber* where what was at issue was double proof of what was in substance the same debt against the same estate), reinforces the conclusion that the creditor has the legal right to prove against both estates. That the loss is only to be compensated once is a matter to be accounted for (if at all) at the dividend stage of the two estates. The situation in this case is more akin to where a creditor claims in the insolvent estates of both the principal debtor and the surety, which has traditionally been considered permissible and is known to insolvency practitioners as a "double dip" rather than a "double proof": see *Re Polly Peck International plc (in administration)* [1996] 2 All ER 433 (EWHC) at 442 and the UK Supreme Court case of *In re Kaupthing Singer & Friedlander Ltd (in administration) (No 2) Mills v HSBC Trustee (CI) Ltd* [2012] 1 AC 804 at [11].

37 For completeness and the avoidance of doubt, my decision concerns only the admission of the applicant's POD. I am not giving directions on how the dividend process should ultimately be carried out, which may be a matter for further consideration by the parties concerned and perhaps for fuller argument in a subsequent proceeding.

**Conclusion**

38 For the foregoing reasons, I allow the applicant's application. I order that the respondents' decision on 3 December 2024 to reject the applicant's POD lodged on 22 March 2023 for the Sum be reversed. The POD is to be admitted in principle, with the quantum of debt to be determined subsequently.

39 I direct parties to file written submissions on costs within 14 days of the date of this judgment, limited to seven pages each, if they are not able to agree

on costs. Unless requested to hear parties orally, I will proceed thereafter to decide on the incidence and quantum of costs.

Philip Jeyaretnam
Judge of the High Court

Lin Weiqi Wendy, Leow Jiamin and G Kiran (WongPartnership LLP) for the applicant;
Lin Weiwen Moses and Mo Fei (Shook Lin & Bok LLP) for the respondents.

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