Pacific Harbor Advisors Pte Ltd and another *v* Tiny Tantono (representative of the estate of Lim Susanto, deceased) and another suit
[2015] SGHCR 3

Case Number	: Suit No 795 of 2012 (Summons No 2527 of 2014) and Suit No 863 of 2012 (Summons No 3387 of 2014)
Decision Date	: 19 January 2015
Tribunal/Court	: High Court
Coram	: Tan Teck Ping Karen AR
Counsel Name(s)	: Mr Gregory Vijayendran, Mr Benjamin Smith and Mr Ronald Wong (Rajah & Tann LLP) for the judgment creditor in S795 of 2012; Ms Monica Chong, Mr Edmund Koh and Mr Oh Sheng Loong (Wong Partnership LLP) for the judgment creditor in S863 of 2012Mr Rakesh Kirpalani and Mr Alphis Tay (Drew & Napier LLC) for the judgment debtor in both suits.
Parties	: Pacific Harbor Advisors Pte Ltd and another — Tiny Tantono (representative of the estate of Lim Susanto, deceased)

Civil Procedure – Examination of Judgment Debtor – Scope of Examination

19 January 2015 Judgment reserved.

Tan Teck Ping Karen AR:

Factual Background

1 The late Mr Susanto Lim ("Lim") passed away on 15 October 2009. Madam Tiny Tantono is Lim's widow.

2 Prior to his death, Lim provided a personal guarantee to the Pacific Harbour Advisors Pte Ltd ("Pacific") and Credit Suisse AG, Singapore Branch ("Credit Suisse") as well as LIM Asia Multi-Strategy Fund Inc ("LIM Asia") in respect of loans granted to PT Batanghari Sawit Lestari ("BSL"). BSL fell in default of the loans. As no payments were received, Pacific and Credit Suisse commenced Suit No. 795 of 2012 against Lim's estate. This was followed by LIM Asia who commenced Suit No. 863 of 2012 against Lim's estate.

3 As no Grant of Probate or Letters of Administration was taken out in respect of Lim's estate, Madam Tiny Tantono was appointed the litigation representative of Lim's estate in respect of the two suits.

4 On 28 March 2014, final judgment was entered in favour of the Plaintiffs in respectively in Suit No. 795 of 2012 and Suit No. 863 of 2012. Pursuant to the final judgments , the Plaintiffs in both suits ("Judgment Creditors") each obtained an order for the examination of judgment debtors. The examination of Madam Tiny Tantono, in her capacity as litigation representative of Lim's estate ("Judgment Debtor"), in both suits was fixed before me.

The issue and further arguments

5 At the outset of the examination on 4 August 2014, an issue arose over the scope of the examination. The Judgment Creditors raised the issue of whether the Judgment Debtor should answer

questions in respect of the "*historical aspect*" of Lim's estate i.e. questions concerning the estate's property from the date of Lim's death in 2009 to date. After hearing the submissions of the Judgment Creditors and the Judgment Debtor, I decided that no questions on the historical aspect of the property of Lim's estate would be allowed. I observed that under Order 48 rule 1(1) of the Rules of Court, which provide for the order for examination of judgment debtor ("EJD"), the matters on which the Judgment Debtor may be examined on are limited to property which the Judgment Debtor **has**. It is not provided that the Judgment Debtor is to be examined on property that it *had*. I, therefore, limited questions on the property of Lim's estate to the period commencing from the date of the final judgment, i.e. 28 March 2014.

6 At the subsequent examination on 22 September 2014, the Judgment Creditors sought to make further arguments, which I agreed to hear, on the issue which was framed as follows:

> *Would the Judgment Creditor be permitted to ask questions on the historical aspect of the estate of the deceased if such questions have a nexus to the property that the estate has wheresoever situated i.e. assets post judgment?*

The relevant provision

7 Order 48 rule 1(1) of the Rules of Court reads as follows:

> (1) Where a person has obtained a judgment or order for the payment by some other person (referred to in this Order as the judgment debtor) of money, the Court may, on an application made by ex parte summons supported by affidavit in Form 99 by the person entitled to enforce the judgment or order, order the judgment debtor, or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar, and be orally examined ***on whatever property the judgment debtor has*** and wheresoever situated, and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination. [Emphasis added]

Is a judgment creditor permitted to ask questions on the historical aspect of the property of a judgment debtor?

The parties' submissions

8 Counsel for Pacific and Credit Suisse, Mr Gregory Vijayendran, urged the Court to take a purposive interpretation of Order 48 rule 1(1). Relying on *United Overseas Bank Ltd v Thye Nam Loong (S) Pte Ltd and Others* [1994] SGHC 262 ("*UOB*"), Mr Vijayendran highlighted that the purpose of the EJD is to enable the judgment creditor to obtain the necessary information from the judgment debtor in order to enforce a judgment. The examination is "not only intended to be an examination but to be a cross-examination and that of the severest kind." Flowing from this, the judgment creditor should be entitled to pose any question as far as possible to ascertain the judgment debtor's property and to receive from the judgment debtor all necessary particulars in respect of the same.

9 Agreeing that a purposive approach should be taken, Ms Monica Chong, counsel for LIM Asia, argued that there is no prohibition on the judgment creditor asking questions about the assets owned by the judgment debtor in the period before the date of the judgment, as long as the questions are "fairly pertinent" to the recovery of the debt. Such questions would be limited by ensuring they had a "nexus" to the current property held by the judgment debtor.

10 On the other side, Mr Ramesh Kirpalani, counsel for the judgment debtor, argued that a plain and purposive reading of Order 48 rule 1(1) meant that only questions regarding the current assets of the judgment debtor should be allowed.

The scope of questions that may be asked during an EJD

11 As there is no local case on whether questions may be asked on the historical aspect of a judgment debtor's property, assistance was sought from English, Australian and Hong Kong cases.

12 As a preliminary point, it should be noted that there are slight differences in the wordings of the relevant EJD provisions in England, Australia and Hong Kong. The EJD provisions in these jurisdictions all provide that a judgment debtor may be examined on

(a) whether any, and if so, what debts *are* owing to the judgment debtor; and

(b) whether the judgment debtor *has* any, and if so, what other property or means of satisfying the judgment or order.

[emphasis added]

13 The EJD provision in Singapore merely states that the judgment debtor may be "orally examined on whatever property the judgment debtor *has*".

14 However, despite the slight differences, the foreign cases are still persuasive authorities on the issue being considered, namely, whether questions on the historical aspect of a judgment debtor's property are allowed in an EJD. This is because the foreign EJD provisions as well as the Singapore EJD provision all use the present tense when referring to the debts, means or property of the judgment debtor. Therefore, the foreign court's analysis of whether the examination of a judgment debtor is limited to current and present assets of the judgment debtor would be instructive.

15 The scope of the questions that may be asked during an EJD and how the Court's discretion is to be exercised was examined in the English case of *Watkins v Ross* (1893) 68 LT 423 ("*Watkins*"), the Australian case of *McCormack v National Australia Bank Ltd* (1992) 106 ALR 647 ("*McCormack")* and the Hong Kong case of *Bloomsbury International Ltd v Nouvelle Foods (Hong Kong) Ltd* [2005] 1 HKC 337 ("*Bloomsbury*").

Watkins

16 In *Watkins*, the judgment debtor had deposited a debenture bond of a company with the judgment creditor. After obtaining judgment against the judgment debtor, the judgment creditor commenced action against the company to recover the amount of the bond. The company obtained leave to unconditionally defend on the basis that the bond had not been validly issued.

17 The judgment creditor sought to examine the judgment debtor on the validity of the bond in EJD proceedings. The judgment debtor refused to answer the questions and the questions were disallowed by the court.

18 On appeal, Lindley LJ explained the purpose of the EJD provision at [424]:

The object of this rule is plain enough; it is to make a judgment debtor tell what assets he has got to satisfy the judgment.

19 Lindley LJ observed that the judgment debtor could be asked questions regarding the bond as he held a reversionary interest in it. However, the judgment creditor could not ask questions on the validity of the bond to strengthen the creditor's case against the company.

20 *Watkins* established that a broad brush approach cannot be taken in determining the questions that may be addressed to a judgment debtor in an EJD. The judgment creditor not entitled to ask unfettered questions on the property of the judgment debtor. Reyes J sitting in the Court of First Instance in *Bloomsbury*, referred to *Watkins* and correctly observed at [75] and [76]:

> There must be some line beyond which a creditor examining under O48 may not tread. That line cannot be drawn with precision. It is undesirable fully to articulate its boundaries. That would needlessly constrain the flexibility inherent in O48.
>
> At one extreme, questions will clearly be directed at discovering information about a debtor's property and means. Those should be within the bounds of O 48. At the other end of the spectrum, questions will be so obviously unconnected with a debtor's assets, as to be outside the purpose of O 48. In between will inevitably fall a large grey area of topics. Whether a particular course of inquiry in the grey area falls within or without O 48 should be left to the discretion and good sense of the tribunal hearing the examination to decide.

McCormack

21 In the Australian case of *McCormack*, the judgment creditor sought to examine the judgment debtor about a maintenance agreement entered into between the judgment debtor and his wife and the transfer of property pursuant to this agreement.

22 The master hearing the examination understood that the purpose of the questions was to obtain information that may assist the judgment creditor to recover assets which could be used to satisfy the judgment debt. Effectively, the judgment creditor was seeking information about the past assets of the judgment debtor. The master disallowed the questions, holding at p649 that only questions that go to "some method *presently available* to [the judgment debtor] to satisfy the judgement debt" would be allowed in the examination. The "nascent possibility" that the maintenance agreement may be set aside did not bring the property within the scope of the examination.

23 The Federal Court of Australia agreed with the master. It held at p649:

> [O43 (the Australian EJD provision)] does not provide for an unlimited examination of a debtor in respect of his financial affairs…
>
> We would not read the term "means" as limited to pecuniary resources presently, in the sense of instantly or currently, available. …The term "means" of its very nature denotes **not only existing property or assets but also resources or sources whereby assets or property may become available** for satisfaction of the judgment debt. **But nevertheless, the rule allows only an examination as to the property and means which the judgment debtor *has* to satisfy the judgment**…. The purpose of the examination is to ascertain from what sources the debtor may satisfy the judgment debt. The term "means" does not denote other possible methods by which the judgment creditor may obtain satisfaction of the debt. It is the means of the debtor which are the subject of the examination. [emphasis added]

24 The principle that may be drawn from McCormack is that only questions that concern means or property that are "presently available" to the judgment debtor will be allowed. This would cover

existing property and assets as well as assets or property that may become available to the judgment debtor. Questions on past assets held by the judgment debtor would not be allowed.

Bloomsbury

25 In *Bloomsbury*, the Hong Kong Court considered the issue of whether a judgment debtor may be examined on claims which might be brought by the judgment debtor against third parties in the future.

26 The brief facts are as follows. The judgment debtor's shares held by the parent company were sold to third parties. Subsequently, the judgment creditor obtained an arbitration award against the judgment debtor and leave was granted for the award to be enforced as a judgment. Leave was granted to examine the directors of the defendant company under the Hong Kong equivalent of O48. A dispute arose as to whether the transfers of the judgment debtor's shares were bona fide arms-length transactions.

27 The Hong Kong Court discussed *Watkins* and *McCormack* and concluded that the use of the present tense "has" in O48 did not prohibit the judgment creditor from asking about actions which may be brought in the future. The pertinent question was whether there *currently existed* a chose in action. The court held that the judgment debtor may have potential claims against third parties. These potential claims are chose in action, which though intangible, would constitute "property" which the judgment debtor currently has and is within the ambit of O48.

28 The Hong Kong court's holding that the judgment debtor's future claims are chose in action which the judgment debtor *presently* has is consistent with *Watkins* and *McCormack* which held that a judgment debtor may only be examined in respect of means or property which is *presently available*.

My Analysis

29 Having analysed the cases, I am of the view that the issue which has been drafted for my consideration attempts to apply a broad brush approach to the issue of what questions may be addressed to the Judgment Debtor in the examination, without due consideration to the "grey areas" that may arise. It would be more pertinent to focus on the purpose of the rule.

30 It cannot be said that questions on the historical aspect of the estate of the deceased will or will not be allowed merely because there is some nexus to the property the estate has. To allow questions on assets of the estate merely because it has a nexus to the current property of the estate is to commence down a slippery slope. This is because, at the end of the day, all assets and property previously held by the estate can be shown to have a link or nexus with the current assets and property as the previous assets or property would have to be sold or mortgaged to raise the capital or generate the income to purchase current assets and property.

31 I am of the view that the touchstone is not whether there is a nexus with the current property. The touchstone is whether the questions allow the Judgment Creditors to obtain information on the estate's existing property as well as property which may become available. Therefore, for the above reasons, I hold that the Judgment Creditor is not permitted to ask questions concerning the historical aspect of the estate of the deceased even if such questions have a nexus to the property that the estate has wheresoever situated.

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