IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 211

Bankruptcy No 2678 of 2016
(Registrar's Appeal No 173 of 2017)

In the matter of the Bankruptcy Act (Cap 20)

And

In the matter of Shi Yuzhi

Between

HSBC Bank (Singapore) Limited

… *Plaintiff*

And

Shi Yuzhi

… *Defendant*

GROUNDS OF DECISION

[Insolvency law] — [Bankruptcy] — [Court's power and discretion to grant bankruptcy order]

[Insolvency law] — [Bankruptcy] — [Private trustees in bankruptcy]

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HSBC Bank (Singapore) Ltd
v
Shi Yuzhi

[2017] SGHC 211

High Court — Bankruptcy No 2678 of 2016 (Registrar's Appeal No 173 of 2017)
Woo Bih Li J
24, 31 July 2017

24 August 2017

Woo Bih Li J:

1 The present Originating Summons was commenced by HSBC Bank (Singapore) Limited ("the Plaintiff") against Mr Shi Yuzhi ("the Defendant") on 27 December 2016 based on a debt of $22,719.70 due and owing by the Defendant as at 22 December 2016. On 1 June 2017, an Assistant Registrar ("AR") granted a bankruptcy order in respect of the Defendant ("the Bankruptcy Order"). The outstanding debt at that time was $3,519.99. Subsequently, the Defendant filed an appeal on 6 July 2017 against the Bankruptcy Order.

2 The appeal came up for hearing before me on 24 July 2017 and 31 July 2017. I eventually dismissed the appeal. I set out my reasons below.

Background

3 On 27 November 2016, the Plaintiff's solicitors served a statutory demand under s 62 of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("BA") on the Defendant for an outstanding debt of $22,469.05 ("the Statutory Demand").

4 On 27 December 2016, the Plaintiff's solicitors filed the Originating Summons, *vide*, HC/B 2678/2016, for a bankruptcy order to be made against the Defendant and for public accountants registered under the Accountants Act (Cap 2, 2005 Rev Ed) to be appointed as the Defendant's trustees in bankruptcy ("the Bankruptcy Application"). The supporting affidavit stated that the outstanding debt as at 22 December 2016 was $22,719.70. The Bankruptcy Application was first served on the Defendant on 30 December 2016.

5 26 January 2017 was the date of the first hearing of the Bankruptcy Application before an AR. The Defendant was absent. The Plaintiff's counsel sought a two-week adjournment as the Defendant had promised to make full repayment by end-January 2017. The hearing was accordingly adjourned to 9 February 2017.

6 On 9 February 2017, the Defendant was absent. The Plaintiff's counsel informed the AR that some payments had been made, but that there remained disagreement on interest. The hearing was adjourned to 23 February 2017. The Plaintiff's counsel was directed to write to inform the Defendant about the next hearing date.

7 On 23 February 2017, the Defendant was absent. The Plaintiff's counsel said that the Defendant had repaid what the Defendant thought was due, *ie*,

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$13,000. The Plaintiff's counsel then sought four weeks' adjournment to resolve the matter. The hearing was thus adjourned to 23 March 2017. The Plaintiff's counsel was directed to inform the Defendant by email and post about the next hearing date.

8 On 22 March 2017, the Plaintiff filed an affidavit of non-satisfaction ("ANS") stating that as at that date, a sum of S$3,519.99 remained due and owing by the Defendant.

9 On 23 March 2017, the Defendant was absent. The Plaintiff's counsel mentioned to the AR that the Debt Repayment Scheme ("DRS") under Part VA of the BA applied to the Defendant. He said that the Defendant had been in communication with the Plaintiff's solicitors and the Plaintiff. The Defendant had been notified of the hearing date (of 23 March 2017) by post and email on 16 March 2017. The hearing was adjourned for six months to 7 September 2017 for the Official Assignee ("the OA") to consider the Defendant's suitability for the DRS. Further, the AR dispensed with the need for the Plaintiff to file a fresh ANS if the value of the outstanding debt remained unchanged by the next hearing.

10 On 4 May 2017, the OA wrote to the Registrar of the Supreme Court ("the Registrar") to say that the Defendant had been determined to be unsuitable for the DRS under s 56B of the BA. The reason was that the Defendant had failed to submit the requisite documents under s 56C of the BA within the stipulated timelines despite notices sent to him dated 28 March 2017 and 12 April 2017.

11 A Registrar's Notice dated 5 May 2017 was then issued to the Plaintiff's solicitors to re-fix the next hearing of the Bankruptcy Application from

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7 September 2017 to 1 June 2017 (at 9.00 am) ("the Notice"). The Notice also directed the Plaintiff's solicitors to inform the Defendant of the new hearing date.

12 On 1 June 2017, the Defendant was absent. The Plaintiff's counsel informed the AR that he was proceeding with the Bankruptcy Application and that the Defendant had been informed of the hearing date (of 1 June 2017) by letter and email dated 5 May 2017. He referred to the ANS showing an outstanding sum of $3,519.99. He also informed the court that the OA had determined the Defendant to be unsuitable for the DRS as the Defendant had failed to submit the requisite documents to the OA. The AR then made the Bankruptcy Order against the Defendant and appointed private trustees in bankruptcy in respect of his estate.

The appeal

13 On 4 July 2017, the Defendant appeared before a Duty Registrar. He tendered the letter dated 4 May 2017 from the OA to the Registrar. By then, apparently, a solicitor had entered an appearance on his behalf but the Defendant said that that was not for the present bankruptcy proceedings. The Defendant then informed the Duty Registrar that he wanted to appeal against the Bankruptcy Order.

14 On 6 July 2017, the Defendant filed Registrar's Appeal No 173 of 2017. The reasons he stated in his appeal were as follows:

> The Official Assignee had assessed the bankruptcy case against me during my academic vacation in China and Korean. This was the reason why I could not appear the hearings. Also, they didn't tell me that I could appeal the case within 14 days, which is why I apply for this appeal now.

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> I have decided to appeal for the case for just one reason. In the beginning of this year, I had paid all the loan. Since then there were only 2,300 interests unpaid plus the so-called legal fee 3,700. There had been an argument between HSBC, the lawyer, and me about the legal fee. As you know, the minimal amount for filing a bankruptcy case is S$15,000. This case is obviously unreasonable.
>
> In addition, I am a tenured professor at National University of Singapore with the $137,000 annual salary. I really could understand how the people could make the decision which ruins my life.
>
> The bankruptcy case is a disaster for my family. All my banks have been frozen, and we have no money for living. Our situation is really urgent. Please help me out. Your quick response will be highly appreciated.

The first hearing

15 24 July 2017 was the first hearing date of the appeal before this court. I asked the Defendant whether he wanted an interpreter of the Chinese language. The Defendant declined and said that he was prepared to carry on in the English language.

16 The Plaintiff was represented by Mr Tham Kai Mun of Kelvin Chia Partnership ("Mr Tham"). Mr Tham informed me that on 20 June 2017 there had been a settlement between the Plaintiff and a third party, who is apparently the Defendant's friend, as regards the outstanding sum owed by the Defendant to the Plaintiff. Mr Tham did not take the point that under s 8(1) of the BA read with O 56 r 1(3) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), the Defendant's appeal was filed late as it should have been filed within 14 days from 1 June 2017. Instead, Mr Tham submitted that the Defendant should have applied to annul the Bankruptcy Order under s 123(1)(*b*) of the BA, instead of appealing against the Bankruptcy Order.

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17 The Defendant tendered a stack of documents to the court. He said that there was a dispute as to the legal costs claimed by the Plaintiff. In this regard, he asserted that although he was not opposed to paying the legal costs, such costs should be assessed by the court and that the Bankruptcy Order had been sought in a bid to force him to pay these costs despite his protests. When I informed him that he should have made this point prior to the Bankruptcy Order by appearing in court, he replied that he had been on an academic vacation in China and Korea. When I then queried if he had asked anyone to appear on his behalf, or written to the court to have the matter adjourned or re-fixed, he stated that he had done none of these.

18 The Defendant then alleged that the minimum debt in respect of which a bankruptcy order could be made was $15,000. According to him, the Plaintiff's continued pursuit of the Bankruptcy Application despite the minimum debt threshold not being satisfied indicated that the application had been a bid to force him to pay the disputed legal costs. On this point, I informed the Defendant that the minimum debt threshold was to be considered as at the date of the bankruptcy application and not the date of the order (see s 61(1)(*a*) of the BA).

19 In any event, Mr Tham pointed out that the sum of $3,519.99 stated to be outstanding in the ANS did not include the legal costs disputed by the Defendant. Mr Tham also reiterated that there was a settlement subsequent to the Bankruptcy Order (see [16] above).

20 The Defendant did not dispute that there was a settlement by the time of the hearing before this court. However, he pointed out that the Plaintiff's solicitors had claimed legal costs of $3,781.34 in their letter to him dated

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20 March 2017. He also stressed that this appeal was of urgency to him because his bank accounts were frozen.

21 Mr Tham repeated that the ANS did not include legal costs. I add that there was an exhibit to the ANS, which was a tabulation titled "Calculation of Interest as at 22 March 2017". This tabulation provided a detailed breakdown of the amount outstanding in respect of the Defendant's personal loan account with the Plaintiff as at 22 March 2017. Legal costs were not included in the breakdown of $3,519.99, which appeared instead to comprise entirely of interest accruals.

22 Importantly, Mr Tham also informed the court that, based on his understanding, the Defendant had other creditors. Furthermore, under r 235(4) of the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed) ("BR"), when any person other than the OA applies for an annulment of a bankruptcy order, the OA or the trustee, as the case may be, is obliged to give notice of the application to certain creditors as stipulated. The court's attention was also drawn to r 237(1) of the BR, under which once a date has been fixed for the hearing of the annulment application, the Registrar must give notice of the time and place of the hearing to the applicant, the OA, and the administrator of the bankrupt's estate "not less than 21 days before the day so appointed".

23 In the light of the information about the other Defendant's creditors and the notice requirements for an annulment application, I was of the view that the hearing should be adjourned for these issues to be clarified with the Defendant's trustees in bankruptcy and to see how the matter could be expedited. As the Defendant was anxious for a quick resolution, I tried to assist him by adjourning the hearing for one week to 31 July 2017, instead of for at least 21 days. Further,

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I suggested to the Defendant that he contact the trustees in bankruptcy to explore the possibility of an expedition. The idea was for him to check with them the amounts owing to his other creditors and to determine whether the requisite notice periods could be abridged. As the Defendant was a litigant in person, I also requested Mr Tham to assist in his request for an expedition by speaking to the trustees in bankruptcy about the current situation.

The second hearing

24 At the second hearing on 31 July 2017, the Defendant provided no update about his discussions with the trustees in bankruptcy. Rather, he again raised the question of the legal costs claimed against him. He stressed that he had paid everything outstanding to the Plaintiff as of early 2017. He referred to the documents that he had handed to the court at the previous hearing. In particular, he referred to a document titled "Demand Deposit Transaction History". This document pertained to an account ending with "060" whereas the Statutory Demand and the Bankruptcy Application were in respect of another account ending with "458". In any event, the document only appeared to show that as at 22 June 2017, there had been a nil balance in the account ending with "060", and that transfers of certain sums had been made from this account to his other account ending with "458". The document did not show that as at the date of the Bankruptcy Order on 1 June 2017, no amounts were outstanding to the Plaintiff.

25 Bearing in mind what Mr Tham had said at the previous hearing, I asked Mr Tham to show the Defendant a copy of the ANS for the Defendant's perusal. Mr Tham did so in my presence and added that he believed that a copy had previously been sent by email to the Defendant. Mr Tham also elaborated that insofar as the Defendant was referring to payments that he had made up to the

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date of the ANS, such payments had already been taken into account in the ANS as reflected in the appended exhibit to the ANS.

26 Instead of addressing the point that the legal costs were not included in the exhibit to the ANS which evidenced an outstanding debt of $3,519.99 as at 22 March 2017, the Defendant insisted that the Plaintiff explain the legal basis for claiming such legal costs, and that the OA explain the reasons for which the Bankruptcy Order had been made against him. I reminded the Defendant that such legal costs were not included in the ANS and that the date at which the minimum debt threshold is to be assessed is the date of the bankruptcy application and not the date of the bankruptcy order (see [18] above), but the Defendant maintained his demand to know the legal basis on which the Plaintiff had sought the legal costs. This was all the more puzzling since it was common ground between the Plaintiff and the Defendant that all amounts claimed by the Plaintiff (whether including any legal costs or not) had been resolved by a settlement reached on 20 June 2017. I would mention that the court was not informed about the terms of the settlement or whether the settlement included legal costs and, if so, how much legal costs had been agreed upon.

27 Mr Tham also produced an email from one Brenda on behalf of the trustees in bankruptcy dated 27 July 2017 addressed to the Defendant and copied to Mr Tham. That email revealed that three other creditors had lodged proofs of debt against the Defendant's bankruptcy estate. Two of the creditors were bank creditors, each claiming more than $28,000 from the Defendant. The third creditor was the Comptroller of Income Tax who was claiming more than $6,000. The email also stated that the Defendant had indicated his intention to apply to the court for an annulment of the Bankruptcy Order under s 123 of the BA. Further, the email recorded that the 3-week notice period to be given for an

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intended annulment was "an instruction given by the [OA]" in order to inform all creditors that the deadline for the filing of proofs of debt had been brought forward. In this case, the trustees in bankruptcy appeared to have advertised such notice on 28 July 2017 with a deadline for the filing of proofs of debt by 18 August 2017.

The analysis

28 The analysis of the Defendant's appeal is done in two parts:

(a) Whether the AR had the power to grant the Bankruptcy Order; and

(b) Whether the AR had the discretion to decline to grant the Bankruptcy Order and, if so, whether the AR had erred in nevertheless making such order.

The court's power to grant a bankruptcy order

29 In the present case, the Plaintiff, as a creditor of the Defendant, had the standing to file a creditor's bankruptcy application against the Defendant under s 57(1)(*a*)(i) of the BA. It was undisputed that the Defendant satisfied the conditions in respect of the debtor required under s 60(1) of the BA: according to the Plaintiff's affidavit, the Defendant was domiciled in Singapore, had property in Singapore, and within the one year immediately preceding the date of the Bankruptcy Application had been ordinarily resident in Singapore and had a place of residence in Singapore in the Pasir Panjang area.[1]

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[1] Plaintiff's Affidavit dated 27 December 2016 at para 2(a).

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30 Further, the grounds of the Plaintiff's Bankruptcy Application were clearly established. Section 61 of the BA provides as follows:

> **Grounds of bankruptcy application**
>
> **61.**—(1) Subject to section 63A, no bankruptcy application shall be made to the court in respect of any debt or debts unless at the time the application is made —
>
> (*a*) the amount of the debt, or the aggregate amount of the debts, is not less than $15,000;
>
> (*b*) the debt or each of the debts is for a liquidated sum payable to the applicant creditor immediately;
>
> (*c*) the debtor is unable to pay the debt or each of the debts; and
>
> (*d*) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the applicant creditor by virtue of a judgment or an award which is enforceable by execution in Singapore.
>
> (2) The Minister may, by order published in the *Gazette*, amend subsection (1)(*a*) by substituting a different sum for the sum for the time being specified therein.

31 It is notable that s 61(1) makes clear that the four conjunctive limbs of that provision are to be assessed "at the time the application is made". In the present case, the requirements were all made out:

(a) The Plaintiff's affidavit filed in support of its Bankruptcy Application stated that as at 22 December 2016, the Defendant owed the Plaintiff an aggregate sum of $22,719.70 (see above at [4]).[2] This exceeded the statutorily prescribed threshold of $15,000. The Defendant did not suggest that the outstanding amount had been reduced below the threshold as at the date of the Bankruptcy Application on 27 December 2016.

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2 Plaintiff's Affidavit dated 27 December 2016 at para 3.

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(b) Section 61(1)(*b*) was undisputed.[3]

(c) Under s 62 of the BA, since the Defendant had been served with the Statutory Demand by the Plaintiff in the prescribed form and had neither fully complied with it nor applied to the court to set it aside (see above at [3]), he was presumed until he proved to the contrary that he was unable to pay any debt within the meaning of s 61(1)(*c*) of the BA.

(d) Section 61(1)(*d*) did not apply.

32 Accordingly, on 1 June 2017, it was within the AR's power to have granted the Bankruptcy Order. In this context, the BA empowers the court to make a bankruptcy order on a bankruptcy application. Section 59 of the BA states that "[s]ubject to this Part, the court may make a bankruptcy order on a bankruptcy application made under section 57 or 58".

33 The AR was also not precluded from making the Bankruptcy Order under s 65(1) of the BA, which states:

> **Proceedings on creditor's bankruptcy application**
>
> 65.—(1) The court hearing a creditor's bankruptcy application shall not make a bankruptcy order thereon unless it is satisfied that —
>
> (*a*) the debt or any one of the debts in respect of which the application is made is a debt which, having been payable at the date of the application, has neither been paid nor secured or compounded for; and
>
> (*b*) where the debtor does not appear at the hearing, the application has been duly served on him.
>
> …

[3] Plaintiff's Affidavit dated 27 December 2016 at para 2(b).

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34 First, as of 1 June 2017, the debt had not been fully repaid, secured, or compounded for. Secondly, while the Defendant did not appear in court on 1 June 2017, the Bankruptcy Application had been served on 30 December 2016 in accordance with the terms of the loan agreement between the Plaintiff and the Defendant. Furthermore, the Plaintiff's solicitors had specifically informed the Defendant of the hearing date of 1 June 2017 as directed by the Registry (see [11] and [12] above).

35 For completeness, it should also be mentioned that r 127 of the BR obliges the court to dismiss a creditor's bankruptcy application in three situations. The rule provides as follows:

> **Dismissal of bankruptcy application**
>
> **127.** The court shall dismiss a creditor's bankruptcy application where —
>
> (*a*) the applicant creditor is not entitled to make the bankruptcy application by virtue of section 60, 61 or 62 of the Act;
>
> (*b*) the statutory demand upon which the application is based is such that the court would have set it aside had the debtor made an application under rule 97; or
>
> (*c*) in a case where the application is based on a statutory demand, the applicant creditor has not discharged the obligations imposed on him by rule 96.

36 None of the three limbs of r 127 apply in the present case.

37 Accordingly, the AR was not obliged to decline to make the Bankruptcy Order under s 65(1) of the BA, or to dismiss the Bankruptcy Application under r 127 of the BR.

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The court's discretion not to grant a bankruptcy order

38 However, it did not follow that just because there was a remaining amount owing to the Plaintiff as at 1 June 2017, a bankruptcy order should necessarily be made. This is because the BA does not mandate that a bankruptcy order *must be made* even if all threshold requirements had been met. Indeed, it appears that the court has a statutory discretion not to make a bankruptcy order.

39 First, s 65(2) of the BA provides the disjunctive grounds upon which the court may exercise its discretion to dismiss a bankruptcy application. In particular, s 65(2)(*e*) BA states that the court "may dismiss the application if… it is satisfied that for other sufficient cause no order ought to be made thereon".

40 Secondly, s 64(1) of the BA states that the court "may at any time, for sufficient reason, make an order staying the proceedings on a bankruptcy application, either altogether or for a limited time…"

41 Accordingly, it seemed to me that a court may, in some situations and in its discretion, dismiss or stay a bankruptcy application if the remaining debt outstanding is a relatively small sum (here, of about $3,000) as at the date on which a bankruptcy order is to be made. Therefore, to the extent that Mr Tham's submission suggested that the Defendant was precluded from filing an appeal against the Bankruptcy Order and could only have applied for an annulment, I did not agree.

42 However, it does not follow that a court should always exercise its discretion to dismiss or stay the bankruptcy application if the remaining debt is

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relatively small. On the facts of this case, even assuming that the AR had a discretion not to grant the Bankruptcy Order, the following countervailing factors supported the AR's decision and militated against allowing the Defendant's appeal:

(a) Prior to the filing of his appeal, the Defendant had not attended any of the hearings before the court. There were a total of 5 hearings spanning over 4 months from January to June 2017. At each of these hearings, the Plaintiff's solicitors were directed to inform the Defendant of the next hearing date by various means including by email.

(b) Although the Defendant stated in his appeal that he was away on academic vacation in China and Korea, he did not state the period of his absence. He tendered a copy of some pages of his passport, but did not use them to elaborate on the specific period or periods that he had been away from Singapore between January and June 2017.

(c) More importantly, the Defendant did not deny receiving the Statutory Demand. Neither did he deny that he knew that bankruptcy proceedings had been commenced against him. Yet, apparently, he did not inform the Plaintiff or its solicitors, or the OA, or the court that he would be away and the period of his absence from Singapore. The result was that no party but the Defendant himself apparently knew that he was away. Hence, the OA's letter dated 4 May 2017 suggested that the Defendant was simply not responding to their letters.

(d) I should mention that r 119 of the BR provides that a debtor who intends to oppose a creditor's bankruptcy application filed against him must, not later than 3 days before the hearing of his application, file in

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court a notice specifying the grounds of objections and serve a copy of the same on the applicant creditor and the OA. In the present case, the Defendant had done none of these. Even if the Defendant was not aware of this rule, he did not deny that he was aware of the various hearing dates before the ARs, including the hearing on 1 June 2017. In any event, if indeed he was away on 1 June 2017, he apparently took no steps to inform the Plaintiff's solicitors of this which he should have done.

(e) The Defendant informed this court that his wife had passed away and his daughter was studying in the US. However, if it was true that no one else was at his home in Singapore while he was away, then it was all the more so that he should have informed the Plaintiff's solicitors that he would not be in Singapore and his period of absence so that they, in turn, could inform the court and the OA.

(f) This was not a case where a debtor had a low income or no job. Indeed, the Defendant did have a decent income. He was quick to mention in his appeal his status as a tenured member of the local academia and that he earned a salary of $137,000 per annum. Yet, he did not explain why he was unable to pay the initial outstanding sum of about $22,000 until the Plaintiff had to commence bankruptcy proceedings against him. Furthermore, there was no explanation as to why he failed to pay the remaining sum of $3,519.99 which did not include legal costs. He also did not say that he had offered to make instalment payments to the Plaintiff whether for the initial outstanding sum or for the remaining sum. In the absence of any explanation from him, the inference was that he had been recalcitrant in not making payment.

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43 In summary, the Defendant must have known about the gravity of his predicament, especially in the light of the severity of the bankruptcy proceedings brought against him. It must have been clear to the Defendant that he could not simply act as he wished and make payment on his terms. It may be that the Defendant thought that so long as he reduced the outstanding debt to below $15,000, no bankruptcy order could be made against him (see [17] above). But that is not the law. In any event, even if the Defendant genuinely held that belief, he should have attended before the court on 1 June 2017 to address the court as to why a bankruptcy order should not be made, or informed the Plaintiff's solicitors or the court that he would be away on that date. He did not do any of these things. Rather, the first time he appeared was before the Duty Registrar on 4 July 2017 after the Bankruptcy Order had been made.

44 For the above reasons, I was of the view that the AR did not err in making the Bankruptcy Order on 1 June 2017.

45 Even then, I was still prepared to consider allowing the appeal, albeit only as a matter of indulgence, assuming that the court had a discretion not to make a bankruptcy order in the present circumstances. However, I also considered the existence of other creditors who may be prejudiced if the appeal was allowed without more. Unfortunately for the Defendant, he chose to make the Plaintiff's legal costs the issue even though that was not relevant. He did not say anything about what he was proposing to do with his other debts.

46 In the circumstances, I decided that the appropriate thing to do was to dismiss the appeal but to expressly qualify that the dismissal did not preclude the Defendant from subsequently applying for an annulment order. Therefore,

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he could still make that application if he was minded to do something about his other debts.

47 I should add that the existence and scope of the court's discretion to dismiss or stay a bankruptcy application under ss 65(2)(*e*) and 64(1) of the BA respectively may require further examination in an appropriate case. On its face, both these provisions contain language that suggest a broad purport to the court's discretion: "for other sufficient cause" (s 65(2)(*e*)) and "for sufficient reasons" (s 64(1)). Dicta also appear to support a broad reading of s 65(2)(*e*). In this regard, the High Court in *Lembaga Tabung Angkatan Tentera (Malaysia) v Ling Lee Soon* [2017] 3 SLR 414 opined 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", which includes the matters stated in ss 123(1)(*c*) and (*d*) of the BA (at [72]). In the same vein, Vinodh Coomaraswamy JC (as he then was) suggested in *Chimbusco International Petroleum (Singapore) Pte Ltd v Jalalludin bin Abdullah* [2013] 2 SLR 801 that the discretion to dismiss bankruptcy proceedings under s 65(2)(*e*) of the BA exists even if the court is satisfied that there are no triable issues (at [46]). Nevertheless there may be remaining issues as to the scope and limit of the court's discretion under either of these provisions (see, *eg*, *Lee Kiang Leng Stanley v Lee Han Chew (trading as Joe Li Electrical Supplies)* [2004] 3 SLR(R) 603 at [16]; *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 at [18]-[19]). However, as I have found on the facts that the AR had not erred in declining to exercise such discretion even assuming that the discretion existed, these issues do not arise and I make no further comment.

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The Defendant's complaints

48 I turn now to address two complaints that the Defendant has made about this court.

49 After the first hearing on 24 July 2017, the Defendant sent an email dated 27 July 2017 to the Supreme Court. In that email, he complained that this court was not interested in looking at the documents that he had tendered. He also alleged that he had been scolded when he tried to explain the situation. He felt strongly insulted during the hearing. He asked for another judge to be appointed to hear his appeal which was adjourned to 31 July 2017. I will refer to this email as "the 1st Complaint".

50 The Supreme Court replied to the Defendant on 28 July 2017 to state that he had to file an application to seek this court's recusal and that the application must be supported by an affidavit setting out the reasons. If he wished to proceed, he was to file his application by 5 pm on 28 July 2017, which was a Friday, so that arrangements could be made to fix the application for hearing on 31 July 2017, which was the following Monday, before this court.

51 Apparently, the Defendant did not reply to this email. Neither did he file any application for recusal. When he appeared before this court on 31 July 2017, he did not orally apply for this court's recusal. He also did not mention any discontent about the way the hearing on 24 July 2017 had been conducted.

52 Accordingly, as at the second hearing on 31 July 2017, this court was not aware of the 1st Complaint or that the Defendant was unhappy about the court or the manner in which the proceedings had been conducted. Indeed, this

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court was surprised to eventually learn about the 1st Complaint after the conclusion of the second hearing.

53 It is not correct that the Defendant was scolded when he tried to explain his appeal to the court at the first hearing. Perhaps the Defendant took exception when the court noted that the ANS did not include legal costs. The more important point is that it is untrue that this court was not interested to look at the documents tendered by the Defendant. For example, the court did consider the letter dated 20 March 2017 from the Plaintiff's solicitors to the Defendant claiming legal costs of $3,781.34 (see [20] above). However, the problem was that this letter did not help him since the disputed legal costs were not part of the amount claimed in the ANS. This had been explained several times to the Defendant.

54 After the second hearing on 31 July 2017, the Defendant sent another email dated 1 August 2017 to the Supreme Court. This time the email was copied to this court's office. I will refer to this as "the 2nd Complaint". In that complaint, he said that this court had asked him to provide a document and, while his head was bowed to look at his papers, the court spoke to him and started "to yield" (presumably meaning "to yell") at him to look directly at the court when the court was addressing him. He stated that he was forced to say that he understood this. He wrote that this was his first time in the High Court and requested for the regulations and "item of the law" to prove that there existed any such requirement to look at the court while the court addressed the parties.

55 It is not correct that at the second hearing the Defendant bowed his head to look at some documents because of the court's request for him to provide a

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document. If that had been the case, the court would have waited for him to locate the document. Rather, the court was addressing the Defendant when he chose instead to look at some documents. When the court noticed this, the court informed him that he should be looking at the court when he was being addressed. As the Defendant did not respond, the point was repeated. Eventually, the Defendant looked up and appeared to be displeased. The court stressed to the Defendant that if he wanted the court to listen to him then he should do likewise. If not, the court would not wish to hear further from him. When the Defendant was asked whether he understood this, he reluctantly said he understood. There was no yelling.

56 In any event, as the Defendant himself said in his email, the more important point in the 2nd Complaint was that this court had failed to understand his appeal. He referred to the Plaintiff's claim for interest and legal costs. He also alleged that the minimum debt threshold "to file a bankruptcy case" was $15,000 and that despite that threshold, the OA had "assessed the bankruptcy case" against him on the basis of an "already-paid (non-existing) amount of the debt on June 1, 2017". He stated that the "purpose of [his] appeal is to let the [OA] give the specific item of the law to prove the decision of [the OA] lawful".

57 I have already elaborated on the Defendant's insistence on questioning the legal costs even though the court had explained to him that such legal costs were not included in the ANS. Furthermore, it was common ground that, subsequent to the Bankruptcy Order, there was a settlement of whatever the Plaintiff was claiming. The interest claimed was also not the Defendant's issue before this court. As for the minimum debt threshold of $15,000, the court had explained to the Defendant that this threshold is to be considered as at the time

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the bankruptcy application is filed, and not at the time that the bankruptcy order is to be made.

58 Ultimately, the allegation that this court had been disinterested in the Defendant's documents or appeal is baseless and must be refuted. If that was the case, this court could have dismissed his appeal outright at the first hearing. Instead, the court adjourned the appeal for him to contact the trustees in bankruptcy for the reasons mentioned above (see [23] above). Secondly, the court adjourned the appeal for one week, instead of for more than 21 days. This shorter adjournment was granted in order to try and expedite matters for the Defendant on account of the hardship that the Defendant claimed to be suffering under the Bankruptcy Order. Thirdly, considering the fact that the Defendant was a litigant in person, the court also expressly requested Mr Tham to assist by speaking to the trustees in bankruptcy about the current situation. These steps were taken to help the Defendant to extricate himself from this predicament.

59 I add that the Defendant's allegations against the OA are unfounded. The OA is not a party to this Bankruptcy Application, and the Defendant's trustees in bankruptcy are public accountants rather than the OA. Contrary to the Defendant's assertion in his 2nd Complaint, the OA did not assess the bankruptcy case against him on the basis of an "already-paid (non-existing) debt". Rather, the OA had only found the Defendant to be unsuitable for DRS because of his own lack of response to the OA's notices (see above at [10]). It was the AR who made the Bankruptcy Order.

Conclusion

60 This court did attempt to assist the Defendant. So did the ARs below who adjourned the Bankruptcy Application several times despite his

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non-attendance in order to give the Defendant more time to fully satisfy his debt prior to the Bankruptcy Order. I should add that Mr Tham did not ask for any costs of the two hearings pertaining to the appeal after the Defendant's appeal was dismissed.

61 Regrettably, the Defendant perceived things differently. He also did not help himself, other than to insist that the court overreach into a matter that was not properly before it and notwithstanding that a private settlement had been reached. In his appeal, the Defendant was quick to mention his academic status and his annual salary. It would be better for him if he had matched his words with his deeds and taken responsibility for the predicament that he found himself in. The court did make a considered decision as to the merits of his appeal. The Defendant bears the consequences of his own conduct.

Woo Bih Li
Judge

Tham Kai Mun (Kelvin Chia Partnership)
for the plaintiff/respondent;
the defendant/appellant in person.

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