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

**[2018] SGHC 205**

Originating Summons (Bankruptcy) No 141 of 2017
(Registrar's Appeal No 49 of 2018)

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

And

In the matter of Rule 97 of the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed)

And

In the matter of Statutory Demand dated 24 April 2017 and issued under Section 62 of the Bankruptcy Act (Cap 20, 2009 Rev Ed)

Between

Wheeler, Mark

… *Plaintiff/Appellant*

And

Standard Chartered Bank (Singapore) Limited

… *Defendant/Respondent*

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# GROUNDS OF DECISION

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[Insolvency Law] — [Bankruptcy] — [Statutory demand]

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# Wheeler, Mark
# v
# Standard Chartered Bank (Singapore) Limited

**[2018] SGHC 205**

High Court — Originating Summons (Bankruptcy) No 141 of 2017
(Registrar's Appeal No 49 of 2018)
Woo Bih Li J
14, 21 May 2018

20 September 2018

**Woo Bih Li J:**

## Introduction

1 Originating Summons (Bankruptcy) No 141 of 2017 was an application by the plaintiff, Mr Mark Wheeler, to set aside a statutory demand which the defendant, Standard Chartered Bank (Singapore) Limited ("SCB"), had served on him. SCB's counsel clarified that the statutory demand was issued on 24 April 2017 and served on Mr Wheeler on 4 May 2017.

2 SCB had sent the statutory demand to claim money alleged to be due and owing to SCB by Mr Wheeler arising from the use of a credit card issued by SCB to him. Mr Wheeler disputed the validity of the sum claimed for various reasons.

3 On 2 March 2018, an Assistant Registrar dismissed Mr Wheeler's application to set aside SCB's statutory demand. Mr Wheeler filed an appeal. After hearing arguments, I allowed his appeal on the basis that the debt was disputed on grounds which appeared to be substantial. I was of the view that SCB should obtain judgment against Mr Wheeler first before initiating any step towards the filing of a bankruptcy application against him.

4 Mr Wheeler's grounds of dispute were fact-centric and it is not necessary to elaborate on them here. However, in the course of arguments, a provision in the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed) and the consequence of non-compliance with it, as provided for under another provision, were raised. As these provisions are of general application, I will say something about them. The provisions in question were r 94(3) read with r 98(2)(*d*) of the Bankruptcy Rules ("Rule 94(3)" and "Rule 98(2)(*d*)" respectively).

**Rule 94(3) and Rule 98(2)(*d*)**

5 Rule 94(3) states:

> If the amount claimed in the statutory demand includes interest, penalties, charges or any pecuniary consideration in lieu of interest, it shall separately identify the actual amount that has accrued as at the date of the demand and the rate at which and the period for which it was calculated.

6 Rule 98(2)(*d*) states that "The court shall set aside the statutory demand if rule 94 has not been complied with".

7 The language in Rule 94(3) and Rule 98(2)(*d*) appears mandatory such that it suggests that the court has no discretion and that once r 94 has not been complied with, and this includes Rule 94(3), the court must set aside the



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statutory demand regardless of whether the debtor has suffered any prejudice by the non-compliance. As I will elaborate later, the consequence of a failure to comply with Rule 94(3) may not be as severe as a literal reading of Rule 98(2)(*d*) initially suggests.

8 The second part of Rule 94(3) states, "it shall separately identify the actual amount that has accrued as at the date of the demand and the rate at which and the period for which it was calculated". This seems to mean that if the amount claimed in the statutory demand includes interest, then the statutory demand shall:

> (a) separately identify the actual amount that has accrued by way of interest as at the date of the demand; and
>
> (b) the rate at which and the period for which such interest was calculated.

9 Therefore, if for example, the interest is included as part of the principal due and owing at monthly intervals at the end of each calendar month, it seems that it is sufficient if a statutory demand sent at the end of a calendar month states only the aggregate sum due but not the interest component since the interest has already been included as part of the principal.

10 It appeared from SCB's statutory demand and from the statements of account SCB exhibited that the interest for the sum Mr Wheeler owed SCB was compounded on a monthly rest basis. Furthermore, interest was added onto the principal due and owing on the 20th of each calendar month. SCB's statutory demand was dated 24 April 2017. However, the sum stated to be due as at 24 April 2017 has the same figure as the sum shown (in a statement of account)



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to be outstanding as at 20 April 2017. SCB did not make it clear whether it was waiving interest for the period between 21 and 24 April 2017. Furthermore, SCB's statutory demand mentioned:

> (a) the principal sum and interest, fees, commissions and other charges due as at 24 April 2017; and
>
> (b) the finance charges on the sum claimed, accruing at a certain rate, compounded on a monthly rest basis from 25 April 2017 until the date of full payment.

This gave the impression that monthly rest interest was calculated from the 25th of each month when it was from the 21st of each month.

11 Furthermore, under Rule 94(3), it appears that it is not sufficient for a creditor to say that the interest rate was already stated in statements of account sent regularly to the debtor. The information must be stated in the statutory demand.

12 In the UK, the insolvency regime appears to allow more flexibility in respect of a statutory demand. Rule 10.1(7)(a) of the Insolvency (England and Wales) Rules 2016 (SI 2016 No 1024) (UK) provides that if the amount claimed in a statutory demand includes any charge by way of interest of which *notice had not previously been delivered* to the debtor as a liability of his, the amount or rate of the charge must be separately identified and the grounds on which payment of it is claimed must be stated. I highlight that the requirement there to separately identify the amount or rate of the charge and the grounds for such a claim applies where there is no previous notification of the charge to the debtor. Therefore, if the interest rate has been specifically mentioned in statements of



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account sent regularly to the debtor, then presumably the statutory demand need not contain further information about the interest charged.

13 I come back to Rule 98(2)(*d*) which I have set out at [6] above.

14 This provision gives the impression that a court must set aside the statutory demand even if the non-compliance with r 94 is technical and no substantial injustice has been caused to the debtor. However, Rule 98(2)(*d*) should be construed with r 278 of the Bankruptcy Rules and s 158(1) of the Bankruptcy Act (Cap 20, 2009 Rev Ed).

15 Rule 278 of the Bankruptcy Rules states:

> Non-compliance with any of these Rules or with any rule of practice shall not render any proceeding void unless the court so directs, but such proceeding may be set aside wholly or in part, amended or otherwise dealt with in such manner and upon such terms as the court thinks fit.

16 Section 158(1) of the Bankruptcy Act states:

> No proceedings in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceedings is of the opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

17 It appears that Singapore courts generally adopt an approach that suggests that a statutory demand will not be set aside if no substantial injustice to the debtor has been caused by a deficiency in the statutory demand and that "proceedings in bankruptcy" in s 158(1) of the Bankruptcy Act encompass a statutory demand (see *Re Rasmachayana Sulistyo (alias Chang Whe Ming), ex parte The Hongkong and Shanghai Banking Corp Ltd and other appeals* [2005] 1 SLR(R) 483 at [19]; *Ramesh Mohandas Nagrani v United Overseas Bank Ltd*



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[2016] 1 SLR 174 at [9], [11]–[12] and *iTronic Holdings Pte Ltd v Tan Swee Leon* [2018] 4 SLR 359 at [53], [74]–[75], [77], [81]).

18 Nevertheless, debtors, who are quite often lay litigants, and even lawyers may be led into thinking that Rule 98(2)(*d*) means that any deficiency in a statutory demand, however insignificant, will be sufficient to cause the statutory demand to be set aside and hence embark on a challenge of the validity of a statutory demand when such a challenge should not be made in the circumstances.

19 I am not certain why Rule 98(2)(*d*) is couched in such mandatory language. It is one thing to stress the importance of a statutory demand. It is another to seemingly impose a drastic consequence for non-compliance with r 94 in relation to the form and contents of a statutory demand if there is no substantial injustice to the debtor. Apparently there is no equivalent of this provision in the UK insolvency regime.

20 Furthermore, r 98(2) stipulates a few grounds on which the court "shall set aside the statutory demand". Rule 98(2)(*d*) is one out of five grounds. The other grounds appear to encompass reasons of substance whereas Rule 98(2)(*d*) allows procedural or technical reasons to be raised about non-compliance with r 94. This raises the question whether Rule 98(2)(*d*) should have been inserted somewhere else in the Bankruptcy Rules rather than in r 98(2).

21 In any event, if it is correct that Rule 98(2)(*d*) is subject to r 278 of the Bankruptcy Rules, then perhaps an amendment should be made to the Bankruptcy Rules to make this clear. Conversely, if Rule 98(2)(*d*) is to apply notwithstanding r 278, then this should also be made clear. The interaction



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between s 158(1) of the Bankruptcy Act and r 278 of the Bankruptcy Rules should also be made clear.

22 Another provision has also come to the attention of this court. Rule 98(3) of the Bankruptcy Rules states that if the court dismisses the application (to set aside a statutory demand), it shall make an order authorising the creditor to file a bankruptcy application either on or after the date specified in the order. It is not clear why such a provision is necessary. I believe that some lawyers for creditors have overlooked this provision and not sought such an order. They have assumed that once the application to set aside the statutory demand is dismissed, they may proceed to file a bankruptcy application. That assumption is quite understandable and perhaps the need for r 98(3) should be reviewed.

Woo Bih Li
Judge

The plaintiff/appellant in person;
Wong Nan Shee (Tan Kok Quan Partnership)
for the defendant/respondent.

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