Lim Zhipeng *v* Seow Suat Thin
[2019] SGHC 104

Case Number	: HC/Suit No 336 of 2018 (HC/Registrar's Appeal No 45 of 2019)
Decision Date	: 24 April 2019
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Adrian Tan Wen Cheng and Delson Tan (August Law Corporation) for the plaintiff/respondent; Kanthosamy Rajendran (Relianze Law Corporation) for the defendant/appellant.
Parties	: Lim Zhipeng — Seow Suat Thin

Civil Procedure – Summary judgment

24 April 2019 Judgment reserved.

Choo Han Teck J:

1 One Derek Cheong Wee Ker ("Mr Cheong"), the son of Madam Seow Suat Thin, the defendant, owed Lim Zhipeng, the plaintiff, $595,000. He was unable to pay the debt in full and had a balance of $490,000 unpaid when he was adjudicated a bankrupt on 13 July 2017. On 28 September 2017 the defendant signed what was purported to be an agreement by deed ("the Agreement").

2 In the Agreement, made between the defendant and the plaintiff, the defendant gave a guarantee to the plaintiff that in the event Mr Cheong is unable pay the outstanding sum of $490,000, the defendant will pay the outstanding debt. On or about 21 November 2017, the defendant paid $40,000 to the plaintiff and the plaintiff also received a total of $11,500 from Mr Cheong on several occasions. This brought the total outstanding debt down to $438,500.

3 The plaintiff sued the defendant on the Agreement and obtained summary judgment against her for the sum of $438,500, and this is an appeal by the defendant against the summary judgment. Mr K Rajendran appeared on behalf of the defendant (appellant) and Mr Adrian Tan appeared on behalf of the plaintiff (respondent).

4 Mr Rajendran's main point was that the Agreement between the plaintiff and the defendant was void for contravening s 76(1)(c) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("BA") which provides as follows:

> 76 – (1) On the making of a bankruptcy order —
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> (a) the property of the bankrupt shall —
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> (i) vest in the Official Assignee without any further conveyance, assignment or transfer; and
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> (ii) become divisible among his creditors;
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> (b) the Official Assignee shall be constituted receiver of the bankrupt's property; and

(c) unless otherwise provided by this Act —

(i) no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy shall have any remedy against the person or property of the bankrupt in respect of that debt; and

(ii) no action or proceedings shall be proceeded with or commenced against the bankrupt in respect of that debt,

except by leave of the court and in accordance with such terms as the court may impose.

Mr Rajendran submitted that once a person (like Mr Cheong) has been made a bankrupt no creditor (like the plaintiff) "shall have any remedy against the person or property of the bankrupt". He submitted that after Mr Cheong's bankruptcy, he is incapable of entering into any agreement that makes him indebted to anyone.

5 Although Mr Cheong is not a party or signatory to the Agreement, the recital of the Agreement made it clear that Mr Cheong has an outstanding debt of $490,000 owing to the plaintiff, and that he and the defendant proposed to pay the debt in three instalments, and that the defendant guarantees this repayment.

6 Had this been an agreement by a deed under seal, it may possibly be construed as a binding undertaking by the defendant to pay $490,000 to the plaintiff. Although the Agreement was described as a deed, the copy filed as an exhibit does not have a seal. Without the formality of sealing the deed, the document is only evidence of an agreement in writing; and if it is to be enforced as a contract, there must be proof of consideration (see *Kuek Siew Cheng v Kuek Siang Wei and another* [2015] 1 SLR 396 at [30]–[31] and *Hishiya Seiko Co Ltd v Wah Nam Plastic Industry Pte Ltd and another* [1993] SGHC 7). There is no express provision as to consideration, and thus, the question as to whether the court can infer a forbearance to sue as consideration for the Agreement is a matter for trial.

7 Furthermore, even though Mr Cheong was not a party to the Agreement, the Agreement was entered after Mr Cheong had become a bankrupt. Insofar as the Agreement recites that Mr Cheong and the defendant "proposed to pay the Debt" to the plaintiff, the reference to Mr Cheong may not be proper because once Mr Cheong is declared bankrupt, his property vests in the Official Assignee and further, any disposition of his property between the bankruptcy application period and the order is void (see ss 76(1)(a) and 77(1) BA). The effect of the reference to Mr Cheong calls into further question the validity and extent of the Agreement, or the 'deed', if indeed it was a deed.

8 Mr Rajendran's arguments regarding s 76(1)(c) of the Bankruptcy Act is convoluted, and the Assistant Registrar below may not be wrong to be unpersuaded by Mr Rajendran's interpretation that the 'deed' affects the rights and property of Mr Cheong, but the intention of the plaintiff and defendant are relevant in ascertaining the nature of this document that is not a deed but titled the "Deed of Guarantee" and that has to be explored at trial. For this reason, the plaintiff is not entitled to a summary judgment.

9 I am of the view that there are issues as to the legitimacy and validity of the document that the plaintiff is relying on for his judgment. I will therefore allow the appeal and set aside the order for summary judgment. Costs will be reserved to the trial judge.