

Asia Silk Stores v Lata Ashok Khemlani (trading as DJ Hira Enterprise)
[2019] SGHC 112

Case Number : HC/Originating Summons (Bankruptcy) No 110 of 2018 (HC/Registrar's Appeal No 85 of 2019)
Decision Date : 07 May 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Satwant Singh s/o Sarban Singh (Satwant & Associates) for the plaintiff/appellant; Sarindar Singh (Singh & Co.) for the defendant/respondent.
Parties : Asia Silk Stores — Lata Ashok Khemlani (trading as DJ Hira Enterprise)

Insolvency Law – Bankruptcy – Statutory demand

7 May 2019

Choo Han Teck J:

1 The plaintiff sold textiles to a firm known as DJ Hira Enterprise (“DJ Hira”). The defendant, Lata Ashok Khemlani is the registered sole proprietor of DJ Hira. A trading debt amounting to \$49,933.15 was due by DJ Hira to the plaintiff. The plaintiff served a statutory demand on the defendant on 14 October 2018, 14 days after she had, on her solicitor’s advice (she claimed), ignored a letter of demand from the plaintiff for payment of the debt. She stated in her affidavit that the lawyer told her that if she did not owe the money she could ignore the letter.

2 The defendant persuaded an assistant registrar to set aside the statutory demand on the basis that the debt is disputed on substantial grounds, and the plaintiff appealed against the order. On appeal before me, Mr Sarindar Singh, counsel for the defendant, submitted that the defendant knew nothing about the trade transactions and that the transactions were carried out by her husband, Ashok Khemlani, without her knowledge.

3 Mr Sarindar said that his client’s marriage had broken down and although she had once taken out a personal protection order on 3 March 2016, she has not divorced him. The defendant also claimed in one of her affidavits, sworn on 17 December 2018 that, “Only my husband will be able to answer the question. My solicitors have tried to communicate with my husband but without success”.

4 In spite of that, the husband filed an affidavit in support of the defendant’s claims, on 21 February 2019 stating that although they live together, they are living separate lives, and that as their daughter was getting married soon, they try to remain civil to each other. Referring to the photographs of what appears to be a happy couple and family, the husband explained that:

The [defendant] and I are only together in the photographs to show the world at large that we are a happy family. However, the truth is that we have contemplated going our separate ways for quite some time but appear together as a façade.

5 The husband acknowledged the debt but claimed that “the debt was incurred by me without the knowledge of the [defendant]”. He also claimed that the cheques of DJ Hira were in his possession and were used by him without the defendant’s knowledge and that as soon as she found

out about this case, she “immediately removed my mandate [to operate the cheque account]”.

6 Mr Sarindar admitted that it was a mistake on the defendant’s part not to have closed the bank account or removed herself from DJ Hira after she was no longer involved in it. The fact is that for all intents and purposes, DJ Hira remains the defendant’s façade to the business world at large. Although the husband was the person representing DJ Hira, the invoices and the goods were sent to DJ Hira, and payments were made by cheques from DJ Hira’s account. The goods could have been ordered by anyone from DJ Hira, and the evidence showed that the plaintiff was clearly doing business with the entity ‘DJ Hira’. That was the incontrovertible evidence from the affidavits filed from both sides.

7 The defendant, if what she claims is true, has a recourse against her husband. The trades done in the name of DJ Hira must be paid by DJ Hira. For these reasons, I allowed the appeal on 22 April 2019 and gave the defendant a further 21 days to comply with the statutory demand.

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