Seto Wei Meng (suing as the administrator of the estate and on behalf of the dependants of Yeong Soek Mun, deceased) and another *v* Foo Chee Boon Edward

[2021] SGHCR 5

Case Number	: Originating Summons (Bankruptcy) No 400 of 2021
Decision Date	: 05 July 2021
Tribunal/Court	: General Division of the High Court
Coram	: AR Randeep Singh Koonar
Counsel Name(s)	: Chain Xiao Jing, Felicia (Legal Clinic LLC) for the plaintiffs; Palaniappan Sundararaj and Lim Min (K&L Gates Straits Law LLC) for the defendant.
Parties	: Seto Wei Meng — (suing as the administrator of the estate and on behalf of the dependants of Yeong Soek Mun, deceased) — Seto Mun Chap — (suing as the co-administrator of the estate and on behalf of the dependants of Yeong Soek Mun, deceased) — Foo Chee Boon Edward

Insolvency Law – Bankruptcy – Bankruptcy order

5 July 2021

AR Randeep Singh Koonar:

Introduction

1 The key issue in Originating Summons (Bankruptcy) No 400 of 2021 ("B 400") was whether I should allow the Defendant's application for a stay of the bankruptcy proceedings, pending the determination of the Defendant's appeal against the judgment on which the bankruptcy application was founded ("the Stay Application").

2 I dismissed the Stay Application on 12 April 2021, delivering brief oral grounds. I made a bankruptcy order against the Defendant and appointed the Official Assignee the trustee of the Defendant's estate.

3 I now set out the detailed grounds of my decision. I do so because the Stay Application raised points of law which do not appear to have been directly considered by the local case authorities. The first concerned the standards which should guide the Court's discretion to stay bankruptcy proceedings, pending an appeal against the judgment debt. There was a further question as to how this discretion should be exercised where the trial judge had earlier denied a stay of execution of the judgment or ordered a stay of execution on conditions which were not satisfied.

Background

The parties

4 The Plaintiffs are the administrator and co-administrator of the estate of Yeong Soek Mun ("Yeong"), who is deceased.

5 The Defendant is a medical doctor. At the material time, he practised at a clinic known as TCS Aesthetics Clinic ("the Clinic").

The High Court suit

6 On 28 June 2013, Yeong underwent a liposuction and fat transfer procedure at the Clinic. The Defendant performed the procedure. During the procedure, Yeong suffered a condition known as a pulmonary fat embolism, which resulted in her death.

7 On 27 May 20216, the Plaintiffs commenced Suit No 533 of 2016 ("S 533") against the Defendant and two corporate entities which owned and managed the Clinic for negligently causing Yeong's death. The suit against the corporate entities was discontinued after they went into liquidation. The Defendant also joined the Singapore General Hospital as a third party. However, he discontinued the third party proceedings midway through trial.

8 The trial of S 533 was heard by Choo Han Teck J. Choo J delivered judgment on 26 November 2020, finding the Defendant liable in negligence. Choo J awarded the Plaintiffs damages of $5,599.557.48 and further pre-judgment interest. Under O 42 r 12 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), the Plaintiffs were also entitled to post-judgment interest. Choo J's judgment is reported as *Seto Wei Meng (suing as the administrator of the estate and on behalf of the dependants of Yeong Soek Mun, deceased) and another v Foo Chee Boon Edward and others (Singapore General Hospital Pte Ltd, third party)* [2020] SHGC 260.

Events after the High Court suit

9 On 11 December 2020, the Plaintiffs served a statutory demand on the Defendant ("the Statutory Demand"). The Statutory Demand was for the sum of $6,959,341.58, comprising the damages award, pre-judgment interest and post-judgment interest.

10 On 15 December 2020, the Defendant appealed against the whole of Choo J's judgment in S 533 by way of Civil Appeal No 208 of 2020 ("CA 208").

11 Shortly after filing CA 208, the Defendant filed Summons No 5638 of 2020 ("SUM 5638") for a stay of execution of Choo J's judgment in S 533, pending the final determination of CA 208. The Defendant's grounds for seeking a stay of execution are of note. As will be seen, they were identical to the Defendant's grounds for seeking a stay of the bankruptcy proceedings. In his affidavits, the Defendant deposed that:

(a) There was merit in his appeal.

(b) His appeal would be rendered nugatory and he would be prejudiced if a stay of execution was not granted, especially if he was made bankrupt.

(c) Ordering a stay of execution would not prejudice the Plaintiffs.

12 Choo J heard SUM 5638 on 18 January 2021. He granted a stay of execution on three conditions:

(a) The Defendant was not to dispose of his assets without an order of court.

(b) The Defendant was to file an affidavit setting out a list of his assets by 25 January 2021.

(c) The Defendant was to make partial payment of $300,000 within 30 days of the order.

13 Choo J further ordered that the conditional stay would be expunged if the Defendant failed to comply with any of the conditions. The conditional stay was expunged when the Defendant failed to

file an affidavit setting out a list of his assets by 25 January 2021. The Defendant also failed to make partial payment of the judgment sum.

The bankruptcy proceedings

14 The Plaintiffs commenced the present bankruptcy proceedings in B 400 against the Defendant on 17 February 2021. The bankruptcy application was served on the Defendant on 22 February 2021.

15 B 400 first came up for hearing before me on 18 March 2021. Defendant's counsel made an application under s 316(5) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ("IRDA") for the bankruptcy proceedings to be stayed pending the final determination of CA 208. Plaintiffs' counsel objected to the application and urged the Court to make a bankruptcy order forthwith. Parties were subsequently directed to file written submissions on the Stay Application.

16 Finally, it is relevant to note that on 17 February 2021, which is the day B 400 was filed, the Plaintiffs filed Summons No 20 of 2021 ("SUM 20") in CA 208 for an order that the Defendant furnish further security for costs in the appeal, in the sum of $60,000. The Court of Appeal allowed SUM 20 on 6 April 2021. The Defendant furnished the ordered security on 9 April 2021.

Decision

17 By the time I delivered judgment on the Stay Application on 12 April 2021, it was undisputed that the Plaintiffs' papers in B 400 were in order and the conditions for making a bankruptcy order against the Defendant were satisfied. The sole issue was whether I should grant a stay of the bankruptcy proceedings pending the determination of CA 208. For the reasons that follow, I found that the circumstances did not merit the granting of a stay, whether unconditionally or on conditions.

The relevant statutory provisions

18 I begin by examining the relevant statutory provisions under the IRDA. Two provisions are of note.

19 The first is s 315(1) of the IRDA, which confers a general power on the Court to stay bankruptcy proceedings:

> **Power of the Court to stay or dismiss proceedings on bankruptcy application**
>
> **315.**—(1) 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, *on such terms and conditions as the Court thinks fit*.
>
> …
>
> [emphasis added]

20 The second is s 316(5)(*a*) of the IRDA, which is a more specific provision:

> **Proceedings on creditor's bankruptcy application**
>
> …
>
> (5) When a bankruptcy application has been made against a debtor on the ground that the

debtor —

(a) *has failed to pay a judgment debt*, and there is *pending an appeal* from or an application to set aside, the judgment or order *by virtue of which the judgment debt is payable*;

…

the Court *may*, *if it thinks fit*, stay or dismiss the application.

[emphasis added]

21 Sections 315(1) and 316(5)(*a*) are worded identically to ss 64(1) and 65(4)(*a*) of the now repealed Bankruptcy Act (Cap 20, 2009 Rev Ed) ("BA"). The case law interpreting the BA provisions is therefore relevant in interpreting the corresponding provisions in the IRDA.

22 The Court of Appeal's decision in *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 ("*Chimbusco CA*") at [19] also bears mention. There, the Court of Appeal considered the relationship between the court's general power to stay bankruptcy proceedings under s 64(1) of the BA and its specific powers under provisions like s 65(4)(*a*). The Court of Appeal held that the specific powers should be read as clarifying the scope of the general power. This is consistent with the High Court's earlier observation in *Lee Kiang Leng Stanley v Lee Han Chew* [2004] 3 SLR(R) 603 at [17] that the specific powers would be rendered superfluous given the breath of the general power, unless the specific powers were read as illustrations of what the court might do under its general power. These observations are equally apposite to the relationship between ss 315(1) and 316(5)(*a*) of the IRDA.

Principles governing the exercise of the Court's discretion to order a stay of the bankruptcy proceedings

23 I turn to consider the standards which should guide the Court's discretion to stay bankruptcy proceedings, pending an appeal against the judgment debt.

24 Parties agreed that the mere fact of a pending appeal is insufficient to warrant a stay. This must be correct. In *Re Goh Chin Soon, ex parte Oversea-Chinese Banking Corp Ltd* [2001] 3 SLR(R) 145 ("*Re Goh Chin Soon*"), Lai Kew Chai J observed (at [3]) that:

A stay is only to be granted according to the discretion of the court which should be exercised according to established judicial principles. A mere appeal is not enough.

25 While the relevant application in *Re Goh Chin Soon* was made under s 65(4)(*b*) of the BA, which concerns to the Court's discretion to stay bankruptcy proceedings based on a statutory demand where there is a pending application to set aside the demand, Lai J's observations are equally apposite to s 65(4)(*a*) of the BA. In both cases, a mere appeal or setting aside application cannot be sufficient to warrant a stay of the bankruptcy proceedings. If they were, the Court's discretion under those provisions would be redundant.

26 The parties disagreed, however, on the standards by which the Court's discretion should be exercised. The Plaintiffs submitted that the Court should consider all relevant considerations and mediate between the competing interests of the judgment creditor and the judgment debtor. The Defendant, on the other hand, submitted that the merits of the appeal should be the only or

predominant consideration. I found the Plaintiffs' submissions more persuasive.

27 First, it was clear that ss 315(1) and 316(5)(*a*) of the IRDA conferred a broad discretion on the Court. A plain reading of the provisions undermined the Defendant's contention that *only* the merits of the appeal should be considered.

28 Second, I did not see why the standards for determining whether a stay of the bankruptcy proceedings should be granted should be significantly different from the principles for determining whether a stay of execution of the judgment should be granted. As regards the latter, it is trite law (and common ground) that the applicant must establish "special circumstances" before a stay is granted: *Strandore Invest A/S and others v Soh Kim Wat* [2010] SGHC (at [7]). In this regard, the existence of strong grounds for appealing will itself not constitute special circumstances: *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 1 SLR(R) 772. Instead, the Court will balance the judgment creditor's *prima facie* right to obtain the benefit of the judgment in his favour against the prejudice the judgment debtor may suffer, insofar as his right of appeal may be rendered nugatory if a stay is not granted.

29 In my view, the Court's exercise of its discretion under ss 315(1) and 316(5)(*a*) of the IRDA calls for a similar balancing exercise. The Court's role is to weigh the judgment creditor's *prima facie* right and interest in obtaining a bankruptcy order against the prejudice which a judgment debtor may suffer if he is made bankrupt pending his appeal. As far as these are fact-sensitive questions, there is no reason why the Court should myopically focus on the merits of the appeal to the exclusion of other relevant considerations.

30 Third, I did not consider it helpful or appropriate to rely on the merits of the appeal as the only or predominant consideration in determining whether a stay of the bankruptcy proceedings should be granted. It is unhelpful because the bankruptcy court is simply not in a position to fully assess the merits of an appeal, except perhaps, in the most exceptional of cases. It is inappropriate because any adjudication or findings on the merits is properly left to the appellate court. Even if the bankruptcy court were to make a *prima facie* assessment of the merits of an appeal, it ought not to be the sole or predominant consideration because it is only a *prima facie* assessment.

31 Fourth, while there appeared to be a dearth of case authorities on the applicable standard for granting a stay of the bankruptcy proceedings under ss 315(1) and 316(5)(*a*) of the IRDA, the case authorities which parties did find supported the Plaintiffs' position.

32 In *Chimbusco International Petroleum (Singapore) Pte Ltd v Jalalludin bin Abdullah and other matters* [2013] 2 SLR 801 ("*Chimbusco (HC)*"), one issue was whether the bankruptcy proceedings against the defendants should be stayed pending the determination of the defendants' application to set aside the statutory demands served on them. The statutory demands related to sums allegedly due under a guarantee executed by the defendants.

33 In *Chimbusco (HC)* at [57], Vinodh Coomaraswamy J observed that ss 64(1) and s 65(4) of the BA (which are identical to s 315(1) and s 316(5) of the IRDA), were "deliberately drafted widely enough to confer on the court a broad discretionary power to stay [a bankruptcy application] on such terms and conditions as it thinks just". On appeal, in *Chimbusco (CA)* at [39], the Court of Appeal similarly observed that the court's discretion under s 64(1) of the BA was "unqualified and widely framed". The Court of Appeal further observed (at [40]) that:

> In the final analysis, the court will have to mediate between various competing concerns in deciding what conditions ought to be imposed, including, inter alia, protecting the pecuniary

interests of the plaintiff/creditor, the size of the debt, avoiding the stifling of triable issues and responding to different degrees of shadowiness.

34 I am mindful that the Court of Appeal's observations concerned whether conditions ought to have been imposed on the stay that was ordered. But this does not detract from their broader application to the question of whether a stay should be granted at all. There often is significant overlap between the questions of whether a stay should be granted, whether the stay should be granted with or without conditions, and the conditions which should be imposed. *Chimbusco (CA)* suggests that these questions call for a nuanced approach, where the court considers and balances competing considerations. It does not support the blinkered approach the Defendant was urging upon the Court.

35 I am also mindful that *Chimbusco (CA)* concerned a stay pending an application to set aside a statutory demand where the underlying debt had not been adjudicated upon. In contrast, the present bankruptcy application was founded on a judgment debt. In my view, this is not a material ground for distinguishing *Chimbusco (CA)*. If anything, it tilts the balance in the *Plaintiffs' favour* since the Defendant bears the more onerous burden of persuading the Court of Appeal to overturn the judgment entered against him, and not simply raise triable issues, as was the case in *Chimbusco (CA)*.

36 There was also scarce authority supporting the Defendant's contention that the merits of an appeal should be the sole or predominant consideration in determining whether a stay of the bankruptcy proceedings should be granted.

37 The Defendant relied on the following passage in *Re Goh Chin Soon* (at [4]):

> If an attack on a judgment or a statutory demand is doomed to fail or was made without good faith, the discretion under s 65(4) does not come into play, and the bankruptcy order must follow. *On the other hand, if there are sustainable grounds to set aside the judgment or the statutory demand, it would not be right to refuse a stay, resulting in a drastic change in the legal status and capacity of the "debtor"*. Where *clearly sustainable grounds are shown to invalidate a judgment debt or a statutory demand, the petition should ordinarily be dismissed*. Its continuance can operate unjustly against a "debtor", inasmuch as his legal capacity is suspended or called into question in his ordinary life, thereby disrupting his normal dealings.
>
> [emphasis added]

38 I doubt that Lai J had intended to establish the principle suggested by the Defendant, namely, that the merits of the appeal against the judgment debt should be the sole or predominant consideration in determining whether a stay of the bankruptcy proceedings should be granted. Notably, Lai J had held earlier in his judgment (at [3]) that a stay is only to be granted according to the discretion of the court, which is to be exercised according to established judicial principles. Lai J further held that the mere fact that an appeal is filed is insufficient.

39 Moreover, Lai J's observations were *obiter*. *Re Goh Chin Soon* was a case where Lai J (at [3]) found the defences to be devoid of merit and that the bankruptcy order should be made. Hence, Lai J did not need to consider how the court should exercise its discretion in the converse scenario, where the appeal could not be shown to be hopeless. At [4] of the judgment, Lai J was also responding to an argument by the debtor's counsel that s 65(4) of the BA prevented the court from making a bankruptcy order where there was an appeal or an application to set aside a statutory demand, and the court's only options were to stay or dismiss the proceedings. Lai J was not addressing the standards by which the court ought to exercise its discretion to order a stay of the bankruptcy

proceedings. If Lai J had indeed intended to establish the principle suggested by the Defendant, then I must respectfully disagree.

40 Keeping with the discussion above, the relevant legal principles may be summarized as follows:

(a) The Court has a broad discretion under ss 315(1) and 316(5)(*a*) of the IRDA to grant a stay of bankruptcy proceedings pending the determination of an appeal against the judgment on which the bankruptcy proceedings are founded.

(b) The party applying for the stay bears the burden of persuading the court that a stay should be granted.

(c) The mere fact of a pending appeal is insufficient to justify a stay being granted.

(d) The court's role in deciding whether to grant a stay involves the balancing of the judgment creditor's interest in obtaining the bankruptcy order forthwith against the prejudice that would be occasioned to the judgment debtor if a stay is not granted and a bankruptcy order is made. All facts relevant to this inquiry should be considered.

An unconditional stay of the bankruptcy proceedings was not warranted

41 The Defendant's principal contention was that the Court should unconditionally stay the bankruptcy proceedings pending the determination of CA 208. I disagreed.

The Stay Application was a collateral attack against the order in SUM 5638

42 In my judgment, the Stay Application was a blatant collateral attack against Choo J's order in SUM 5638, granting a conditional stay of execution of the judgment. On this ground alone, I would not have granted an unconditional stay of the bankruptcy proceedings.

43 For the avoidance of doubt, I do not mean to suggest that a stay of bankruptcy proceedings should never be granted *so long as* a stay of execution was previously denied or if a stay of execution was granted on conditions which have not been satisfied. That is wrong in principle given:

(a) Section 311(1)(*b*) requires the debt on which a bankruptcy application is founded to be payable immediately before a bankruptcy application can be made. Put differently, a bankruptcy application cannot be made at all if there is a stay of execution on the judgment debt. Hence, it cannot be correct that bankruptcy proceedings can only be stayed under ss 315(1) and ss 316(1)(*a*) of the IRDA where there is a stay of execution in relation to the judgment debt. Sections 315(1) and 316(5)(*a*) of the IRDA would be redundant if that were the case.

(b) As I found above (at [40(d)]), the court's discretion to stay bankruptcy proceedings pending an appeal against the judgment debt should be exercised by weighing the *prima facie* right and interest of the judgment creditor in obtaining a bankruptcy order forthwith against the prejudice the judgment debtor would suffer if a stay was not granted and a bankruptcy order made. The existence and extent of prejudice may differ based on whether a stay of execution of the judgment or a stay of the bankruptcy proceedings is being sought pending an appeal.

(i) First, a stay of execution of the judgment is a broader form of relief and prevents *all forms of execution*. If a stay of the bankruptcy proceedings is granted, the judgment creditor can still enforce the judgment through other methods. The prejudice to the

judgment creditor may therefore be diminished.

(ii) Second, bankruptcy proceedings may be more coercive for the judgment debtor compared to other methods of enforcement. This relates to the fact that bankruptcy proceedings prevent a party from pursuing an appeal without the Official Assignee's sanction and may result in the judgment debtor's assets being prematurely realised.

(c) Predicating the court's discretion to order a stay of bankruptcy proceedings purely on the outcome of an earlier application for a stay of execution can lead to a situation where a party who does not apply for a stay of execution at all is better off than one who applies unsuccessfully. That seems unprincipled if the circumstances of each party's case are similar.

(d) Finally, circumstances may have materially changed between the time a stay of execution was denied and the time an application is made for the stay of the bankruptcy proceedings. The court must be entitled (and is probably duty bound) to consider all relevant circumstances when making its decision, and not have its discretion fettered by an earlier decision based on different facts.

44 However, I disagreed with the Defendant's submission that Choo J's decision was *irrelevant* as to whether a stay of the bankruptcy proceedings should be granted. The Defendant relied on *dicta* in *Re International Tin Council* [1987] 1 Ch 419, where Millet J observed (at 455) that the winding up process was not a method of "enforcing" a debt. This *dicta* has been cited by the Singapore High Court in *Re Rasmachayana Sulistyo (alias Chang Whe Ming), ex parte The Hongkong and Shanghai Banking Corp Ltd and other appeals* [2005] 1 SLR(R) 483 ("*Re Rasmachayana*") at [40] and *Pacific King Shipping Pte Ltd and another v Glory Wealth Shipping Pte Ltd* [2010] 4 SLR 413 ("*Pacific King*") at [17].

45 The Defendant's submission, in a nutshell, was that because bankruptcy proceedings did not involve the "enforcement" or "execution" of a judgment debt, I should disregard the fact that Choo J had denied an unconditional stay of execution of the judgment for the purposes of the Stay Application. I disagreed.

46 First, even if bankruptcy proceedings were not "enforcement" or "execution" proceedings in the strict sense of these terms, it was incontrovertible that they were closely related to the enforcement process. As I mentioned at [43(a)] above, bankruptcy proceedings cannot be commenced if there is a stay of execution on the judgment debt on which the bankruptcy application is founded.

47 Second, the Defendant's purported distinction between bankruptcy proceedings and "enforcement" or "execution" proceedings was a distinction without a difference. The significance of Choo J's decision in SUM 5638 to the present application depended on whether the applications raised substantially similar or overlapping considerations. It did not depend on whether bankruptcy proceedings could be pigeon-holed within the meaning of "enforcement" or "execution" proceedings.

48 Third, the Defendant's submission was belied by his own position in SUM 5638. In his supporting affidavit, the Defendant stated that "if no stay of execution [was] granted and/or the Administrators are *allowed to proceed with execution*, *such as by bankruptcy proceedings*…the appeal would be rendered nugatory [emphasis added]". The Defendant was clearly taking inconsistent positions based on what suited him at the time.

49 Fourth, the Defendant's reliance on *Re International Tin Holdings*, and the local cases citing it, was misplaced. None of the cases concerned an application for a stay of bankruptcy proceedings

pending an appeal against the a judgment debt. They shed little light on how cases like the present ought to be decided.

50 Moreover, a close reading of *Re International Tin Holdings* shows that the proposition established by the case may be narrower than what the Defendant suggests. Notably, Millet J held (at p 456) that "the presentation of a winding up application [was] *not simply* a means of enforcing a judgment or award [emphasis added]", but rather, "it [was] the commencement of proceedings of *far wider effect* [emphasis added]". Likewise, in *Re Rasmachayana*, V K Rajah J (as he then was) observed (at [40]) that it was "overly simplistic to refer to bankruptcy proceedings *purely* as enforcement or attachment proceedings [emphasis in original omitted, emphasis added]".

51 Reference should also be made to *In re Lines Bros Ltd* [1983] Ch 1 (at 20), which was cited in *Re International Tin Holdings* (at 454). Brightman LJ offered an illuminating explanation of the relationship between bankruptcy proceedings and the enforcement process:

> The liquidation of an insolvent company *is a process of collective enforcement of debts* for the benefit of the general body of creditors. *Although it is not a process of execution*, because it is not for the benefit of a particular creditor, *it is nevertheless akin to execution* because its purpose is to enforce, on a *pari passu* basis, the payment of the admitted or proved debts of the company. When, therefore, a company goes into liquidation a process is initiated which, for all creditors, is *similar* to the process which is initiated, for one creditor, by execution.
>
> [emphasis added]

52 In my view, the cases do not detract from the clear relationship between bankruptcy proceedings and the enforcement process. The Defendant's suggestion that Choo J's decision was irrelevant because bankruptcy proceedings were not "enforcement" or "execution" proceedings was overly simplistic and I rejected it.

53 On the contrary, as the Plaintiffs submitted, it is important for there to be a reasonable degree of consistency between judicial decisions, especially where the facts and issues before the court are alike. To this end, it is pertinent that when Choo J denied an unconditional stay in SUM 5638, he must have been fully cognisant of the possibility of the Defendant being made bankrupt before the hearing of CA 208. This would have been evident from the Defendant's grounds for seeking a stay in SUM 5638 (see [11] above). It would also have been evident from the fact that the Statutory Demand was served on the Defendant before SUM 5638 was heard. In fact, the sequence of events strongly suggests that it was the issuance of the Statutory Demand which led to SUM 5638 being filed.

54 There was no change in circumstances from the time Choo J issued his decision in SUM 5638 and the hearing of B 400. The Defendant's affidavit filed in support of the Stay Application simply rehearsed his arguments in SUM 5638. The rehashing of the arguments was also clear from the Defendant's reference to his affidavits filed in SUM 5638 to support the Stay Application.

55 Although nothing had changed, the Defendant contended that I should exercise my discretion in a manner that was *fundamentally inconsistent* with an earlier High Court decision; and further, that of a High Court judge. All things considered, the Defendant's application for an unconditional stay of the bankruptcy proceedings struck me as a backdoor appeal against Choo J's decision in SUM 5638. This was particularly inappropriate since the Defendant could have applied to the Court of Appeal for a stay of execution under s 41(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), then in force, if he was dissatisfied with Choo J's decision. He chose not to for reasons best known to himself. In the circumstances, it was unprincipled and anomalous that the Defendant should be

granted an unconditional stay of the bankruptcy proceedings having failed to obtain substantially similar relief from Choo J on the very same facts.

The Defendant had failed to demonstrate why an unconditional stay should be granted

56 In any event, the Defendant bore the burden of persuading the Court that an unconditional stay of the bankruptcy proceedings should be granted. I found that the Defendant had failed to discharge his burden.

57 The Defendant's first ground for seeking an unconditional stay was that his appeal had merit. I placed little weight on this consideration. As discussed earlier, the merits of the appeal are not particularly probative, let alone, determinative, as to whether a stay should be granted. Moreover, while I accepted that the Defendant's appeal was not hopeless, it was equally not one which was bound to succeed. The Defendant's task of persuading the Court of Appeal to overturn the various findings of fact made by Choo J was not a straightforward one. The merits of the appeal were at best a neutral factor.

58 The Defendant's second ground was that his appeal in CA 208 would be stifled if a stay was not granted. I accepted that a bankruptcy order might adversely affect the Defendant's right of appeal. Under s 401(1)(*a*) of the IRDA, the Defendant would not have been able to continue the appeal without the Official Assignee's sanction.

59 At the same time, excessive weight should not be placed on this factor. To begin, this factor would exist in all cases where a stay of bankruptcy proceedings is sought pending an appeal. Giving it excessive weight would mean that a stay would be granted as a matter of course, thereby inverting the burden of persuasion in such applications. It was also relevant that the Defendant could still pursue his appeal with the Official Assignee's sanction even if he was made bankrupt (see *iTronic Holdings* at [112]). To this end, I had to assume that the Official Assignee would exercise its discretion reasonably and not withhold its sanction if the circumstances merited it.

60 The Defendant's third ground was that he would be financially prejudiced by a bankruptcy order if the Official Assignee proceeded to realise his assets and should he later prevail on his appeal. In this regard, I agree with Coomaraswamy J's observation in *Chimbusco (HC)* at [100] that while a bankruptcy order may have draconian effects, it is not irreversible insofar as the order can be annulled should the defendant succeed in his appeal.

61 In any event, the Defendant's claims of irreversible prejudice were unsupported by evidence. There was no evidence before me as to what assets the Defendant even had to begin with. All the Defendant said about his assets in his various affidavits was that he did not have "sufficient liquid assets" to make partial payment of $300,000 of the judgment sum, which Choo J had ordered as a condition of the stay of execution. The Defendant did not define "liquid assets". Nor did he make *any* disclosure as to his other (presumably "illiquid") assets. As I observed at the hearing, it was the Defendant's prerogative to be secretive about his assets. However, he had to accept the inferences which the Court might draw from his lack of candour.

62 The Defendant's fourth ground was that there was a lack of evidence to suggest that he was dissipating assets. The Defendant attempted to distinguish the High Court's decision in *Deutsche Bank AG v Lam Chi Kin David* [2011] 2 SLR 225 ("*Lam Chi Kin David*"), where Tay Yong Kwang J (as he then was) granted a conditional stay of the bankruptcy proceedings pending appeal, pursuant to s 65(4)(*a*) of the BA. The condition imposed was that the defendant pay $100,000 of the judgment debt totalling US$1.135m.

63 The Defendant's reliance on *Lam Chi Kin David* was flawed for two reasons.

64 First, *Lam Chi Kin David* established (at [26]) that "an applicant against whom judgment has been entered after a trial and who is seeking the court's protection from bankruptcy proceedings should be candid and forthcoming". Hence, it was not for the Plaintiffs to prove dissipation to resist the Stay Application. Instead, the burden was on the Defendant to make proper disclosures of his assets, for the Court to assess the merits of his application.

65 Second, the Defendant's reliance on *Lam Chi Kin David* was ironic given the facts of that case. In *Lam Chi Kin David*, the alleged dissipation concerned the sale proceeds of a property sold by the defendant during the trial. By the time Tay J heard the appeal against the assistant registrar's decision, the defendant had adduced further evidence purporting to account for the sale proceeds of the property, and which sought to show that he could not afford to make partial payment of $500,000 of the judgment sum, which the assistant registrar had ordered as a condition of the stay. Despite these further disclosures, Tay J found that the defendant was not candid and forthcoming because he failed to furnish any supporting documentary proof.

66 The Defendant in the present case had similarly sold a property during the trial of the action. But in stark contrast, the Defendant failed to provide any explanation as to how the sale proceeds were utilized. He failed to provide an explanation even though he was effectively seeking a second bite of the cherry in the Stay Application. *Lam Chi Kin David* thus undermined the Defendant's position.

67 Moreover, there were strong factors pointing against an unconditional stay being granted.

68 I agreed with the Plaintiffs that there was a real risk of them suffering prejudice if they succeeded on appeal. Such prejudice was attributable to two things. The first was the size of the judgment debt, which at the time of the bankruptcy proceedings, stood at slightly over $7m. The second and related point was that the Defendant's insurers had repudiated liability, making the Defendant personally liable to satisfy any damages award made against him. There was no evidence that the Defendant could satisfy a damages award if his appeal was unsuccessful, either in whole or part. Coupled with the Defendant's lack of candour regarding his assets, the Plaintiffs were clearly in an invidious position.

69 I also agreed with the Plaintiffs that there was no credible evidence before the Court to suggest that the Defendant was unable, as opposed to unwilling, to comply with the conditions of the stay of execution imposed by Choo J. In particular, I found the Defendant's claims regarding his inability to comply with *any* financial conditions to be unbelievable since he was able to retain the services of Senior Counsel at both trial and on appeal, and had furnished a total of $80,000 as security for costs in CA 208.

70 Finally, I note that the Defendant alleged that the Plaintiffs had filed B 400 for the ulterior purpose of stifling his appeal. In my judgment, this was a baseless allegation. As there was no stay of execution of the judgment, the Plaintiffs were plainly entitled to file a bankruptcy application. All the other conditions for making the application were also met. While the Plaintiffs could be said to have taken the "nuclear option" of filing a bankruptcy application without attempting other methods of enforcement, this alone could not amount to an abuse of process since a judgment creditor is generally entitled to decide on the method of enforcement: see *Chan Siew Lee Jannie v Australia and New Zealand Banking Group Ltd* [2016] 3 SLR 239 at [36]. Moreover, it was not necessarily to the Plaintiffs' advantage to seek a bankruptcy order simply to stifle the Defendant's appeal since a bankruptcy order would prevent the Plaintiffs themselves from taking out execution proceedings to

recover any debts which the Defendant might owe them.

71 I therefore denied the Defendant's application for an unconditional stay of B 400.

A conditional stay of the bankruptcy proceedings was also not warranted

72 Lastly, I considered whether I should grant a conditional stay of the bankruptcy proceedings or deny a stay entirely. In my judgment, the circumstances did not merit a conditional stay being granted.

73 First, if a conditional stay was granted, its terms should not be more favourable than those previously imposed by Choo J. It also seemed wrong in principle to order a stay on the same conditions. In this regard, I agreed with the Plaintiffs that doing so would create a perverse incentive for parties in the Defendant's position to avoid complying with the original conditions imposed on a stay of execution, in the hope of getting a better "deal" in bankruptcy proceedings.

74 Second, the Defendant's position was that he would not be able to satisfy *any* financial conditions imposed by the Court. Taking the Defendant's own case at its highest, granting a conditional stay would therefore have been futile.

75 Third, a court's ability to impose appropriate conditions when ordering a stay of bankruptcy proceedings is dependent on the applicant being candid and forthcoming about his assets. *Lam Chi Kin David* illustrates the point. As mentioned at [66]–[69] above, the Defendant was anything but forthcoming in disclosing his assets. Without that information, it was simply not possible to determine what conditions might be fairly imposed if a stay was ordered.

76 Fourth, at the hearing on 25 March 2021, I had expressly directed that parties make submissions on the conditions which should be imposed, if the Court was minded to grant a conditional stay. The Defendant completely ignored this direction. He instead persisted in making the untenable argument that the bankruptcy proceedings should be stay unconditionally. This coupled with the Defendant's lack of candour plainly indicated that the Defendant had no intention of complying with any conditions imposed by the Court.

77 I therefore held that a conditional stay of the bankruptcy proceedings should not be granted. Accordingly, I dismissed the Stay Application in its entirety.

Conclusion

Having dismissed the Stay Application, I made an order-in-terms of the Plaintiffs' application in B 400. A bankruptcy order was made against the Defendant and the Official Assignee was appointed as the trustee of the Defendant's estate in bankruptcy.