IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 116

Bankruptcy No 2829 of 2022 (Summons No 531 of 2023)

In the matter of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Ambika d/o Ramachandran

Between

Mirmohammadali Hadian

… *Claimant*

And

Ambika d/o Ramachandran

… *Defendant*

And

Official Assignee

… *Non-party*

GROUNDS OF DECISION

[Insolvency Law — Bankruptcy — Bankrupt's duties and liabilities — Review by court of determination of monthly contribution and target contribution — Section 340(1) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

[Insolvency Law — Bankruptcy — Bankrupt's duties and liabilities — Power of court to vary monthly contribution and target contribution — Section 341(1) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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v
Ambika d/o Ramachandran
(Official Assignee, non-party)

[2023] SGHC 116

General Division of the High Court — Bankruptcy No 2829 of 2022
(Summons No 531 of 2023)
Goh Yihan JC
11 April 2023

2 May 2023

Goh Yihan JC:

1 The applicant is a creditor and the claimant in HC/B 2829/2022. In the present application ("SUM 531"), the applicant, Mr Mirmohammadali Hadian, had applied for the court to review a determination by the Official Assignee ("the OA") in relation to the Bankruptcy Estate of Ambika d/o Ramachandran ("the Bankrupt"). The OA had determined that the monthly contribution ("MC") of the Bankrupt was to be set at $100, and the target contribution ("TC") to be set at $5,200 over 52 months ("the Determination"). More specifically, the applicant's substantive prayer in SUM 531 stated as follows:

> This Honourable Court reviews the decision of the Official Assignee … the administrator of the estate of [the Bankrupt], that the monthly contribution and target contribution of the Bankrupt be determined to be S$100 and S$5,200 respectively;

The key issue was therefore whether the applicant had shown sufficient reasons for the court to review the Determination.

2 While the applicant did not specify the exact provision in the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") upon which he was relying in SUM 531, it is clear, from the similarity between his framing of his substantive prayer and s 340(1) of the IRDA ("s 340(1)"), that he was relying on s 340(1). For completeness, s 340(1) provides as follows:

> **Review by Court of determination of monthly contribution and target contribution**
>
> **340.**—(1) If a bankrupt or any creditor of the bankrupt is dissatisfied with the monthly contribution and target contribution determined under section 339, the bankrupt or the creditor (as the case may be) may, within 21 days after the service of the notice of the determination, apply to the Court to review the determination.

This had a bearing on some of the arguments advanced by the applicant, which I will return to below. For completeness, Mr Ang Leong Hao ("Mr Ang"), who appeared for the applicant, pointed out during the hearing before me that the applicant had expressed his desire that the OA "vary" the MC and the TC. Mr Ang explained that the applicant had therefore advanced SUM 531 under both ss 340(1) and 341(1) of the IRDA. I disagreed with Mr Ang because the OA cannot be expected to figure out the statutory basis for the applicant's application beyond a plain reading of the application and its substantive prayers.

3 During the hearing, Ms Angela Lee ("Ms Lee"), who appeared for the OA, said that the OA would be willing to review the MC and TC based on the applicant's submission that the Bankrupt had not made full disclosure. Given the OA's position, I made no order as to the applicant's application. However, I directed the OA to conduct a new determination of the Bankrupt's

MC and TC if it emerges from the OA's investigation that the Bankrupt had failed to declare all her other income that she is earning, or other information, such that there is new information that affects the content of the factors listed in s 339(2) of the IRDA ("s 339(2)"). I now set out the full reasons for my decision.

Background facts

4 I turn first to the background facts, which can be stated very simply. The Debt owed by the Bankrupt arose out of a judgment which the applicant obtained against the Bankrupt and her husband. On 7 October 2022, the applicant applied for a bankruptcy order against the Bankrupt. The bankruptcy order was granted on 10 November 2022. At the time of the bankruptcy order, the Debt due from the Bankrupt stood at S$206,337.78.

5 On 6 February 2023, the applicant received a Notice of the Determination dated 1 February 2023 from the OA ("the NOD"). In the NOD, the OA determined the MC and TC of the Bankrupt to be S$100 and S$5,200, respectively. The Bankrupt was to pay the MC of S$100 to the OA from 1 February 2023.

6 Being dissatisfied with the Determination, the applicant filed SUM 531 on 27 February 2023 to review the Determination. On 14 March 2023, the OA filed a copy of his Explanation of Basis of Determination of MC and TC ("the Explanation"). The Explanation was filed pursuant to r 121(1) of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 ("PIR"). Rule 121(1) of the PIR provides as follows:

> **Notice of application to Court, etc., under section 340(1) of Act**
>
> **121.**—(1) The trustee of a bankrupt's estate on whom an application under section 340(1) of the Act is served must, within 14 days after the date of such service, file in court an explanation of the basis for making the determination which is the subject of the application.

As can be seen from the text of r 121(1), the OA had filed the Explanation on the basis that SUM 531 constituted an application under s 340(1). And as I suggested above, the OA's position was eminently reasonable given that the applicant had framed his substantive prayer in SUM 531 in terms similar to s 340(1).

The parties' general positions

7 I now set out the parties' general positions in their written submissions. I will elaborate on their specific positions in relation to the various issues at the appropriate junctures below.

8 The applicant submitted that the Determination was erroneous. In light of this, the applicant asked that the court direct the OA to request all relevant documentation from the Bankrupt and to then determine the Bankrupt's MC and TC. The applicant also asked that the court direct the OA to consider the following factors under s 339(2): (a) the current monthly income of the Bankrupt, (b) the extent to which the current monthly income of the Bankrupt's husband may contribute to the maintenance of the Bankrupt's family, and (c) the monthly income that the Bankrupt may reasonably be expected to earn over the duration of the bankruptcy.

9 In response, the OA submitted that SUM 531 should be dismissed for two reasons. First, SUM 531 was filed out of time and no extension of time had

been granted for the applicant to file the present summons. Second, in any event, a high threshold must be met in applications to review the OA's determination of a bankrupt's MC and TC, and SUM 531 failed to meet this threshold. Instead, the OA submitted that, in determining the MC and TC in this case, the OA correctly exercised his statutory discretion by considering all the relevant factors stipulated in the IRDA. As such, unless the applicant could establish that the OA had acted perversely in the determination of the MC and TC, this court should not disturb the Determination.

Whether SUM 531 was filed out of time

The parties' positions

10 I turned first to consider the OA's preliminary objection that SUM 531 was filed out of time. More specifically, in his written submissions, the OA stated that the NOD was served on the applicant on 2 February 2023 by registered post in accordance with the requirements of s 429(1)(*d*) of the IRDA. Section 429(1)(*d*) provides as follows:

> **Service of summons, notice, etc.**
>
> **429.**—(1) Every summons, notice or document required or authorised to be served on any person under any provision of Parts 3 and 13 to 21 and, despite anything to the contrary in the Criminal Procedure Code 2010, every summons issued by a court for the attendance of any person accused of any offence under Parts 3 and 13 to 21, may be served on the person —
>
> …
>
> (*d*) by forwarding it by registered post in a cover addressed to that person at that person's usual or last known place of residence or business or at any address furnished by that person.

As such, the OA submitted that the effective date of service of the NOD was 2 February 2023.[1] For reasons that I will explain below (at [12]), this would make 23 February 2023 the deadline for filing SUM 531. Since the applicant only filed SUM 531 on 27 February 2023, the OA argued that the applicant had filed SUM 531 *four* days out of time.[2]

11 During the hearing, I observed to Ms Lee that the OA had changed his position on the effective date of service. This is because in the Explanation, the OA had stated that "the NOD was served on [the applicant] on 1 February 2023" and SUM 531 was therefore filed *five* days out of time.[3] Indeed, even at the pre-trial conference held as recently as 21 March 2023, the OA maintained that SUM 531 was filed *five* days out of time. It would appear that the OA had maintained that the effective date of service of the NOD was 1 February 2023 all along until he changed his position in the written submissions dated 4 April 2023 to the effective date instead being 2 February 2023. This is not an insignificant point. To my mind, this shows the problem of regarding the effective date of service as the date of posting as opposed to the date of delivery.

12 Taking the OA's latest position that the effective date of service is 2 February 2023, the OA argued that SUM 531 was filed four days out of time because s 340(1) provides that a bankrupt or any creditor dissatisfied with the MC and TC "may, within 21 days after the service of the [NOD], apply to the Court to review the determination". Thus, the OA's position was that the deadline for the applicant to file SUM 531 was 21 days after 2 February 2023,

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1 The Official Assignee's written submissions at para 15.

2 The Official Assignee's written submissions at para 2(a).

3 Explanation of Determination at para 10.

which would be 23 February 2023. However, the applicant only filed SUM 531 on 27 February 2023, which would be four days out of time.

13 In response to the OA's preliminary objection, the applicant did not dispute the wording of s 340(1). However, he argued that pursuant to s 2(5) of the Interpretation Act 1965 (2020 Rev Ed) ("IA"), where the term "serve" or any other word is used, service is deemed to have been effected at the time in which the letter would be *delivered* in the ordinary course of post. For completeness, s 2(5) of the IA provides as follows:

> **Interpretation of certain words and expressions**
>
> **2.—**(5) Where an Act authorises or requires any document to be served by post, whether the word "serve", "give" or "send" or any other word is used, then, unless a contrary intention appears, the service is deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and, unless the contrary is proved, is deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

14 The applicant pointed out that, by the tracking receipt of the Registered Post, the NOD was delivered to his mailbox on 6 February 2023. Therefore, the applicant argued in his written submissions that the OA was not correct to say that the NOD was served on him on 1 February 2023.[4] I pause to note that the applicant's written submissions had proceeded on the OA's prior position that the effective date of service was 1 February 2023. In any event, by the applicant's argument, the deadline for the applicant to file SUM 531, being 21 days from 6 February 2023, should be 27 February 2023. The applicant therefore filed SUM 531 within the stipulated deadline.

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4 Applicant's written submissions at para 19(3).

My decision: SUM 531 was filed within time

15 In my judgment, SUM 531 was filed within time. I agreed with the applicant that the effect of s 2(5) of the IA read with s 340(1) of the IRDA means that the effective date of service of the NOD is the date on which it has been delivered. This would be 6 February 2023 in the present case. As such, SUM 531 was filed within time on 27 February 2023, being within the stipulated 21 days from the date of service.

16 This conclusion is also consistent with the High Court's approach in *Chia Kim Huay (litigation representative of the estate of Chua Chye Hee, deceased) v Saw Shu Mawa Min Min and another* [2012] 4 SLR 1096 ("*Chua Chye Hee*"). In that case, Chan Seng Onn J said that (at [46]), in the context of service of documents, s 2(5) of the IA modifies the postal acceptance rule at common law. Thus, while the postal acceptance rule deems an acceptance sent by post to be effective at the point of posting, s 2(5) of the IA deems service to be effected only (a) by properly addressing, prepaying, and posting a letter containing the document, *and* (b) unless the contrary is proved, at the time at which the letter would be delivered in the ordinary course of post. The latter part of s 2(5) of the IA has been understood to mean that if a party being served had actually received the document on a certain date, then service is deemed to have been effected on that date. This explains why, on the facts of *Chua Chye Hee*, Chan J held that an acceptance letter was deemed to have been served "only when it was actually delivered to and received by the Defendant … and not any earlier" (at [47]). Similarly, in *Qingjian International (South Pacific) Group Development Co Pte Ltd v Capstone Engineering Pte Ltd* [2014] SGHCR 5, the plaintiff had discharged its burden of proving that it had *received* an order granting leave from the defendant. Applying s 2(5) of the IA, the High Court held that service was deemed to be effected on the date of receipt (at [24]–[26]).

Applied to the present case, the effective date of the NOD would be the date on which it was actually delivered to the applicant, which is 6 February 2023.

17 Furthermore, this conclusion is also sensible from a policy perspective. It must be remembered that the recipient would have no way of knowing when the OA has posted the NOD. Instead, the recipient would only know the date of delivery. He would thus only be able to ascertain when the 21-day period prescribed in s 340(1) ends on this basis. In my view, so that the recipient can properly ascertain the date by which he must file an application under s 340(1), the effective date of service should be when the NOD was actually delivered to the recipient. This, in contrast to the date on which the OA posted the NOD, is what would be known to the recipient.

18 In this regard, the OA also said that, on his case that the effective date of service is 2 February 2023, the applicant in the present case still had "17 clear days" to file SUM 531.[5] In so far as the OA was suggesting that 17 days is still a substantial period for the applicant to file SUM 531, I will say that if the IRDA has prescribed a 21-day period for an applicant to consider whether to file an application under s 340(1), then the applicant should have the full 21 days, no more and no less. As such, to make the 21-day period real and meaningful to an applicant, I decided that the effective date of service should be when the NOD was actually delivered to the applicant.

19 Accordingly, I concluded that the NOD was filed within time and rejected the OA's preliminary objection on the basis that it was filed four (and, on his previous position, five) days out of time.

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5 The Official Assignee's written submissions at para 16.

Whether the Determination should be re-determined

The parties' positions

20 I turned then to consider the applicant's substantive prayer in SUM 531, which was for the court to review the Determination. The applicant's position was that the Determination was erroneous for the following three reasons. First, the OA had not properly considered the relevant factors under s 339(2) in determining the MC and TC. Second, it was just and equitable to review the Determination as it unduly prejudiced the applicant. Third, the Bankrupt had failed to disclose information to the OA which the Bankrupt knew or ought to reasonably know would have a material impact on the Determination.

21 In response, the OA submitted that the Determination fails to meet the "perversity standard" laid down in the High Court decision of *Zhang Hong En Jonathan v Private Trustee in Bankruptcy of Zhang Hong'En Jonathan* [2021] 4 SLR 139 ("*Jonathan Zhang*") at [43]. By this standard, a court would consider the merits and substance of the trustee's decision against whether any other reasonable trustee would have acted in the same way before interfering with the trustee's decision. The OA also submitted that while *Jonathan Zhang* concerned an application for review under s 43 of the IRDA, the High Court has held in *Haotanto Anna Vanessa v Fang Ching Wen Ted* [2022] SGHC 216 ("*Haotanto*") that the same perversity standard should apply in relation to reviews under s 340 of the IRDA (at [24]). The OA finally submitted that while *Haotanto* involved a bankruptcy administered by a private trustee and not the OA, the perversity standard should apply equally to a bankruptcy administered by the OA since the duties of the private trustee and the OA are identical.

My decision: the applicant had not shown good reasons why the Determination should be varied

22 In my judgment, the applicant had not shown good reasons why the Determination should be varied. However, given the OA's position as I had spelt out earlier (at [3]), I made no order as to SUM 531. I instead ordered that the OA conduct a new determination of the Bankrupt's MC and TC if certain conditions, which are not based on the three reasons advanced by the applicant, are met.

The applicable law

23 I turn first to the applicable law. In this regard, I respectfully agree with Aedit Abdullah J's analysis of the applicable standard of review in *Haotanto.* Indeed, I respectfully adopt the learned judge's conclusions in *Haotanto* in the context of an application to review the OA's determination of the MC and TC pursuant to s 340(1). By doing so, I arrive at the following principles.

24 First, the standard of review applicable to the decisions of the OA in his determination of the MC and TC would be the perversity standard as stated in *Jonathan Zhang*. This flows from Abdullah J's holding in *Haotanto* that the perversity standard applied to the decisions of a private trustee. Since it is clear that the duties of a private trustee and the OA are materially similar – which are "to supervise the conduct and affairs of the bankrupt and to administer the estate of the bankrupt" (see s 39(1) of the IRDA and *Haotanto* at [15]) – it must follow that the same standard of review applies to the decisions of both a private trustee and the OA.

25 Second, the perversity standard of review applied to the present context required me to consider whether no other OA would have done what the OA

has done. Put differently, was the OA's decision so absurd that no OA properly advised or properly instructing himself could have so acted (see *Jonathan Zhang* at [31] and [46], and *Haotanto* at [25])? In applying this standard, it is important to bear in mind Abdullah J's important guidance in *Jonathan Zhang* (at [44]):

> … It is perhaps better to describe the process as one of assessing the general commercial and business judgment of the private trustee in furthering the protection of the estate for the benefit of the creditors, and without causing unnecessary prejudice to the bankrupt. Where the decision reached as a result of such general commercial and business judgment is not indefensible, bearing in mind the varying considerations to balance outlined at [41] above, the court is unlikely to intervene. Further, where an action or decision may be taken without causing harm to the estate or the creditors, and correspondingly, harm might result to the bankrupt if that decision is not approved, then the general inclination of the court would be to approve such a decision.

26 Third, I will add that because s 339(2) provides that, for the purposes of determining the MC, the OA *must* take into account the various factors listed, the OA will need to show in response to an application made under s 340(1) that he has, in fact, done this. In this regard, the information that the OA would possess for the purposes of reaching an initial determination is heavily dependent on the Statement of Affairs filed by the bankrupt person in Form PIR-11 pursuant to r 102(1) of the PIR. In that Form, would-be bankrupt persons would need to fill in information such as their spouse net income, total monthly expenses, their family's total monthly expenses, employment records, and highest educational qualifications. As is apparent, these reflect the factors that are statutorily expressed in s 339(2). The application of the perversity standard, while setting a higher bar for challenging the determination of the OA, cannot absolve the OA from considering these factors. Rather, the application of the perversity standard is premised on the OA *having* considered these factors and then coming to a determination pursuant to s 339(1)(*a*) of the IRDA ("s 339(1)(*a*)"). It is with respect to *that* determination that the perversity

standard asks whether no other OA would have reached that decision. In other words, the OA, and all other putative OAs in the perversity standard analysis, would have taken into account all the factors in s 339(2).

27 More specifically, how the OA is to demonstrate that he has taken into account of the factors in s 339(2) will differ from case to case. In this regard, I do not think that the OA needs to show that he has considered the factors in any great detail. It suffices for him to show briefly that he has considered the factors. Neither do I think that the OA needs to establish that he has, as the applicant put it, "properly" considered the factors. This is because the consideration of whether the OA "properly" considered the factors would be to descend into considering the substantive merits of the determination, and the perversity standard of review should then apply. Indeed, the overarching principle is that the OA should be allowed to do his job without constantly looking over the shoulder to wonder if some complaint would be made (see *Jonathan Zhang* at [42]). As such, it suffices for the purposes of showing that the OA had complied with the mandatory requirement of taking into account the facts listed in s 339(2), if the OA can establish that he had taken the factors into account by, for example, explaining the connection between the factors and the determination in question. This inquiry does not relate to the merits of the determination, because the court is not assessing the correctness of the conclusion drawn from a consideration of these factors.

28 In summary, I was of the view that the consideration of an application under s 340(1) to review the OA's determination of the MC and TC should proceed in two stages:

(a) First, has the OA shown that he has complied with the mandatory requirement of considering the factors in s 339(2)?

(b) Second, if the OA has shown that he had considered the factors in s 339(2), then does the determination reached pursuant to s 339(1)(*a*) withstand review under the perversity standard? The question to be asked is whether the OA's decision is so absurd that no OA properly advised or properly instructing himself could have so acted. If the answer to this question is yes, then the OA's determination should be varied.

The OA had considered the factors set out in s 339(2) of the IRDA

29 With the above principles in mind, I turned to the applicant's first reason for challenging the Determination. This was that the OA had not properly considered the relevant factors under s 339(2) in determining the MC and TC. For reasons that I will now explain, I disagreed with this reason and held that the OA had considered the factors set out in s 339(2).

30 In this regard, the applicant submitted that the OA had based the Determination on the unsupported assertion that "both the bankrupt and her spouse are required to contribute equally towards their children's expenses" and therefore did not consider the factor in s 339(2)(*b*).[6] For completeness, this factor is framed in s 339(2) of the IRDA in the following terms:

> (*b*) the extent to which the current monthly income of the bankrupt's spouse may contribute to the maintenance of the bankrupt's family;

In gist, the applicant submitted that the OA had not considered the *extent* to which the Bankrupt's husband may contribute to the maintenance of the Bankrupt's family because the OA had simply asserted that "both the bankrupt

6 Applicant's written submissions at para 22.

and her spouse are required to contribute **equally** towards their children's expenses" [emphasis in original][7] without explaining how such a position was arrived at.

31 I disagreed with this submission because the OA had clearly, in accordance with the terms of s 339(2), *considered* this factor by making an assessment that, in the circumstances of this case, the Bankrupt's husband had a joint responsibility to maintain their two children. As such, it was not correct for the applicant to say that the OA had not even considered this factor. As for what appears to be the applicant's disagreement with the *substance* of the OA's determination in relation to this factor, I found that the application of perversity standard militated against varying the Determination. This is because I was not convinced that no OA properly advised or properly instructing himself could have so acted. For example, I found that it is within the OA's commercial judgment to attribute little or no weight to the Bankrupt's husband email dated 13 December 2022 that he was the "sole breadwinner in [his] family".[8] It would be untenable if the OA's determination is subject to such detailed scrutiny because it is always possible to find room for fine disagreements.

32 The applicant also submitted that the OA had simply taken the view that the Bankrupt's current salary of $2,450 was representative of her earning capacity and therefore did not consider the factor in s 339(2)(*c*) of the IRDA ("s 339(2)(*c*)"). The applicant elaborated that the OA had relied solely on the account of the gross wage of a General Office Clerk aged between 30 and 39 years old from the Ministry of Manpower's Occupational Wage Survey in June 2021 ("OWS"), and therefore did not consider the specific factors in

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7 Explanation of Determination at para 9.

8 Applicant's Bundle of Documents at p 85.

ss 339(2)(*c*)(i) to 339(2)(*c*)(vi). For completeness, s 339(2)(*c*) provides as follows:

> (2) For the purposes of determining the monthly contribution mentioned in subsection (1)(a), the Official Assignee must take into account —
>
> > (*c*) the monthly income that the bankrupt may reasonably be expected to earn over the duration of the bankruptcy, taking into account —
> >
> > > (i) the previous and current monthly income of the bankrupt;
> >
> > > (ii) the educational and vocational qualifications, age and work experience of the bankrupt;
> >
> > > (iii) the range of monthly income earned by persons who are employed in occupations, positions or roles similar to that in which the bankrupt is, or can be expected to be, employed;
> >
> > > (iv) the effect which the bankruptcy may have on the bankrupt's earning capacity or other income;
> >
> > > (v) the prevailing economic conditions; and
> >
> > > (vi) the period of time during which the bankrupt is likely to be capable of earning a meaningful income; …

33 I disagreed with the applicant's argument that the OA had not considered the factor in s 339(2)(*c*). This is because the OA plainly considered the Bankrupt's current employment and concluded that the Bankrupt's current gross salary of $2,450 is a reasonable measure of her income over the 52-month period where she is required to make the MC payments. Indeed, I did not think that the OA needed to show that he had considered the specific factors. This is because while s 339(2) provides that the OA *must* take into account the factors listed in ss 339(2)(*a*), 339(2)(*b*), 339(2)(*c*), and 339(2)(*d*), that does not extend to the specific factors in ss 339(2)(*c*)(i) to 339(2)(*c*)(vi). It is important in this regard to note that the word "must" does not similarly appear in s 339(2)(*c*) to

describe the OA's obligation to take into account the specific factors listed at ss 339(2)(*c*)(i) to 339(2)(*c*)(vi).

34 Ultimately, the specific factors are not to be applied in a mechanistic fashion but are rather meant to inform the OA's estimate as to the monthly income that the bankrupt may be reasonably expected to earn over the duration of the bankruptcy. All that the OA needs to show is that he had conducted an assessment that would meaningfully inform that estimate. This would often, but not necessarily, involve the consideration of the specific factors in ss 339(2)(*c*)(i) to 339(2)(*c*)(vi). I was persuaded that the OA had done so in the present case, as I considered the Bankrupt's current gross monthly salary of $2,450 to be a reasonable measure of what she may be expected to earn over the period of her bankruptcy. In reaching this conclusion, the OA had regard to the OWS, which states that the gross wage of a General Office Clerk aged between 30 and 39 years old is $2,650. While the applicant asserted that the Bankrupt drew a monthly salary of $2,800 in her previous job, there was no independent evidence to corroborate this. In any event, even if the OA must take these specific factors into account, it was more than sufficient that the OA has considered the OWS because the specific factors listed in s 339(2)(*c*) implicitly find expression within the OWS.

35 In essence, the applicant's arguments as to how the OA had not considered the factors in s 339(2) descended into the *minutiae*, which is not warranted in an application under s 339(1) of the IRDA ("s 339(1)"). I repeat that it is sufficient for the OA to show briefly that he has considered the factors in s 339(1) in order to comply with the statutory direction that he "must" take into account of these factors (see [27] above). In so far as the applicant's first reason amounts to a challenge on the substantive merits of the Determination, I would repeat that the OA is entitled to make commercial decisions without

needing to constantly worry about complaints being made against those decisions. The application of the perversity standard of review gives effect to this principle. Applying that standard, I was not convinced that the Determination should be varied.

The OA's Determination need not have taken into account the applicant's prejudice

36 I then considered the applicant's second reason for challenging the Determination, which was that it was just and equitable to review the Determination as it unduly prejudiced the applicant. In this regard, the applicant argued that the Determination would unduly prejudice his interests as a creditor because the TC of $5,200 over 52 months would constitute a mere 2% of the Debt. As such, the Bankrupt could potentially be discharged from bankruptcy having only paid $5,200 towards repayment of the Debt.

37 I disagreed with this argument because all the factors in s 339(2) relate to the income and expenses of the bankrupt and his or her family, and not to other circumstances such as the bankrupt's debts or liabilities. While it is true that, generally, the courts should consider the interests of the creditors in reviewing the OA's decisions (see *Jonathan Zhang* at [41]), I did not think that this allows the courts to read into s 339(2) what was not intended by Parliament.

38 In this regard, Parliament had intended for the "differentiated discharge framework" under which s 339(2) operates to be a "rehabilitative regime", which would incentivise bankrupts to make sufficient contributions to achieve an earlier discharge. This would give bankrupts a chance to make a fresh start (see *Singapore Parliamentary Debates, Official Report* (13 July 2015), vol 93 ("*13 July Second Reading Debate*")). Indeed, this might explain why, in response to a question posed to her during the Second Reading of the

Bankruptcy (Amendment) Bill 2015, the Senior Minister of State for Education and Law, Ms Indranee Rajah, clearly stated that "[t]he [TC] is determined without reference to the debts owned by the bankrupt, but according to what reasonably their income is" (see *Singapore Parliamentary Debates, Official Report* (14 July 2015), vol 93). Conceivably, if bankrupts are able to pay the MC within the limits of their monthly income and expenses, they might be more incentivised to do so, which would in turn benefit creditors. On the flipside, concerns of moral hazard are intended to be addressed by safeguards in the form of permanent bankruptcy records and the discretion by the OA or the court to extend the bankruptcy (see *13 July Second Reading Debate*). Given the balance that Parliament has struck in this matter, it would not be the proper function of the courts to depart from it. Accordingly, within the confines of the applicant's application under s 340(1) for this court to review the Determination made under s 339(1)(*a*), I found no cause to disturb the Determination.

39 In relation to the applicant's allusion to the court's power under s 341(2)(*c*) of the IRDA to vary the MC and TC where it is "just and equitable" to do so, it is important, as I alluded to at the beginning of these grounds, that SUM 531 was framed in terms of an application pursuant to s 340(1) and not s 341(1) of the IRDA. This is important because the specific grounds listed in s 341(2) clearly contemplate that an application based on s 341(1) is different from one based on s 340(1). This explains why the OA had provided the Explanation pursuant to r 121(1) of the PIR but did not otherwise address, in either his affidavit or submissions, whether it would be "just and equitable" to vary the MC and TC. The OA never had proper notice of the applicant's intention to mount a prayer under s 341(1). In the circumstances, it would not have been proper for me to determine what was effectively the applicant's new

prayer that was premised on s 341(2)(*c*) read with s 341(1), when the OA never had a chance to respond to this properly.

The OA's Determination need not have taken into account the Bankrupt's alleged failure to declare assets

40 Finally, I turned to the applicant's third reason for challenging the Determination. This reason was that the court has the power under s 341(2)(*a*) of the IRDA to vary the MC or TC where "the bankrupt … [has] failed to disclose to, the [OA]… information which the bankrupt knows or ought reasonably to know would have a material impact on the determination", and the Bankrupt has allegedly failed to declare assets in the present case.

41 I rejected this third reason on two grounds. First, within the confines of the applicant's application under s 340(1), whether the Bankrupt had failed to declare her assets was not a factor that the OA had to consider under s 339(2). Second, and more pertinently, this allegation that the Bankrupt had failed to declare her assets should properly be made in an application under s 341(1). It would not have been fair for me to consider this argument on the basis of s 341(1) when the OA did not have proper notice of the applicant's intention to make an application under s 341(1).

The OA should conduct a new determination of the MC and TC if certain conditions are met

42 However, given the OA's sensible position that he would be willing to review the Determination on his own accord, I made no order as to SUM 531. Indeed, in so far as the OA had acknowledged the applicant's allegation that the Bankrupt failed to declare all her assets and that he would "investigate" these allegations, it may well be that those investigations would uncover fresh facts that would have a direct bearing on the content of the factors in s 339(2). If that

were the case, then the OA would come under a fresh obligation under s 339(2) to take into account of the factors listed there.

43 With this in mind, I therefore directed, under s 340(5)(*b*) of the IRDA, that the OA conduct a new determination of the Bankrupt's MC and TC if it emerges from the OA's investigation that the Bankrupt had failed to declare all her other income, or other information, such that there is new information that affects the content of the factors listed in s 339(2).

Conclusion

44 In conclusion, for the reasons I have given above, I made no order as to SUM 531 but instead made the order detailed in the preceding paragraph. For completeness, I also made no order as to the costs of this application.

Goh Yihan
Judicial Commissioner

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