

Goh Chin Soon v Overseas-Chinese Banking Corporation Ltd
[2001] SGHC 265

Case Number : OS 600029/2001, RA 600062/2001
Decision Date : 12 September 2001
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Irving Choh Thian Chee and Twang Kern Zern [Chong Yeow & Partners] for the plaintiff; V K Rajah SC and Lee Eng Beng [Rajah & Tann] for the defendants
Parties : Goh Chin Soon — Overseas-Chinese Banking Corporation Ltd

Judgment:

GROUNDS OF JUDGMENT

1 On 2 January 2001 the defendants ("the Bank") issued a statutory demand in the prescribed form under rule 94(1) of the Bankruptcy Rules and under section 62 of the Bankruptcy Act against the plaintiff in which the debt claimed was stated to be \$19,551,043.40. It was served on the plaintiff on 13 January 2001 and on 13 March 2001 the plaintiff filed this summons to set it aside. The Deputy Registrar dismissed the application and gave leave to the Bank to commence bankruptcy proceedings.

2 I heard his appeal against that decision and I dismissed it with costs. It was clearly shown that at the time when the statutory demand was issued there was no underlying security to disclose. All the relevant properties had been sold and the net proceeds of sale had been accounted for in Part A of the statutory demand, save for the net proceeds of the sale of the plaintiffs property at 105 Sixth Avenue, Singapore. That property was sold for \$2,861,650.00 and the net proceeds were expected to be received by the Bank subsequent to the issuance of the statutory demand. These material facts were all set out clearly in Part A of the statutory demand. Secondly, his cross claims were, in my view, not bona fide but were generated to set the stage to thwart any bankruptcy proceedings by the Bank; when examined they were demonstrated to be so lacking in substance and merits that they were indubitably unsustainable. Thirdly, the Bank quite properly issued the statutory demand in question and its issue was not an abuse of process and was not an unwarranted collateral attack on the plaintiffs appeal in another bankruptcy proceeding. On 14 June 2001 the plaintiff filed a Notice of Appeal against my orders and I now set down the material facts and the reasons.

3 At the hearing before me, the plaintiff relied on three grounds to set aside the statutory demand:

(a) that he had a valid counterclaim, set-off or cross demand which exceeds the amount of the debt claimed within the meaning of Rule 98(2) of the Bankruptcy Rules;

(b) that the statutory demand did not comply with Rule 94(5) of the Bankruptcy Rules; and

(c) that the intended commencement of bankruptcy proceedings under the statutory demand in question in these proceedings amounted to an unwarranted collateral attack on his appeal in a related bankruptcy proceedings to the Court of Appeal and was an abuse of the process of the court.

Background

4 Before dealing with the grounds, I should set out the background facts within a reasonably brief compass. Until the events hereinafter recited, the plaintiff was the controller of 4 companies, namely, Grandlink Group Pte Ltd ("Grandlink"), Galleries Development Pte Ltd ("Galleries"), Escada Development Pte Ltd ("Escada") and Shin Hwa Cheong Development Co. Pte Ltd ("Shin Wah Cheong"). These companies were customers of the Bank and had borrowed substantial sums from the Bank and they had defaulted on their loans.

5 The plaintiff, with two other persons, had acted as a guarantor for those loans and had executed third party mortgages of his properties to partially secure the loans extended by the Bank to his companies.

6 Grandlinks banking facilities were secured by third party mortgages over 13 properties executed by the plaintiff or jointly by all three of them. In addition the plaintiff signed a guarantee in favour of the Bank for a sum of \$43 million. Upon the default of Grandlink on its banking facilities the Bank obtained an Order of Court for the possession of the 13 mortgaged properties and judgment for the sum of \$50,360,579.05 in Originating Summons No. 123 of 2000 against Grandlink and all three of them including the plaintiff. That Order of Court was and stood as final since no appeal was lodged by any of the judgment debtors. In the event, Grandlink was wound up on 29 March 2001.

7 So far as Galleries was concerned, its banking facilities of \$11.05 million was secured on the personal guarantee of the plaintiff. It was in default and in Suit No. 600161 of 2000 the Bank obtained final judgment against both Galleries and the plaintiff as the guarantee for the outstanding sum of \$3,440,292.42. No appeal was lodged by either party against that judgment. As part of its enforcement steps, on 12 September 2000 the Bank issued a statutory demand against the plaintiff pursuant to this judgment and, in the usual way, bankruptcy proceedings followed. But the plaintiff applied to set aside the statutory demand on two grounds, namely, (i) that, under Suit No. 740 of 2000/X, he had a valid counterclaim, set-off or cross demand which equalled or exceeded the amount of the debt; and (ii) that the statutory demand did not comply with Rule 94(5) of the Bankruptcy Rules. The Deputy Registrar dismissed the plaintiffs application. He failed in his appeal to the High Court. In Civil Appeal No. 150 of 2000 the plaintiff appealed to the Court of Appeal and since my decisions in this matter the Court of Appeal had on 22 August 2001 dismissed the appeal.

8 I turn to the insolvent state of Escada. The Bank had extended a loan of \$27 million to Escada to develop the housing project known as "Escada View". The plaintiff signed a personal guarantee as security for this facility in favour of the Bank. After Escada defaulted on their obligations, the Bank appointed receivers and managers who completed the housing project. All the development units were sold. As on 1 April 2001 the amount owing by Escada and the plaintiff under this account was in excess of \$7.6 million.

9 The next insolvent account I would refer to stood in the name of Shin Wah Cheong. The Bank together with Overseas Assurance Corporation ("OAC") extended facilities of \$80 million to Shin Wah Cheong for the purpose of financing the mixed commercial and residential project known as Grandlink Square. Those facilities were secured by a mortgage over the property at 511 Guillemard Road ("Grandlink Square") and the plaintiffs personal guarantee dated 23 October 1997 of the total outstanding. Following its default, the company has been in the hands of the receivers and managers. They reported that on the assumption that the remaining units in the development would be sold, an amount in excess of \$31 million would remain outstanding under this account.

10 It was emphasised by counsel for the Bank that the plaintiff would be liable to the Bank under those guarantees in an amount in excess of \$59 million. This was the aggregate of sums owing by the following principal corporate debtors:

Grandlink \$17.2 million

Galleries \$ 3.4 million

Escada \$ 7.6 million

Shin Wah Cheong \$31.0 million

TOTAL \$59.2 million

11 The plaintiff did not mount any meaningful or credible challenge on his liability under the guarantees nor on the principal indebtedness of his companies for which he stood as a guarantor. I therefore turn to his attempt to invalidate the statutory demand on the 3 grounds, starting with his assertion that he appears to have a valid counterclaim, set-off or cross demand which is equivalent to or exceeds the amount of the debt or debts specified in the statutory demand: Rule 98(2)(a) of the Bankruptcy Rules.

12 After examining the suits which the plaintiff and others have commenced against the defendants, I came to the conclusion that these were begun in bad faith and did not arise out of just cause. They were commenced solely for the purpose of delaying the bankruptcy proceedings.

13 By Suit No. 740 of 2000/X the plaintiff and 3 others filed this suit for breach of mortgagees duties in realising certain properties after the defendant had issued a Statutory Demand against the plaintiff pursuant to the judgment obtained in Suit No. 600161 of 2000. The claim was for damages said to amount to \$5.15 million. He attempted to set aside the Statutory Demand and relied on the counterclaim or set-off under this suit. As stated, he failed. In that case, the plaintiff was castigated by Lee Sieu Kin JC who stated that the suit was "commenced in order to generate a ground for setting aside the Statutory Demand rather than on account of any bona fide belief in the probability of success." (That decision has since been upheld by the Court of Appeal.)

14 The other principal counterclaim or set-off relied on by the plaintiff was that in Suit No. 297 of 2001/Y which he and 2 others commenced against the defendant. He sought a declaration that the defendants had breached their duties as mortgagees in respect of the sale of 13 mortgaged properties. The plaintiff had not filed a statement of claim. However, it was clear that of the 13 properties, 2 were the subject matter of Suit 740 of 2000/X. The 7 properties as described by the defendants in Goh Hooi Khims affidavit filed on 6 April 2001 were sold to a buyer procured by the plaintiff and his fellow debtors. They had consented in writing to the sale. The plaintiff alleges that there was a "shortfall" of \$568,602.59 in the sale of the mortgaged properties but the defendants produced evidence in writing of the disbursements which accounted for the "shortfall".

15 Further, it was pointed out by the defendants that even if the plaintiffs claim of \$5.15 million as damages under Suit NO. 740 of 2000/X and the alleged shortfall of \$568,602.59 were sustainable as to amount to a counterclaim, set-off or cross demand within the meaning of Rule 98(2)(a) of the Bankruptcy Rules the total would only be \$5,718,602.59 which was far less than the debt owed by the plaintiff.

16 I turn to the second limb of the plaintiffs assault against the Statutory Demand under which he alleges that Rule 94(5) of the Bankruptcy Rules was not complied with. That rule provides as follows:

If the creditor holds any property of the debtor or any security for the debt, there shall be specified in the demand

- a. the full amount of the debt; and
- b. the nature and value of the security or the assets.

17 The banking account concerned was that of Grandlink which was secured by, inter alia, the 13 mortgaged properties. All those properties were sold. As particularised in Part A of the Statutory Demand, the shortfall was just under \$17 million. In my view, the defendants were entitled to issue the Statutory Demand in question based on an entirely different debt at a time when there was no security held.

18 The last ground was the assertion that the Statutory Demand and the intended bankruptcy proceeding following it amounted to an unwarranted attack on the plaintiffs appeal to the Court of Appeal as mentioned above. The fact of the matter was that prior to this Statutory Demand the defendants had issued a Statutory Demand against the plaintiff pursuant to the judgment in Suit NO. 600161 of 2000. This Statutory Demand was issued pursuant to the order of court obtained against the plaintiff in Originating Summons NO. 123 of 2000. Since the judgment obtained remained unsatisfied even after realisation of all the securities under this debt, the defendants were, in my view, entitled to present another Statutory Demand against the plaintiff. There was no abuse of the process.

Sgd:

Lai Kew Chai
Judge

Singapore, 12 September 2001.