

Toh Khim Eak v United Overseas Bank Limited and Another
[2001] SGHC 6

Case Number : B 119/2000
Decision Date : 08 January 2001
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : Applicant in person; Chee Yong En (William Lai & Alan Wong) for the respondents
Parties : Toh Khim Eak — United Overseas Bank Limited; Another

Insolvency Law – Bankruptcy – Statutory demand – Validity – Whether joint statutory demand by two creditors valid – ss 2, 57, 61 & 62 Bankruptcy Act (Cap 20)

Words and Phrases – "Creditor's petition" – ss 2, 57, 61 & 62 Bankruptcy Act (Cap 20)

Words and Phrases – "Statutory demand" – ss 2, 57, 61 & 62 Bankruptcy Act (Cap 20)

: This is an appeal by the respondents against the order of the deputy registrar setting aside their joint statutory demand to the applicant. The latter, who had acted in person below, did not turn up at the appeal. Nevertheless, I proceeded with hearing the submission of the respondents' counsel, at the end of which I dismissed the appeal with no order as to costs.

In the course of his submission, counsel advised that there was no direct authority to support his case but alleged that it was generally the practice in the Registry to uphold such a letter as a valid statutory demand under the Bankruptcy Act (Cap 20) (the Act). I should say that the deputy registrar, against whose decision the respondents had appealed, had held that it was invalid. Nevertheless, in view of the absence of authority, I felt that it would be useful to set out the grounds for my decision and do so below.

The applicant did not dispute that at the time of the demand, he owed the respondents the sums claimed, viz \$9,708.53 to the first respondent and \$4,942.27 to the second respondent. However the respondents had jointly issued a single letter to him, purportedly under s 62 of the Act, to demand the sum total of those two debts, which amount to \$14,650.80. The deputy registrar was of the view that this was an irregular statutory demand because it had combined two different debts owing to two different creditors in a single letter.

Counsel said that in respect of a creditor's petition, it may be jointly presented by two or more creditors and the threshold sum of \$10,000 applies to the aggregate amount of the debts, notwithstanding that each individual debt is less than that amount - see (i) s 57(1)(a)(i); (ii) the definition of 'creditor's petition' in s 2; and (iii) s 61(1)(a) of the Act. He submitted that the same ought to apply to a statutory demand made under s 62. Counsel also referred me to the decision of Chan Seng Onn JC in **The Straits Times Press (1975) Ltd v Wong Chee Kok** (Unreported), and to a passage from Anandarajah, et al, **Law and Practice of Bankruptcy in Singapore and Malaysia** (1999).

I first turn to examine the authority cited, **The Straits Times Press (1975) Ltd v Wong Chee Kok**. The question before the court there was whether a letter issued by a creditor to the debtor demanding the total of two different judgment debts was a valid statutory demand. The judge held that a statutory demand could contain more than one debt owed to the creditor. The principal basis for this was the construction of s 61(1)(c), which mentions '**the debt or each of the debts**' and s 62, which refers to 'any debt within the meaning of section 61(1)(c)'. The judge found further

support for this in r 98(2)(a) of the Bankruptcy Rules which contemplates the possibility of there being more than one debt in the statutory demand. However that case did not concern a joint statutory demand by two different creditors in respect of different debts owed to each of them nor did the judge consider this point.

Counsel pointed out to me that although he had no direct authority dealing with the present situation, the authors of ***Law and Practice of Bankruptcy in Singapore and Malaysia*** specifically state that more than one creditor may issue a joint statutory demand. This is found at p 84 and it goes as follows:

... Ensure that the debt which is the proposed subject matter of the statutory demand is one which could have been the subject matter of a bankruptcy petition, ie that the debt:

a is liquidated;

*b amounts to not less than S\$10,000. In this respect, more than one debt, **whether of the same creditor or of two or more creditors, may be aggregated together***

In respect of the italicised words, the authors placed the following footnote:

*99 See the decision of Chan Seng Onn JC in **The Straits Times Press (1975) Ltd v Wong Chee Kok** ... and Hunter, **Muir Hunter on Personal Insolvency** at para 7-062/2.*

I have explained that the true ratio in ***The Straits Times Press (1975) Ltd v Wong Chee Kok*** is that a statutory demand may contain more than one debt owed to a single creditor and that the judgment did not consider the case of a joint demand by two creditors. In respect of the reference to ***Muir Hunter on Personal Insolvency*** , again it relates to the same question. Paragraph 7-062/2 of that text states as follows:

Can one Statutory Demand include more than one debt?

Despite the references, in sections 267 and 268, and in this Rule, to the statutory demand being made for a `debt`, it is plain that any creditor demanding payment may well be demanding payment of more than one debt. It is submitted that it must be inferred that more than one debt can properly be claimed on one statutory demand, and such demands for more than one debt are commonly made. ... This construction is supported by the IR 1986, r 6.5(4), which refers to the `debt` or `debts` specified in the statutory demand, and the Forms provide space for more than one debt. Furthermore, section 267(2) (d), dealing with the creditor`s right to present a petition, refers to there being no outstanding application to set aside a statutory demand under section 268 `in respect of the debt or any of the debts`. Section 267(2)(a) also refers to `the aggregate amount of the debts`. ...

It would therefore appear that the authors of ***Law and Practice of Bankruptcy in Singapore and Malaysia*** had extended the proposition in the authority and the text without giving any reasons for it.

I turn now to examine the matter on principle. In respect of a joint creditors' petition, the position in the Act is clear and unequivocal. Sections 57(1)(a)(i) and 61(1)(a) as well as the definition of 'creditor's petition' in s 2 provide for joint petitions and aggregation of all the debts therein for the purpose of the threshold sum. However there is no similar provision in respect of statutory demands. The manner in which a statutory demand operates is as follows. Section 61(1)(c) of the Act requires that a debtor be unable to pay his debts before a bankruptcy petition may be presented in respect of such debts owed by him. Section 62(1) provides a convenient mechanism to establish this inability on the part of the debtor to pay those debts and it states as follows:

62	For the purposes of a creditor's petition, a debtor shall, until he proves to the contrary, be presumed to be unable to pay any debt within the meaning of section 61(1)(c) if the debt is immediately payable and -	
(a)	(i)	the petitioning creditor to whom the debt is owed has served on him in the prescribed manner, a statutory demand;
	(ii)	at least 21 days have elapsed since the statutory demand was served; and
	(iii)	the debtor has neither complied with it nor applied to the court to set it aside;

All a creditor needs to do to satisfy the condition in s 61(1)(c) is to serve the statutory demand on the debtor. After 21 days, if there is neither compliance with the demand nor an application to have it set aside, then the debtor shall be presumed to be unable to pay that debt.

This being a statutory presumption substantial, if not strict, compliance with the terms of the provision is necessary. 'Statutory demand' is defined in s 2 of the Act to mean:

a demand in the prescribed form which requires the person to whom it is addressed to pay, secure or compound to the reasonable satisfaction of the creditor making the demand, any debt owed by him to the creditor

This definition refers to 'creditor' in the singular. Furthermore, the term 'prescribed' has a precise meaning in legislation. Section 2 of the Interpretation Act defines it in the following manner:

'prescribed' means prescribed by the Act in which the word occurs or by any subsidiary legislation made thereunder

The `prescribed form` for a statutory demand is in fact Form 1 of the Bankruptcy Rules (`the Rules`). In this prescribed form, the reference to creditor is also in the singular. Rules 94 to 97, which regulate the form and contents of statutory demands, consistently refer to `creditor` in the singular.

Counsel contended that in the circumstances of the Act, the singular should include the plural. However he was not able to point specifically to anything in the Act or to any related material which would justify this conclusion. Nor can I find any. Indeed the provisions in respect of bankruptcy petitions, which specifically provide for joint creditors` petitions, would suggest the converse. Section 2 of the Act defines `creditor`s petition` as meaning:

a bankruptcy petition presented under section 57 by a creditor or by 2 or more creditors jointly

And s 61(1)(a) provides as follows:

(1) No bankruptcy petition shall be presented to the court in respect of any debt or debts unless at the time the petition is presented -

(a) the amount of the debt, or the aggregate amount of the debts, is not less than \$10,000

Therefore in respect of a bankruptcy petition:

(a) Two or more creditors may present a joint petition against a debtor; and

(b) those creditors can aggregate their debts in order to clear the \$10,000 limit.

Hence where the Act envisages that two or more creditors can join in a petition it does so in clear terms.

On the other hand the provisions in the Act in respect of statutory demand consistently refer to `creditor` in the singular. When one speaks of a person`s `debt` to another person it can, as a matter of construction, be taken to mean the sum of all the individual debts owed to that other person. But a reference to `the creditor` in the Act cannot, in the present context, include a reference to two or more creditors presenting a joint statutory demand.

There is also no policy reason why I should so construe the matter. The Act only requires a petition to be in respect of a sum not less than \$10,000 and for that purpose permits joint petitions by two or more creditors and for the different debts to be aggregated. There is no minimum sum in respect of a statutory demand. It is therefore open to the respondents to serve on the applicant two separate statutory demands in respect of each of the debts owed to them and thereafter present a joint petition. Counsel submitted that there was a saving of cost as only one letter would need to be prepared instead of two. I do not think that this is sufficient basis for departing from the clear provisions of the Act, especially in view of the fact that the savings in this case would only be in terms of a few sheets of paper as the instructions would still have to be taken from the two respondents and service on the applicant of the two letters can be effected at the same time.

In the circumstances I would hold that a joint letter issued by two or more creditors to demand different debts owed to each of them is not a valid statutory demand under s 62 of the Act.

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