

C & K Credit Pte Ltd v Lee Chin Kwee Kalvin
[2002] SGHC 245

Case Number : OS Bankruptcy No 33 of 2002, RA No 252 of 2002
Decision Date : 21 October 2002
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Peter Pang Xiang Zhong (Peter Pang & Co) for the appellant; Phua Siow Choon (Michael BB Ong & Co) for the respondent
Parties : —

Insolvency Law – Bankruptcy – Statutory demand – Notice of Assignment attached to statutory demand – Whether assignment of rights under guarantee or of chose-in-action

Insolvency Law – Bankruptcy – Statutory demand – Setting aside – Whether debt stated in the statutory demand properly accounted for

Orient called upon the guarantee. Eventually, judgment was entered against the debtor. Orient then executed a deed of assignment in favour of the petitioning creditors. The petitioning creditors asserted that a Notice of Assignment was served on the debtor by letter dated 18 October 2001. This was disputed by the latter who claims that he did not know of the letter. The debtor's application to set aside the statutory demand was dismissed by the assistant registrar. The debtor appealed to a judge in chambers. On appeal, the debtor submitted that although a copy of the notice of assignment was attached to the statutory demand, it did not constitute good notice because when the statutory demand was served, bankruptcy proceedings are deemed to have begun. Next, the debtor submitted that the assignment by Orient to the petitioning creditors was only an assignment of the hire purchase agreement and there was no assignment of their rights under the guarantee. Lastly, the debtor submitted that the notice was a notice of an assignment of the chose-in-action and was therefore bad because the chose-in-action had merged with the judgment.

Held, allowing the appeal:

(1) The service of a statutory demand is essentially a notice to the debtor and does not commence any proceedings in court. Bankruptcy proceedings are commenced by the filing of a petition. There is no reason why a notice of assignment cannot be served at the same time as the statutory demand. The pertinent question, and the primary purpose of the notice requirement, is whether a debtor had been given adequate notice of the matters set out in the notice of assignment and the statutory demand. In the present case, the debtor was clearly put on proper notice of both events (See [2]).

(2) When one examines the deed of assignment, it was clear that there was an assignment of Orient's rights under the guarantee. It is not in dispute that the chose-in-action had merged with the judgment. The question is whether the assignment was an assignment only of the chose-in-action. Here, the provisions of the deed evinced a clear assignment of all rights and monies payable under guarantees in connection with the Hire Purchase Agreement (See [3] – [4]).

(3) The debt stated by the petitioning creditors in the statutory demand did not appear to be properly accounted for. The subject matter of the hire-purchase (the car) was wrecked in Malaysia and towed back to Singapore

whereupon, the petitioning creditors de-registered the car and obtained payment of the car's PARF and COE values from the Land Transport Authority, amounting to \$55,282. The judgment debt was \$78,561.69 plus interest. Instead of stating the sum of \$55,282.00, the petitioning creditors declared it as "the balance of proceeds" from the sale of the car, amounting to \$32,808.70. The petitioning creditors explained that the difference were due to deductions in respect of administrative and other expenses incurred by them. But this was not explained in the statutory demand nor in the supporting affidavit. It is important that the amount deducted must be set out and explained so that the debtor may challenge them if he has grounds to do so. He would be unable to challenge them if he did not know how or why there were deductions from the proceeds from the sale of the car. This was a sufficiently fatal flaw in the statutory demand to warrant setting it aside (See [5]).

Case(s) referred to

Compania Columbiana De Seguros v Pacific Steam Navigation Co

[1965] 1 QB 101 (distd)

Judgment

GROUND OF DECISION

1. This was an appeal by a debtor against the registrar's decision in refusing to strike out the statutory demand of the petitioning creditors dated 7 August 2002. The salient background facts are as follows. A company called Orient Consumer Credit Pte Ltd entered into a hire purchase agreement with one Francis Marcel for the purchase of a second hand BMW 320 car. The debtor signed a separate agreement with Orient Consumer Credit Pte Ltd as the guarantor for Francis Marcel. Marcel defaulted and Orient Credit Pte Ltd called upon the guarantee. Eventually, judgment was entered against the debtor on 24 July 2001. On 18 October 2001 Orient Credit Pte Ltd executed a deed of assignment in favour of the petitioning creditors.

2. The petitioning creditors asserted that a Notice of Assignment was served on the debtor by letter dated 18 October 2001. This was disputed by the latter who claims that he did not know of the letter. The debtor's application to set aside the statutory demand was dismissed. Mr Peter Pang submitted on behalf of the debtor that although a copy of the notice of assignment was attached to the Statutory demand, it does not constitute good notice because when the statutory demand was served, bankruptcy proceedings are deemed to have begun. In his view, the notice of assignment must be given before the commencement of proceedings. He cited the case of *Compania Columbiana De Seguros v Pacific Steam Navigation Co* [1965] 1 QB 101 in support. In my view, I can find nothing in that case that is of assistance to the debtor here. The service of a statutory demand does not commence any proceedings in court. That takes place, in the case of bankruptcy proceedings, by the filing of the petition. The statutory demand is essentially a notice to the debtor. In my opinion, there is no reason why a notice of assignment cannot be served at the same time as the statutory demand. The pertinent question, and the primary purpose of the notice requirement, is whether a debtor had been given adequate notice of the matters set out in the notice of assignment and the statutory demand. The debtor was clearly put on proper notice of both events in this case.

3. Mr Pang's second argument was that the assignment by Orient Consumer Credit Pte Ltd to

the petitioning creditors was only an assignment of the hire purchase agreement. He submitted that there was, therefore, no assignment of their rights under the guarantee. This argument fails entirely when one examines the deed of assignment. The relevant provision which I now set out below sufficiently assigned this rights under the guarantee to the petitioning creditors:-

"In consideration of the sum of Singapore Dollars NINETY-FIVE THOUSAND SEVENTY AND CENTS THIRTY-SEVEN ONLY (\$95,070.37) now paid by the Assignee paid to the Assignor (the receipt whereof the Assignor hereby acknowledges) the Assignor as beneficial owner hereby assign to the Assignee *all the rights and interest of the Assignor under the Agreement together with all the monies now or hereafter to become payable under the Agreement and the goods comprised herein and the benefit of our guarantees and indemnities, if any, taken by the Assignor in connection with the Agreement to hold the same unto the Assignee absolutely subject to the rights of the Hirer thereunder.*" (*emphasis mine*).

4. The next point that Mr Pang submitted was that the notice was a notice of an assignment of the chose-in-action and is therefore bad because the chose-in-action had merged with the judgment. Numerous authorities were referred at length to establish that the chose-in-action had merged with the judgment. I think that is a point that is not in dispute. The question is whether the assignment was an assignment only of the chose-in-action. The provisions of the deed evinced a clear assignment of all rights and monies payable under guarantees in connection with the Hire Purchase Agreement.

5. The points above were insufficient to merit setting aside the statutory demand. However, the debt stated by the petitioning creditors in the statutory demand did not appear to be properly accounted for. It is important to set out the undisputed background facts in respect of this point. The subject matter of the hire-purchase (the BMW car) was wrecked in Malaysia and towed back to Singapore whereupon, the petitioning creditors de-registered the car and obtained payment of the car's PARF and COE values from the Land Transport Authority, amounting to \$55,282. The judgment debt was \$78,561.69 plus interest. Instead of stating the sum of \$55,282.00, the petitioning creditors declared it as "the balance of proceeds" from the sale of the car, amounting to \$32,808.70. Counsel for the petitioning creditors explained that the difference were due to deductions in respect of administrative and other expenses incurred by them. But this was not explained in the statutory demand nor the supporting affidavit. In my view, it is important that the amount deducted must be set out and explained so that if the debtor may challenge them if he has grounds to do so. He would be unable to challenge them if he did not know how or why there were deductions from the proceeds from the sale of the car. This is a sufficiently fatal flaw in the statutory demand to warrant setting it aside; and on this ground alone I allowed the appeal and set aside the statutory demand.

Sgd:

Choo Han Teck

Judicial Commissioner

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