

Lim Lee Lee v United Overseas Bank Ltd
[2018] SGHC 79

Case Number : HC/Originating Summons (Bankruptcy) No 86 of 2017 (HC/Registrar's Appeal No 342 of 2017)
Decision Date : 03 April 2018
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Lee Ee Yang and Charis Wong (Covenant Chambers LLC) for the plaintiff; Patrick Ang, Ryan Loh Chin Leong and Edwin Cheng (Rajah & Tann Singapore LLP) for the defendant.
Parties : Lim Lee Lee — United Overseas Bank Limited

Insolvency law – bankruptcy – statutory demand

[LawNet Editorial Note: The appellant's appeal in Civil Appeal No 75 of 2018 was dismissed by the Court of Appeal on 19 February 2019 with no written grounds of decision rendered. The Court of Appeal was satisfied that the appellant did not raise genuine triable issues to set aside the statutory demand.]

3 April 2018

Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a housewife and a joint-owner of a house on Branksome Road together with her husband, now a bankrupt businessman. Prior to his bankruptcy, the company in which the husband was a partner ran up a huge debt, and the Branksome Road property was mortgaged to the defendant bank. It is not disputed that the plaintiff signed the mortgage documents.

2 Despite the foreclosure on the mortgaged property, the husband's company still owes the defendant US\$12m, as the documents contain covenants by the husband and the plaintiff to jointly and severally pay all sums due by the husband's company. The mortgaged property was sold in March last year and the defendant served a statutory demand on the plaintiff for the outstanding debt of S\$16,194,413.13.

3 The plaintiff did not respond and so the defendant commenced bankruptcy proceedings on 17 April 2017. She was represented by solicitors by April 2017, and the husband's company began negotiations with the defendant without success. It was only on 3 August 2017 that her solicitors objected to the bankruptcy application, notwithstanding that in five previous hearings, no objection was raised in respect of the application and the statutory demand. The proceedings in respect of the bankruptcy application have been stayed pending the defendant's present appeal before me. The defendant is appealing against the order of an assistant registrar ("AR") setting aside the statutory demand on the ground that there are "triable issues". The AR had also granted the plaintiff an extension of time to apply to set aside the statutory demand. Had he not done so, the time limited for the plaintiff to apply to set aside the statutory demand would have expired on 31 March 2017.

4 There are, therefore, two issues before me. First, was the AR right to grant the plaintiff an extension of time to set aside the statutory demand, presumably because he felt that the merits

deserved to be heard at trial. Secondly, was the AR right in finding that there are merits in setting aside the statutory demand? Some of the defendant's arguments on the first issue overlap with the second. I will deal with both jointly.

5 No reason was given as to why the AR exercised his discretion to grant an extension of time for the plaintiff to apply to set aside the statutory demand, presumably because he felt that the merits deserved to be heard at trial. It is clear from the record that the plaintiff had requested through her lawyers for a copy of the partial discharge of the mortgage. That was sent to her and from it she would have known that her obligations have not been fully discharged. I agree with Mr Ang that the delay of about five months from the time limited for such applications is too long for the court to take a lenient view. It still may if there are strong grounds for doing so, but from the facts of this case, discussed below, there is no basis to grant the plaintiff an extension of time to file her application to set aside the statutory demand.

6 The plaintiff sought refuge in the fact that she did not object to the bankruptcy application and the statutory demand because the parties were in negotiations to settle the defendant's claims, but as Mr Patrick Ang, counsel for the defendant pointed out, those negotiations were entered into expressly without prejudice to the plaintiff's rights to oppose the bankruptcy proceedings.

7 The plaintiff claims that she signed the mortgage documents because she was misled by her husband who exercised undue influence on her. That may possibly be true, and on that alone people in the plaintiff's position deserve genuine sympathy, but the court's role is not just that of a dispenser of sympathy. It is to ensure that competing claims are fairly adjudicated. The circumstances show that her claim to be a weak one, conjured out of desperation when time was running out.

8 The plaintiff, like every housewife, who has and will sign mortgage documents on account of their being joint owners of a property put up as security for a loan by their husbands, must be protected from any undue influence. But so must innocent third parties, which, in this case is the defendant bank. An agreement with a bank will only be vitiated if the bank is put on inquiry as to the undue influence, and fails to take reasonable steps to satisfy itself that there is no undue influence. Here the accusation was directed at the complainant's own husband. It is easy enough to allege that one's spouse has unduly influenced one, but such an allegation is insufficient and the aggrieved plaintiff here has a recourse in law against the spouse. In this way, the law prevents businessmen from hiding assets from creditors.

9 Furthermore, the documents had been explained to the plaintiff by the solicitor of the bank, who had followed up with a confirmation in writing the next day. Counsel for the plaintiff argued that that is proof that the solicitor did not advise her of the consequences on the day the plaintiff signed. On the contrary, I think that sending a written version of an oral advice is a common practice and a good one. It does not follow that it had not followed a previous oral advice; but even if the solicitor did not render oral advice before the plaintiff signed the mortgage documents, there was ample time for the plaintiff to take remedial action. That runs naturally against her argument that she had signed under the undue influence of her husband. The two arguments are not compatible. Neither seems to me in this case to be sufficient to justify an extension of time to apply to set aside the statutory demand or to set aside the statutory demand in any event. That alone is sufficient to allow the defendant's appeal, but there is also no merit in the plaintiff's case for setting aside the statutory notice. The defendant's appeal is therefore allowed. I will hear arguments on costs at a later date.