

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
(COMMERCIAL DIVISION)  
IN BANKRUPTCY NO: D4-29-1399-2002**

RE:                   TAN BEE HOON

EX PARTE:         STANDARD CHARTERED BANK           ...     PLAINTIFF

**GROUND S OF JUDGMENT**

Enclosure 52 is the Judgment Debtor appeal against the Senior Assistant Registrar's decision on 29 August 2005 granting a Receiving and Adjudication Order on the day of hearing of the Creditor's Petition. I had on 17 August 2005 dismissed Enclosure 38 and 45, the Judgment Debtor's appeal against the Senior Assistant Registrar's decision on 3 June 2005 dismissing the Judgment Debtor's Summons in Chambers in Enclosure 22 (application to strike out CP) and Enclosure 25 (Notice by the JD to Oppose Petition) with costs.

On the day of hearing of the Creditor's Petition, the Court was informed of the dismissal of Enclosure 45 and the Senior Assistant Registrar struck off Enclosure 44 (stay pending hearing of Enclosure 45). The Judgment Debtor attempted to obtain a stay on the ground that he is appealing to the Court of Appeal. The Senior Assistant Registrar, after hearing the oral application and the reply from the Judgment Creditor, disallowed the stay on the ground *inter alia* that the Judgment Debtor had failed to show any special circumstances. The

Senior Assistant Registrar then gave a Receiving and Adjudication Order against the Judgment Creditor and hence this appeal in Enclosure 52. The Creditors' Petition is for the amount of RM16,103,471.88 *vide* the Kota Kinabalu High Court Judgment in Default.

To trace the bankruptcy proceedings, the Bankruptcy Notice was issued on 12 March 2002. The JD subsequently filed SIC for the Bankruptcy Notice to be extended for 12 month and be served by substituted service which was duly granted on 22 June 2002. Based on the substituted service, the act of bankruptcy is committed from 12 May 2003. On 17 June 2003 the JC filed the Creditor's Petition. The JD then on 26 March 2004 filed Enclosure 20 to set aside the Bankruptcy Notice on the ground that he has a counter claim setoff or cross claim against the JC which he could not make as the cause of action only occurred after the judgment was obtained. The nature and amount of his claim was never disclosed

Later on 22 May 2004 JD filed Enclosure 22 to set aside / strike out the Creditor's Petition and on 14 June 2004 filed a Notice to oppose the Petition by Enclosure 25. JD contended that the Creditor's Petition is a nullity as the affidavit opposing bankruptcy notice (Enclosure 22) has not been heard and therefore no act of bankruptcy had been committed. JD said he was a social guarantor and this proceeding should not be taken against him. JD next said that the judgment of Kota Kinabalu High Court had not been registered at the

Kuala Lumpur High Court and finally that the officer of the JC did not have authority under seal to initiate the Creditor's Petition.

I had earlier dismissed both the appeal by JD against the refusal of the Senior Assistant Registrar on Enclosure 20, 22 and 25. As these Enclosures had been dismissed, the Senior Assistant Registrar was correct in granting the adjudication and Receiving Order against JD on 29 August 2005.

I now revert to the JD's affidavit to oppose the Bankruptcy Notice. I am satisfied that he had failed to depose positively by condescending to particulars of the counterclaim set off or cross claim. It is obviously unacceptable to oppose a Bankruptcy Notice by merely stating generally the alleged counter claim without more.

In *Datuk Lim Kheng Kim v. Malayan Banking Berhad* [1993] 2 MLJ 298, the Federal Court quoted with approval Slesser J in *Re A Debtor, exp Debtor* 1935 I Ch 347 where he said;

*“It is therefore, necessary that the affidavit in question should, on the face of it show a counterclaim, set off or cross demand which equals or exceed the amount of the judgment debt, and which the debtor could not have setup in the action in which the judgment or order was obtained.”*

The affidavit in opposition of the JD should meet the above requirements as in section 3(1)(i) of Bankruptcy Act. Instead it is a bare one and it is baseless and not *bona fide*. Under the circumstances, the said affidavit in Enclosure 22 cannot operate as an application to set aside the Bankruptcy Notice within the contemplation of the said section 3(1)(i) of the Act. I had on 20 April 2005 dismissed this appeal of JD in Enclosure 38 against refusal of SAR to set aside BN.

In respect of the Creditor's Petition, JD filed Enclosure 22 for petition to be struck off and in Enclosure 25 notice to oppose petition. The grounds are primarily that:-

- 1) there is no act of bankruptcy,
- 2) JD is social guarantor,
- 3) Judgment not registered at High Court Kuala Lumpur,
- 4) JD had informed JC that she is domiciled in New Zealand, and
- 5) The officer of JC did not have authority under seal to initiate the petition.

Both these applications were dismissed by the SAR and JD's appeal in Enclosure 45 had also been dismissed by me. I am satisfied that JD had committed an act of bankruptcy from 12 May 2003. Whether JD is a social guarantor is irrelevant to this application. It is trite that the judgment of the High Court of Malaya or Sabah and Sarawak maybe executed or enforced in any

part of the Federation (see Article 121(3) of the Federal Constitution). As for ground (4) JD had made an application to set aside the service in Enclosure 29 which will be dealt with later.

Rule 215 Bankruptcy Rules allows for a petition to be filed either by the officer in his own name duly authorized under seal or by the corporation and signed by the officer on its behalf or thirdly by an agent duly authorized under seal of the corporation.

In this petition Enclosure 10, the affidavit verifying petition Enclosure 11 was filed by the senior accounts manager Group. Special Assets Management Chartered Bank. The petition was signed by him and this falls under the 2<sup>nd</sup> category ie, presented by the corporation and signed by the Senior Accounts Manager as its officer on it's behalf. Under this category it does not require him to be authorized under seal (See *Re Ho Fok., exp. Ann Bee (M) Sdn Bhd* [2002] 2 CLJ 223)

I note Enclosure 29 by the JD to set aside the Affidavit of Service of BN and CP had been correctly dismissed by the Senior Assistant Registrar Enclosure 20 was also filed on the grounds that on 30 March 2003, JD had informed JC that he lived and was domiciled in New Zealand and all documents should have been served on him there. I am satisfied that JD had not furnished any documentary proof that he is indeed domiciled in New Zealand. He had never

disclosed that and evidently in all his affidavits he gave his address as Block 12-2-10 Prisma Cheras Condominium, Jalan Midah, Kuala Lumpur.

For the reasons aforesaid, the order of AO and RO were correctly made against JD and I thereby dismissed JD's appeal in Enclosure 52.

Dated This 24<sup>th</sup> Day of July, 2005

**DATO' ABDUL WAHAB BIN SAID AHMAD**  
**JUDGE**  
**HIGH COURT OF MALAYA**  
**KUALA LUMPUR**

**Counsel for Judgment Creditor:-**

Tetuan Ariffin & Partners  
Advicates & Solicitors

**Council for Judgment Debtor:-**

Saran Singh & Co  
Advocates & Solicitors

**Reference:-**

1. *Datuk Lim Kheng Kim v. Malayan Banking Berhad* [1993] 2 MLJ 298.