IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHCR 1

Bankruptcy No 868 of 2021

In the matter of the Insolvency, Restructuring and Dissolution Act (Act 40 of 2018)

Then Feng

… *Applicant*

GROUNDS OF DECISION

[Insolvency Law] — [Bankruptcy] — [Statement of Affairs]
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General Division of the High Court — Bankruptcy No 868 of 2021
AR Reuben Ong
4, 28 June, 22, 23 July, 2 September, 3 November 2021

3 January 2022

AR Reuben Ong:

1 In Bankruptcy No 868 of 2021 ("the BA"), the applicant, Mr Then Feng ("the Applicant"), sought a bankruptcy order against himself. In the course of the proceedings, several contingent creditors applied to intervene to oppose the Applicant's attempt to bankrupt himself. In total, three groups of contingent creditors filed applications seeking variously that the BA be dismissed or stayed pending the outcome of other related proceedings against the Applicant. These applications raised the following issues:

(a) whether creditors and/or contingent creditors have a right to be heard in a *debtor's* bankruptcy application under r 14(2) read with 14(3) of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 ("PIR");

(b) the applicable test for invoking the Court's discretion under s 315(2) of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA") to dismiss a debtor's bankruptcy application for contravening

the requirements of the IRDA or the PIR (here, the Applicant's alleged failure to file a complete and accurate Statement of Affairs ("SOA")); and

(c) the applicable test where *creditors* seek to invoke the Court's power to dismiss or stay a *debtor's* bankruptcy application under s 315(1) of the IRDA on grounds of the debtor's failure to show that he was unable to pay his debts.

2 On 4 June 2021, I directed that certain contingent creditors be served with the bankruptcy application and the supporting affidavit under r 14(2) of the PIR. Accordingly, they were entitled to be heard pursuant to r 14(3) of the PIR. On 2 September 2021, having heard the contingent creditors and the Applicant, I found that the Applicant's SOA was indeed incomplete and adjourned the hearing of the BA to give the Applicant a final chance to file a complete SOA by a stipulated deadline. On 3 November 2021, as the Applicant had failed to file a complete SOA by the deadline, I dismissed the BA. These are the full grounds of my decision.

Facts

The Applicant's Statement of Affairs filed on 12 April 2021

3 The BA was filed on 12 April 2021. The debts upon which the Applicant applied to bankrupt himself totalled S$431,781.45, and comprised: (a) S$205,281.45 owed to Drew & Napier LLC ("D&N") in respect of legal fees ("the D&N Debt"); (b) S$51,756.07 owed to Premier Law LLC also in respect of legal fees ("the Premier Law Debt"); and (c) S$174,743.93 owed to Lee Moonyoung, the Applicant's wife, in respect of a personal loan to pay for legal and professional fees incurred by the Applicant ("the Loan Debt").

4 The Applicant also declared four contingent liabilities in the form of legal claims instituted against him. These were as follows:

(a) HC/S 326/2019 ("Suit 326") filed by Chew Funn Loong Colin and Marcus Lim Yi, who were also the 1st and 2nd Non-Parties in the present proceedings, against the Applicant. On 29 April 2021 (after the BA was filed), judgment was granted against the Applicant, who was ordered to pay US$141,120.30 plus pre-judgment interest. Accordingly, that sum was now an actual debt, and no longer merely a contingent debt. I refer to Mr Chew and Mr Lim collectively as "the Suit 326 Judgment Creditors".

(b) SIC/S 8/2020 ("Suit 8") filed by Providence Asset Management and 5 And 2 Pte Ltd ("the Suit 8 Plaintiffs"), who were also the 3rd and 4th Non-Parties in the present proceedings, against the Applicant and his wife.

(c) SIC/S 5/2020 ("Suit 5") filed by The Micro Tellers Network Limited, Michael Lin Daoji, Rio Lim Yong Chee and Wong Zhi Kang Clement ("the Suit 5 Plaintiffs"), who were also the 7th to 10th Non-Parties in the present proceedings, against the Applicant. The trial of Suits 5 and 8 were fixed together and was heard in June 2021.

(d) HC/S 1104/2019 ("Suit 1104") filed by Michael Joseph Millsopp ("the Suit 1104 Plaintiff"), who was also the 5th Non-Party in the present proceedings, against the Applicant. The trial of Suit 1104 was heard in August 2021.

I refer to the Suit 326 Judgment Creditors, the Suit 8 Plaintiffs, the Suit 5 Plaintiffs and the Suit 1104 Plaintiff collectively as "the Non-Parties".

5 As regards his personal assets, the Applicant declared cash assets of S$3.53 and a sundry debt of S$16,329 owed to him. He also declared substantial contingent assets comprising: (a) a debt of CHF 49,000 (approximately S$70,070,000) owed to the Applicant by one Frederic Willy Gaillard; (b) debts totalling approximately S$2,599,077.87 owed to the Applicant by one Edward Young Han; and (c) some US$50,000 plus several cars purportedly worth approximately S$1.35m owed to the Applicant by Chariot Global Trading Ltd, a UK company.

Procedural history

6 At the first hearing of the BA on 20 May 2021, the Suit 8 Plaintiffs appeared at the hearing and informed the Court that they intended to file an application to intervene in the proceedings. This was done with a view to opposing the Applicant's attempt to bankrupt himself on the ground that there was a substantial dispute as to the Applicant's professed inability to pay his debts. The assistant registrar directed that parts of the SOA be furnished to the non-parties in attendance (respective counsel for the Suit 326 Judgment Creditors and the Suit 1104 Plaintiff had also attended on watching brief), and gave timelines for the filing of the intended application to intervene.

7 On 27 May 2021, the Suit 8 Plaintiffs filed Summons No 2538 of 2021 ("SUM 2538"), by which they sought: (a) leave to intervene in the BA; (b) a stay of the BA pending the trial of Suit 8; and (c) in the alternative, the dismissal of the BA.

8 I heard SUM 2538 on 4 June 2021. In support of their application to intervene, the Suit 8 Plaintiffs relied on r 14(2) and 14(3) of the PIR, which state that the Court may at any time direct that the bankruptcy application and the

supporting affidavit be served on any person who "may be affected by the order or other relief sought", and that any person who is so served is entitled to be heard. As the effect of these provisions was a main point in contention, I reproduce them in full:

> **Service of application**
>
> **14.**—(2) The Court may at any time —
>
> (*a*) direct that service of an application and the supporting affidavit (if any) be effected on, or notice of proceedings be given to, any person who may be affected by the order or other relief sought; and
>
> (*b*) direct the manner in which such service is to be effected or such notice is to be given.
>
> (3) Any person who is served or notified under paragraph (2) is entitled to be heard.

9 It was undisputed that the Non-Parties, who were either creditors (in the case of the Suit 326 Judgment Creditors) or contingent creditors (in the case of the plaintiffs in Suit 5, 8 and 1104), fell within the category of persons who may be "affected" were a bankruptcy order to be made against the Applicant. In particular, the contingent creditors, who had pending lawsuits against the Applicant, would certainly have been "affected" since a bankruptcy order would, by virtue of s 327(1)(*c*) of the IRDA, automatically stay all pending proceedings against the Applicant.

10 The Applicant resisted the application to intervene solely on the basis that r 14 of the PIR does not apply to *debtor's* bankruptcy applications. He argued that r 14 ought to be read in light of rr 104 and 105 of the PIR, which are the provisions governing the hearing of *debtor's* bankruptcy applications specifically. Rules 104 and 105 provide that the debtor is obliged to serve the bankruptcy application, supporting affidavit and SOA on "interested person[s]", which are defined as referring specifically to nominees acting in relation to a

voluntary arrangement under Part 14 of the IRDA. The Applicant's point was that since rr 104 and 105 *expressly* provide that certain *specified* non-parties have a right to be heard, and creditors and contingent creditors are not amongst those specified, it must follow that creditors and contingent creditors do not have any right to be heard in a debtor's bankruptcy application. The Applicant further argued that there were good reasons why this should be so – for if it were the case that creditors and contingent creditors had a right to be heard, that would place an impossibly onerous obligation on the debtor to ensure, in every case, that *all* of his creditors and contingent creditors were served with the bankruptcy application and related papers.

11 I rejected the Applicant's argument for three reasons. First, r 14(2) and 14(3) of the PIR are of general application to all bankruptcy applications, including debtor's bankruptcy applications: see r 3(*a*) of the PIR. Second, nothing in the language of rr 104 and 105 of the PIR suggests that those provisions were intended to be *exhaustive* of the situations in which a non-party to bankruptcy proceedings may be entitled to a right to be heard, nor do they purport to exclude the operation of r 14 of the PIR. Third, as regards the Applicant's argument that such a reading of r 14 would place an onerous obligation on debtors regarding the service of the bankruptcy papers on creditors, that contention was, in my view, based on an erroneous understanding of r 14(2) of the PIR. Rule 14(2) of the PIR does not *create* any obligation upon the debtor to serve the relevant papers on all persons who may be affected forthwith upon filing the bankruptcy application. Rather, it *empowers* the Court to direct that such persons be served with the papers or be notified of the proceedings. If indeed there are any concerns as to the practicability of such a course of action, the debtor is free to raise any such concerns for the Court's consideration.

12 For these reasons, I took the view that r 14(2) of the PIR applied to debtor's bankruptcy applications. As it was undisputed that the Non-Parties were persons who may be affected if a bankruptcy order were made against the Applicant, I directed, pursuant to r 14(2)(*a*) of the PIR, that the Applicant serve the bankruptcy application and the supporting affidavit on the Non-Parties. Accordingly, pursuant to r 14(3) of the PIR, each of the Non-Parties were entitled to be heard. While r 14(2)(*a*) of the PIR refers only to the bankruptcy application and the supporting affidavit (and not separately to the SOA), it is in my view clear that the SOA should also be served on the relevant persons where a direction under r 14(2)(*a*) is issued because: (a) s 308(2)(*a*) of the IRDA clearly provides that the SOA must be exhibited to the supporting affidavit; and (b) if the purpose of a direction under r 14(2)(*a*) of the PIR is to ensure that persons who may be affected by an order made in the bankruptcy proceedings are fully apprised of the bankruptcy application and the circumstances giving rise to it so that such persons may consider taking necessary action, there is no reason why the SOA, which is an integral part of the bankruptcy application, should not also be served when a direction under r 14(2)(*a*) of the PIR is made.

13 On 16 June 2021, the Suit 326 Judgment Creditors filed Summons No 2841 of 2021 ("SUM 2841"), seeking a stay of the BA pending the disposal of certain examination of judgment debtor proceedings they had commenced against the Applicant in Summons No 2281 of 2021 filed in Suit 326 ("the EJD Proceedings").

14 On 9 July 2021, the Suit 5 Plaintiffs filed Summons No 3256 of 2021 ("SUM 3256"), seeking that the BA be dismissed.

Issues to be determined

15 In summary, a total of three applications were filed, seeking variously that the BA be dismissed or stayed:

(a) By SUM 2538, the Suit 8 Plaintiffs sought a stay of the BA pending the trial of Suit 8 to allow the issue of whether the Applicant had hidden assets, which is inextricably intertwined with the issue of whether he is able to pay his debts, to be determined by the Court hearing Suit 8. In the alternative, they asked that the BA be dismissed on account of the Applicant's failure to make full and frank disclosure of his assets in his SOA.

(b) By SUM 2841, the Suit 326 Judgment Creditors sought a stay of the BA pending the conclusion of the EJD Proceedings on the basis that those proceedings might yield useful information as to whether the Applicant had hidden assets.

(c) By SUM 3256, the Suit 5 Plaintiffs sought the dismissal of the BA on two alternative grounds; (a) that the Applicant had failed to disclose certain assets and/or disposals of assets, and therefore had failed to file a complete and accurate SOA in contravention of the IRDA and the PIR; and (b) because the Applicant had not shown that he is unable to pay his debts.

16 These applications collectively raised the following issues:

(a) Issue 1: Whether the BA should be dismissed on the basis that the Applicant had failed to disclose certain assets and/or disposals of assets.

(b) Issue 2: If not, whether the BA should be dismissed or stayed on the basis that triable issues had been raised as to the Applicant's professed inability to pay his debts.

(c) Issue 3: If not, whether the BA should be stayed pending the conclusion of the EJD Proceedings.

The applicable legal principles

17 Before discussing the three issues outlined above, I begin by setting out the legal principles applicable to the determination of *debtor*'s bankruptcy applications.

18 Regardless of whether a bankruptcy application is brought by a creditor or by the debtor against himself, the Court must be satisfied that the debtor is unable to pay his debts before it may make a bankruptcy order against him: s 316(3)(*c*) and s 318(1) of the IRDA. The applicant bears the burden of proof. Thus, in a debtor's bankruptcy application, it is the debtor, as the person who would fail if no evidence were given in the proceedings (see s 104 of the Evidence Act (Cap 97, 1997 Rev Ed)), who must satisfy the Court of his inability to pay his debts.

19 As regards the legal test to be applied when determining whether the debtor is able to pay his debts, it was undisputed that the cash flow test that was applied in the case of *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)* [2021] 2 SLR 478 ("*Sun Electric*") in the context of determining the insolvency of a company under s 254(2)(*c*) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") should also apply to the bankruptcy of an individual, and that the cash flow test was the sole test that applied. Section 318(1) of the IRDA and s 254(2)(*c*) of the Companies Act are

in pari materia in that they both speak in terms of proof to the satisfaction of the Court that the debtor "is unable to pay the debtor's debts". In my view, there is no reason why the legal test for insolvency where the debtor is a company cannot also be applied where the debtor is an individual.

20 In applying the cash flow test, the Court assesses whether the debtor's *current* assets exceed his *current* liabilities such that he is able to meet all debts as and when they fall due. The Court of Appeal observed that in the context of a corporate insolvency the debtor's "current" assets and liabilities would generally be taken as referring to assets realisable and debts which will fall due within a 12-month timeframe, although that timeframe is flexible and will depend on the circumstances of each case (*Sun Electric* at [65] and [67]). In my view, the 12-month timeframe remains applicable as a general guide when assessing an *individual* debtor's "current" assets and liabilities, although that timeframe would likewise depend on the circumstances of each case. The Court of Appeal in *Sun Electric* had also set out a non-exhaustive list of factors which the Court should consider under the cash flow test (*Sun Electric* at [69]). In my view, these factors were also apposite to the context of assessing the solvency of an *individual* debtor. In particular, the Court should consider:

(a) the quantum of all debts which are due or will be due in the reasonably near future;

(b) whether payment is being demanded or is likely to be demanded for those debts;

(c) whether the debtor has failed to pay any of its debts, the quantum of such debt, and for how long the debtor has failed to pay it;

(d) the length of time which has passed since the commencement of the bankruptcy proceedings;

(e) the value of the debtor's current assets and assets which will be realisable in the reasonably near future;

(f) the debtor's sources of regular income, in order to determine his expected cash flow;

(g) any other income or payment which the debtor may receive in the reasonably near future; and

(h) arrangements between the debtor and prospective lenders, in order to determine whether any shortfall in liquid and realisable assets and cash flow could be made up by borrowings which would be repayable at a time later than the debts.

21 The debtor cannot expect that his admission of insolvency and his declarations as to his financial affairs, even if sworn to or affirmed in an affidavit, will be taken as conclusive, particularly where the bankruptcy application is opposed by persons who have advanced some reasonable basis upon which the accuracy or truthfulness of the debtor's professed inability to pay his debts may be questioned. In such circumstances, the debtor may be required to adduce evidence to substantiate the accuracy and truthfulness of his statement of affairs, and if the debtor fails to do so, the Court may draw an adverse inference against him in an appropriate case.

22 With these legal principles in mind, I turn to the substantive issues raised in the BA.

Issue 1: Whether the BA should be dismissed on the basis that the Applicant had failed to disclose certain assets and/or disposals of assets

23 The Suit 5 Plaintiffs submitted that the Applicant had failed to disclose certain assets and/or disposals of assets as required and therefore failed to file a complete SOA in accordance with s 308(2) of the IRDA and r 102 of the PIR, and that the Court ought therefore to exercise its discretion to dismiss the BA pursuant to s 315(2) of the IRDA.

24 This raises two sub-issues: (a) first, whether the Applicant had indeed failed to disclose assets and/or disposals of assets in the SOA in contravention of the IRDA and the PIR; and (b) if so, whether that contravention warrants an outright dismissal of the BA.

Whether the Debtor had failed to disclose assets or disposals of assets in contravention of the requirement to file a complete SOA

25 Section 308(2)(*a*) of the IRDA states that where the debtor is an individual, the debtor must exhibit to his supporting affidavit a statement of the debtor's affairs containing "such particulars of the debtor's assets, creditors, debts and other liabilities as may be prescribed". Rule 102 of the PIR and Form PIR-11 prescribe the form in which the SOA must be prepared and filed. Part 1 of Form PIR-11 requires the debtor to set out particulars relating to, amongst other things, his directorship or involvement in the management of any company or business as well as his involvement in any legal proceedings. Part 2 requires the debtor to provide a summary of his assets and liabilities. And under Part 3, the debtor must disclose all property disposed of (*ie*, given away, transferred or sold) five years prior to the date of the bankruptcy application and any repayments to creditors in the last two years before the date of the bankruptcy application.

26 It is critical that the SOA filed by the debtor is a complete, comprehensive and accurate reflection of the debtor's assets, debts and other particulars prescribed. This is particularly so in the context of debtor's bankruptcy applications (which are typically unopposed) because the SOA, coupled with the debtor's own admission of his inability to pay his debts, is often the only evidence available to the Court as to the debtor's inability to pay his debts. In other words, the requirement under s 308(2)(*a*) of the IRDA to file an SOA must be understood as a requirement to file a complete, comprehensive and accurate statement of the debtor's affairs.

27 The Suit 5 Plaintiffs submitted that the Applicant had failed to make adequate disclosure in respect of three categories of assets or liabilities. I address each in turn.

The WPS Sums

28 First, the Suit 5 Plaintiffs say that the Applicant should have disclosed the existence of sums totalling US$5,148,000 and S$973,000 ("the WPS Sums") which had been deposited into the account of Walkers Professional Services Limited ("WPS"). While the Applicant was not listed as a director of WPS, WPS was, on the Applicant's own case in Suit 5, owned and controlled by him. It was also undisputed that WPS had indeed received the WPS Sums. In my view, that being the case, the Applicant ought to have disclosed the WPS Sums as an asset in Part 2 of the SOA, or if the WPS Sums had since been expended, accounted for their disposal in Part 3 of the SOA.

29 Against this, the Applicant explained that he had not disclosed these sums since, on the Suit 5 and Suit 8 Plaintiffs' cases in their respective suits, the WPS Sums were in fact the various *Plaintiffs'* funds which had been misused

by the Applicant, and which therefore never belonged to the Applicant and had at best been held on trust by the Applicant for the various Plaintiffs. However, this was flatly contradicted by the fact that the Applicant had, at all material times, treated the WPS Sums as belonging to himself, personally. For instance, and on his own case in Suits 5 and 8, the Applicant had loaned a part of the WPS Sums to Mr Gaillard, and the Applicant now seeks to claim those monies from Mr Gaillard in his own name (see [5] above).

30 In my judgment, the Applicant had, on his own admission and by his own conduct, clearly treated the WPS Sums as his personal assets, and therefore the WPS Sums should have been disclosed as such. If the WPS Sums had since been disposed of, their disposal should have been accounted for in Part 3 of the SOA.

The Net Sale Proceeds

31 In Part 3 of his SOA, the Applicant disclosed his disposal of several assets which generated substantial net sale proceeds totalling $1,257,186.29 ("the Net Sale Proceeds"). However, and although the Net Sale Proceeds had been generated fairly recently in the period between October 2019 to January 2021, they were not accounted for in Part 2 of the SOA as part of the Applicant's assets or in Part 3 of the SOA if they had been disposed of.

32 At the hearings before me, the Applicant explained that a "substantial portion" of the Net Sale Proceeds had been applied towards the payment of legal fees and living expenses. Of course, this explanation is no defence to the Applicant's failure to *account* for how the Net Sale Proceeds had been disposed of in his SOA. More fundamentally, it was, in my view, far from clear how the

Net Sale Proceeds totalling some S$1.2m could have been entirely or substantially expended on the Applicant's living expenses and legal fees alone.

(a) As regards the Applicant's living expenses, he had, elsewhere in the SOA, declared that his total living expenses (including his family's expenses) were $15,710 per month. That amounts to a total of just $267,070 from October 2019 (when the first of the Net Sale Proceeds was generated) to April 2021 (when the SOA was filed).

(b) As regards the Applicant's legal fees, no invoices or receipts of payment were adduced, and no satisfactory reason was given to explain why these documents could not be produced. In other words, there was absolutely no evidence that the quantum of legal fees incurred and paid for by the Applicant constituted or approached the sum of S$1.2m. His involvement in multiple sets of legal proceedings notwithstanding, it is doubtful that the Applicant could have incurred such significant legal fees, especially considering that he had, at least in the case of D&N in Suit 5, discharged his lawyers prior to the exchange of AEICs.

33 In my view, the Applicant's bare assertions that a "substantial" portion of the Net Sale Proceeds totalling US$1.2m had been expended on legal fees and living expenses fell far short of the standards of accountability required of a debtor who seeks to make a bankruptcy order against himself. It was incumbent on the Applicant to have at least provided a breakdown of the specific uses to which the Net Sale Proceeds were purportedly applied (*eg*, the amounts paid to each law firm, and the dates of such payments), supported by invoices and receipts where available.

The Amex Debts

34 In section 2.1.6 in Part 2 of the SOA, the Applicant claimed that one Mr Edward Young Han had misappropriated monies from bank accounts belonging to him totalling US$498,158.96 and made unauthorised charges on his American Express ("Amex") credit card to the tune of some US$1,317,719.28 ("the Amex Debts"). It appeared that the Applicant had attempted to dispute the charges, but those attempts were unsuccessful and were ultimately rejected by Amex on 5 September 2019. As the Suit 5 Plaintiffs pointed out, since the Applicant did not list Amex as a creditor in section 2.2 of Part 2 of the SOA, that must mean that the Applicant's position was that he had paid off the Amex Debts. And since the Amex Debts could only have been paid after 5 September 2019 (being the date the Applicant's attempts to dispute the card charges were rejected), any such payment would have constituted a repayment to a creditor which should have been accounted for in Part 3 of the SOA. These non-disclosures were material because the Amex Debts involved very substantial sums – far in excess of the debts upon which he now seeks to bankrupt himself – and if the Amex Debts had indeed been paid off by the Applicant, that would raise questions as to whether he might have other sources of funds available to him to pay his debts. The Applicant dismissed this as mere conjecture, but offered no explanation as to whether and how the Amex Debts were paid.

35 While I was unable to make any finding that the Amex Debts had indeed been paid up and therefore ought to have been disclosed, I accepted that the evidence put forward by the Suit 5 Plaintiffs was such as to raise serious questions as to: (i) whether the Amex Debts had indeed been paid up; and (ii) if so, by whom.

36 In sum, I found that the Applicant should have, but failed to disclose the WPS Sums as part of his assets in Part 2 of the SOA. He also failed to satisfactorily account for the disposal of the Net Sale Proceeds in Part 3 of the SOA by, for instance, providing a breakdown as to how and how much of the Net Sale Proceeds were expended on his legal fees and living expenses. The Applicant had therefore failed to file a complete, comprehensive and accurate SOA in contravention of s 308(2)(*a*) of the IRDA. While I was unable to definitively conclude that the Applicant's omission of the Amex Debts in Part 3 of the SOA constituted a similar contravention of the IRDA, I was of the view that the Applicant should have explained whether the Amex Debts had been paid up, and if so, by whom so that the Court might be put in a position to assess whether the Amex Debts should have been declared.

Whether the Debtor's failure to file a complete SOA warranted dismissal of the BA

37 Having found that the Applicant had failed to file a complete SOA in contravention of s 308(2) of the IRDA and r 102 of the PIR, I turn to the question of whether this warranted the exercise of the Court's discretion under s 315(2) of the IRDA to dismiss the BA.

38 Section 315(2) of the IRDA provides that the Court may dismiss the bankruptcy application where it appears to the Court that the applicant has contravened any of the provisions of the IRDA or the PIR:

> **Power of the Court to stay or dismiss proceedings on bankruptcy application**
>
> **315.**—(1) The Court may at any time, for sufficient reason, make an order staying the proceedings on a bankruptcy application, either altogether or for a limited time, on such terms and conditions as the Court thinks just.

> (2) Without affecting subsection (1), where it appears to the Court that the person making a bankruptcy application has contravened any of the provisions of this Act or any rules in relation to proceedings on a bankruptcy application, the Court may, in its discretion, dismiss the application instead of staying any proceedings on the application under that subsection.

39 The Suit 5 Plaintiffs contended that the Applicant's non-disclosures above warranted the dismissal of the BA. They referred me to two English cases involving the annulment of a bankruptcy order on the basis that the debtor's petition to bankrupt himself was, in the circumstances, an abuse of process.

40 The first, *F v F (Divorce: Insolvency: Annulment of Bankruptcy Order)* [1994] 1 FLR 359 ("*F v F*"), was a decision of the Family Division of the High Court of England and Wales. In *F v F*, the husband in matrimonial proceedings had obtained a bankruptcy order against himself by omitting to declare assets he held outside the jurisdiction. On the wife's application, the court set aside the bankruptcy order on the basis that the order ought not to have been made on grounds existing at the time the order was made (at p 366):

> The [bankruptcy] order was obtained on the husband's petition which presented a false picture of his financial circumstances. He omitted assets outside the jurisdiction that are cardinal to any evaluation of his true net worth. … It was an abuse of the processes of bankruptcy and it is an order that must be set aside.

41 The second, *Paulin v Paulin* [2010] 1 WLR 1057 ("*Paulin*"), also involved a husband who had obtained a bankruptcy order against himself in the midst of matrimonial proceedings initiated by the wife. In dismissing the husband's appeal against an annulment of the bankruptcy order, the English Court of Appeal observed that a debtor who is shown to have made a substantially dishonest statement of affairs and to have in fact held assets which substantially exceeded his liabilities will find it difficult to resist annulment of

the bankruptcy order on the basis that he was nevertheless unable to pay his debts (at [50]).

42 These cases involved the annulment of a bankruptcy order on the basis that the debtor's petition was an abuse of process. They suggest that dishonesty and a lack of candour on the debtor's part can amount to an abuse of process warranting the annulment of a bankruptcy order.

43 The question in the present case is a different one: whether the Court ought to exercise its discretion under s 315 of the IRDA to dismiss the BA on the basis that the debtor had contravened the IRDA and PIR. But the same basic principle – that dishonesty on the debtor's part as to his financial affairs will not be countenanced by the Court – nonetheless applies.

44 While not every contravention of the IRDA or PIR would be cause for dismissal of the bankruptcy application, in my view, the Court would be amply justified in doing so where the contravention in question is such as to directly and irreparably affect the Court's ability to fairly and properly decide the bankruptcy application. This would be so where, for example, the debtor's statement of his affairs is substantially dishonest or where material parts are shown to be incomplete or inaccurate and the debtor refuses or fails to rectify and explain the omissions or inaccuracies, with the result that the Court is not presented with a full picture of the debtor's financial affairs, thus affecting the Court's ability to determine whether the debtor truly is unable to pay his debts.

45 In my view, the Court, when considering whether a contravention of the IRDA or PIR warrants dismissal of the bankruptcy application, may consider: (a) the materiality of the contravention of the IRDA or PIR; and (b) whether the contravention in question is remediable. On materiality, a contravention of the

IRDA or PIR would be material where it directly affects the Court's ability to fairly and properly decide the bankruptcy application. On irremediability, where a material contravention of the IRDA or PIR is irremediable or the debtor refuses or fails to remedy it, the Court's ability to decide the bankruptcy application would be irreparably compromised and this would in my view justify the dismissal of the bankruptcy application. But where the contravention is remediable, and the Court is satisfied of the debtor's ability and willingness to remedy the contravention in a timely fashion, the Court should ordinarily be slow to dismiss the bankruptcy application, particularly where the debtor would otherwise be entitled to file a fresh bankruptcy application having remedied the contravention.

46 The value of the WPS Sums and the Net Sale Proceeds far exceeded the quantum of the debts upon which the Applicant sought to bankrupt himself. On the facts of the present case, I found that the Applicant's failure to disclose what had become of the WPS Sums and the Net Sale Proceeds was a material contravention of the requirement to file a complete and accurate SOA under s 308(2)(*a*) of the IRDA, because that would make it impossible for the Court to determine whether the Applicant was truly unable to pay his debts, and would therefore directly affect the Court's ability to fairly and properly determine the bankruptcy application. The Applicant had had ample opportunity to rectify the SOA – he could have, for instance, asked for time to do so after all of these deficiencies were raised at the hearings before me.

47 That said, since those deficiencies could still be remedied, I was minded to give the Applicant a final chance to remedy the deficiencies in the SOA by doing the following: (a) accounting for the whereabouts of the WPS Sums, including, if applicable, their disposal; (b) accounting for the disposal of the Net Sale Proceeds with a detailed breakdown of how these were disposed of, with

supporting invoices and receipts where available; and (c) stating whether he had repaid the Amex Debts. I further directed that unless the Applicant refiled the SOA completed to the Court's satisfaction by the stipulated deadline, the BA would be dismissed.

Issue 2: Whether the BA should be dismissed or stayed on the basis that triable issues have been raised as to the Applicant's professed inability to pay his debts

48 Given my finding that the Applicant's failure to file a complete and accurate SOA had irreparably compromised the Court's ability to determine the Applicant's ability to pay his debts, I was of the view that it would not be appropriate at this stage to make a finding as to the Applicant's professed inability to pay his debts. The Applicant would first have to re-file a completed SOA accounting for the whereabouts or disposals of the WPS Sums and the Net Sale Proceeds, as the case may be, as well as for the payment of the Amex Debts before the Court would be in a position to determine his ability to pay his debts.

49 That said, as regards the WPS Sums, the Applicant did, in the course of his written and oral submissions (though not in his SOA), provide certain explanations as to how those sums were disposed of. In brief, his case was that the WPS Sums had been expended on the purchase of a bank and the loan to Mr Gaillard. Therefore, on the Applicant's case, even if a complete SOA were filed accounting for the disposal of the WPS Sums and Net Sale Proceeds, the fact remained that those sums had been disposed of and were no longer available to him as personal assets. Therefore, the Applicant remained unable to pay the D&N Debt, the Premier Law Debt and the Loan Debt, and accordingly, there was no reason why the bankruptcy order should not be made.

50 Against this, the Suit 8 Plaintiffs submitted that the BA should at least be stayed pending the conclusion of Suit 8, because the veracity of the Applicant's explanations as to his purported disposal of the WPS Sums was an issue that would be determined by the Court in Suit 8.

51 The legal threshold which a *debtor* who seeks a stay or dismissal of bankruptcy proceedings brought against him by a creditor must meet is that of a "triable issue"; the debtor must raise a triable issue as to his ability to pay his debts: see *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 at [16]–[18]. In my view, there is no reason why that same threshold should not apply *mutatis mutandis* where a *creditor* seeks a stay or dismissal of bankruptcy proceedings brought by the debtor against himself. In other words, the Court may stay or dismiss a *debtor's* bankruptcy application if a creditor raises a triable issue, for instance, as to whether the debtor has other realisable assets that could be used to pay his debts, or as to the existence of or quantum of the debt upon which the debtor seeks to bankrupt himself, or indeed as to any relevant factor such as those listed at [20] above.

52 Having heard the parties, I found that the Suit 8 Plaintiffs have raised triable issues as to whether the WPS Sums had truly been disposed of as the Applicant claimed ("the WPS Sums Issue"), which was an issue in dispute in Suit 8. In Suit 8, the Suit 8 Plaintiffs claim, amongst other things, the return of monies that the Suit 8 Plaintiffs had transferred to the Applicant (*ie*, the WPS Sums) which they say the Applicant had misappropriated. Importantly, the Applicant did not deny that the WPS Sums had been transferred to the WPS account; his only explanation was that the WPS Sums had been applied to two specific ends – the purchase of a bank and the making of a loan. Were the trial court in Suit 8 to reject the Applicant's defence that the WPS Sums had been so

applied and thereby disposed of, that would raise questions as to whether the WPS Sums remained in the Applicant's possession as undisclosed, hidden assets, and those questions would in turn be inextricably intertwined to the issue of whether the Applicant was truly unable to pay his debts.

53 The mere fact that the parties had joined issue on the WPS Sums Issue in Suit 8 does not necessarily make it a *triable* issue; that threshold must be independently satisfied. On the facts, I was satisfied that the Suit 8 Plaintiffs had met that threshold:

(a) First, I was referred to a table recording outflows of funds from the WPS account. The table showed that there were significant outflows of funds from the WPS account even *before* the terms of the alleged purchase of the bank had been finalised. The table also showed that funds had been transferred out of the WPS account in dribs and drabs, with no clearly identifiable transactions corresponding to the purported purchase price of the bank. In my view, these cast doubt over the Applicant's claim that the WPS Sums had been applied towards the purchase of the bank.

(b) Second, and in relation to the Applicant's claim that the remaining WPS Sums (which had not been expended in completing the alleged purchase of the bank) had been advanced to one Mr Gaillard as a loan, Mr Gaillard was called as a witness in Suit 8 and had testified that there was no such loan. Although the Applicant disagreed with Mr Gaillard's evidence on this point, the Applicant's own evidence in his affidavit of evidence-in-chief filed in Suit 8 was never admitted into evidence because the Applicant chose to submit no case to answer and therefore did not take the stand.

For these reasons, I was satisfied that there were triable issues as to the Applicant's ability to pay his debts which were pending determination in Suit 8.

54 I also agreed with the Suit 8 Plaintiffs that there would be little prejudice (if any at all) occasioned to the Applicant by the grant of a stay. First, Suit 8 was due to be heard in less than two weeks from the date of the relevant hearing for parties' oral submissions in the present proceedings. The Applicant was unrepresented in the proceedings which were ongoing at the time, meaning that he would not incur further legal fees. Moreover, the Applicant had not put forward any evidence that any of his creditors would be prejudiced by a stay of the BA; rather, it appeared that a majority of his contingent creditors were in fact united in their opposition to the Applicant's attempt to bankrupt himself.

55 In the circumstances, even if the BA was not dismissed on account of the Applicant's failure to file a complete and accurate SOA, the facts were, in my view, such as to warrant a stay of the BA pending the conclusion of Suit 8.

Issue 3: Whether the BA should be stayed pending the conclusion of the EJD Proceedings

56 Finally, I turn to the Suit 326 Judgment Creditors' application for a stay of the BA pending the conclusion of pending EJD Proceedings which they had commenced against the Applicant with a view to enforcing the judgment debt in Suit 326.

57 At first blush, it seemed intuitive that examination of judgment debtor proceedings, having as their aim the investigation of the judgment debtor's financial affairs and assets so as to shed light as to the availability of any assets against which the judgment debt may be enforced, would aid a bankruptcy court charged with determining whether that judgment debtor was unable to pay his

debts. Given this seeming overlap between the objective of the EJD Proceedings and the issue of the Applicant's ability to pay his debts, it was argued that the BA ought to be stayed pending the conclusion of the EJD Proceedings since it may emerge in the course of the latter that the Applicant had other hidden or undisclosed assets.

58 That said, I did not think it appropriate to stay the BA pending the EJD Proceedings for three reasons:

(a) First, it must be borne in mind that the objective of examination of judgment debtor proceedings is ultimately to facilitate the enforcement of a judgment debt. Were a bankruptcy application to be stayed pending the conclusion of examination of judgment debtor proceedings against the debtor, that might theoretically allow the judgment creditors to steal a march on the general pool of creditors since they would be the first to come to any assets of the debtor which the examination of judgment debtor proceedings unearth. In saying this I do not intend to suggest that the Suit 326 Judgment Creditors would in fact do this. My point is that staying the BA might allow a party in their position to do so, and therefore a court should be slow to stay bankruptcy proceedings pending the conclusion of examination of judgment debtor proceedings.

(b) Second, unlike Suit 8, for which the trial court is expected to make a finding on the WPS Sums Issue which will for the reasons set out above aid the bankruptcy court in these proceedings, the EJD Proceedings are open-ended in nature and do not result in any judicial determination of any issue. Examination of judgment debtor proceedings allow a judgment creditor to subject the judgment debtor to

a process of examination in the hope that information relevant to the enforcement of the judgment debt might be obtained. There is no guarantee that any relevant information would be forthcoming at the conclusion of the examination of judgment debtor proceedings.

(c) Third, there is in fact no definite end to examination of judgment debtor proceedings given that such proceedings are, in practice, very much driven by the judgment creditor, who generally decides when to discharge the examinee (although this remains subject to the Court's discretion). I was mindful of the possibility that any stay granted might therefore be a stay of potentially indefinite duration, and, more fundamentally, a stay with a duration primarily determined by the judgment creditors.

59 For these reasons, I declined to grant a stay of the BA pending the conclusion of the EJD Proceedings.

Conclusion

60 In light of the foregoing, in my view, the most practical way forward was not to stay or dismiss the BA, but to adjourn the hearing of the BA pending two matters: (a) first, the Applicant's re-filing of the SOA by a specified deadline; and (b) second, the conclusion of Suit 8 and any appeal therefrom. Therefore, on 2 September 2021, I directed that if the Applicant failed to file a complete and accurate SOA by the specified deadline (*ie*, 14 October 2021), the BA was to be dismissed; and that if the SOA was duly re-filed, subject to any views the Non-Parties wished to be heard on in relation to the re-filed SOA, the hearing was to be adjourned to a date to be fixed, after the conclusion of Suit 8

and any appeal therefrom. I also directed that the Applicant be at liberty to write in by 7 October 2021 if a request for extension of time became necessary.

61 For completeness, I note that the Applicant ultimately failed to re-file his SOA by 14 October 2021 or request an extension of time to do so by 7 October 2021 as directed. The Applicant's request for an extension of time was only made on 14 October 2021, the same day the SOA was due to be re-filed. The Applicant claimed that he needed more time to obtain bank statements in respect of the WPS account and also to obtain other supporting documents such as deposit slips and remittance advices in order to account for the disposal of the WPS Sums as directed. I convened a hearing and heard the parties on the Applicant's request for an extension of time on 3 November 2021.

62 Having heard the parties, I rejected the Applicant's request for an extension of time for the following reasons:

(a) The starting point was that the SOA should have been duly completed when the BA was filed. As I had found, the Applicant's failure to file a complete and accurate SOA was grounds for the dismissal of the BA. When the Applicant was directed to re-file the SOA by 14 October 2021, this was itself an indulgence and a final chance for compliance.

(b) The deadline of 14 October 2021 was a full six weeks from the date of my order on 2 September 2021, and this should have been ample time for compliance. In any case, the Applicant had liberty to write in to request an extension of time by 7 October 2021, but did not do so, despite the fact that the difficulties which the Applicant cited in support of his request would have been known to him before 7 October 2021.

(c) As regards the Applicant's claim that he needed more time to obtain the bank statements of the WPS account, the Applicant admitted at the hearing on 3 November 2021 that the bank statements were in fact already in his possession and that they had previously been disclosed in other proceedings, including in Suit 8 and in the BA itself.

(d) The Applicant's second ground for seeking an extension of time – that he needed more time to obtain supporting documents like deposit slips and remittance advices – was also unmeritorious. This ground was raised for the first time at the hearing on 3 November 2021. If this were a genuine reason, the Applicant could have raised this in writing before 7 October 2021, or at the very latest in his correspondence with counsel for the Non-Parties to enquire if they would consent to his request for an extension of time. The fact that this was never raised until the hearing on 3 November 2021 suggested that this was an afterthought.

63 Accordingly, since the Applicant failed to re-file his SOA by the specified deadline, I dismissed the BA.

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Assistant Registrar

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