MOSCOW NARODNY BANK LTD v. NGAN CHING WEN
FEDERAL COURT, KUALA LUMPUR
STEVE SHIM, CJ (SABAH & SARAWAK); ABDUL MALEK AHMAD, FCJ; ABDUL HAMID MOHAMAD, FCJ
CIVIL APPEAL NO: 03-1-2003 (W)
1 APRIL 2004

[2004] 2 CLJ 241; [2004] 4 AMR 177

BANKRUPTCY*: Interest - Commencement date for interest - Whether claim barred by s. 6(3) Limitation Act 1953 - Decision of Federal Court in United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin*

CIVIL PROCEDURE*: Interest - Judgment debt - Commencement date for interest - Whether claim barred by s. 6(3) Limitation Act 1953 - Decision of Federal Court in United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin*

LIMITATION*: Interest - Arrears - Whether claim barred by s. 6(3) Limitation Act 1953 - Decision of Federal Court in United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin*

BANKRUPTCY*: Petition - Abuse of process - Creditor accepting payments from debtor after commencing Bankruptcy proceedings - Whether payments constituted complete accord and satisfaction of debt - Whether merely part-payment of judgment debt - Whether acceptance of payments rendered Bankruptcy proceedings an abuse of process*

The petitioning creditor ('appellant') had petitioned the judgment debtor ('respondent') for bankruptcy alleging that the respondent was indebted to the appellant for the sum of RM5,513,468.61. The senior assistant registrar dismissed the petition with costs, and subsequent appeals to the judge-in-chambers and the Court of Appeal were also dismissed. Upon further appeal, leave was granted to the appellant for the determination of two issues: (a) whether for the purpose of interpretation of the provisions of the second limb to s. 6(3) of the Limitation Act 1953, the date when interest becomes due under a judgment is to be taken as the date of judgment or the date of commencement of interest as stipulated in the judgment; and (b) whether acceptance of part-payment by a judgment creditor in the course of bankruptcy proceedings renders the proceedings an abuse of process despite indication by the judgment creditor that such payments would be paid over to the official assignee in the event the debtor is adjudicated bankrupt upon the creditor's petition by reason of the absence of full settlement of the judgment debt. With regard to the second question, it was not disputed that RM504,816.20 was paid by the respondent and accepted by the appellant, and that the appellant undertook to pay it to the official assignee. What was disputed was whether it was paid and received as a complete accord and satisfaction of the debt.

Held (allowing the appeal):

Per Abdul Hamid Mohamad FCJ

[1] The date on which the interest became due was the judgment date (decision of the Federal Court in the case of *United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin* followed).

[2] The appellant had filed the bankruptcy proceedings as a judgment creditor to recover the judgment debt owed to it. The fact that the respondent made the payment of RM504,816.20 subsequent to the filing of the bankruptcy proceedings did not in any way tarnish the intention of the appellant in commencing or even pursuing the proceedings as the appellant was of the view that it was only a part-payment of the judgment debt. Furthermore, the respondent had not raised the issue of abuse of process of the court in the High Court. Thus, merely accepting payments in the course of bankruptcy proceedings does not render the proceedings an abuse of process, what more when the money is to be paid to the official assignee in the event the debtor is adjudicated a bankrupt.

*[**Bahasa Malaysia** Translation Of Headnotes*

Pemiutang mempetisyen ('perayu') telah mempetisyen penghutang penghakiman ('responden') untuk kebankrapan atas alasan bahawa responden telah terhutang kepadanya sebanyak RM5,513,468.61. Penolong kanan pendaftar menolak petisyen dengan kos, dan rayuan-rayuan kepada hakim-dalam-kamar dan Mahkamah Rayuan berikutnya juga ditolak. Ekoran rayuan selanjutnya, izin telah diberi kepada perayu untuk menentukan dua isu, iaitu: (a) sama ada bagi maksud pentafsiran peruntukan jejari kedua s. 6(3) Akta Had Masa 1953, tarikh di mana faedah menjadi terbayar di bawah suatu penghakiman adalah tarikh penghakiman itu dibuat atau tarikh permulaan faedah sebagaimana yang ditetapkan di dalam penghakiman; (b) sama ada penerimaan bayaran sebahagian oleh pemiutang penghakiman dalam tempoh prosiding kebankrapan menjadikan prosiding tersebut satu salah guna proses, walaupun terdapat petanda dari pemiutang penghakiman bahawa bayaran tersebut akan dibayar kepada Pegawai Pemegang Harta sekiranya penghutang dihukumkan bankrap di bawah petisyen pemiutang kerana gagal membayar sepenuhnya hutang penghakiman. Berhubung persoalan kedua, tidak dinafikan bahawa sebanyak RM504,816.20 telah dibayar oleh responden dan diterima oleh perayu, dan bahawa perayu juga telah mengakujanji untuk membuat pembayaran kepada Pegawai Pemegang Harta. Apa yang dipertikaikan adalah sama ada jumlah tersebut dibayar sebagai penyelesaian penuh hutang.

Diputuskan (membenarkan rayuan):

Oleh Abdul Hamid HMP

[1] Tarikh di mana faedah menjadi terbayar adalah tarikh penghakiman (keputusan Mahkamah Persekutuan dalam kes *United Malayan Banking Corp Berhad v. Ernest Cheong Yong Yin* diikuti).

[2] Perayu telah memfail prosiding kebankrapan sebagai pemiutang penghakiman bagi mendapatkan jumlah yang terhutang kepadanya. Fakta bahawa responden membuat bayaran sebanyak RM504,816.20 selepas pemfailan prosiding kebankrapan tidak sedikit pun menjejaskan hasrat perayu dalam memulakan ataupun meneruskan prosiding kerana perayu berpendapat bahawa ia hanyalah bayaran sebahagian hutang penghakiman. Lagi

pun, responden tidak membangkitkan isu salah guna proses mahkamah di Mahkamah Tinggi. Oleh itu, semata-mata menerima bayaran semasa prosiding kebankrapan masih berjalan tidaklah menjadikan prosiding itu suatu salah guna proses, sementelah jika bayaran tersebut akan dibayar kepada Pegawai Pemegang Harta sekiranya penghutang dihukumkan bankrap.

Rayuan dibenarkan.]

[Appeal from Court of Appeal, Civil Appeal No: W-03-6-1996]

Reported by Suresh Nathan

Case(s) referred to:

*In re Majory [1955] Ch 600 (**refd**)*

*Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd [1999] 4 CLJ 533 CA (**refd**)*

*Menteri Sumber Manusia v. Association of Bank Officers, Peninsular Malaysia [1999] 2 CLJ 471 FC (**foll**)*

*Re Chong Ah Kwan Construction Co v EX PARTE BAN AIK KEE CO [1966] 1 LNS 156; [1966] 2 MLJ 39 (**refd**)*

*Re Darshan Singh Atma Singh, ex p OCBC Bank (Malaysia) Bhd [1996] MLJU Lexis 1195 (**refd**)*

*Re A Debtor (No 757 of 1954), ex p The Editor v. RA Damont Ltd [1955] 2 All ER 65 (**refd**)*

*Re Fong Yuan Kwong, ex p Public Bank Bhd [1995] 1 LNS 203; [1996] 4 MLJ 42 (**refd**)*

*Re Fredericke and Whitworth, ex p Hibbard [1927] 1 Ch 253 (**refd**)*

*Re Hussain Manaf, ex p Malayan Banking Bhd [2001] MLJU Lexis 781 (**refd**)*

*Re Loh Kok Huah, ex p Ban Hin Lee Bank Bhd [1991] 3 CLJ 1817; [1991] 3 CLJ (Rep) 183 HC (**refd**)*

*Re MSA Zachariah, ex p Boon Siew [1993] 3 CLJ 279 HC (**refd**)*

*Re Patel (a debtor) [1986] 1 All ER 522 (**refd**)*

*Re Saloma Co, ex p Ipoh Radio Co [1962] 1 LNS 166; [1963] 29 MLJ 46 (**dist**)*

*Re Sharifah Mohsin, ex p Perwira Habib Bank Malaysia Bhd [1994] 3 CLJ 373 HC (**refd**)*

*Rozenbes & Ors v. Kronhill & Anor 95 CLR 407 (**refd**)*

Rozila Mohamed v. American Express (M) Sdn Bhd [1999] MLJU Lexis 959 (***refd***)

Sababumi (Sandakan) Sdn Bhd v. Dato' Yap Pak Leong [1998] 3 CLJ 503 FC (***refd***)

Tara Chand v. Jugal Kishore [1924] Vol 83 Indian Cases 967 (***refd***)

Thomas v. Marconi's Telegraph Co Ltd [1965] 2 All ER 598 (***refd***)

United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin [2002] 2 CLJ 413 FC (***foll***)

Legislation referred to:

Courts of Judicature Act 1964, s. 25(2)

Limitation Act 1953, s. 6(3)

Rules of the Federal Court 1995, rr. 47(4), 57(1), (2)

Bankruptcy Act 1883 [UK], s. 4(1)(g)

Other source(s) referred to:

Halsbury's Laws of England, 4th edn, vol 3(2), para 185

Counsel:

For the appellant - Leong Wai Hong (Claudia Cheah); M/s Skrine & Co

For the respondent - Sulaiman Abdullah (KK Yeow & Thaiyub Khan); M/s Thaiyub Khan Othuman & Co

Case History:

Court Of Appeal : [2001] 4 CLJ 641
High Court : [1996] 2 CLJ 943

Abdul Hamid b Mohamad, FCJ

The petitioning creditor (the appellant in this court) had petitioned the judgment debtor (the respondent in this court) for bankruptcy alleging that the respondent was truly indebted to them for a sum of RM5,513,468.61. The senior assistant registrar dismissed the petition with costs. Appeal to the judge in chambers was also dismissed with costs. Appeal to the Court of Appeal was also dismissed with a slight variation to the judge's order. On July 7, 2003 this court granted leave to the appellant for the determination of two issues:

(a) Whether for the purpose of interpretation of the provisions of the second limb to s 6(3) of the Limitation Act 1953 the date when interest became due under a judgment is to be taken as the date of judgment, or the date of commencement of interest as stipulated in the judgment;

(b) Whether acceptance of part payment by a judgment creditor in the course of bankruptcy proceedings renders the proceedings an abuse of process despite indication by the judgment creditor that such payments would be paid over to the official assignee in the event the debtor is adjudicated bankrupt upon the creditor's petition by reason of the absence of full settlement of the judgment debt.

About two weeks before the date fixed for the hearing of this appeal, the respondent filed a notice of motion for an order that the appeal be struck out or be stayed permanently mainly on the ground of multiplicity of proceedings. This is because, subsequent to the filing of the bankruptcy proceedings from which this appeal arises, the appellant had filed another bankruptcy notice allegedly based on the same judgment. We decided to hear the appeal because, on my part, the respondent had in fact applied for an order to strike out the second bankruptcy notice and an order had been made by the senior assistant registrar to that effect. The appellant had appealed to the judge in chambers against that order and the appeal is still pending. The second proceeding, in my view, does not in any way affect the hearing and disposal of this appeal. Indeed, the disposal of this appeal will determine the fate of the second proceedings. This is because, if the decision favours the appellant, the second proceeding becomes superflous. In any event, as it stands, the second proceeding stands struck out. This appeal concerns the first proceeding. If there is an abuse of process of the court on the ground put forward in the notice of motion, it is the second proceeding, not the first.

Coming back to this appeal, to appreciate the discussion on the two issues, I shall briefly narrate the facts.

The appellant obtained a judgment against the respondent on November 19, 1987. The judgment, as amended, reads: **195* It is this day adjudged that the defendant (the respondent in this court — added) to pay the plaintiffs (the appellant in this court — added) the sum of US$1,755,000 (United States Dollars One Million seven hundred and fifty five thousand) together with interest thereon at the rate of 9½% per annum from day of March 22, 1986 to the date of realisation and $350 (Ringgit Three hundred and fifty) costs.

On January 4, 1992, the bankruptcy notice was issued. The particulars of indebtedness show an outstanding principal sum of RM4,403,295 derived from the judgment order. As regards the interest due on the principal sum, it was calculated from March 22, 1986 as stated in the judgment. There were payments made by the respondent from time to time towards the judgment debt which were duly noted in the particulars.

The respondent did not pay the sum demanded in the bankruptcy notice within the stipulated 7 days i.e. November 12, 1992, but, on November 18, 1992 the respondent made a part payment of RM126,700 to the appellant. On February 16, 1993 the appellant presented a creditor's petition against the respondent for failure to comply with the bankruptcy notice. The creditor's petition claimed a sum of RM5,513,465.61 being the amount outstanding as at December 15, 1992, after deducting the part-payment of RM126,700.

On November 11, 1993, the respondent made a further part-payment of RM504,816.20 (equivalent to US$200,000) to the appellant.

The respondent then filed a notice of intention to oppose the petition dated May 23, 1994. The sole ground relied on by the respondent was that there had been a complete accord and satisfaction of the debt owed to the appellant by his payment of RM504,816.20 (equivalent to US$200,000) on November 11, 1993.

The appellant denied that there was accord and satisfaction of the debt. The appellant further indicated that the appellant would hand over to the official assignee all monies on which the act of bankruptcy was committed.

First question

On the first question, the High Court held that interest claimed in the bankruptcy notice was time-barred as the total period for which interest was claimed exceeded six years. This is because the interest had been calculated from the date of commencement of interest as stipulated in the judgment i.e. from June 22, 1986. The Court of Appeal, in dismissing the appeal, did not expressly decide on this point. The appeal was dismissed on the second issue only.

Before us, learned counsel for the appellant referred us to this court's judgment in United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin [2002] 2 AMR 1803; [2002] 2 MLJ 385 and submitted that as the bankruptcy notice was issued within six years from the date of the judgment, the interest claimed was not time-barred even though it included pre-judgment interest. In other words, the material date is the date of the judgment, not the date of commencement of interest. So long as the bankruptcy notice is filed within six years from the date of the judgment, the appellant is entitled to claim interest as stipulated in the judgment even though the date of the commencement of the interest was earlier.

The judgment of this court in United Malayan Banking Corp Bhd, *supra*, was delivered on April 5, 2002, more than a year before leave was granted in this case. In that case on October 15, 1987, the appellant had obtained summary judgment against the respondent for RM95,864.93 on an overdraft account together with interest at 15% p.a. thereon with monthly rests from April 1, 1986 until full realisation, and for RM66,051.74 on overdue trust receipt account together with interest at 16% p.a. thereon until full settlement, and RM350 costs. On January 24, 1996, eight years and three months after the date of judgment, the appellant filed a bankruptcy notice against the judgment debtor amounting to RM229,563.68 including accrued interest thereon.

Abdul Malek Ahmad FCJ, delivering the judgment of the court, said, at p 397 of the report:
The Court of Appeal had decided that “the date on which the interest became due” was the date of the breach which would be before the judgment date. We are of the considered view that this finding is erroneous as the arrears of interest are in respect of a judgment debt, which as we have stated earlier is the principal sum and the prejudgment interest, and so the date on which the interest on the judgment debt became due must surely mean the judgment date.

Thus, it is clear that this court has, in United Malayan Banking Corp Bhd*'s* case, *supra*,

decided that “the date on which the interest became due” is the judgment date. That is the answer to the first question. In this judgment I shall not say anything more about the other points decided in that case.

Second question

Regarding the second question, it is not disputed that US$200,000 (RM504,816.20) was paid by the respondent and accepted by the appellant and that the appellant undertook to pay it over to the official assignee. What was disputed was whether it was paid and received as a complete accord and satisfaction of the debt. Indeed that was the only ground for opposing the petition as contained in the affidavit of the respondent filed on the same date as the notice of intention to oppose the petition, i.e. May 23, 1994.

The learned High Court judge held: … no agreement was ever reached between the debtor and the petitioning creditors to treat the payment of US$200,000 as a full and final settlement of the judgment debt. The debtor's offer was never accepted by the petitioning creditors prior to the debtor making the payment of US$200,000.

In the Court of Appeal, learned counsel for the appellant complained that the learned High Court judge found for the respondent on the point without sufficient investigation of facts. That argument found favour with the Court of Appeal. That part of the judgment reads: The appellants complains that the learned judge found for the respondent on the point without sufficient investigation of facts. I think there is much force in this argument. There may or may not have been an accord and satisfaction as alleged by the respondent. It is an issue that called for resolution in other proceedings properly brought by the respondent. The judge ought not, in my view, have expressed any concluded view on this issue in the absence of cogent evidence.

However, whether the payment of US$200,000 is or is not a complete accord and satisfaction of the debt is not the issue in this court. The issue is whether the receipt of the payment by the appellant (which is not denied) amounts to an abuse of the bankruptcy jurisdiction of the High Court or, what is usually called “abuse of the process of the court”. It must also be pointed out that the question, as posed to this court is not whether acceptance of part-payment nullifies the bankruptcy notice and/or petition. However, as decisions on this last-mentioned point are only at High Court level, perhaps I should take this opportunity to clarify the law.
In Re Patel (A Debtor) [1986] 1 All ER 522, it was held that where a debt on which the bankruptcy petition was founded had by the date of the hearing of the petition been reduced by part-payment to less than the statutory minimum the court had no jurisdiction to make a receiving order. That is a very sensible judgment, because, if the debt at the time of making the receiving order, is less than the statutory minimum, then the bankruptcy court clearly has no jurisdiction to make the receiving orders. But, where the debt is above the statutory minimum, the court's jurisdiction is not ousted.

Malaysian courts have, on many occasions, followed Re Patel, *supra*, and took a similar view, i.e. where after the filing of the creditor's petition the amount owing by the debtor is reduced, the petition is not bad as long as the amount remaining owing at the date of hearing of the petition is more than the statutory limit. See Re Chong Ah Kwan Construction Co [1966] 2 MLJ 39; Re Loh Kok Huah [1992] 1 MLJ 687; Re Ti Hock Soon [1993] 1 CLJ 477; Re Sharifah Mohsin [1993] 2 AMR 1176; [1994] 3 CLJ 373; Re Fong Yuan **198* Kwong [1996] 4 MLJ 42; Re Darshan Singh a/l Atma Singh, Ex parte; OCBC Bank (Malaysia) Bhd

[1996] MLJU LEXIS 1195; Rozila binti Mohamed v American Express (M) Sdn Bhd [1999] MLJU LEXIS 959; Dalam perkara: Hussain bin Manaf, Ex parte*;* Malayan Banking Bhd [2001] MLJU LEXIS 781; Re MSA Zachariah, Ex parte*;* Boon Siew Finance Bhd [1993] 2 AMR 1158; [1993] 3 CLJ 279.

I am also aware of the judgment of High Court, Ipoh (Azmi J, as then was) in Re Saloma Co*;* Ex parte, Ipoh Radio Co [1963] MLJ 46. In that case the judgment debtor sought to set aside a bankruptcy notice which had been served on him by way of substituted service. The service was deemed to take effect on May 29, 1962. However, on May 12, 1962 the judgment debtor had paid RM700 towards the judgment debt. The court held that the bankruptcy notice was defective.

In my view, that case is clearly distinguishable from the other cases mentioned earlier. It was an application to set aside the bankruptcy notice. Clearly, the amount stated in the bankruptcy was incorrect as the payment of RM700 had not been taken into account. Furthermore, from the judgment, we do not know how much the balance was. It could well be below the statutory minimum.
In any event I prefer the view that have been followed by the courts in this country, following Re Patel, *supra*.

On the question of abuse of the process of the court, this is what the Court of Appeal says:
However, in the state of the evidence before him, the learned judge would have been perfectly entitled to dismiss the petition on the ground that it was an abuse of process. The appellant's own evidence warranted this. It is clear that the appellant had accepted payments from the respondent after commencing bankruptcy proceedings. The totality of the circumstances reasonably supports the inference that the appellant was using the bankruptcy court to extract payments from the respondent. That in my judgment amounts to an abuse of the bankruptcy jurisdiction of the High Court. The bankruptcy jurisdiction of the High Court is invoked on the ground that a debtor has committed an act of bankruptcy. The object of the exercise is to take the debtors financial affairs out of his hands and place them in the hands of the official assignee. It is certainly an abuse of process to use bankruptcy proceedings in the way of a judgment debtor summons to extract periodical payments from the debtor.

In considering the question of abuse of the process of court in bankruptcy proceedings, we must not lose sight of the reality in a debt recovery action. The intention of a creditor is to recover the debt. Towards that end, he files his claim and obtains judgment. Obtaining a judgment is not the end of the matter. A judgment is worthless if the debt is not recovered. So, the law provides ways to realise the judgment by way of execution proceedings. If the judgment debtor has assets, usually the judgment debtor would adopt one of the methods of execution proceedings. But, where the debtor, being an individual, has no assets, the judgment debtor, usually as a last resort, would commence bankruptcy proceedings. It is only a natural process provided by law. When law provides various means of realising a judgment debt, the fact that a judgment debtor prefers one method over the others is within his legal right. Any judgment creditor would prefer to choose the most effective way of realising the judgment debt. That again is sensible. So, strong evidence of mala fide on the part of judgment creditor is required to prove abuse of process of court in bankruptcy proceedings. In this respect, perhaps it is easier to prove abuse of process of court in winding-up proceedings, in particular where no judgment has been obtained, the amount is small, the company is in a sound financial position, than in bankruptcy proceedings based on a

judgment.

With that opening observation, let us look at the law in the context of bankruptcy proceedings.

Halsbury's Laws of England, 4th edn, vol 3(2), paragraph 185, under the heading of "Abuse of process" says: Where a petition is founded on a debt to which the petitioning creditor is not properly entitled, it may be dismissed as an abuse of process. This includes the situation where the presentation of a petition amounts to an attempt by the petitioning creditor, through the commencement of bankruptcy proceedings, to obtain the payment of money or other advantage to which he is not properly entitled. Such conduct on the part of the creditor is sometimes termed as "extortion".

In Re Debtor (No 757 of 1954), Ex parte*;* The Editor v RA Damont Ltd [1955] 2 All ER 65, CA, it was held:

(a) there is no hard and fast rule that any arrangement or agreement made by a petitioning creditor with his debtor, after the institution or under the shadow of bankruptcy proceedings, whereby the creditor is able to get more than that "to which he was legally entitled" (that is, more than he could have recovered at law at the time of the bankruptcy proceedings being started or threatened) amounts to extortion in bankruptcy law, notwithstanding the absence of any mala fides or anything amounting to oppression in fact.

(b) There is equally no rule that extortion has, in bankruptcy law, a special and artificial significance divorced altogether from the ordinary implication of the word. **200*

(c) The so-called "rule" in bankruptcy is no more than an application of a more general rule that court proceedings may not be used or threatened for the purpose of obtaining for the person so using or threatening them some collateral advantage to himself, and not for the purpose for which such proceedings are properly designed and exist; and a party so using or threatening proceedings will be liable to be held guilty of abusing the process of the court and, therefore, disqualified from invoking the powers of the court by proceedings which he had abused.

(d) On the other hand the court will always look strictly at the conduct of a creditor using or threatening bankruptcy proceedings; and, if the court concludes that the creditor has used or threatened the proceedings at all oppressively (for example in order to obtain some payment or promise from the debtor or some other collateral advantage to himself properly attributable to the use of the threat), the court will not hesitate to declare the creditor's conduct extortionate and will not allow him to make use of the process which he has abused.

(e) In every case it is a question of fact in all the circumstances of the case whether there has been, in truth, extortion.

A good summary of the law on the issue is to be found in the judgment of the High Court of Australia in Rozenbes & Ors v Kronhill & Anor [1995] CLR 407 at p 417. Citing In Re Majory [1955] Ch 600 which was also reported as Re A Debtor, *supra*, the judgment went on to say: There is an abuse of process if a pending bankruptcy petition, or a threat of

proceedings in bankruptcy, is used as a means of extortion. The word “extortion” is not a technical term, and it has in bankruptcy law “no special and artificial significance divorced altogether from the ordinary implication of the word”. The court will look strictly at the conduct of a creditor using or threatening bankruptcy proceedings, and extortion may be held to have taken place if the creditor has used, or attempted to use, a pending petition, or a threat of a petition; in order to extract from the debtor money which the debtor is not bound to pay, or in order to obtain some secret and unfair advantage over other creditors. But extortion will not be held to have taken place “in the absence of mala fides or anything amounting to oppression in fact”. There must be a real intention on the part of the creditor to use the process for some other end than its legitimate end, and there must be a real exertion of pressure.

In the instant appeal, the only factor relied on by the respondent was that the appellant had accepted the payment of US$200,000 by the respondent. Even that payment, which the appellant insisted was a part-payment was made after the bankruptcy proceedings was commenced. There is no allegation that the appellant was using the bankruptcy proceedings as a means of obtaining **201* payment of money to which the appellant was not entitled to or any evidence of fraud. As mentioned earlier, the only ground put up by the respondent to oppose the petition was that there was an accord and satisfaction. The bankruptcy proceedings was filed by the appellant, as a judgment debtor, to recover the judgment debt owed to them. The fact that the respondent made the payment subsequent to the filing of the bankruptcy proceedings does not in any way tarnish the intention of the appellant in commencing the proceedings or even pursuing it as the appellant was of the view that it was only a part-payment of the judgment debt. Furthermore, the issue of abuse of process of the court was not raised by respondent in the High Court.

So, my answer to the second question is in the negative. Merely accepting payments in the course of bankruptcy proceedings does *not* render the proceedings an abuse of process, what more when the money is to be paid to the official assignee in the event the debtor is adjudicated bankrupt.

For the reasons above-stated, I would allow the appeal with costs. The order of the Court of Appeal dated July 20, 1999 is set aside. As only those two issues are before this court and, in my judgment, I have answered them both in favour of the appellant, I would make a receiving and adjudicating order against the respondent. The deposit is to be returned to the appellant. The sum of RM504,816.20 (equivalent to US$200,000) paid by the respondent to the appellant and the interests earned thereon is to be paid to the official assignee within two weeks of this order.