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

[2024] SGHC 263

Originating Application No 742 of 2024

Between

In the matter of Rule 132 of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020

And

In the matter of Park Hotel CQ Pte. Ltd. (in liquidation)

And

In the matter of the Notice of Rejection of Proof of Debt dated 10 July 2024

Between

Law Ching Hung

… *Applicant*

And

(1) Aw Eng Hai (in his capacity as a joint and several liquidator of Park Hotel CQ Pte. Ltd. (in liquidation)
(2) Kon Yin Tong (in his capacity as a joint and several liquidator of Park Hotel CQ Pte. Ltd. (in liquidation)
(3) Park Hotel CQ Pte. Ltd. (in liquidation)

… *Respondents*

EX TEMPORE JUDGMENT

[Civil Procedure — Stay of proceedings — Whether there is multiplicity of proceedings between application to set aside liquidator's rejection of proof of debt and ongoing liquidation of separate company]

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v
Aw Eng Hai (in his capacity as a joint and several liquidator of Park Hotel CQ Pte Ltd (in liquidation)) and others

[2024] SGHC 263

General Division of the High Court — Originating Application No 742 of 2024
Goh Yihan J
16 October 2024

17 October 2024

Goh Yihan J:

1 This is an application by Mr Law Ching Hung (the "applicant") for the following orders:

(a) that the Notice of Rejection of Proof of Debt dated 10 July 2024 (the "Notice"), issued by the first respondent, Mr Aw Eng Hai ("Mr Aw"), in his capacity as a joint and several liquidator of Park Hotel CQ Pte Ltd (in liquidation) ("PHCQ"), be set aside, reversed, varied, or struck out;

(b) that an Order of Court thereafter be granted to the applicant for the respondents to accept the applicant's Proof of Debt ("POD") in the total sum of $4,800,000, which had been rejected by the Notice;

(c) further and/or alternatively, that there may be such further orders made or such other amounts allowed on the applicant's POD (which was rejected) as the court deems fit or as the justice of the matter requires;

(d) that this application be held in abeyance until HC/S 364/2022 ("Suit 364") is heard and determined by the court (including any appeal); and

(e) costs of this application be allowed to the applicant.

2 In essence, the applicant is not asking for this court to determine the merits of this application now. Instead, he is asking the court to preserve his rights vis-à-vis the POD by staying this application until Suit 364 is conclusively determined. The applicant's main reason for so asking is that the findings in Suit 364 may affect his right to claim against PHCQ.

3 It follows that if there is, in fact, no connection between Suit 364 and the applicant's right to claim against PHCQ, then there is no reason to stay this application pending the conclusive determination of Suit 364. For the reasons which I explain below, I decide that there is no such connection between the two matters mentioned. I therefore conclude that there is no need to stay this application and decide it on its merits now. In the circumstances, I dismiss this application after considering its merits.

Background facts

4 I turn first to the material background facts. The applicant was a director of PHCQ, which was placed in liquidation on 19 November 2021. The respondents are the liquidators of PHCQ.

The applicant's claims against PHCQ

5 The genesis of the present application needs to be understood considering the applicant's claims against PHCQ. In this regard, on 31 June 2013, the applicant paid to PHCQ, by way of a director's loan, the sum of $7,812,000 (the "Loan").[1] The applicant has exhibited in his supporting affidavit copies of the loan agreement between PHCQ and the applicant dated 30 June 2013, as well as the Directors' Resolution in Writing dated 22 September 2014 ratifying the said loan agreement. Between 31 August 2013 and 14 January 2016, PHCQ repaid the applicant $3,012,000, leaving an outstanding balance of $4,800,000.[2] The transactions that constitute the repayment are said to be recorded in PHCQ's internal records, as well as its balance sheets from July 2013 to December 2013.

6 The applicant later transferred from PHCQ to Park Hotel Management Pte Ltd ("PHMPL") the sum of $2,000,000 on 9 December 2020, and the sum of $2,000,000 on 4 January 2021 (the "Relevant Transfers").[3] According to the applicant, the Relevant Transfers, which total $4,000,000, were made to partially set off the Loan, and were part of the internal reorganisation of inter-company loans.

7 However, after the $4,000,000 was transferred to PHMPL, the applicant, in his capacity as director of PHMPL, caused PHMPL to transfer a total of $4,413,505.21 (of which $4,000,000 was transferred from PHCQ to PHMPL)

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1 1st Affidavit of Law Ching Hung filed on 31 July 2024 ("Law's 1st Affidavit") at para 13.

2 Law's 1st Affidavit at para 14.

3 Law's 1st Affidavit at para 17.

to himself on 8 January 2021.[4] These transfers, as well as the Relevant Transfers, led to the respondents commencing actions against the applicant.

Suit 363 and Suit 364

8 On 31 March 2022, PHCQ and the respondents, in their capacities as liquidators for PHCQ (the "Suit 363 Plaintiffs"), commenced HC/S 363/2022 ("Suit 363") against the applicant. Amongst other things, the Suit 363 Plaintiffs alleged that the applicant had transferred moneys out of PHCQ in breach of his duties. They also alleged that the applicant had made substantial payments to PHMPL in breach of his duties as a director, as well as ss 224 and 438 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA").

9 The applicant's defence in Suit 363 was two-fold. First, at the time when the relevant transactions were conducted, PHCQ was not insolvent. Second, in any case, the relevant transactions were not conducted at an undervalue and/or for the purpose of putting assets beyond the reach of PHCQ's creditors.

10 On 5 June 2024, the applicant and the Suit 363 Plaintiffs arrived at a settlement in respect of Suit 363, without any admission of liability on the applicant's part.[5]

11 In addition to Suit 363, the respondents, in their capacities as liquidators of PHMPL, together with PHMPL (the "Suit 364 Plaintiffs"), also commenced Suit 364 against, among others, the applicant on 31 March 2022. PHMPL had been placed in liquidation on 2 July 2021, and the respondents are its

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4 1st Affidavit of Aw Eng Hai filed 19 September 2024 ("AEH's 1st Affidavit") at para 9.

5 Law's 1st Affidavit at para 8.

liquidators. In Suit 364, the respondents alleged the applicant of, among others, disposing of PHMPL's assets at an undervalue and/or in breach of his duties. They also alleged that the applicant made substantial payments to himself in breach of his duties as a director, as well as ss 224 and 225 of the IRDA.

12 The applicant's defence, in relation to PHMPL's assets, is similarly two-fold. First, PHMPL was solvent at least until 8 March 2021, which was when PHMPL sold a substantial part of its assets.[6] Second, and in any case, PHMPL's assets were properly valued and not sold at an undervalue. Suit 364 had originally been scheduled to be heard in August 2024 but has now been refixed to be heard in early 2025.

The POD

13 It was against the above background that the applicant's solicitors submitted the POD to the respondents on 5 June 2024, in their capacities as the liquidators of PHCQ.[7]

14 On 10 July 2024, Mr Aw issued the Notice to the applicant's solicitors. By the Notice, Mr Aw informed the applicant that the liquidators of PHCQ have adjudicated the applicant's claim and decided to reject it in full. The reasons for rejection were stated as follows:[8]

> Based on the liquidator's review of the Company's accounting records, the Company had passed journal entries to transfer the outstanding loan by Director to Park Hotel Management Pte. Ltd. (In Compulsory Liquidation) on 30 November 2020.
>
> As at 19 November 2021, the management accounts of the Company shows [*sic*] that there is no amount owing to Director.

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6 Law's 1st Affidavit at para 11.

7 Law's 1st Affidavit at para 21.

8 Law's 1st Affidavit at para 22 and pp 232-233.

> Based on the Statement of Affairs submitted by the Company's Director on 2 December 2021, no amount owing to Director was declared.

The parties' positions

15 The applicant's position for this application is that, depending on the findings in Suit 364, he may have to seek recourse against PHCQ. This is because Mr Aw had stated on affidavit in Suit 364 that the Suit 364 Plaintiffs "do not admit the amounts owing to [the applicant]" arising from the Relevant Transfers. Thus, whether the Relevant Transfers were proper is necessarily an issue in dispute in Suit 364. If the court upholds the Relevant Transfers, then the applicant need not seek recourse against PHCQ. However, if the court finds that the Relevant Transfers are improper, then the applicant would have to seek recourse against PHCQ. In that case, the applicant would be left in an impossible situation where he would (a) not be able to make a claim against PHMPL and (b) no longer be able to make a claim against PHCQ, since the POD has been rejected. This is why the applicant is seeking an order that this application be stayed until the conclusive determination of Suit 364.

16 In any case, the applicant argues that Mr Aw ought not to have rejected the POD. This is because Mr Aw had only considered the accounting records provided to PHCQ's liquidators, as well as the Statement of Affairs ("SOA") submitted by Mr Lim Kang-Ling, the registered director of PHCQ at the time of winding up. While these documents do not show the Loan or the applicant as one of the unsecured creditors, they are not conclusive as to the existence of a debt in favour of the applicant. Instead, Mr Aw ought to have gone behind the accounting records and SOA to form his own conclusions as to the existence or otherwise of the debt concerned. In this regard, Mr Aw has not disputed that the Loan was paid by the applicant to PHCQ or challenged the veracity of the loan

agreement, PHCQ's internal records, and the balance sheets from July 2013 to December 2013, all of which evidence the existence of the Loan.

17 In turn, the respondents' position for this application can be summarised in three points. First, the applicant's POD was rightly rejected, as the $4,800,000 is not a provable debt within the meaning of s 218(2) of the IRDA. Second, there is no conflicting position with (a) the PHCQ's liquidators' decision to reject the POD in the liquidation of PHCQ, and (b) the PHMPL's liquidators' claim for the repayment of the $4,414,505.21, comprising, among others, the $4,000,000, which was transferred from PHCQ to PHMPL, before the applicant had caused the same to be paid to himself. Third, this application should not be stayed pending the conclusive determination of Suit 364, as the outcome in that case, which only concerns PHMPL, would not affect PHCQ's debts and liabilities.

My decision: this application need not be stayed and is dismissed

This application need not be stayed

18 In my judgment, this application need not be stayed until the conclusive determination of Suit 364. To begin with, the General Division of the High Court's (the "General Division") general power to order a stay of proceedings is found in s 18(2) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") read with para 9 of its First Schedule. Paragraph 9 provides that the General Division has the following power:

> **Stay of proceedings**
>
> 9. Power to dismiss or stay proceedings where the matter in question is res judicata between the parties, or where by reason of multiplicity of proceedings in any court or courts or by reason of a court in Singapore not being the appropriate forum the proceedings ought not to be continued.

19 While para 9 appears to be exhaustive of the circumstances in which the General Division may exercise its power to stay proceedings, the Singapore International Commercial Court in *BNP Paribas Wealth Management v Jacob Agam and another* [2017] 3 SLR 27, referring to the Court of Appeal decision of *Chan Chin Cheung v Chan Fatt Cheung* [2010] 1 SLR 1192, had acknowledged (at [31]–[32]) that the court also has the inherent power to order a stay of proceedings. This seems to suggest that there are other circumstances in which the General Division may exercise this power.

20 Going strictly by para 9 of the First Schedule to the SCJA, there is no multiplicity of proceedings here and hence no reason for this court to exercise its power to stay this application. This is because this application concerns PHCQ, whereas Suit 364 concerns PHMPL. While the respondents are parties to this application and Suit 364, they act in different capacities: in this application, they act as the liquidators of PHCQ, whereas in Suit 364, they act as the liquidators of PHMPL. These are two separate legal entities and there can no multiplicity of proceedings in this situation.

21 Further, there is simply no connection between this application and the eventual outcome in Suit 364. This is because PHCQ is not a party to Suit 364. It follows that any orders made in Suit 364 cannot affect PHCQ's debts and liabilities. Thus, the findings in Suit 364 cannot cause the $4,800,000 that is allegedly owing to the applicant by PHCQ to materialise into a right of payment. Likewise, even if the applicant were ordered in Suit 364 to repay PMHPL, that cannot entitle him to file a POD against PHCQ. There is therefore also no inconsistency between the respondents' (a) rejection of the POD in the liquidation of PHCQ and (b) pursuing the claim for the repayment of $4,000,000 in Suit 364.

22 In addition to s 18(2) of the SCJA, the applicant also pointed to s 6(2) of the IRDA as a source of the court's power to stay this application. The section provides that:

> **6.**—(2) The Court may adjourn any case or matter under this Act coming within the cognizance of the Court, or make such order or give such direction as the Court thinks fit for the just, expeditious and economical disposal of any such case or matter, without requiring the parties to appear in person, by giving written notice of the adjournment, order or direction to all parties concerned.

I accept that s 6(2) of the IRDA, which is broadly worded, confers on the court a power to stay this application. However, that power needs to be exercised in accordance with principle. Without intending to be exhaustive as to how the power to stay is exercised under s 6(2), I think that para 9 of the First Schedule to the SCJA, which deals with when the court's general power to grant a stay should be exercised, is materially relevant. Thus, for the same reasons as discussed above in relation to para 9, I decline to stay this application on the basis of s 6(2) of the IRDA.

23 More broadly, in as much as the applicant complains that he would be left in the impossible situation where he cannot claim against PHMPL and against PHCQ, this is the consequence of his own actions. In this regard, the applicant had, on or around 30 November 2020, transferred to PHMPL the debt of $6,100,000 originally owing from PHCQ to himself. There is thus no debt owing to the applicant by PHCQ.[9] Indeed, before me, Ms Nanthini d/o Vijayakumar ("Ms Nanthini"), who appeared on behalf of the applicant, fairly acknowledged that the accounting records and SOA do not show the existence of a debt. Despite this, Ms Nanthini argues that should

[9] AEH's 1st Affidavit at para 8.

Suit 364 be decided against the applicant, the accounts of PHCQ might be rectified so that the Loan can be resurfaced. However, as Ms Lee Bik Wei ("Ms Lee"), who appeared on behalf of the respondents, submitted, it is not clear on what basis can such rectification be sought, and even so, who would apply for such rectification given that PHMPL is in liquidation. This reinforces the point that there is no connection between this application and the eventual outcome in Suit 364.

24 For all these reasons, I decline to stay this application pending the conclusive determination of Suit 364.

This application is dismissed

25 It follows that I can deal with this application now. In my view, it should be dismissed for two reasons.

26 First, Mr Aw is correct in rejecting the POD based on the accounting records and SOA, which do not disclose there to be a debt owing to the applicant by PHCQ. In this regard, the applicant cites, among others, the General Division decision of *Rich Construction Co Pte Ltd v Greatearth Construction Pte Ltd (in liquidation) and others and another matter* [2024] 5 SLR 570 ("*Rich Construction*"), where Wong Li Kok Alex JC observed (at [47]) that it is "incumbent on liquidators to apply their minds to the material and examine and investigate the material to ascertain if the debts were genuinely created and remained legally due".

27 However, the learned judge's observations must not be taken out of context. In *Rich Construction*, Wong JC accepted (at [47]) that the claimants had a correct claim in principle, but the quantum remained a "moving feast" as various projects were in the midst of construction. In contrast, there is no new

information that may affect the POD in the present case. In particular, the documents which the applicant alleges that Mr Aw should have relied on all pre-date the accounting records and SOA. At the highest, those documents only prove that there *was* the Loan from the applicant to PHCQ. However, they cannot prove that there *remained* a debt owing to the applicant by PHCQ at the date of the winding up. Adopting a *de novo* examination of the POD (see *Rich Construction* at [17]), I am satisfied that, even based on the documents the applicant now raises, there is no evidence to support the debt in the POD.

28 In this regard, a debt for an insolvent company is only provable if it falls within the meaning of s 218(2) of the IRDA, which provides that:

> **Description of debts provable in judicial management or winding up**
>
> …
>
> (2) Subject to this section and section 203, the following are provable where a company is in judicial management or an insolvent company is being wound up:
>
> (*a*) any debt or liability to which the company —
>
> (i) is subject at the commencement of the judicial management or winding up, as the case may be; or
>
> (ii) may become subject after the commencement of the judicial management or winding up (as the case may be) by reason of any obligation incurred before the commencement of the judicial management or winding up, as the case may be;
>
> (*b*) any interest, on any debt or liability mentioned in paragraph (*a*), that is payable by the company in respect of any period before the commencement of the judicial management or winding up, as the case may be.

29 Considering the evidence, including the documents which the applicant has now raised, there is no provable debt under s 218(2)(*a*)(i) of the IRDA

owing from PHCQ to the applicant at the date of the winding up on 19 November 2021. As I said earlier, not only are the documents which the applicant now raises older than PHCQ's management accounts as of 20 November 2021, they do not show that there existed a debt as of PHCQ's winding up. At best, they show that there *was* such a debt. In fact, the applicant does not refer to the extract of PHCQ's general ledger for November 2020 that is exhibited in Mr Aw's affidavit for this application.[10] That document shows clearly that, because of the applicant's various adjustments made to PHCQ's accounts, an amount of $6,100,000 recorded as owing by PHCQ to him was transferred over to PMHPL and recorded as owing by PHCQ to PHMPL. Thus, as of 30 November 2020, PHCQ no longer owed the applicant any sum but owed $6,100,000 to PHMPL instead.[11] While the documents raised by the applicant may show that PHCQ once owed him moneys pursuant to the Loan, these later documents, which the applicant is privy to, show otherwise.

30 Second, there is also no contingent debt pursuant to s 218(2)(*a*)(ii) of the IRDA that is dependent on the outcome of Suit 364. For reasons that I have already explained, PHCQ is not a party to Suit 364. Thus, any orders made in Suit 364 cannot affect its debts and liabilities. On this point, Ms Nanthini argues that should the accounts of PHCQ be rectified following Suit 364, the Loan would be resurfaced as of its original date and hence fall within s 218(2)(*a*)(ii) as a contingent debt. I disagree because, as Ms Lee pointed out, a contingent debt is one that is not currently payable "but it is admissible as a proof for something which may ripen into a right for present payment" (see *Re Telegraph Construction Company* (1870) LR 10 Eq 384 at 388). It cannot be said that the Loan is a contingent debt *now* that is dependent on some event after the winding

10 AEH's 1st Affidavit at p 54.

11 AEH's 1st Affidavit at para 8.

up because there is simply no obligation to speak of given that the applicant had effected the transfer of the debts owed to him by PHCQ to PHMPL. Indeed, it cannot be the purpose of s 218(2)(*a*)(ii) to allow a person in the applicant's position, who insists that his conduct of transferring the subject debt away (which is eventually paid out to him) is proper, to hedge his position by preserving that very debt as a "contingent debt" that is "contingent" on the court's ruling as to whether those transfers are proper.

Conclusion

31 For all these reasons, I decline to stay this application and dismiss it.

32 The parties are to submit their submissions on the costs of this application, limited to seven pages each, within seven days of this decision.

33 I thank Ms Nanthini and Ms Lee for their helpful submissions, which were clearly and reasonably advanced.

Goh Yihan
Judge of the High Court

Nanthini d/o Vijayakumar, Terence Yeo and John Thomas George (TSMP Law Corporation) for the applicant;
Ong Boon Hwee William, Lee Bik Wei, Kay Tan Jia Xian and Tang Jia Ding Justin (Allen & Gledhill LLP) for the respondents.