

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1987] SGHC 2

OS 953/1986

Between

Vasudevan

... Plaintiff

And

Icab Pte Ltd

... Defendant

GROUND OF DECISION

Civil Procedure — Costs; Companies — Winding up

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Vasudevan v Icab Pte Ltd

[1987] SGHC 2

OS 953/1986
Chan Sek Keong JC
16 February 1987

1 On 8 November 1982, the plaintiff herein commenced an action in Suit No 4851/82 against the defendants claiming damages at common law for injuries suffered by the plaintiff as a result of an accident on or about 2 October 1981 in the course of his employment as a casual labourer. The said action was set down for trial on 20 October 1983. Sometime in November 1985, the solicitors for the defendants informed the solicitors for the plaintiff that the defendants had been wound up. A search by the solicitors for the plaintiff in the Registry of Companies showed that the defendants were dissolved as a company on or about 22 April 1985. In the meantime, the action had been fixed for hearing on 15 October 1986.

2 On 5 August 1986, the plaintiff filed this originating summons for an order that he be granted leave to continue proceedings against the company. On 20 August 1986, the liquidator filed an affidavit in which he stated that he was appointed a liquidator of the defendants pursuant to a special resolution to wind up the company voluntarily, passed by members at an extraordinary general meeting held on 16 January 1985; that on 22 January 1985 a notice of the special resolution to wind up the company was published in the *Singapore Monitor*;

that on 21 February 1985 he caused to be published in the ***Singapore Monitor*** an advertisement in the usual form requesting all creditors to send their names and addresses with particulars of their debts or claims to him at his address; that on 4 March 1985, he caused to be published in the ***Singapore Monitor*** a notice of a final general meeting of the members of the company for the purpose of receiving an account from him showing the manner in which the winding up has been conducted and to hear any explanations that may be given at the final general meeting to be held on 25 March; that on 25 March 1986 he lodged with the Registry of Companies and the Official Receiver a copy of the return by the liquidator relating to final meeting and its statement of accounts in accordance with s 308 of the Companies Act. The liquidator then stated that to the best of his knowledge and information, he had not from the date of appointment to the date of his resignation as liquidator on 28 July 1986 received any claim relating to the plaintiff's action in Suit No 4851/ 82.

3 On 1 September 1986, the plaintiff made an application by way of summons in chambers in this originating summons for an order under s 308(6) of the Companies Act (Reprint) that the dissolution of the defendants be deferred until after determination of the action in Suit No 4851/82. Both applications came before me for hearing on 29 September 1986. In respect of the application to defer the winding up, counsel for the plaintiff made a long submission on the law and argued that this was a proper case for such an order to be made on the basis of the decisions in ***Re Crookhaven Mining Co*** (1866) LR 3 Eq 69 and ***Whiteley Exerciser Ltd v Gamage*** [1898] 2 Ch D 405 CA. In the first case, the proceedings were commenced for an order for a call upon holders of shares not fully paid up for the purpose of adjusting the rights of shareholders before but came on for hearing after the dissolution took effect. In the second case, the hearing had already commenced but the court was unable

to complete the hearing and so had to adjourn it, after which the company was dissolved. Both of these case were ready for hearing but could not be heard because of the state of business of the court. These two cases had nothing to do with the court`s power to defer the dissolution and therefore the application for this order must fail. However, as the present action had been set down for trial since October 1983 but could not be heard because of the court`s calendar, I could then have simply given leave to the plaintiff to continue with the action. What would have happened would be that if the main action were heard and the plaintiff were to obtain judgment against the defendant, he would have a judgment against a non-existent company. In that situation, the plaintiff would then either have to make an application to dissolve the company in order to enforce the judgment against the company or to make a claim against the liquidator on some basis or other eg negligence or breach of statutory duty (a course of action which was referred to by North J in the ***Gamage*** case [1898] 2 Ch D 405 CA (at p 410)). I was then informed by counsel for the plaintiff that the application was a formal application in the sense that the company`s liability, if any, would be met by the insurers, and that the insurers were not objecting to the application to defer or declare void the dissolution. Accordingly, in order to expedite the resolution of the whole problem, I then indicated to counsel that this was a proper case for an application under s 343(1) to have the dissolution declared void. The hearing was then adjourned.

4 Accordingly, on 1 October 1986, the plaintiff made another application by way of summons in chambers under s 307 of the Companies Act to have the dissolution declared void. All three applications came before me again on 6 October 1986 when I made the following orders:

- (1) an order declaring the dissolution void;

(2) an order granting leave to the plaintiff to continue the proceedings against the company;

(3) no order on the application to defer the dissolution.

5 I then reserved the question of costs of these applications pending the outcome of the main action.

6 The question of costs has now come back to me following the settlement of the action between the plaintiff and the defendants' insurers. The plaintiff's case is that he is entitled to the costs of the application to declare the dissolution void. The liquidator's case is that he has performed his statutory duty and that in any case all the assets of the company had been distributed to the shareholders and that he no longer had any funds to meet an order for costs against the company or himself. In his submission, counsel for the liquidator stated that his client had done all that was required of him by placing the three advertisements in the newspapers and by requesting the directors for information on the affairs of the company and that these acts were all that could be expected of a reasonable liquidator.

7 What are the duties of a liquidator in a winding up as regards the liabilities of a company? Section 264 of the Companies Act provides that the property of a company shall, on its winding up, be applied *pari passu* in satisfaction of its liabilities (subject to the prescribed preferential payments). This is a statutory obligation which falls on the liquidator. It is not an absolute duty. On the other hand, where he is paid professionally to wind up a company, he must exercise a high standard of care and diligence commensurate with his professionalism. In the present case all the liabilities of the company had not been met prior to dissolution. *Prima facie*, the liquidator has failed to discharge his statutory obligation. In ***Pulsford v Devenish*** [1903] 2 Ch 625, Farwell J said that the duty of a liquidator was not confined to merely advertising for

creditors but to write to those creditors of whose existence he knew, even though they had not sent in claims, and asked them if they had any claim. In ***Re Armstrong Whitworth Securities Co Ltd*** [1947] Ch 673, the liquidator had in his possession 16,000 to 17,000 individual folders of the company's accident records but apart from advertising for claims, he did not write to these potential claimants. Jenkins J held that the liquidator was in breach of his duty in not writing to each of these potential claimants to ask them whether they intended to claim; and that the large number of cases involved did not render this course impracticable. In ***Austin Securities Ltd v Northgate & English Stores Ltd*** [1969] 1 WLR 529, the liquidators did not deal with a claim against the company as they were lulled to sleep by the company's solicitors who had sent a note of professional charges drafted in such a way as to mislead the liquidators into believing that the proceedings in court had been abandoned by the plaintiffs. The Court of Appeal held that the liquidators had failed in their duty in not asking the solicitors to clear up the position.

8 In the present case, the liquidator has deposed that he did not know of suit No 4851/82 because he was not told about it. In my view, this is no excuse. There is no evidence as to what he had actually done in the way of ascertaining claims, whether from the directors or from the records of this company. The winding up was a quick affair. He ought to have made a search in the High Court Registry or the Subordinate Courts Registry to find out whether there were any pending actions against the company. This is not an onerous obligation. He could have instructed solicitors to do that for him and they would have discovered the existence of this action.

9 Accordingly, I hold that the liquidator has not discharged his statutory duty. He ought to be ordered to pay the costs of the application to declare the dissolution void, and so I order.

10 ***Order accordingly.***

Chan Sek Keong JC

Clive Heng (Murphy & Dunbar) for the plaintiff
Toh Peng Ann (Tan Lee & Choo) for the liquidator
