IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1990] SGHC 45

CWU 617/1985

Between

Procam (Pte) Ltd

… *Applicant*

And

Nangle
Another

… *Respondent*

GROUNDS OF DECISION

Companies

Version No 1: 11 Sep 2026 (01:05 hrs)

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.

Procam (Pte) Ltd v Nangle and Another

[1990] SGHC 45

CWU 617/1985
L P Thean J
10 July 1990

1 Cur Adv Vult

2 On 11 April 1986 a winding-up order against People`s Park Katong Development Pte Ltd (the company) was made upon the petition presented by one of its credited B & W Engineering Services Pte Ltd (petitioning creditor), and Messrs Charles Jocelyn Tichborne Nangle and Wong Tui San (the liquidators) were appointed liquidators of the company. The solicitors for the petitioning creditor in the winding-up proceedings were Drew & Napier. Prior to the winding-up order, on or about 31 October 1985, the company commenced an action in Suit No 8988 of 1985 in the High Court against the petitioning creditor claiming an injunction to restrain it from commencing winding-up proceedings against the company, and obtained ex parte an interim injunction restraining it from so doing. That injunction, however, was discharged on 13 January 1986 with costs to the petitioning creditor. The solicitors for the petitioning creditor in Suit No 8988 of 1985 were also Drew & Napier, and pursuant to the order they drew up a bill of costs, as between party and party, and delivered it to Lee Woo & Partners, then solicitors for the company, for taxation on 15 April 1986. The taxation, however, was adjourned to 3 June

1986, presumably, because of the winding-up order which had then just been remade against the company.

3 Soon after the winding-up order, on 25 April 1986, the liquidators applied to court for, among other things, leave to appoint such firm or firms of solicitors as they, in their absolute discretion, think fit to assist them in their duties, and on 19 May 1986, an order was made in terms of their application. Pursuant to that order they also appointed Drew & Napier as their solicitors to assist them in the winding-up of the company.

4 At that time or probably even before the winding-up order against the company was made, Drew & Napier were already acting for another creditor of the company, namely, Banque Paribas. Banque Paribas was, and still is, a secured creditor of the company. By a deed of assignment dated 11 August 1984, Banque Paribas had taken, as security, an assignment of the company`s rights and benefits under various sale agreements made between the company as vendor and diverse purchasers of units of People`s Park Katong Shopping Complex developed or then being developed by the company. In addition to this security, Banque Paribas had by a deed of debenture executed by the company also on 1 August 1984 taken, first, by way of a fixed charge all the fixed assets of the company and, secondly, by way of floating charge the whole of the undertaking and all the property and assets of the company (other than those specifically charged) whatsoever and future, including goodwill and uncalled capital and all present and future book and other debts of the company. Banque Paribas` securities are therefore all embracing; they cover practically all the property and assets of the company. Acting on behalf of Banque Paribas, Drew & Napier commenced actions against several purchasers of the units of People`s Park Katong Shopping Complex, who were in default, seeking, inter alia, specific performance of the respective sale agreements.

Version No 1: 11 Sep 2026 (01:05 hrs)

5 I now revert to the bill of costs of the petitioning creditor. Prior to the winding-up order, the bill had already been marked by Lee Woo & Partners, the former solicitors acting for the company, and a copy of the marked bill had been returned to Drew & Napier. At the taxation before the registrar on a June 1986, no solicitor appeared for the liquidators. Nor did either of the liquidators appear in person. A solicitor from Drew & Napier appeared for the petitioning creditor and he informed the registrar that the liquidators had no intention of challenging the bill. Accordingly, the markings made by the former solicitors were not brought to the attention of the registrar and were therefore not considered by the registrar, and the full amount of the bill was allowed.

6 On 12 June 1986, one Ho Kok Cheong (HKC), a contributory of the company, holding only one share with par value of $1 in the capital of the company, applied by Summons-in-Chambers No 6589 of 1986 for an order under s 268(1) of the Companies Act (Cap 50) that the liquidators be removed from their office as liquidators of the company and for consequential directions. In his affidavit filed in support, HKC alleged, inter alia, that in engaging Drew & Napier as their solicitors the liquidators acted irresponsibly in failing to appreciate the conflict of interests on the part of the latter. Following that affidavit, multiple affidavits were filed by one of the liquidators, Charles Jocelyn Tichborne Nangle (Nangle) and HKC, and I shall refer to these shortly, where relevant. While the application was pending HKC was made a bankrupt on 6 November 1987. However, before that, on 18 September 1987, a company, Procam (Pte) Ltd (Procam), applied by Summons-in-Chambers No 6412 of 1987 asking for the same order and consequential directions as sought in HKC`s application. Procam is a creditor of the company, and has filed a proof of debt in respect of an amount of $2,750 owing to it by the company. In support of the application by Procam, Miss Ho Wei Fun, a director, filed an affidavit alleging

Version No 1: 11 Sep 2026 (01:05 hrs)

the same matters as alleged by HKC in his affidavits filed in support of his application, and, in effect, she relied on the matters stated by HKC in his affidavits. I should mention two things in respect of the application by Procam: first, Procam is a company in the group of HKC`s companies, and, secondly, it seems to me that the application was taken out by Procam in anticipation of the likelihood of HKC being made a bankrupt, which did occur on 6 November 1987.

7 Eventually, both the applications came before me. At the commencement of the hearing, counsel for HKC said he would not be proceeding with the application, and, accordingly, I dismissed that application. Counsel for Procam intimated that he would be proceeding with the application (taken out by Procam) and that he would be relying on the affidavits filed by HKC in support of the latter`s application which had been dismissed. Counsel for the liquidators informed me that Nangle had retired from the firm of Ernst & Whinney, and by an order of court Nangle had been removed as liquidator and one Abbas H Nakhoda had been appointed in his place. Counsel objected to Procam relying on the affidavits of HKC and, if reliance on those affidavits was allowed, counsel applied for leave to cross-examine HKC and Miss Ho on their respective affidavits. Counsel further made two other points. First, he mentioned that the Official Receiver was not before the court and that he should be present to assist the court and should know what was going on. The liquidators are under the control or supervision of the Official Receiver and under s 265 of the Companies Act (Cap 50), the latter can look into the complaint of any creditor. Secondly, he pointed out that Procam is a very small creditor: the company owes Procam only $2,750; there are numerous other creditors, and the total amount owed to these creditors, including secured and preferential creditors, is in the region of $20m. These creditors should have been

Version No 1: 11 Sep 2026 (01:05 hrs)

given notice of these proceedings; they were not before me. The question whether the liquidators should be removed should be considered in the interest of all the creditors as a body and the court should not look at the interest of only one creditor. Accordingly, he asked the court to direct a meeting of creditors under s 325 of the Companies Act so that they could decide and inform the court whether they wish to remove the liquidators.

8 Counsel for Procam said that he was not aware, until the commencement of the hearing, of the substitution of Nakhoda for Nangle, and he asked that an order be made substituting Nakhoda for Nangle as a party. He opposed the application for leave to cross-examine HKC and Miss Ho on the ground that the complaint by Procam was based on sworn facts which are substantially not in dispute. Procam`s complaint, counsel submitted, is one of public importance and should be heard.

9 I was of the opinion that Procam, though a very small creditor of the company - the amount owing to it is really minuscule as compared to the overall indebtedness of the company - was entitled to take out the application and to be heard, and there was no necessity to have the papers served on all other creditors of the company. Probably the Official Receiver should have been served and be informed of this application so that if he wished to be heard he could be present. Notwithstanding the absence of the Official Receiver, I decided to proceed with the hearing. I then made the following orders at that stage. First, I made an order striking out Nangle and substituting in his place Nakhoda; I refused leave to cross-examine HKC and Miss Ho on their affidavits. In my view, the matter can be heard without the deponents to the affidavits being cross-examined, as the facts are substantially not in dispute. I deferred considering the question of making an order under s 325 of the Companies Act to a later stage, if it is relevant or necessary to consider such a question.

Version No 1: 11 Sep 2026 (01:05 hrs)

10 The main complaint of Procam against the liquidators is that the liquidators acted irresponsibly in engaging Drew & Napier to assist them in the winding-up of the company in that Drew & Napier were then acting for the petitioning creditor and Banque Paribas and the interests of these two creditors conflict with that of the company acting by the liquidators. The conflict of interests occurred in two areas. First, at the time of the winding-up of the company, Drew & Napier were acting for the petitioning creditor and at that time there was still a matter in dispute between the petitioning creditor and the company, namely, the bill of costs drawn up by Drew & Napier which had yet to be taxed. I shall refer to this as the first conflict of interests. Secondly, at the time of the winding-up of the company, Drew & Napier were already acting and advising Banque Paribas, a secured creditor of the company. The interest of a secured creditor is in conflict with that of the liquidators, and Drew & Napier in taking instruction and acting for the liquidators were in a position where their duty to the secured creditor conflicts with their duty to the liquidators. Accordingly the liquidators should have been alive to these conflicts of interests and should have called a meeting of creditors to ascertain their wishes on the appointment of Drew & Napier as solicitors to assist them in the liquidation of the company. Instead, they instructed Drew & Napier to apply to court for an order giving them absolute discretion to appoint any firm of solicitors and they obtained such an order without disclosing to court (i) that they intended to instruct Drew & Napier, and (ii) that Drew & Napier were also acting for the petitioning creditor and Banque Paribas.

11 Dealing with the first conflict of interests, I think that the complaint of Procam is not unjustified. At all material times, Drew & Napier were acting for the petitioning creditor; in that capacity, they drew up a bill of costs, and that bill of costs had yet to be taxed by the registrar. Hence, at the time when the

Version No 1: 11 Sep 2026 (01:05 hrs)

liquidators obtained the order giving them leave to engage a firm of solicitors to assist them, there was then still a matter in dispute between the petitioning creditor and the company, namely, the taxation of the bill of costs of the petitioning creditor. Nangle in his affidavit affirmed on 24 July 1986 said, in paras 4 and 5, the following:

> *4 With respect to the question of Drew & Napier`s bill of costs to which reference is made in para 5 of Mr Ho`s affidavit, it is denied that the respondents acted irresponsibly and without regard to the question of conflict. The bill of costs was sent to us by Drew & Napier who asked us if it was our intention to challenge the bill of costs in accordance with the markings of Messrs Lee, Woo & Partners (who were the solicitors for the company prior to its being wound up) or in any other manner. We studied the bill in the light of the feasibility of engaging the services of solicitors to examine, mark and attend the taxation of the bill, the quantum of which represents an unsecured debt against the company. Such an engagement would have meant that we would have to dip into the limited funds of the company to pay for such services.*

> (5) It was felt that the same objective of having the bill scrutinized could be achieved without using the company`s funds by the Registrar of the High Court who is empowered to examine the bill, direct production of documents supporting the bill and is vested with a complete discretion to disallow all costs, charges and expenses which were not necessarily and properly incurred.

12 While I fully appreciate Nangle`s explanation that the quantum of the bill would not justify incurring the expenses of engaging a solicitor to study the bill and attend taxation, I cannot agree with the stand he took at that time. He erred on two points. First, he said that the quantum of the bill `represents an unsecured debt against the company`. On that he was correct. But he failed to appreciate that under s 256 of the Companies Act, the liquidators are obliged to reimburse the petitioning creditor out of the assets of the company the taxed costs incurred by the petitioning creditor, and under s 328 of the Act the taxed costs of the petitioning creditor rank prior to all other unsecured debts of the

Version No 1: 11 Sep 2026 (01:05 hrs)

company and rank equally with the remuneration of the liquidators and the costs, if any, of any audit carried out pursuant to s 317 of the Act.

13 Secondly, he seemed to have come to the conclusion and, in my view, erroneously - and I do not know on what basis he arrived at that conclusion - that on taxation of the bill of costs the registrar would on his own motion scrutinize and examine the bill for him without him or anyone representing him being present, give the necessary direction as to production of supporting documents and disallow costs, charges and expenses not necessarily or properly incurred. Of course, the registrar has all these powers. However, it is not the duty of the registrar on his own motion to scrutinize and examine a bill and every item therein; it is for a party to the litigation or his counsel to raise an objection or objections, whether on principle or on quantum or on both, to item or items in the bill and support the objection or objections with arguments; it is then the duty of the registrar to consider the objection or objections and decide thereon. In the instant case, counsel for the petitioning creditor at the taxation informed the registrar that the liquidators were not challenging the bill. In such circumstances, the registrar cannot be expected to scrutinize and examine the bill for the liquidators.

14 Clearly, Drew & Napier could not act for the liquidators and advise them on the bill of costs; Nangle in his affidavit said that Drew & Napier did not act for the liquidators in relation to the bill, thus avoiding a conflict of interests. That I accept. That, however, I do not consider satisfactory: because of that the liquidators found themselves in a position in which having engaged a firm of solicitors they could not look to the solicitors for assistance and advice. In my opinion, the liquidators at the time needed proper legal advice on the bill of costs and they had not received any. If they had engaged solicitors, other than Drew & Napier, to assist and advise them in the winding-up, they would have had the

Version No 1: 11 Sep 2026 (01:05 hrs)

benefit of proper legal advice on the bill and would not be left to act `independently` and be `guided by` considerations, some of which turned out to be ill-founded.

15 At any rate, confronted with a bill of costs and without the benefit of any legal advice there are three courses open to Nangle. First, he could himself attend the taxation and draw the registrar`s attention to the items already marked by Lee Woo & Partners. Probably as a professional man, he found that if he attended taxation in person it would cost the company just as much if he were to engage a solicitor to do so. Secondly, he could have enquired from Lee Woo & Partners, who had studied and marked the bill, whether they would be prepared to attend taxation and negotiate an acceptable fee for such attendance. Thirdly, he could negotiate with Drew & Napier on the basis of the items marked in the bill and seek to reduce the amount. Unfortunately, he did not take any of those courses.

16 I now turn to the second conflict of interests complained of: the interest of Banque Paribas as a secured creditor and that of the liquidators. The liquidators before they appointed Drew & Napier knew that the latter acted for Banque Paribas and they had a discussion with the solicitor concerned of Drew & Napier. Presumably, arising from the discussion, they were satisfied that there was no conflict of interests; at any rate, it was agreed that if there should be any conflict or potential conflict of interests arising the liquidators would seek independent legal advice. Nangle in para 9 of his affidavit said:

> *With respect to para 8 of Mr Ho`s affidavit, the respondents were fully aware, before appointing Drew & Napier, that that firm was acting for Banque Paribas in regard to the matters referred to in paras 6 and 7 of Mr Ho`s affidavit. It was because we were aware of this that we had a meeting with Mr Davinder Singh of Drew & Napier prior to their appointment as the respondents` solicitors. At this meeting, it was disclosed that Drew & Napier*

Version No 1: 11 Sep 2026 (01:05 hrs)

> *was acting for Banque Paribas and it was agreed that should any conflict arise or potential conflict appear imminent, Drew & Napier will not act for the respondents who will seek independent legal advice. Contrary to what is alleged in para 8 of Mr Ho`s affidavit, Banque Paribas and the petitioning creditors are well aware of and have not objected to the fact that Drew & Napier act for the respondents.*

17 In my opinion, the liquidators were again in error. After they had assumed office, they knew of the securities that had been created by the company in favour of Banque Paribas, and clearly in respect of such securities their interests as liquidators and that of the bank as mortgagee or chargee are not and cannot be identical. As liquidators, they have to examine and question whether all these securities had been properly and validly constituted and are valid, and if any of them is invalid then they have to take proceedings immediately to set it aside. They needed urgent independent legal advice on this aspect of the liquidation. Banque Paribas, on the other hand, as mortgagees and chargees, have to get in and protect their securities and, where necessary, to enforce and realize the securities. There is also the question of Banque Paribas` obligations as regards maintenance and enforcement of securities, with which the liquidators should be concerned. It is obvious that the liquidators should have independent legal advice and assistance from a solicitor and they cannot and should not instruct the same firm of solicitors who act for Banque Paribas. It is true that it was agreed that should a conflict arise the liquidators would engage a separate and independent solicitor. But right from the commencement of liquidation the conflict had already arisen and the liquidators should have discerned and realized it.

18 In the circumstances in my opinion, the prudent course for the liquidators to take is to refrain from instructing Drew & Napier and to instruct another competent firm of solicitors to advise and assist them in all areas of the liquidation of the company. I think Nangle was in all probability, somewhat

Version No 1: 11 Sep 2026 (01:05 hrs)

complacent on the question of conflict of interests or for some reason failed to perceive the difficult position the liquidators would be placed when he decided to engage Drew & Napier. In my view, Nangle did make a mistake in taking the decision of engaging Drew & Napier. In taking such a decision he was guided by the consideration that the liquidators should engage a competent firm of solicitors to advise and assist them. There is nothing before me which suggests that he acted otherwise than in good faith. A mistake clearly he made; but it was made in good faith.

19 It was submitted by counsel for Procam that the liquidators did not act impartially and engaged Drew & Napier to prosecute multiple claims against various companies in HKC`s group of companies. In respect of these multiple claims which have been instituted against these companies, there is no evidence that any or all of them are ill-founded, baseless or utterly unjustified. If they are valid and legitimate claims, I do not understand why the liquidators should not pursue them; indeed they were bound to do so, whether they are claims against such group of companies or others. There is really no material before me to sustain any argument that the liquidators did not act impartially. I therefore reject this submission.

20 The other complaints of Procam against the liquidators are these: (i) erroneous payment of full costs to Drew & Napier; (ii) actions taken by the liquidators to get in and collect book debts and properties which belong to a secured creditor; (iii) taking winding-up proceedings against debtor companies based on debts which are in disguise; (iv) lack of care in presenting petitions to wind up companies, and (v) the liquidators allowing themselves to be in a position of conflict of interests by being appointed liquidators of Beauty Park Development Pte Ltd (in liquidation) (Beauty Park) and Rochester Co Pte Ltd (in liquidation) (Rochester).

Version No 1: 11 Sep 2026 (01:05 hrs)

21 On the question of payment, it is not disputed that the liquidators had paid:

> (a) $13,407.50 to Drew & Napier to account of disbursements in respect of advertisement costs, stamp and search fees and other expenses incurred;
>
> (b) $2,633.60 to account of disbursements as set out in the bill of costs of the petitioning creditor, which had been taxed.

22 In so far as payment of the amount in (a) is concerned, there can be no complaint about that; that represents the total of the amounts incurred on the instructions of the liquidators in the course of liquidation and was properly paid. As for payment of the $2,633.60, it is, in my view, a proper reimbursement made by the liquidators; see ss 256(2) and 328(1)(a) of the Companies Act. For these reasons, I do not understand the submission of counsel for Procam that the liquidators had made erroneous payments.

23 On the actions taken by the liquidators to collect book debts and properties which belong to the secured creditors, Wong Tui San, the other liquidator, in his affidavit affirmed on 19 January 1990, said that Banque Paribas asserted their rights only over the rights to receive the sale proceeds to the shop units sold to purchasers by the company, and have not asserted their rights over other properties. In the circumstances, I do not see any objection to the liquidators taking action to collect the book debts and other properties.

24 The second and third complaints (listed above) can be dealt with together. These companies, against which the liquidators have instituted winding-up proceedings, are companies within the group of companies owned or controlled by HKC. Whether the proceedings are well-founded or not, or whether they were based on disputed or undisputed debts, are matters which the

Version No 1: 11 Sep 2026 (01:05 hrs)

liquidators acting on the advice of their solicitors can consider and also are matters which the court hearing the petitions can decide. These are questions not open to me to decide here; they are not within my jurisdiction. These complaints of Procam have no merit.

25 As for the last complaint, there are not before me sufficient facts to show that by taking up the appointments of liquidators in the two companies, Beauty Park and Rochester, the liquidators have placed themselves in a position where their duties conflict with their interest. It is not clear from the affidavits whether or not these two companies are subsidiaries or wholly-owned subsidiaries of the company. But this much is clear: they are companies within the group of companies owned or controlled by HKC. I accept that where the interests of these two companies conflict with that of the company the liquidators should not assume the roles of liquidators of the two companies. However, nothing has been shown to me that such was and is the case here. I was referred to ***Re City and County Investment Co Ltd*** (1877) 25 WR 342 where one SL Price was appointed liquidator of a company which was being wound up under a supervision order. The liabilities and assets of that company had been taken over by the City and County Bank, which subsequently failed and was being wound up, and Price was also a liquidator in the winding-up of the bank. By an agreement between the bank and a firm, Brown, Jansen & Co, the firm agreed to take over the assets and liabilities of the bank on condition, inter alia, that Price was to be appointed liquidator of the bank. There was a dispute as to whether Brown, Jansen & Co were by virtue of the agreement liable to indemnify the shareholders of the company against its debts. On application for removal of Price as liquidator of the company it was held that `Price had, as liquidator of the company and of the bank, antagonistic interests` and that Price must either retire or be removed from the office of liquidator of the company.

Version No 1: 11 Sep 2026 (01:05 hrs)

That case is of no assistance here. As I have held, nothing has been established to show that as liquidators of the company and the two companies, the liquidators had antagonistic interests.

26 All these five complaints made by Procam have no substance whatsoever, and I have no hesitation in rejecting all of them.

27 I now turn to the final question: what order should I make in the circumstances? Section 268(1) of the Companies Act provides:

> *A liquidator appointed by the court may resign or on cause shown be removed by the court.*

28 The liquidators have erred in two instances, and in view of these two errors should I make an order for their removal? I think not. First, the errors were made in good faith, and they have not seriously prejudiced the liquidation of the company. Secondly, it is not in the interest of liquidation to make such an order. The present status of the liquidation of the company is that most of the matters in the liquidation have been completed, except:

> (i) the liquidation of Beauty Park and Rochester;
>
> (ii) the dispute with People`s Parkway Development Ltd; and
>
> (iii) the petitions for winding-up of the following companies within the HKC`s group, namely, Ming Arcade (Pte) Ltd, Nam Sam Glass Importers & Exporters (Pte) Ltd and Hempstead Pte Ltd.

29 In so far as the assess of the company are concerned, they are as follows:

> Total receipts $ 113,958.54
>
> Payments out $ 77,847.18
>
> Balance $ 36,111.36

Version No 1: 11 Sep 2026 (01:05 hrs)

30 According to the proofs of debts filed, the total amount of preferential claims or debts is $15,867,107.16 and unsecured claims or debts is $4,961,108.96. There is at present a disputed claim against People`s Parkway Development Pte Ltd which amounts to $11,765,441.24. Clearly there is a deficit of about $4m even if that claim against that company is realized. An order made for removal of the liquidators would involve incurring further costs and expenses, and whatever funds there are at the moment may be insufficient to pay for the liquidators upon their discharge and the liquidators to be appointed. In the circumstances, I am of the opinion that the present liquidators should be allowed to continue with the liquidation of the company. I therefore make no order on the application. I wish now to hear argument as to costs.

31 ***Application dismissed*** .

L P Thean J

Terence Cullen QC and Tony Ng (Tony Ng & Partners) for the applicant
S Selvam, K Shanmugam and Indranee Rajah (Drew & Napier) for the respondents

Version No 1: 11 Sep 2026 (01:05 hrs)