IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 136

CWU 265/1996, SIC 884/1998

Between

Siong Huat Shipyard Pte Ltd
(now in liquidation)

… *Plaintiff*

And

Hong Lam Marine Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Siong Huat Shipyard Pte Ltd (now in liquidation) v Hong Lam Marine Pte Ltd

[1998] SGHC 136

CWU 265/1996, SIC 884/1998
Chan Seng Onn JC
24 April 1998

Judgment:

GROUNDS OF DECISION

Brief Background

1. On 14 February 1996, Siong Huat Shipyard Pte Ltd ('shipyard') commenced Arbitration 6 of 1996 against Hong Lam Marine Pte Ltd ('Hong Lam') but subsequently withdrew its claim. However, Hong Lam counterclaimed against the shipyard for its failure to complete and deliver the vessel 'Harmony' to them by 12 January 1996.

2. On 12 June 1996, the shipyard was placed in receivership. The receivers and managers agreed to proceed with the arbitration after American Home Assurance Co ('AHA') agreed to fund the costs. Mr Prem Gurbani of M/s Gurbani & Co was appointed to act for the shipyard in defending the counterclaim.

3. The shipyard was wound up on 6 December 1996 and a liquidator was appointed. Hong Lam obtained leave of the court to prosecute its counterclaim. On 2 April 1997, the arbitrators awarded Hong Lam about S$4.3 million in damages with costs.

4. M/s Gurbani & Co, solicitors for AHA, wrote to the liquidator's solicitors, Fong Jeya Partnership on 17 April 1997 giving an undertaking to indemnify the shipyard and the liquidator against all legal costs if the liquidator agreed to them acting for the shipyard in appealing against the arbitration award. The liquidator consented.

5. Hong Lam filed a proof of debt dated 27 May 1997 with the liquidator. Hong Lam applied for and obtained an order of court on 9 September 1997 directing the liquidator to adjudicate on that proof of debt. The court also ordered the liquidator to apply on or before 23 October 1997 to obtain the sanction of the court under section 272(1)(e) of the Companies Act to appoint a firm of solicitors to act for and on behalf of the shipyard in Originating Motion No. 11 of 1997 ('OM 11'), which was an application for leave to appeal against the arbitration award.

6. The liquidator, through its solicitors, admitted the proof of debt on 15 October 1997 but stated that the admission was without prejudice to the outcome of OM 11 or any appeal arising therefrom.

7. AHA became involved in this matter as it had issued 4 performance bonds totalling S$6,678,750 in favour of Hong Lam to secure the performance of the shipyard in the construction of the vessel. Hong Lam commenced Arbitration 39 of 1997 against AHA and was awarded a sum of S$3,242,449.06, interest

and costs on 12 February 1998. AHA paid up and filed OM No 6 of 1998 for leave to appeal against the award.

The issues

8. The respondents in their written submissions have set out the following four issues:

(a) Whether the time limit to apply for the sanction has expired;

> (b) Whether the application for the sanction under Section 272(1)(e) of the Companies Act must be made by the liquidator and not the company; (c) Whether the liquidator has satisfied the court that the prosecution of OM 11 forms part of his duties as liquidator; and

(d) Whether there is a "live issue" for the company to appeal against.

(a) Whether the time limit has expired

9. In the course of the hearing, Mr Gurbani made an oral application to extend the time for him to file his application which was to have been done by 23 October 1997. There was no objection from counsel for the respondents and I allowed the application. Hence, this is no longer an issue.

(b) Whether the application for sanction must be made by the liquidator

10. Section 272(1)(e) of the Companies Act provides that:

> 272(1) The liquidator may with the authority either of the Court or of the committee of inspection -
>
> ……
>
> (e) appoint a solicitor to assist him in his duties.

11. Counsel for the respondents submitted that Section 272(1)(e) requires the liquidator to apply to the court to authorise the appointment of solicitors to assist him in his duties. It was argued that Gurbani & Co had no *locus standi* to make the application as they were not authorised to do so.

12. I do not see any merit in this submission. The liquidator need not personally make the application. The liquidator may appoint a solicitor to assist him and act for him to make the necessary applications to the court, including the application for the appointment of a solicitor. The liquidator may want to engage more than one solicitor to assist him, particularly if there are areas where special assistance from another solicitor is required.

13. Mr Jeyaputra, who was before me, confirmed that he is acting for the liquidator in the liquidation and that Mr Gurbani's role is going to be limited to prosecuting the appeal against the arbitration award. From Mr Gurbani's affidavit and Mr Jeyaputra's oral confirmation, I am satisfied that the liquidator is desirous of having M/s Gurbani & Co appointed to act for him in OM 11 for leave to appeal against the award. In my opinion, the liquidator has authorised M/s Gurbani & Co to make the application that was before me.

(c) Whether the liquidator has satisfied the court that the prosecution of OM 11 forms part of his duties as liquidator

14. It would appear from the authorities submitted by counsel for the respondents that the issue here is really whether the liquidator has exercised his discretion impartially in the best overall interest of the all the parties affected by the liquidation, when he decided to consent to the appointment of M/s Gurbani & Co to apply for leave to appeal against the arbitration award.

15. I am satisfied with the reasons given for selecting M/s Gurbani & Co. This firm was involved in the conduct of the arbitration proceedings which led to the award against the shipyard. Clearly, they would be most familiar with the issues at the arbitration proceedings and it would not be inappropriate to appoint them to conduct the appeal. Further, the liquidator has ensured that both the liquidator and the shipyard have been indemnified against all legal costs in connection with the appeal. Apparently, these costs will be borne AHA. Should the appeal be allowed, the shipyard will save about $4.3 million, excluding the interest charges. Should the appeal fail, the shipyard will not incur any further loss. The liquidator and the shipyard have nothing to lose and everything to gain. Under these circumstances, I do not see that the failure by the liquidator to consult all the creditors and shareholders of the company could amount to any negligence or bad faith on his part.

16. The liquidator's solicitors have examined the arbitration award and have taken the view that there are merits in the appeal. The liquidator has been advised accordingly and he has consented to proceeding with the appeal. See the affidavits of Mr S Rajagopal filed in OM 11. When the liquidator accepts the advice of his solicitors, it does not mean that he has exercised his discretion improperly. In legal matters, the liquidator is entitled to seek and rely on the advice of his solicitors.

17. There is no evidence produced before me that the liquidator had exercised his discretion in any manner which is contrary to the best interest of the shipyard and all the parties affected in the winding up. I can see no basis for refusing to sanction the decision of the liquidator.

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18. I reject the submission of counsel for the respondents that the liquidator had acted in breach of his duty to exercise the care and skill expected of a qualified accountant familiar with the statutory requirements of a liquidator when he decided to proceed with OM 11 and have M/s Gurbani & Co act for him accordingly.

19. In *Duffy v Super Centre Development Corporation Ltd* [1967] 1 N.S.W.R 382, Street J said at page 383:

> The receiver and manager is appointed as an officer of the Court to undertake in that capacity the management of the business of the company as well, of course, as undertaking the care of the company's assets. To the extent to which he makes decisions from time to time, they are in effect made under the authority of the Court itself, and they are subject to review and control by the Court should a proper case be made out requiring such intervention. Whilst this Court does, therefore, have an ultimate control over the day-to-day actions of a receiver and manager, it is a control which is not in my view to be too freely exercised. If, of course, there can be shown to be some defect in the manner in which the receiver and manager is conducting his duties – a defect arising either out of some want of good faith or out of some erroneous approach in law or in principle – then that is clearly a ground on which the Court would entertain an application by one of the interested parties for appropriate directions or some other form of remedial order. Where, however, the challenge made is that there has been an absence of prudence and wisdom in the receiver's decision, a far heavier onus rests upon the party who seeks to challenge the decision in question. The Court will not concern itself with minor and ordinary decisions that he may have made: it must be shown that there is a decision of real significance in the affairs of the company and as to which there are real and substantial grounds for questioning its correctness before the Court will embark upon an investigation of what, if any, directions ought to be given.

20. In my opinion, what Street J had said with respect to receivers and managers is equally applicable to liquidators appointed by the court.

(d) Whether there is a "live issue" for the company to appeal against.

21. Counsel for the respondents submitted that the liquidator was precluded from pursuing OM 11 as he had admitted the proof of debt and in that sense, there was no "live issue". It was submitted that the liquidator cannot put a proviso to his admission. Counsel argued that if the liquidator intended to proceed with the appeal, he should have rejected the proof of debt under rule 92 of the Companies (Winding Up) Rules.

22. Where there is a judgment or an arbitration award, the liquidator cannot reject a proof of debt based on that judgment or award, as that would amount to a non-recognition by him of the validity of the decision made by the court or the arbitration tribunal. However, that admission cannot by any means debar the liquidator from appealing against the judgment or the award. An analogous situation is payment by a judgment debtor to satisfy a judgment debt. Such payment does not preclude him from subsequently appealing against that judgment.

23. In this case, the liquidator admitted the proof of debt based on the arbitration award which had not been set aside. Further, he had made very clear that the admission was to be without prejudice to the outcome of OM 11 or any appeal arising therefrom. Under the circumstances, I cannot see how the liquidator can be precluded from pursuing OM 11.

Conclusion

24. The proper forum to decide the whole issue whether the liquidator should be

allowed to proceed with the appeal will be the court hearing OM 11 itself. I am only dealing with the very limited issue whether M/s Gurbani & Co should be appointed to assist and act for the liquidator in OM 11. I think they are. I note that Lai Siu Chiu J. had ordered the liquidator to apply and 'obtain the sanction of the Court under Section 272(1)(e) of the Companies Act to appoint a firm of solicitors to act for and on behalf of the Company' in OM 11 and the liquidator was therefore doing nothing more than abiding by the order of Lai J. when he obtained the services of M/s Gurbani & Co to make the application.

25. For the reasons given, I sanctioned the appointment of M/s Gurbani & Co to act on behalf of the liquidator in OM 11 of 1997. Dissatisfied with my decision, the respondents have appealed.

SGD :

CHAN SENG ONN

JUDICIAL COMMISSIONER

Chan Seng Onn JC

Prem Gurbani (Gurbani & Co) for the applicants
Scott Thillagaratnam with Navinder Singh (Benny & Scott) for the respondents
Jeya Putra (Fong Jeya Partnership) for the liquidator of Siong Huat Shipyard

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