

Wong David H v Timothy Seow Group Architects Pte Ltd (in liquidation) and Another
[2007] SGHC 110

Case Number : OS 2209/2006
Decision Date : 05 July 2007
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Sankaran Karthikeyan (Toh Tan & Partners) for the plaintiff; Ranvir Kumar Singh (Unilegal LLC) for the first defendant; Chandra Mohan and Robert Tay Chun Leng (Rajah & Tann) for the second defendant
Parties : Wong David H — Timothy Seow Group Architects Pte Ltd (in liquidation);
Timothy Seow

Insolvency Law – Winding up – Rejection of proof of debt by liquidator – Whether time should be extended for appealing against liquidator's rejection of proof of debt – Rule 93 Companies (Winding Up) Rules (Cap 50, R 1, 2006 Rev Ed)

5 July 2007

Tan Lee Meng J:

1 This case involves an application by a person who claims to be a creditor of a company in liquidation for an extension of time to appeal against the rejection by the said company's former liquidator of his Proof of Debt more than 6 ½ years ago; the law requires that such an appeal must, unless the leave of the court is obtained, be lodged within 21 days of the rejection. The plaintiff, Mr David H Wong ("Mr Wong"), sought an extension of time to file an appeal against the decision of Mr Don Ho Mun Tuke ("Mr Don Ho"), the former liquidator of the first defendant, Timothy Seow Group Architects Pte Ltd (In Liquidation) ("TSG"), who rejected his claim against TSG on 17 April 2000. I dismissed the application and now give the reasons for my decision.

Background

2 Mr Wong, an architect from Vancouver, and a number of other architects, including the second defendant, Mr Timothy Seow (Mr Seow"), formed an architectural practice called SLH International ("SLH") in 1994. Mr Wong left SLH in August 1995 and returned to Canada.

3 SLH was dissolved on 26 September 1996 and many of its architects set up TSG, which was incorporated in January 1996.

4 TSG went into voluntary liquidation after another architect, one Mr Jeffrey Yap ("Mr Yap"), obtained a consent judgment against it in Suit No 664 of 1998 for unpaid design fees amounting to \$600,321.00.

5 Mr Wong filed a Proof of Debt against TSG with respect to services rendered. On 17 April 2000, the former liquidator, Mr Don Ho, rejected his Proof of Debt on the following grounds:

- (a) The period of the claim was in relation to work done prior to the incorporation of TSG in 1996;

(b) Mr Wong's claim for salary was in relation to his employment by SLH and not by TSG; and

(c) The amount of profits claimed by Mr Wong was in relation to projects under the name of SLH and not TSG.

6 Mr Wong's solicitors intimated to Mr Don Ho that he would take steps to reverse or vary the decision to reject his Proof of Debt.

7 On 15 May 2000, Mr Don Ho released his report on TSG.

8 On 5 June 2000, Mr Wong's solicitors invited Mr Don Ho to reconsider his decision on the rejection of Mr Wong's Proof of Debt. Although the then liquidator did not change his mind, Mr Wong took no further action for more than 6 years. It was only on 21 July 2006 that he wrote to TSG's present liquidators to restore his Proof of Debt. On 24 November 2006, some 6 ½ years after his Proof of Debt had been rejected by Mr Don Ho, he filed Originating Summons No 2209 of 2006 to seek an extension of time to appeal against the former liquidator's decision.

Whether the period for filing an appeal should be extended

9 A creditor who wishes to appeal against a liquidator's rejection of his Proof of Debt must take note of s 93 of the Companies (Winding Up) Rules (Cap 50, R1 2006 Rev Ed), which provides as follows:

If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision; but subject to the power of the Court to extend the time, no application to reverse or vary the decision of the liquidator in a winding up by the Court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained unless notice of the application is given before the expiration of *21 days from the date of the service of the notice of rejection*.

[emphasis added]

10 Where an application to extend the time for an appeal is lodged, the court must consider whether there are good grounds for the delay and if so, whether there is a *prima facie* case for the reversal of the rejection of the Proof of Debt on the merits.

11 The time bar for lodging an appeal against the rejection of a Proof of Debt by a liquidator must be given effect save in circumstances where the applicant has very good reasons for the delay. In *Re Wallace, ex parte Wallace* [1962] NZLR 531 ("*Re Wallace*"), a decision of the New Zealand Supreme Court, Barrowclough CJ pointed out at p 534 that the administration of bankruptcy law "requires and is designed to achieve a prompt settlement in a more or less summary way of all disputed questions that arise in the bankruptcy". He added that this regime is "a strictly commercial measure dealing with business failures somewhat after the nature of a salvage operation and it is in the interest of the public and of creditors that the operation should not be unduly prolonged".

12 In the present case, there was an inordinate delay of more than 6 ½ years since the rejection of Mr Wong's Proof of Debt. In *Re Wallace*, where the delay was only 8 months, Barrowclough CJ described the said delay at p 535 as "extraordinary" and regarded the application to extend time as a "very belated" application. He thus found it unnecessary to consider whether or not, if a satisfactory reason had been given, there was a *prima facie* case for an extension on the merits.

13 Mr Wong explained the reasons for his long delay in his first affidavit at [20] as follows:

Notwithstanding the inexplicable action of Don Ho in selecting and rejecting my claim, after taking note of the Company's financial position and the costs involved in taking out a Court application to reverse Don Ho's decision, I decided not to take any continued action to reverse [his decision] in rejecting my claim. Thus I did not proceed with any application to the Court to reverse the decision of Don Ho then.

14 Mr Wong added that the position changed when Mr Yap succeeded in another suit, namely Suit No 217 of 2004, against some of TSG's officers, including Mr Seow, after which the prospect of payment of money to creditors became a reality. Mr Yap had alleged that the defendants in question had conspired to defraud him and had conducted the company's affairs in a way to defraud its creditors. A creditor should not be allowed an extension of time to mount an appeal against a rejection of a Proof of Debt more than 6 ½ years after the event merely because he is finally satisfied that the company is in a position to pay some money to him. Otherwise, all creditors would be entitled to insist on having their rejected claims looked at afresh should the company recover some money in the future even though they took no steps within the prescribed 21 days to challenge the liquidator's decision to reject their claims. It is also worth noting that whatever TSG's officers may have been guilty of, TSG's former liquidator, Mr Don Ho, had rejected Mr Wong's claim against TSG in 2000 on the ground that he had directed his claim to the wrong party as it concerned professional work done by Mr Wong on behalf of SLH.

15 Mr Wong's counsel relied on *Mah Wand Hew v Ong Yew Huat and Another* [2003] 1 SLR 859 ("*Mah*"), where the plaintiff was given an extension of time to file her appeal against the liquidator's rejection of her Proof of Debt but the facts in that case were rather special. Apart from the fact that the delay in *Mah* was only five months, as compared to the 6 ½ years in the present case, the plaintiff in *Mah* was an employee who worked at Hotel Equatorial and had claimed from the owners of the said hotel her overdue salary, unused annual leave, 13th month salary for 1997, three months' salary in lieu of notice and retrenchment benefits. Lai Kew Chai J was satisfied that the plaintiff did not appeal against the liquidator's rejection of her Proof of Debt because she had no money to instruct solicitors and that this was due to the very fact that the hotel in question had not paid her remuneration and other benefits. As such, he held that this was a fit and proper case for the granting of an extension of time to appeal against the liquidator's rejection of her Proof of Debt.

16 In contrast to the plaintiff in *Mah*, Mr Wong was legally represented when his Proof of Debt was rejected in April 2000. In his Notice of Rejection of the Proof of Debt dated 17 April 2000, Mr Don Ho specifically informed Mr Wong that, subject to the power of the Court to extend the time, no application to reverse or vary his decision "will be entertained after the expiration of twenty-one days from this date". As has been mentioned, Mr Wong's solicitors intimated to Mr Don Ho in 2000 that an appeal against the rejection of his Proof of Debt in 2000 was forthcoming. Although Mr Wong knew that his claim had been rejected on the basis that he had made claims against the wrong party as he had left SLH and Singapore in 1995, well before TSG was incorporated in 1996, and that his claim was in connection with work done for and on behalf of SLH and not TSG, he chose not to proceed with his appeal. He should thus live with the consequences of his choice.

17 As Mr Wong did not furnish any valid ground to justify the inordinate delay of more than 6 ½ years in appealing against the decision of the former liquidator, there was no need for me to consider whether he has a *prima facie* case in relation to the merits of his Proof of Debt. His application was thus dismissed with costs.