Lau Yu Man v Wellmix Organics (International) Pte Ltd
[2007] SGHC 223

Case Number : CWU 110/2006, S 2865/2007

Decision Date : 28 December 2007

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Edwin Lee, Wong Tjen Wee and Daniel Xu (Rajah & Tann) for the plaintiff; Philip Jeyaretnam SC, Elizabeth Yeo and Zhulkarnain Bin Abdul Rahim (Rodyk & Davidson) for the defendant

Parties : Lau Yu Man — Wellmix Organics (International) Pte Ltd

Companies

28 December 2007

Lee Seiu Kin J:

1 This is a continuation of a long running saga between the plaintiff ("Lau") and, nominally, the defendant company. In actual fact, the plaintiff's quarrel is with the persons calling the shots in the company, the general manager Wong Yiat Hong Raymond ("Wong") and the majority shareholder, Lai Shit Har ("Lai") who is Wong's mother.

2 I had outlined the background to this matter in my decision in *Lau Yu Man v Wellmix Organics (International) Pte Ltd* [2007] SGHC 96 dated 20 June 2007 and refer to my narration of the facts there. In the three concluding paragraphs at [10], [11] and [12], I had stated as follows:

> 10 After hearing the submissions of counsel, I was satisfied that the main object, and therefore the substratum of the Company, was to distribute fertiliser from the Wellmix Group. It is clear from the affidavits that a dispute arose between Lau and Wong as to whether the distributorship agreement covered Malaysia and this had caused a breakdown of their relationship. This has resulted in the first suit (Suit No 600041/2000) being brought by the Company against CUDL for supply of defective goods and breach of contract by attempting to award the Malaysian distributorship to another company, which the parties refer to as MATTRA. There was a proposed compromise in that action, with CUDL paying $20,000 to the Company, and Lau withdrawing as director and transferring his shares. But the Company did not go through with this proposed compromise, although for some reason it discontinued that action. Suit No 642/2001 was filed on 26 May 2001. This was a claim against Lau himself, for breach of duties as director, in particular by getting MATTRA to deal directly with the Wellmix Group instead of through the Company. The Company claims substantial damages in its claim against Lau in that action. However it is hampered by a lack of resources as Lau was the main financier and, combined with the long interlocutory battles that have dragged the case over five years, the Company has reached breaking point in terms of its ability to continue the suit.
>
> 11 The other side of the coin is that the Company had transacted no business after December 2000. Clearly it has suspended business since 2001. The Company was being kept alive to sustain the action against Lau. Although Lai and Wong claim that the Company was active in that it received mail etc, it is clear that there is no intention to conduct business. Its only asset is the claim against Lau. Under these circumstances, the condition for ordering winding up under

s 254(1)(c) has been met, i.e. the Company has suspended business for a whole year – in fact it has been more than five years as at the date of filing of this Originating Summons. However s 254(1) provides that the court "may" order winding up; the court has the discretion not to do so where appropriate. The issue before me is how I should exercise this discretion. The Company is in disarray. It is not operated as a company. But ordering its winding up will suppress a claim by an impecunious plaintiff (the Company in Suit No 642/2001). The parties have not submitted to me on the strength of the Company's claim against Lau. I therefore made my decision on the basis that there is a claim and there is a defence. In order to assuage my concerns as to whether winding up would suppress a meritorious claim, counsel for Lau gave the undertaking on behalf of Lau that he would seek from the Liquidator only costs going forward if the Liquidator decides to proceed with Suit No 642/2001. On the other hand, I was mindful that with a winding up an extra layer of costs would be added to the process: that of the Liquidator. This would in effect diminish the chance of the Company pursuing its claim against Lau, even if it is a good one.

12 This is a difficult case. On the one hand there is the interest of Lau as contributor. On the other hand there is the interest of Lai, as main shareholder of a company whose only asset is the claim. Counsel for the Company suggested that I could set a deadline for the Company to make good all defaults in compliance with the Companies Act and Regulations. This would substantially take care of Lau's interest in the winding up. Taking into account all the circumstances of the case, I was of the view that the appropriate order to make at this stage was what counsel for the Company had suggested, i.e. imposing a condition on the Company to file audited accounts within four months, to rectify all previous breaches and comply with the requirements of the Act. I accordingly ordered the application to be adjourned with liberty to Lau to apply for a winding up order after 5 June 2007, if the Company failed to rectify those breaches or failed to comply with the Act by that date, with costs reserved.

3 The above order was made on 5 February 2007, in effect giving the company four months to rectify matters. Five months later, on 4 July 2007, the company filed Summons No 2865 of 2007 praying for the following orders:

1 That an extension of time of 4 months be granted to the Defendants to file audited accounts of the Company to rectify all the Company's previous breaches and comply with the requirements of the Companies Act (Cap.50);

2 That the winding up application be adjourned for a further 4 months with liberty for the Plaintiff to apply for a winding [up] order if the Company fails to rectify those breaches or fails to comply with the Companies Act.

4 From the affidavit filed by Wong in support of this application, it would appear that even five months after I had exercised my discretion in his favour, he had not managed to rectify matters. Wong said that he had tried his best to ensure compliance with the court order but encountered a lot of difficulties. The documents required for the purposes of the auditing process were extensive and numerous. Almost two months were spent gathering and verifying such documents, which were contained in more than 80 arch lever files. Throughout this period he only had the assistance of a part-timer as this was all he could afford. Around March 2007 the original auditor of the company, Robert Tan & Company told him that it was facing a shortage of manpower and would not be able to complete the audit within the deadline. However Wong exhibited a letter of resignation from the auditor dated 12 June 2007. It is surprising that the auditor took some three months to write this letter. It is also surprising that Robert Tan & Company resigned as auditor a week after the deadline of 5 June 2007.

5 Be that as it may, I move on to what Wong said he did about the situation. He said that between March and June 2007 he tried to get another auditor. One such firm he approached was Baker Tilly TFWLCL ("Baker"). However the period was also the peak period for most auditing firms because of tax and audit deadlines in June and July. Wong said that Baker declined at the outset because they were not confident that they could complete the audit by 5 June 2007. Wong also added that because "the Company was financially constrained, I had to spend a considerable amount of time to look for firms that offered an affordable price".

6 After a long search, Wong managed to instruct, with great persuasion, the firm of Wong Sook Yee & Company. He exhibited a letter from that firm dated 29 June 2007 explaining the difficulties involved and why an extension of time was needed. The letter stated that they would require up to the end of September 2007 to complete the audit.

7 I was not satisfied that Wong had diligently gone about complying with the indulgence that I had granted to him on 5 February 2007. Further he had admitted in his affidavit that he had some difficulty with funds to comply with the order. It had not entirely escaped my notice that the application for extension of time was filed only on 4 July 2007, one month after the 4 June 2007 deadline. I should point out that on 5 February 2007 when the issue before me was whether I should exercise my discretion in favour of the company, it was counsel for the company who proposed a four-month period for the company to rectify matters. I did not reduce it at all. As I have stated in the concluding paragraph of my grounds of decision of 20 June 2007, this has been a difficult case and a finely balanced matter. On 5 February 2007 it seemed to me that it would tilt in the company's favour if I gave it four months to comply. In the circumstances that obtained on 16 July 2007, particularly in view of the fact that Wong had been given his chance and not only was he unable to seize it, I was not convinced that he made much effort to do so. In the circumstances I was of the view that the best course of action would be to order the winding up of the company rather than delay it any further. Accordingly I refused the company's application in the summons. I subsequently adjourned the hearing to open court and ordered the company to be wound up under s 254(1)(c) of the Companies Act (Cap 50, 2006 Rev Ed).