IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 256

Originating Application No 555 of 2024 (Summons No. 1957 of 2024)

Originating Application No 726 of 2024

Between

(1) Goh Thien Phong
(2) Chan Kheng Tek
(3) Hin Leong Trading (Pte) Ltd (in compulsory liquidation)

… *Applicants*

And

(1) UT Singapore Services Pte Ltd
(2) Skomer Investments Designated Activity Company
(3) Trafigura Pte Ltd
(4) The Hongkong and Shanghai Banking Corporation
(5) DBS Bank Ltd
(6) ING Bank N.V., Singapore Branch
(7) Cooperative Rabobank U.A., Singapore Branch
(8) Societe Generale, Singapore Branch
(9) Credit Agricole Corporate and Investment Bank,
(10) Singapore Branch

Oversea-Chinese Banking
Corporation Limited
(11) ABN Amro Bank N.V.

… *Non-parties*

GROUNDS OF DECISION

[Companies] — [Schemes of arrangement] — [Whether creditors can be classified as potentially secured creditors]

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Re Hin Leong Trading (Pte) Ltd (in compulsory liquidation) and another matter

[2024] SGHC 256

General Division of the High Court — Originating Application No 555 of 2024 (Summons No 1957 of 2024) and Originating Application No 726 of 2024
Andre Maniam J
30 August 2024

15 October 2024

Andre Maniam J:

Introduction

1 Can a scheme of arrangement include creditors who are *potentially* secured, without their claims to security being fully and finally determined? One such creditor, UT Singapore Services Pte Ltd ("UTSS") contends that such a scheme is not permissible, a scheme proposed in such terms cannot be sanctioned, and that leave should not have been granted to convene a scheme meeting for such a scheme.

2 I granted leave (the "Convening Order") to convene a scheme meeting for the scheme in question (the "Scheme"), and thereafter sanctioned the Scheme (the "Sanction Order"). UTSS has filed appeals in CA/CA 55/2024 ("CA 55") contending that the Convening Order should have been set aside, and

in CA/CA 54/2024 ("CA 54") contending that the Sanction Order should not have been made. These grounds of decision address the matters that UTSS has appealed against.

Background

3 The first and second applicants are the liquidators of the third applicant Hin Leong Trading (Pte) Ltd (in compulsory liquidation) ("HLT").

The claims against HLT

4 HLT was in the business of oil trading. Some of the oil purportedly belonging to HLT was stored at oil storage terminals maintained and operated by UTSS.[1] The relationship between HLT and UTSS was governed by Tankage and Storage Agreements and spot contracts (the "Agreements"), which in turn incorporated UTSS' "Tankage and Storage: General Terms and Conditions" (the "GTCs").[2] UTSS alleges that under the GTCs, it had a general lien over oil at its terminals that belonged to HLT.[3]

5 When HLT was placed in interim judicial management on 27 April 2020, some oil purportedly belonging to HLT was still stored in UTSS' storage facilities.[4] The claims of various third parties asserting ownership of and/or security over some of that oil, became the subject of interpleader proceedings

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1 First Affidavit of Evidence-in-Chief of Goh Thien Phong dated 6 June 2024 filed in HC/OA 555/2024 ("1GTP (Convening)") at para 7.

2 First Affidavit of Evidence-in-Chief of Lai Kuan Loong Victor dated 15 August 2024 filed in HC/OA 726/2024 ("1LKLV") at paras 11 and 13.

3 1LKLV at para 14.

4 1GTP (Convening) at para 10.

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commenced by UTSS in HC/OS 489/2020 (the "UTSS Interpleader").[5] The oil that was the subject of OS 489 was also subject to various injunctions.[6] The oil was then sold and the proceeds (the "UTSS Injuncted Proceeds") were paid into court pending the final determination of the competing claims and rights.[7]

6 Some oil purportedly belonging to HLT was also stored on board ships controlled by a related entity, Ocean Tankers (Pte) Ltd ("OTPL"). That oil was the subject of four interpleader proceedings commenced by the interim judicial managers of OTPL: HC/OS 549/2020, HC/OS 592/2020, HC/OS 616/2020, HC/OS 631/2020 (the "OTPL Interpleaders"). That oil was sold and the proceeds (the "OTPL Injuncted Proceeds") were paid into court pending the determination of the OTPL Interpleaders.[8]

7 There was also oil purportedly belonging to HLT (some of which was stored at UTSS' storage facilities) that was not the subject of the UTSS Interpleader or the OTPL Interpleaders. That oil was sold and the proceeds (the "Uninjuncted Proceeds") are held by HLT's liquidators.[9] UTSS claims security over the Uninjuncted Proceeds, to the extent of its claim of US$42.4 million against HLT.[10]

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5 1GTP (Convening) at pp 51–53.

6 1GTP (Convening) at para 14.

7 1GTP (Convening) at paras 15–16.

8 1GTP (Convening) at paras 17–19.

9 1GTP (Convening) at para 32.

10 UTSS' Written Submissions dated 26 August 2024 ("UTSS' Written Submissions") at para 52.

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8 HLT's liquidators commenced HC/SUM 4108/2021 ("SUM 4108") and HC/SUM 1003/2022 ("SUM 1003") to seek directions on various issues:[11]

(a) SUM 4108 concerns issues such as whether HLT's bank creditors who had financed HLT's oil purchases had valid security over oil purchased by HLT by import financing or inventory financing. Specifically, the liquidators sought guidance on whether such transactions created a security interest by way of "pledge by attornment", and whether those pledges (if valid) are registrable under s 131(3)(d) of the Companies Act (Cap 50, 2006 Rev Ed). SUM 4108 has been fixed to be heard together with the UTSS Interpleader and has proceeded to trial.[12]

(b) SUM 1003 concerns various issues relating to UTSS' claims against HLT.[13]

The Scheme

9 The liquidators proposed the Scheme for the distribution of US$80 million of the Uninjuncted Proceeds to HLT's creditors.[14]

Classification of Scheme Creditors

10 The creditors were divided into two voting classes for the purposes of the Scheme: (a) Potential Secured Creditors; and (b) Unsecured Creditors.[15]

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11 1GTP (Convening) at para 20.

12 1GTP (Convening) at paras 22–23.

13 1GTP (Convening) at para 30.

14 1GTP (Convening) at para 35.

15 1GTP (Convening) at para 59.

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11 Potential Secured Creditors were creditors who had asserted security interests over the Uninjuncted Proceeds. The word "potential" refers to these creditors being *potentially* secured; that they were creditors was not in dispute they were not *potential* creditors.[16]

12 Unsecured Creditors were creditors who had not asserted security interests over the Uninjuncted Proceeds.[17]

Basis of distribution

13 Under the Scheme, the Scheme Consideration of US$80 million would be distributed to all Scheme Creditors (whether they were Potential Secured Creditors or Unsecured Creditors) *pari passu*. Scheme Creditors would recover approximately 1.7% of their admitted claims against HLT (defined in the Scheme as "Admitted Scheme Claims"). To enable this, the Potential Secured Creditors would release and waive any security they may have in the Uninjuncted Proceeds.[18]

Rationale of the Scheme

14 The liquidators explained that the Scheme would be in the best interests of the Scheme Creditors as it would allow for a fair, commercial and expeditious distribution of HLT's assets, for two main reasons:[19]

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16 1GTP (Convening) at para 59(a).

17 1GTP (Convening) at para 59(b).

18 Liquidators' Written Submissions dated 26 August 2024 ("Liquidators' Written Submissions") at paras 28(b) and 29.

19 1GTP (Convening) at paras 36–48.

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(a) there is significant uncertainty in the recoveries the Scheme Creditors will be able to obtain in the absence of the Scheme:

(i) there is a need to ascertain the validity of the various security claims asserted by the financing banks and UTSS over the Uninjuncted Proceeds;

(ii) the attornment issues in SUM 4108 have to be determined; there will also be difficulty in tracing and identifying the oil which the various financing banks may have security over, due to extensive co-mingling;

(iii) there are issues relating to the validity of the lien UTSS has claimed, which issues are pending in SUM 1003;

(iv) after the issues in SUM 4108 and SUM 1003 have been decided, it will still need to be determined how any security interests of the financing banks and UTSS would rank against each other;

(v) given the above, there is significant uncertainty over the recovery (if any) that Unsecured Creditors might receive in the absence of the Scheme; and

(vi) it will be challenging and time consuming to reach a definitive conclusion as to how the Uninjuncted Proceeds should be eventually distributed, in the absence of the Scheme; and

(b) there is significant uncertainty in the time before which the Scheme Creditors will be able to receive any recoveries in the absence of the Scheme.

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(i) first, the Scheme Creditors will only receive dividend payments out of the Uninjuncted Proceeds after SUM 4108 and SUM 1003 have been fully and finally determined; and

(ii) second, even after SUM 4108 and SUM 1003 have been fully and finally determined, additional time will be needed to determine how the security interests rank against each other and to trace the specific property which the secured claims are secured against;

(iii) given the above, it would take years before these issues can be fully and finally resolved, and before the Scheme Creditors can be paid from the Uninjuncted Proceeds.

15 The Scheme was presented to creditors at a dialogue session on 17 May 2024, following which the Scheme received encouraging initial support.[20] By 6 June 2004 (the date of the liquidators' first affidavit in HC/OA 555/2024 ("OA 555" / the "Convening Application")):[21]

(a) 15 out of 25 Potential Secured Creditors (representing 55% in value of that class) had given in-principle approval;

(b) 19 out of 125 Unsecured Creditors (representing 87% in value of that class) had given in-principle approval too; and

(c) no creditors had raised any objections to the Scheme.

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20 1GTP (Convening) at paras 50 and 52.

21 1GTP (Convening) at paras 52–53.

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OA 555: the Convening Application

16 On 6 June 2024, HLT's liquidators applied by OA 555 (*ie*, the Convening Application) for leave to convene a Scheme Meeting for the creditors to consider and, if they thought fit, approve the Scheme (with the accompanying related orders).[22]

17 The same day, a copy each of the Convening Application and its supporting affidavit was provided to the Scheme Creditors (including UTSS).[23]

18 On 14 June 2024, the court directed that any creditor who wished to file a reply affidavit was to do so by 21 June 2024.[24] This direction was notified to UTSS but it did not file a reply affidavit. Indeed, no creditor did so.

19 The Convening Application was heard on 1 July 2024 (the "Convening Hearing"). By then, the level of support for the Scheme had risen to 86.8% in value of the Potential Secured Creditors class, and 85.3% in value of the Unsecured Creditors class, with no creditors raising objections to the Scheme. Various creditors (including UTSS) were represented by counsel at the hearing; none of them objected to the Convening Application.[25] After hearing from the liquidators' counsel, the court granted the Convening Application, making the Convening Order.[26]

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22 HC/OA 555/2024 at para 1.

23 First Affidavit of Evidence-in-Chief of Goh Thien Phong dated 25 July 2024 filed in HC/OA 726/2024 ("1GTP (Sanction)") at para 11.

24 Court's Reply on Other Hearing Related Requests dated 14 June 2024.

25 1GTP (Sanction) at paras 14–15.

26 HC/ORC 3202/2024 at para 1.

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SUM 1957: UTSS' application to set aside the Convening Order

20 On 15 July 2024, UTSS applied by HC/SUM 1957/2024 ("SUM 1957" – the "Setting-aside Application") in OA 555 to set aside the Convening Order.[27] This was two weeks after the Convening Order was made, and a week before the Scheme Meeting scheduled for 22 July 2024.

21 Prayer 3 of the Setting-aside Application asked to defer the Scheme Meeting until after the Setting-aside Application had been determined.[28] This prayer was heard on an urgent basis on 17 July 2024. The court declined to defer the Scheme Meeting. UTSS has not appealed against that decision. The remaining prayers in the Setting-aside Application were adjourned to be heard with the liquidators' intended application for sanction of the Scheme.[29]

OA 726: the Sanction Application

22 At the Scheme Meeting on 22 July 2024, the Scheme received overwhelming support:[30]

(a) only one creditor, UTSS, voted against the Scheme;

(b) the other 22 out of 23 Potential Secured Creditors present and voting (representing 98.7% in value) voted for the Scheme; and

(c) all 12 Unsecured Creditors present and voting (representing 100% in value) voted for the Scheme.

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27 HC/SUM 1957/2024 at para 1.

28 HC/SUM 1957/2024 at para 3.

29 Minute Sheet (17 July 2024).

30 1GTP (Sanction) at paras 7–8.

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23 On 25 July 2024, the liquidators applied by HC/OA 726/2024 ("OA 726" – the "Sanction Application") for the Scheme to be approved and sanctioned by the court. UTSS opposed the application.

24 At the hearing of the Sanction Application on 30 August 2024, the court granted the application and made the Sanction Order, and dismissed the remaining prayers of the Setting-Aside Application.[31]

25 UTSS has by CA 55 appealed against the dismissal of the Setting-Aside Application on 30 August 2024, *ie*, save in relation to prayer 3 (to defer the Scheme Meeting) which was dealt with earlier.

26 UTSS has by CA 54 appealed against the grant of the Sanction Application on 30 August 2024.

27 These are my grounds of decision in relation to the matters decided on 30 August 2024.

Should the Scheme be sanctioned?

Parties' positions

28 The parties do not dispute[32] that the requirements for the sanctioning of a scheme are as set out in *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121 ("*Oriental Insurance*"). In *Oriental Insurance*, the Court of Appeal held that a court must be satisfied of three matters before it sanctions a scheme. First, the statutory provisions must have been complied with. Second, the attendees of the meeting must be representative

31 Minute Sheet (30 August 2024).

32 UTSS' Written Submissions at para 12; Liquidators' Written Submissions at para 51.

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of the class of creditors/members and the statutory majority must not have coerced the minority so as to promote interests adverse to those of the class which the statutory majority purported to represent. Finally, the scheme must be one which an intelligent and honest man or a man of business – being a member of the class in question and acting in respect of his interest – would reasonably approve (at [43]).

29 It was not in dispute that the first requirement above was satisfied to the extent that the statutory formalities had been complied with.

30 UTSS disputed whether the second and third requirements had been complied with:

(a) regarding the second requirement, UTSS contended that the classification of creditors was wrong: there could not be a class of Potential Secured Creditors; and in any case UTSS had wrongly been classified as a *Potential* Secured Creditor, when it was a Secured Creditor entitled to be paid in priority to any other creditor claiming security in the oil in UTSS' tanks (or the proceeds thereof);[33] and

(b) regarding the third requirement, the Scheme was not one which a man of business or an intelligent and honest man would reasonably approve.[34]

31 UTSS also contended that the manner in which the Scheme had been proposed and taken forward had been remiss, not just in classification.[35]

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33 UTSS' Written Submissions at paras 29–60.

34 UTSS' Written Submissions at para 63.

35 UTSS' Written Submissions at paras 61–62.

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32 As a preliminary point, the liquidators contended that UTSS' objections should not be entertained at the sanction stage, when UTSS had not raised them at the convening stage. The liquidators specifically argued that the court should not revisit the issue of creditor classification. I address this first before turning to UTSS' objections.

Should UTSS' objections be entertained at the sanction stage, when UTSS had not raised them at the convening stage?

33 In *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213 ("*TT International*"), the Court of Appeal declined to follow the practice described in the Hong Kong case of *UDL Argos Engineering & Heavy Industries Co Ltd v Li Oi Lin* [2001] 3 HKLRD 634 of leaving issues of creditor classification to the sanction hearing (*TT International* at [60]–[62]. Instead, the Court of Appeal preferred the English approach as stated in the Practice Statement (Companies: Schemes of Arrangement) [2002] 1 WLR 1345 ("Practice Statement"). The Practice Statement provided that in determining whether to order meetings of creditors, the court will consider the number of meetings of creditors required and the appropriate composition of those meetings . The Court of Appeal further noted that while the applicant applying for a meeting to be called bears the responsibility of raising any issues relating to creditors to the court, *creditors themselves who consider that they are unfairly treated should raise this to the court hearing the application*. Indeed, while creditors may yet be able to raise objections at the subsequent hearing to sanction the scheme, these creditors will be expected to *provide a good explanation as to why these objections were not raised earlier* (*TT International* at [59]).

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34 The current version of the Practice Statement, the Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006) dated 26 June 2020, retains the flavour of the previous Practice Statement; it states that "[w]hile members and/or creditors will still be able to appear and raise objections based on an issue identified in paragraph 6 above [*ie*, an issue that might lead the court to refuse to sanction the scheme] at the sanction hearing, the court will expect them to show good reason why they did not raise the issue at an earlier stage" (at para 10).

35 In *Re Smile Telecoms Holdings Ltd and another* [2022] EWHC 740 (Ch) 519 ("*Smile Telecoms*"), Snowden LJ (sitting in the High Court) noted at [48] that the Practice Statement aims to discourage parties who disagree with a scheme from playing a tactical game of keeping their powder dry at the convening stage, before raising jurisdictional points at the sanction hearing. Thus, Snowden LJ took the view that if proper notice of the convening hearing is given, the parties affected have a proper opportunity to adduce evidence opposing an order summoning a meeting of creditors/members, the court is satisfied by the evidence adduced at the convening stage and there is no material change in circumstances, the court is not required (absent some good reason) to conduct the evidential exercise again at the sanction hearing, since this would be a waste of time and expense (at [48]).

36 Thus, if creditors have not objected to creditor classification or involvement at the convening stage, but raise such objections in opposing sanction of the scheme, the court will expect a good explanation (*TT International* at [59]) or good reason (para 7 of the Practice Statement) as to why this was not raised earlier; and if there is no good reason and no material chance of circumstances the court is not required to revisit those creditor issues again at the sanction stage (*Smile Telecoms* at [48]).

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37 UTSS, however, contended that even if it had no good explanation / reason for not objecting to creditor classification at the convening stage, the court was obliged to entertain its objections at the sanction stage. UTSS relied on *Re ColourOz Investment 2 LLC and others* [2021] BCLC 55 ("*ColourOz*"), an earlier decision of Snowden J's (as he then was), where he said that "the court would always have to address a class question even if raised at sanction (because it goes to jurisdiction)", although he noted that "unless a good reason can be shown, such a late submission is unlikely to be well received and might, in an extreme case, justify disallowing an opposing creditor's costs, or even making an adverse costs award" (at [44]).

38 Of Justice Snowden's two decisions, I prefer his approach in *Smile Telecoms*: that if, without good explanation/reason, a creditor has not disputed a creditor issue at the convening stage, the court is not required to address that issue again at the sanction stage.

39 This is more consonant with the approach adopted by the Court of Appeal in *TT International*. Indeed, it would undermine the approach in *TT International* if the court were required to re-decide the issue of creditor classification at the sanction stage, on belated objections raised by creditors without good explanation or reason. If the court were so required, not only the company but also its other creditors would have spent time, effort, and expense in proceeding with the scheme meeting, and in otherwise pursuing or considering the proposed scheme – all of which could have been avoided if the issue of creditor classification were resolved at the convening stage. While it has been suggested that the court could allow the objection while disallowing the opposing creditor's costs or even making an adverse costs award (*ColourOz* at [44]), the court should not be limited in this way. The court should be allowed to decline to revisit an issue of creditor classification that it had already decided

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at the convening stage, when the creditor in question chose to stand by and not object. This is especially so if the creditor has breached court directions for the filing of reply affidavits (as was the case here). As stated by Mr Justice Floyd in *DX Holdings Ltd* [2010] EWHC 1513 (Ch), it would be regrettable for a creditor to ask the court to make a different value judgment at the sanction hearing when that creditor failed to file evidence (or attend) at the convening stage (at [9]).

40 I had agreed with the liquidators that the classification of creditors into two classes (Potentially Secured and Unsecured) was appropriate, and made the Convening Order on that basis. I declined to revisit that issue based on objections belatedly raised by UTSS without good explanation or reason.

41 UTSS contended that, in any event, it had a good explanation/reason for not raising its objections to creditor classification at the convening stage. I did not accept that contention.

42 UTSS said that when the Convening Application was filed on 6 June 2024, the liquidators did not yet have in-principle approval sufficient to pass the Scheme.[36] UTSS only saw that level had been passed, from the liquidators' submissions one working day before the Convening Hearing.[37] The fact remains that the court had directed creditors to file any reply affidavit by 21 June 2024, but UTSS did not do so. By the time of the Convening Hearing, it was apparent to UTSS that the Scheme would pass, even if UTSS voted against it within the class of Potential Secured Creditors, and yet UTSS' counsel raised no objection

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36 First Affidavit of Evidence-in-Chief of Lai Kuan Loong Victor dated 15 August 2024 ("1LKLV") at para 48(b).

37 1LKLV at para 48(c).

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to the Scheme or the Convening Application. UTSS now says that it is a secured creditor entitled to be paid its full claim of US$42.4 million out of the Uninjuncted Proceeds in priority to all other creditors – if that is what UTSS thought all along, one would have expected UTSS to object being grouped together with the financing banks as Potential Secured Creditors, which (if the Scheme were passed and sanctioned) would result in it getting just 1.7% rather than 100% of its US$42.4 million claim.

43 Put another way, UTSS' position is that it could disregard the court's direction about filing reply affidavits, it could then remain silent at the Convening Hearing (although it knew by then that the liquidators had the requisite creditor support for the Scheme even if UTSS were to vote against it), it could raise its objections only after the Convening Order, and the court would have no choice but to entertain its belated objections. I rejected UTSS' position. I found that the court was not obliged to entertain UTSS' belated objections, which it raised only after the Convening Order without good explanation or reason. In particular, the court was not required to revisit the issue of creditor classification if this was an issue which the court had already decided at the convening stage, which here it was.

44 In any event, I found that UTSS' objections failed on the merits, as I explain below.

Should sanction be refused because of the manner in which the Scheme had been proposed and taken forward?

45 UTSS complained that the liquidators had delayed the resolution of issues relating to the security claimed over the Uninjuncted Proceeds. UTSS also complained about the liquidators' lack of sufficient disclosure – to the court and to UTSS.

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46 As a threshold point, I did not accept that these complaints could justify not sanctioning the Scheme, if the requirements for such sanction were otherwise met.

47 UTSS' complaint about delay was linked to its complaint about creditor classification: it contended that the liquidators ought to have advanced the summonses they had filed for the court to determine issues relating to the security claims of the financing banks (in SUM 4108) and UTSS (in SUM 1003).[38] However, the court had directed that SUM 4108 be heard with the UTSS Interpleader – and that had proceeded to trial. As for SUM 1003, the liquidators informed the court that proceedings were held in abeyance pending an attempt to resolve matters by mediation;[39] but in any event, even if all the issues in SUM 1003 were resolved, the question of priority as between security interests would remain to be decided, and that would only be done after SUM 4108 (since tied up with the UTSS Interpleader) had been decided.

48 UTSS says the issues relating to the security claims should be expeditiously resolved by the court, and if that were done there would not be a class of Potential Secured Creditors (since the court would have decided which creditors have security, over what assets, and how the respective claims rank). But one objective of the Scheme is to obviate the time, trouble, and expense that this would entail – and all the Potential Secured Creditors (other than UTSS), support that. If the Scheme is one which ought properly to be sanctioned, that would undermine UTSS' objection that the court should first fully and finally determine the security claims: that is something which the creditors with

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38 UTSS' Written Submissions at para 40; Minute Sheet (30 August 2024).

39 1GTP (Convening) at para 31.

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security claims could vote on, as part of the Scheme, and which they have voted on.

49 As for disclosure, UTSS complained that the liquidators did not disclose to the court:[40]

(a) that there was no precedent for classifying creditors according to their potential rights;

(b) that the liquidators had acknowledged that UTSS had a lien; and

(c) that UTSS did not face the same difficulty as the other Potential Secured Creditors of identifying the assets which it had security over.

50 I rejected all of UTSS' complaints as they were unmeritorious:

(a) there *is* precedent that schemes can include claims with elements of contingency and futurity, and which are of uncertain quantum (*Re Hawk Insurance* [2001] 2 BCLC 480 at [47]–[48] and [50], cited in *TT International* at [136]); *Re T&N Ltd and other companies* [2006] EWHC 1447 (Ch) is another example – where persons with *potential* claims for damages for personal injuries arising out of exposure to asbestos, were included in a scheme;

(b) the liquidators had not acknowledged that UTSS had a valid lien;[41] thus, the validity of the security claimed by UTSS remains in dispute; and

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40 UTSS' Written Submissions dated 26 August 2024 at para 61.

41 1GTP (Convening) at paras 29–30; Oversea Chinese Banking Corporation Limited's Written Submissions dated 26 August 2024 ("OCBC's Written Submissions") at para 56.

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(c) that there was difficulty in tracing and identifying the specific oil products which may be secured to the various financing banks was specifically mentioned in the liquidators' affidavit, in contrast to UTSS' claim which was over oil stored in its tanks and the proceeds thereof.[42]

51 These complaints were not then pursued in oral submissions. Instead, UTSS submitted:[43]

(a) that the liquidators had to explain why they were abandoning their summonses; and

(b) that the liquidators should have disclosed (to creditors) what they are asking the Potential Secured Creditors to waive their security in respect of.

52 Regarding the liquidators supposedly "abandoning their summonses", the liquidators had explained in their supporting affidavit why proceeding with the Scheme (rather than with a contested determination of the summonses) would allow for a fair, commercial and expeditions distribution of HLT's assets. First, the significant uncertainty in the recoveries the Scheme Creditors would be able to obtain without the Scheme meant that the Scheme represented the most commercial and cost-effective solution for the Scheme Creditors. Second, without the Scheme, it would take several years before there could be full and final determination of the various security interests, how they ranked against each other, and the specific property which a security interest is secured against.

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42 1GTP (Convening) at para 39.

43 Minute Sheet (30 August 2024).

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Seen this way, the Scheme gives the Scheme Creditors certainty in terms of the timing in which they can obtain recoveries from the Uninjuncted Proceeds.[44]

53 As for the supposed non-disclosure (to creditors) of what the Potential Secured Creditors were being asked to waive their security in respect of, the liquidators' lawyers had highlighted to UTSS' lawyers that the Uninjuncted Sale Proceeds amounted to US$88.3 million, as was evident from the judicial managers' reports dated 6 November 2020 and 7 February 2021.[45]

54 UTSS' complaints about the liquidators' conduct do not provide a basis for refusing to sanction the Scheme, and the complaints are in any event unmeritorious. I would add that it lies ill in UTSS' mouth to complain about non-disclosure when it chose not to file a reply affidavit, and it chose to raise no objections at the Convening Hearing.

Had UTSS been improperly classified as a potential secured creditor?

55 UTSS' position on creditor classification appeared to evolve over time. In seeking to defer the Scheme meeting (as part of its application to set aside the Convening Order), UTSS only contended[46] that there was a good arguable case that UTSS had been wrongly classified with the financing banks as Potential Secured Creditors, because UTSS had a better claim as compared to those of the banks:

(a) the financing banks faced the challenge of identifying the oil that they had security over, whereas UTSS did not have this problem; and

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44 1GTP (Convening) at paras 36–48.

45 Liquidators' Written Submissions at para 97.

46 UTSS' Written Submissions at para 12.

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(b) the liquidators in SUM 1003 did not challenge the validity or existence of UTSS' security (which I have addressed above at [50(b)] above).

56 In challenging sanction, however, UTSS advanced the new (and more fundamental) objection to creditor classification: that a class of Potential Secured Creditors was impermissible: there had to be a determination of who was secured, who was unsecured, and how the secured creditors ranked as between themselves.

57 UTSS said the fact that security claims must be determined before a scheme of arrangement can be properly proposed is implied in the statutory framework. UTSS cited s 70(4)(b)(i) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA").[47] That section gives the court certain powers to "cram down" where there is a dissenting class of creditors. That had no application to the present case – there was no dissenting class of creditors here; there was just one dissenting creditor (*ie*, UTSS) in a class of Potential Secured Creditors where all the other creditors in the class who voted, voted for the Scheme.

58 Be that as it may, UTSS' argument was that s 70(4)(b)(i) of the IRDA addressed the scenario where the creditors in the dissenting class were secured creditors. From this, UTSS argued that there could not be a class of Potential Secured Creditors – for s 70(4)(b)(i) of the IRDA to work, one must know whether the creditors in the dissenting class are secured or not. For present purposes, this can remain an open question: that is, if the Potential Secured Creditors under the Scheme were a dissenting class, whether they should be

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47 UTSS' Written Submissions at para 32.

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regarded as a dissenting class of secured creditors (under s 70(4)(a)(i)) or unsecured creditors (under 70(4)(a)(ii)).

59 Section 70(4)(b)(i) of the IRDA did not support an argument that where the class is not a dissenting class, one still had to determine the security interests of every creditor claiming to have security, otherwise none of those creditors could be included in a scheme. That would unnecessarily limit the scope and utility of s 210 of the Companies Act 1967 (2020 Rev Ed), especially given judicial recognition that claims with elements of contingency and futurity, and which are of uncertain quantum, can be included (see [50(a)] above).

60 UTSS also argued that unless the various security claims were conclusively determined, it was not possible to properly compare the various creditors' rights in the appropriate comparator (which UTSS said was insolvent liquidation).[48] I rejected this argument:

(a) I agreed with the liquidators that the appropriate comparator here was not insolvent liquidation; since an appropriate comparator is "the most likely scenario in the absence of scheme approval", the comparator here was proceeding with a determination of security claims, with all the time, trouble, and expense that entailed (see *Pathfinder Strategic Credit LP and another v Empire Capital Resources Pte Ltd and another appeal* [2019] 2 SLR 77 ("*Pathfinder*") at [87] citing *TT* at [140]);

(b) one could readily compare the positions of the creditors with or without the Scheme (and the liquidators did just that):

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48 UTSS' Written Submissions at para 31.

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(i) the Potential Secured Creditors could give up their claims to security and be treated *pari passu* together with Unsecured Creditors, or their security claims could be determined; and

(ii) the Unsecured Creditors could agree to the Scheme and receive *pari passu* distribution, or they could wait for a determination of the security claims.

61 What UTSS was left with, was its contention that it had a better security claim, as compared to the claims of the financing banks.

62 In this regard, neither UTSS nor the liquidators asked that I attempt to resolve the disputed issues regarding the security claims. However, UTSS invited me to conclude nevertheless that it had a better claim. I could not reach that conclusion because:

(a) UTSS faces the various issues raised in SUM 1003;

(b) the validity of UTSS' purported lien is being challenged by various parties in the UTSS Interpleader,[49] with those parties alleging that UTSS may have "acted in concert with the Lim Family in the unlawful transfers and movements of products in the tanks";[50]

(c) there is evidence in the UTSS Interpleader that serious fraud has been perpetuated by UTSS; specifically, that two versions of monthly stock balance reports for certain tanks had been maintained by UTSS, on request of HLT;[51]

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49 Liquidators' Written Submissions at paras 65–66.

50 1GTP (Sanction) at pp 165–288.

51 OCBC's Written Submissions at para 59.

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(d) there is the issue of whether UTSS' lien (even if valid) has priority over the claims of the financing banks, where the banks had acquired security over oil prior to the oil being stored with UTSS;[52]

63 The liquidators were quite justified in regarding UTSS, like the financing banks, as a party that had asserted a security interest over the Uninjuncted Proceeds, for the purposes of classifying them together as Potential Secured Creditors. Their rights were not "so dissimilar that they [could not] consult together with a view to their common interest" (*Pathfinder* at [88(c)] citing *Wah Yuen Electrical Engineering Pte Ltd v Singapore Cables Manufacturers Pte Ltd* [2003] 3 SLR(R) 629 ("*Wah Yuen*") at [11]).

64 In *Wah Yuen*, 14 creditors who voted in favour of the scheme stood to recover 100% of their claims. 22 other creditors who voted in favour of the scheme stood to recover various percentages of their claims ranging from 15.33% to 89.07%. The court suggested that the 14 who stood to recover 100% of their claims should be put in a separate class, as should the three whose claims were subordinated to the rest of the creditors (at [23]). However, for the 22 creditors within the 15.33% to 89.07% range of recovery, the court considered that putting them into separate classes based on minor differences in the percentages that they stood to recover was both unrealistic and impractical (at [21]). The court cautioned not enabling a small minority to thwart the wishes of the majority by fragmenting the creditors into small classes (at [21]–[22]). Here, even if it might be said that UTSS had a better claim than the claims of the financing banks (a conclusion which I could not reach), the liquidators were entitled to adopt a "fairly robust" approach and classify creditors in a "broad

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[52] Liquidators' Written Submissions in at paras 70–71.

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and objective manner" (*Wah Yuen* at [22]). UTSS was properly included with the financing banks in a class of Potentially Secured Creditors.

65 Finally, the fact that UTSS had not disputed creditor classification by filing a reply affidavit, or by objecting at the convening stage, could be held against UTSS. Even if UTSS' objections were entertained, in the absence of a good reason (for which there was none), such a submission was – as Snowden J suggested in *ColourOz* at [44] – not well received. Lateness in raising objections at the very least went towards the weight the court should accord to such belated objections. Specifically, UTSS' lack of objection up to the making of the Convening Order supported the inferences that:

(a) UTSS did not really believe that it had an indisputable right to be paid its full claim of US$42.4 million out of the Uninjuncted Proceeds, and

(b) UTSS did not regard being grouped together with the financing banks in a class of Potential Secured Creditors as objectionable.

Was the Scheme one which a man of business or an intelligent and honest man, being a member of the class concerned and acting in respect of his interest, would reasonably approve?

66 On this last requirement, the court must bear in mind that it is not a mere rubber stamp; the court will consider the scheme and assess if it is a reasonable one. Where the court concludes that there is an objection to the scheme that would lead a reasonable man *not* to approve it, the court may accordingly decline to confirm the scheme. But the court will – assuming that the scheme is fair and equitable – be strongly influenced by a big majority vote, notwithstanding that the minority object to the scheme. This is because the court will not take it upon itself to assess the commercial merits of the scheme

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(*Oriental Insurance* at [43] citing *Palmer's Company Law* vol 2 (Geoffrey Morse ed) (Sweet & Maxwell, Looseleaf Ed, 1992, July 2006 release) at para 12.030).

67 In this regard, I considered that the Scheme was a reasonable one, and that UTSS' objections were not objections such that any reasonable man might say that he could not approve the Scheme. The Scheme entailed Potential Secured Creditors giving up their claims to security and accepting *pari passu* payment alongside the Unsecured Creditors, but (as the liquidators explained) that would avoid the time, trouble, expense, and uncertainty attendant in pressing on to having the security claims fully and finally determined. All the other Potential Secured Creditors present and voting evidently considered that reasonable, in voting for the Scheme. I was entitled to be strongly influenced by this big majority vote, provided that the scheme was fair and equitable (as I considered it to be). Whether there was commercial merit in Potential Secured Creditors participating in the Scheme, was up to them as a class to judge, not for the court itself to judge.

68 I thus concluded that the Scheme was one which a man of business or an intelligent and honest man, being a member of the class concerned and acting in respect of his interest, would reasonably approve.

69 With that, all three requirements in *Oriental Insurance* were satisfied, and there were no other reasons for me not to sanction the Scheme. The Scheme was, accordingly, sanctioned.

Should the Convening Order be set aside?

70 In sanctioning the Scheme, I dealt with the objections that UTSS raised against sanction. UTSS had raised a subset of the same set of objections in its

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application to set aside the Convening Order. Accordingly, I dismissed the remaining prayers in the Setting-aside Application.

Conclusion

71 For the above reasons, I sanctioned the Scheme, and dismissed the remaining prayers in UTSS' Setting-aside Application.

72 I ordered UTSS to pay the liquidators costs of $20,000 (all in) for SUM 1957 (UTSS' Setting-aside Application), and costs of $15,000 (all in) for OA 726 (the liquidators' Sanction Application).[53]

Andre Maniam
Judge of the High Court

[53] Minute Sheet (30 August 2024).

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Vergis S Abraham SC, Lau Hui Ming Kenny, Alston Yeong and Huang Xinli, Daniel (Providence Law Asia LLC) for Hin Leong and its liquidators, applicants in HC/OA 555/2024 and HC/OA 726/2024;
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Juliana Lake (TSMP Law Corporation) for second non-party;
Iris Ng (Helmsman LLC) for third non-party;
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Daniel Liang and Richard Xu (Allen & Gledhill LLP) for seventh non-party;
Felicia Ang (JWS Asia Law Corporation) for eighth non-party;
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