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

[2024] SGHC 271

Suit No 805 of 2020 (Summons No 2946 of 2024)

Between

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

… *Plaintiffs*

And

(1) Lim Oon Kuin
(2) Lim Chee Meng
(3) Lim Huey Ching

… *Defendants*

And

(1) Hiew Wen Ji
(2) Hiew Wen Li

… *Non-parties*

Bankruptcy No 3811 of 2024 (Summons No 2970 of 2024)

In the matter of s 328 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Lim Oon Kuin

Between

Lim Oon Kuin

… *Claimant*

And

(1) Hiew Wen Ji
(2) Hiew Wen Li

… *Non-parties*

GROUNDS OF DECISION

[Insolvency Law — Administration of insolvent estates — Disposal of assets]
[Insolvency Law — Avoidance of transactions — Dispositions of property after commencement of insolvency proceedings]
[Land — Conveyance — Conveyancing and Law of Property (Conveyancing) Rules 2011]

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Re Lim Oon Kuin
(Hiew Wen Ji and Hiew Wen Li, non-parties)

[2024] SGHC 271

General Division of the High Court — Suit No 805 of 2020 (Summons No 2946 of 2024), Bankruptcy No 3811 of 2024 (Summons No 2970 of 2024)
Philip Jeyaretnam J
14 October 2024

25 October 2024

Philip Jeyaretnam J:

1 Having concluded an agreement for the sale of a residential property, the vendor enters into bankruptcy and directs payment of the purchase monies to third parties hitherto uninvolved in the transaction. Would compliance by the purchasers give rise to a disposition of property void under s 328(1) of the Insolvency, Restructuring and Dissolution Act 2018 (the "IRDA")? That was the question raised by two applications brought by the purchasers in this case. The applications were heard on an urgent basis. I dismissed them with brief oral reasons. These are the full grounds of my decision.

Background

2 In June 2024, Mr Lim Oon Kuin and Ms Lim Huey Ching (together, "the Lims") put up their good class bungalow at 1K Tanglin Hill, Singapore

248028 (the "Property") for sale by public tender, which sale was expressed as subject to certain "Terms and Conditions of Tender" (the "T&Cs").[1]

3 On 19 July 2024, Mr Hiew Wen Li and Mr Hiew Wen Ji (together, "the Hiews") offered to purchase the Property for $39,200,000.00 on revised T&Cs. They were then informed on 6 August 2024 that the Lims were prepared to accept that offer, albeit on the original T&Cs.[2]

4 Negotiations followed over the T&Cs and on 16 August 2024, the Lims finally accepted the Hiews' offer on revised T&Cs as set out in a redraft of 8 August 2024 (the "Revised T&Cs").[3] In the event, a sale-and-purchase agreement was concluded on 16 August 2024, and the transaction was fixed for completion on 15 October 2024.[4]

5 Central to these applications was cl 23(1) of the Revised T&Cs, which provided that on completion of the sale and purchase:[5]

> (i) the Purchaser shall pay via cashier's order or banker's draft (drawn on a bank in Singapore) the balance Purchase Price and all apportionments of outgoings due and payable under these "TERMS AND CONDITIONS OF TENDER" issued in the manner and *to the payees authorised by the liquidators of Hin Leong Trading (Pte.) Ltd in a written authorisation letter to the Purchaser* and (ii) the Vendor's solicitors shall pay the Deposit via cashier's order or banker's draft (drawn on a bank in Singapore) issued in the manner and *to the payees authorised by the liquidators of Hin Leong Trading (Pte.) Ltd in a written authorisation letter to the Purchaser*.
>
> [emphasis added]

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1 Hiew Wen Li's affidavit in HC/SUM 2946/2024 dated 10 October 2024 ("HWL-1") at paras 12–13.

2 HWL-1 at para 14.

3 HWL-1 at para 19.

4 HWL-1 at para 21.

5 HWL-1 at pp 308-309, cl 23(1).

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6 For context, the liquidators of Hin Leong Trading (Pte.) Ltd (the "Liquidators") had commenced a civil suit against the Lims and another Mr Lim Chee Meng some four years earlier and, in the course of those proceedings, obtained worldwide Mareva injunctions against each of the three defendants. Those injunctions prohibited dealings in or the removal from Singapore of their assets. As regards the injunctions against the Lims (the "Freezing Injunctions"),[6] the Property was expressly stated as subject to those prohibitions. It was against that backdrop that cl 23(1) of the T&Cs was amended to require the Liquidators' written consent to the payees and the manner of payment.[7] Prior to the Lims' final acceptance of the Hiews' offer, the Liquidators confirmed that they would give the written authorisation called for by cl 23(1) provided a suitable payee was nominated.[8]

7 There things stood until 2 October 2024, on which date the Hiews' solicitors received an email from the Lims' solicitors directing that payment of the balance purchase monies be made to two companies, namely MKC Holdings (Pte.) Ltd and LHC Pte. Ltd. ("MKC" and "LHC" respectively, and the "SPVs" collectively).[9] A letter authorising this arrangement was issued by the Liquidators on 9 October 2024 and conveyed to the Hiews' solicitors by email on the same day.[10]

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6 HC/ORC 3094/2021 and HC/ORC 3095/2021.

7 HWL-1 at para 16.

8 HWL-1 at p 314, para 3.

9 HWL-1 at pp 339–342.

10 HWL-1 at para 31 and pp 389–391.

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8 According to the Lims and the Liquidators, MKC and LHC were corporate vehicles wholly-owned by Mr Lim and Ms Lim respectively and had been set up to manage their assets a long time previously.

9 Judgment by consent had been entered on 30 September 2024 against both Mr Lim and Ms Lim on a joint and several basis in an amount of $3.5 billion. Mr Lim then filed for his own bankruptcy on 11 October 2024. As for Ms Lim, bankruptcy proceedings, though anticipated, had not been commenced at the time of the hearing before me.

10 The Hiews, upon learning of the Lims' insolvency, were concerned by the Lims' directions that would have them pay strangers to the transaction for reasons yet unknown to them. They were concerned that compliance with those directions would expose them to future claims or complaints by the Lims' creditors or trustees in bankruptcy,[11] and so two applications were made with a view to confirming their right to pay the Lims directly.

11 By HC/SUM 2970/2024 ("SUM 2970"), the Hiews sought, among other things, (i) a declaration that the Lims' directions and the Liquidators' authorisation that the Hiews make payment to the SPVs would constitute void dispositions of property under s 328(1) IRDA; and (ii) orders that the balance purchase monies be paid to the Lims (by delivery of separate cashier's orders to the Lims' solicitors).

12 By HC/SUM 2946/2024 ("SUM 2946"), the Hiews sought, among other things, an order that the Freezing Injunctions be varied to provide for the Hiews' payment of the balance purchase monies to the Lims.

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[11] HWL-1 at para 34.

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Analysis

13 When the matter came on for urgent hearing before me, I indicated to counsel that the question was whether the Hiews were contractually entitled to pay the Lims (rather than the Lims' nominees, as authorised by the Liquidators). If they were, then they could disregard the nomination. Another way to put the question was in terms of whether the Lims were contractually entitled to make the nomination as they had done. The well-established principle is that where a vendor expressly nominates a third party to receive payment of the purchase proceeds and the purchaser complies with that nomination, then the purchaser's obligation to pay the purchase monies is discharged and the purchaser is entitled to conveyance of the property. In the absence of a prohibition against such nomination in the sale-and-purchase contract, the vendor would ordinarily be entitled to nominate a third party to receive the purchase monies. In this case, the contract expressly permitted nomination of a third-party payee subject to authorisation in writing by the Liquidators: see cl 23(1) of the Revised T&Cs set out at [5] above. It was not disputed that the Liquidators had provided the contractually requisite written authorisation.

14 Thus, it was clear that the Lims were contractually entitled to nominate the SPVs to receive the purchase monies as the Liquidators had provided their authorisation for this. The Hiews' argument then was that payment by them to the SPVs would be a void disposition of property within the meaning of s 328(1) IRDA, given that bankruptcy proceedings were underway in respect of Mr Lim. That, it was said, furnished "reasonable grounds" for refusing to pay the SPVs and instead make payment only to the Lims themselves pursuant to r 18(2)(c)(iv) of the Conveyancing and Law of Property (Conveyancing) Rules 2011 (the "CLPR").

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15 Introduced in 2011, the CLPR was part of a range of legislative safeguards concerning the payment of conveyancing monies. Its introduction was in part a response to incidents involving solicitors absconding with such monies. Among its safeguards was r 18, which concerns instructions from vendors (or their solicitors) for purchase monies to be paid to third parties instead of to the vendors themselves: Singapore Parl Debates; Vol 87, Sitting No 27; Cols 4857–4858; 11 April 2011 (Mr K Shanmugam, Minister for Law).

16 I accepted that these statutory safeguards, if properly invoked, would entitle a purchaser not to comply with a direction given in accordance with the sale-and-purchase agreement. This statutory protection trumps the contractual position between the parties. The question then was what the phrase "other reasonable grounds for such refusal" encompassed. In this connection, the person who must hold such grounds for refusal is not the purchaser but the purchaser's solicitor. This intimates that the holding of such grounds involves professional judgment. Moreover, the preceding grounds all relate to the quality, sufficiency and veracity of the information and documents provided by the vendor (or his solicitor) with a view to enabling the purchaser's solicitor to verify the identity of, and the amount to be paid to, the third-party payee.

17 Counsel did not address me in any depth on interpretation of the phrase "any other reasonable grounds for such refusal". In my judgment, on ordinary principles of statutory construction, the canon of construction known as *ejusdem generis* ("of the same kind" in English) would apply. Accordingly, the compass of reasonable grounds would be limited to those of the same kind as those specified in rr 18(2)(*c*)(i) to (iii), *ie*, relating to the purchaser's solicitor's ability to verify the identity of the third-party payee and the amount to be paid. This would also accord with the statutory purpose of the CLPR, namely to reduce the risk of solicitors absconding with conveyancing monies. Thus, such reasonable

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grounds would include matters raising a real risk that payment in accordance with such a direction would not discharge the purchaser's obligations to the vendor. An example of this would be indications that the vendor had not in fact authorised payment to that payee. By way of contrast, the phrase would not include general grounds for refusing completion that do not relate specifically to the directed mode of payment to a third party.

18 There was no evidence before me that the Hiews' solicitors as opposed to the Hiews themselves held grounds for refusal. The supporting affidavit for the application referred only to the Hiews having such grounds.[12] Notwithstanding this gap in the evidence, I proceeded to consider the arguments on the basis that the Hiews' solicitors had indeed exercised their professional judgment and concluded that they had grounds for such refusal.

19 To recap, the Hiews' contention was that the direction to pay the SPVs was a void disposition of property within s 328(1) IRDA. They did not contend that conveyance to them of the Property would be a void disposition. Accordingly, their solicitors' proffered ground for refusal related specifically to the directed mode of payment and I thus accepted that, if their contention were correct then they would be able to rely on it as a "reasonable ground for refusal".

20 I now turn to the question whether the direction was a void disposition of property. I begin by reproducing s 328(1) IRDA:

> **Restrictions on dispositions of property by bankrupt**
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> **328.**—(1) Where a person is adjudged bankrupt, any *disposition of property made by the bankrupt* during the period beginning on the day of the making of the bankruptcy application and ending on the day of the making of the bankruptcy order is void except to the extent that such

12 1st Affidavit of Hiew Wen Li filed on 10 October 2024, para 35.

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> disposition has been made with the consent of, or been subsequently ratified by, the Court.
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> …
>
> [emphasis added]

21 It was submitted for the Hiews that (a) the relevant "property" belonging to Mr Lim as the bankrupt was the balance purchase monies payable on completion of the sale; and (b) the "disposition" would consist in the Hiews' act of paying those sums to the SPVs rather than the Lims.[13]

22 The difficulty with these arguments was that under cl 23(1) of the Revised T&Cs, the Lims only had a contractual right that the Hiews pay the balance purchase monies to the payee(s) nominated by the Lims with the Liquidators' written consent. That contractual right, being a chose in action, was the full extent of the Lims' 'property' in relation to the balance purchase monies. What the Lims certainly did *not* have was a present interest, whether legal or equitable, in the monies that the Hiews would part with on completion of the transaction. Those monies quite evidently belonged to the Hiews, and the impugned arrangement called for their transfer to the SPVs: to that extent, there would only be a disposition of property by the *bankrupt's counterparty* when s 328(1) IRDA required a disposition of property by the *bankrupt himself*.

23 Counsel for the Hiews then submitted at the hearing that the extinction of the Lims' contractual right to be paid amounted to a disposition of property. In this connection, I was urged to interpret the word "disposition" in s 328(1) IRDA as encompassing any transaction by which value is subtracted from the bankrupt and transferred to another party, regardless of whether there was a grant or transfer of property rights in the formal sense (citing Walter Woon *et*

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13 Purchasers' Written Submissions in HC/SUM 2970/2024 dated 13 October 2024 ("PWS") at paras 28–29.

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al, *Woon's Corporations Law* (LexisNexis, 2022 Desk Ed, 2022) at para 1302).[14] The argument, therefore, seemed to be that (a) payment by the Hiews to the SPVs would merely be the practical means by which (b) the Lims would dispose to the SPVs a valuable right belonging to them (*ie*, a right to receipt of the balance purchase monies for themselves).

24 However, this was a flawed argument. While I accepted that s 328(1) could in principle apply to a subtraction of value to the bankrupt matched with an addition of value to another party (regardless of whether there was also a formal grant or transfer of property rights), this contention did not advance the Hiews' case because that was not the situation here.

25 To understand this, it is important to appreciate that there are two bilateral relationships involved: one between vendor and purchaser, and the other between vendor and the third party. Where a vendor nominates a third party to receive the purchase monies, the flow of monies takes a shortcut, bypassing the vendor. But the legal consequences happen only within the respective bilateral relationships. As between vendor and purchaser, the purchaser's obligation to pay the vendor is discharged by performance. As between vendor and third party, there is also a change affected in their legal relationship which does not involve the purchaser. What that change is depends on whether the monies flow to the third party as a gift, a loan, the repayment of a debt or to be held on trust by the third party for the vendor.

26 To explain this further, the nomination by the vendor of a third party to receive the purchase monies elides two distinct transactions in practice, but they remain distinct in theory. In analysis, while the flow of funds physically

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14 PWS at para 23.

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bypasses the vendor it in law implicates the two bilateral relationships between vendor and purchaser and vendor and third party respectively. As between purchaser and third party, however, the payment produces no legal change or effect. There is no obligation *between them* that would be performed or discharged by that payment.

27 Thus, the court must in turn examine the bilateral relationships between vendor and purchaser and between vendor and third party against s 328(1) IRDA. As between vendor and purchaser, the vendor's contractual right that the purchase monies be paid (whether to him or his nominees) will be extinguished by the purchaser paying either the vendor or his nominees, in accordance with the vendor's instructions – such payment will constitute performance in discharge of the purchaser's primary obligation under the sale-and-purchase agreement. At the same time and in return, the vendor performs his reciprocal contractual obligation to convey the property to the purchaser.

28 The conveyance of land pursuant to a sale-and-purchase agreement could potentially be caught by s 328(1) IRDA as a disposition, but this was not what the Hiews were concerned about. That was shown by the careful wording of the summons to seek a declaration not that the sale and purchase of the Property would be a void disposition, but only that the Lims' directions and the Liquidators' authorisation constituted or gave rise to a void disposition. This focus was also implicit in their contention that any concern with s 328(1) would be eliminated or avoided if they were to pay the Lims directly instead of the nominated SPVs.

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29 The Hiews instead directed attention to the extinction of their obligation to pay the purchase monies. But this extinction would not be a disposition of property on the part of the Lims any more than the collection of a debt by them from the Hiews (which would extinguish the latter's obligation to repay the debt): see Sir Roy Goode QC, *Goode on Principles of Corporate Insolvency Law* (Kristin van Zwieten ed) (Sweet & Maxwell, 5th Ed, 2018) at para 13-122.

30 Turning then to the second bilateral relationship, namely that between vendor and third party (here, between the Lims and the SPVs) that could involve a transfer of value from the former to the latter potentially amounting to a disposition of property. For example, where a bankrupt receives proceeds of sale and then transfers them to a third party as a gift, that gift of monies would be a disposition of property within the meaning of s 328(1). In this case, however, the form of (and basis for) this second transaction was not apparent from the material placed before me. I was not told whether the SPVs would receive the balance purchase monies as a gift or a loan; on trust for the Lims; or in discharge of a prior debt owed by the Lims to the SPVs. For this reason, when counsel for the Lims – acting out of an abundance of caution – made an oral application that the court grant its consent to the transaction under s 328(1) IRDA, I declined to do so and made no order on that oral application. The fundamental point, however, was that even if the transaction as between the Lims and the SPVs were (or would be) void, then that would still be of no concern to the Hiews. They would still have obtained a good discharge of their obligation to pay the purchase monies and their title to the Property would not be defeated on this ground in any event. For completeness, s 328(2) of IRDA would apply if there were a void disposition of property as between the Lims and the SPVs, and the monies would be held by the latter on trust for the former as part of their estates in bankruptcy.

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31 For these reasons, I was not persuaded that the Lims' directions that the Hiews make payment to the SPVs (and the Liquidators' authorisation of those directions) constituted, or would give rise to, a disposition of property. Accordingly, I could not discern any "reasonable grounds" (within the meaning of r 18(2)(*c*)(iv) of the CLPR) for the Hiews' solicitors to refuse to make payment as directed. Thus, there was no basis for granting the relief sought by SUM 2970 and I dismissed the application in its entirety.

32 I now turn to SUM 2946, by which the Hiews sought a variation of the Freezing Injunctions so that payment of the purchase monies could be made to the Lims instead of the SPVs. This application was not well-founded. The Freezing Injunctions prohibited the sale of the Property without the consent of the Liquidators, but the Liquidators had consented to that sale. Moreover, they had authorised payment of the purchase monies to the SPVs. Accordingly, no variation was required to permit completion of the Property's sale. Indeed, the Hiews sought to vary the Freezing Injunctions to direct payment to the Lims notwithstanding the Liquidators' objection to payment being made in this way. There was no basis for the court to make such an order, even if I accepted that the Hiews could intervene as third parties affected by the Freezing Injunctions. Accordingly, I dismissed this application as well.

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Conclusion

33 I dismissed both applications. Given the urgency with which the other parties had had to respond to these applications, I awarded all-in costs in the sum of $6,500.00 per summons to Mr Lim; $2,750 per summons to Ms Lim; and $6,000.00 in respect of SUM 2496 to the Liquidators.

Philip Jeyaretnam
Judge of the High Court

Lai Tze Chang Stanley SC, Yeo Alexander Lawrence Han Tiong, Yeoh Tze Ning and Shjoneman Tan Sze Ern (Allen & Gledhill LLP) for the non-parties in HC/S 805/2020 (HC/SUM 2946/2024) and HC/B 3811/2024 (HC/SUM 2970/2024);
Chia Voon Jiet, Sim Bing Wen and Belle Tan Ling Yi (Drew & Napier LLC) for the plaintiffs in HC/S 805/2020;
Jaikanth Shankar, Sumedha Madhusudhanan and Ng Shu Wen (Davinder Singh Chambers LLC) for the first defendant in HC/S 805/2020;
Christopher Anand s/o Daniel and Harjean Kaur (Advocatus Law LLP) for the third defendant in HC/S 805/2020;
Pillai Pradeep G and Rashpal Singh Sidhu (PRP Law LLC) for the claimant in HC/B 3811/2024;
Suresh Menon and Brian Larry Khoo (Haridass Ho & Partners) for the first and second defendants in HC/S 805/2020 (HC/SUM 2946/2024) and claimant in HC/B 3811/2024 (HC/SUM 2970/2024).

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