Lee Hung Pin *v* Lim Bee Lian and another
[2015] SGHC 171

Case Number : Originating Summons No 1141 of 2014

Decision Date : 01 July 2015

Tribunal/Court : High Court

Coram : Aedit Abdullah JC

Counsel Name(s) : Ong Boon Hwee William, So Siew Sian, Candace and Robin Teo (Allen & Gledhill LLP) for the plaintiff; Anparasan s/o Kamachi and Claire Amanda Lopez (KhattarWong LLP) for the first defendant.

Parties : Lee Hung Pin — Lim Bee Lian and another

Companies – Winding Up

1 July 2015

Aedit Abdullah JC:

Introduction

1 The plaintiff in this case sought to unwind a winding up on the basis that that were irregularities in procedure and matters in the company that called for investigation. The plaintiff in effect sought to turn back the clock. While this can be done in appropriate situations, I found that, in the present case, the grounds relied upon by the plaintiff were insufficient. The supposed irregularities were either of his own making or did not cause harm or prejudice; and his claims that there are matters which require investigation were shadowy. The plaintiff has now appealed my decision and I therefore set out my grounds.

Background

2 The Plaintiff, Mr Lee Hung Pin, was a shareholder and director of Top Treasure Pte Ltd, the 2nd Defendant ("the Company"). The 1st Defendant, Ms Lim Bee Lian, was the secretary and liquidator of the company ("the First Defendant"). The present application was brought under s 343 of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"). The specific orders sought were, in summary:

(a) A declaration that the proceedings or resolutions passed at the final meeting of the Company on 3 September 2012 (including any resolutions to dissolve the company) were void.

(b) A declaration that the purported dissolution of the Company on 5 December 2012 was void and that, consequently, proceedings may be taken as if the company had not been dissolved.

(c) If necessary, an order that the Company be restored to voluntary liquidation.

3 The Company, which was involved in the import and export of sports products, was incorporated in 1997. The shares in the Company were originally held only by the Plaintiff and his then wife, Ms Cheng Yu Fen, in equal proportions. In 2000, a resolution was passed at an Extraordinary General Meeting ("EGM") of the Company to increase the share capital of the Company by way of an

allotment of shares to Ms Cheng's brother and to Ms Cheng's nephew. Following this, the Plaintiff's shareholding went down from 38 per cent to 19 per cent. The Plaintiff claimed to have been unaware of the EGM or the resolutions passed at that meeting. In May 2008, the Plaintiff and Ms Cheng divorced. When the capital increase and share allotment were discovered, along with what the Plaintiff claimed were other irregularities in the affairs of the company, legal proceedings were instituted by the Plaintiff against Ms Cheng in the Republic of China (Taiwan).

4 A written directors' resolution, aiming to fulfil the requirements of a declaration of solvency under s 293(1) of the CA, was passed on 21 August 2009. It stated that the directors had made a full and final inquiry into the affairs of the Company and were of the opinion that the Company was able to pay its debts in full within a period not exceeding twelve months from the date at which the Company proposed to pass a special resolution for winding up. There appeared to be no actual meeting at which the solvency of the Company was considered by its Board of Directors.

5 Notice was given on 24 August 2009 that an EGM would be held on 16 September 2009 to consider a special resolution to wind up the company under s 290(1)(*b*) of the CA. This EGM was held and Ms Lim was appointed as the Company's liquidator. On 24 September 2009, notice of the EGM was published in a local paper. A final general meeting was called for and held on 3 September 2012 to approve the Company's statement of account and to determine the disposal of its books, accounts and documents. The Company was then dissolved on 5 December 2012. Just shy of two years after that, the Plaintiff filed the present application on 4 December 2014.

The Plaintiff's Case

6 The Plaintiff claimed that there were irregularities in the administration of the Company, its winding up and eventual dissolution. Firstly, the plaintiff had not received any notice of the winding up: the notices were sent to the wrong address, namely, 5F, No 6, 26 Alley, 841 Lane Pei An Road, Taipei, Taiwan when the plaintiff actually resided at 2F., No. 8, Aly. 92, Ln. 21, Wenhu St., Neihu District, Taipei City 114, Taiwan (R.O.C.). Ms Cheng still stayed with the Plaintiff at the latter address. However, she did not inform the Plaintiff of the EGM. Furthermore, there was also no actual directors' meeting to consider the solvency of the company before the declaration of solvency was signed.

7 Secondly, there were concerns in respect of the affairs of the Company. These include: (a) an amount of money between $500,000 to $1m which was purportedly unaccounted for; (b) the fact that the Plaintiff was removed as a signatory without any indication of a resolution approving this; (c) the fact that credit facilities were obtained without the Plaintiff's knowledge or approval. Other complaints included a share increase which he contended was unlawful. The Plaintiff argued that these were claims that ought to be (and could only be) pursued by the Company so the Company's dissolution ought to be voided in order that these claims could be pursued.

8 The Plaintiff acknowledged that a civil claim he initiated against Ms Cheng, her nephew and her brother in Taiwan did not succeed. However, he argued that that decision did not however give rise to concerns of *res judicata* because the parties in those proceedings and the present are different.

9 The Plaintiff contended that a declaration that the Company was never dissolved should be granted as the notice of the final meeting was not given to the Plaintiff. He argued that this failure was fatal as Ms Cheng was aware that the Plaintiff was not staying at the mailing address and had the obligation, as the Company's director, to ensure that the notice was brought to his attention. He also argued that the onus was on Ms Lim to send the notice of final meeting to the proper address.

The First Defendant's Case

The First Defendant's case

10 The First Defendant opposed the application and maintained that the proceedings and processes were proper. The notices required were sent out as required under the Memorandum and Articles of Association of the Company ("Memorandum and Articles"), namely, to the Plaintiff's registered address. There was no evidence that the Plaintiff had been deliberately excluded from any meetings and, in any event, his attendance and vote was inconsequential as he only held 19% of the shares then. The First Defendant also pointed out that the Plaintiff had taken no action to invalidate any of the meetings before the dissolution of the company despite knowing that they had taken place.

11 The First Defendant also argued that the various grounds relied upon by the Plaintiff amounted to nothing more than a fishing expedition. He had already failed in the Taiwanese Court and merely sought to re-litigate the same issues in Singapore so his application ought to be barred under the doctrine of *res judicata*.

The Decision

12 I dismissed the application. There was no basis for a declaration that the company was not dissolved as there was no invalidity in the final meeting. As for the argument on the reversal of the winding up, the grounds of the application, particularly the argument that there were claims that should have been pursued, were shadowy. Further, even if it were correct that the consideration of solvency and declaration should be made been made at a meeting, no prejudice was caused by this irregularity. As for the events identified by the Plaintiff as requiring investigation, many of these took place in the far past or were not shown to be directly material to the winding up. A number of contentions about the conduct of affairs at the Company, such as the dilution of the Plaintiff's shareholding through the increase in shares, were also not material to the present proceedings.

The dissolution of the company

13 The dissolution of the company could not be said to have been void because of the irregularities raised by the Plaintiff. Section 308 of the CA states that the dissolution of a company follows, by operation of law, on the occurrence of certain specified events and requirements which include the lodging of the return of the holding of the final meeting. On the facts of this case, there was compliance with those requirements.

14 The Plaintiff argued that the dissolution was invalid as no valid notice was given of the final meeting. In particular, it was argued that it was known to the company that the Plaintiff did not reside at the address the notices were sent to. The First Defendant, in response, argued that there was no error in sending the notices to his registered address since this was what was provided for in the Memorandum and Articles. The First Defendant also contended that the Plaintiff failed to change his address despite being invited to do so. Further, the First Defendant pointed out that the Plaintiff did not take any steps to invalidate the meetings on the basis of non-notification despite knowing, around late 2009–2010, that these meetings had taken place.

15 I accepted that, under the Memorandum and Articles, the notices were to be sent to the address listed in the register of members. As noted by the First Defendant, Art 125 of the Memorandum and Articles specified that the registered address was where notices had to be sent:

> A notice or any other document may be served by the Company upon any Member either personally or by *sending it through the post in a prepaid letter addressed to such Member at his registered address* as appearing in the register of members. [emphasis added]

Article 127 actually went further, specifying that if no registered address in Singapore were given, a member was not entitled to receive any notice. In the present case, the 2nd Defendant had actually sent the notices to the address registered by the Plaintiff even though it was an overseas address. While the validity of Art 127 is doubtful (given that it would effectively deprive members with overseas addresses in the register from receiving *any* notice), the validity of Art 127 did not arise in the present proceedings so I need not decide this point.

16 The Plaintiff, however, contended that a heavier burden was placed on the Company as it was aware (through Ms Cheng) that he did not reside at the address listed in the register of members.

17 This argument could not be accepted. Even if the company were aware that the Plaintiff may have been living at other addresses, such knowledge did not create an obligation to send notices to these other addresses. The point of a registered address or a specific address is to avoid uncertainty about where correspondence should be sent. Persons can maintain a variety of different addresses for many reasons or, occasionally, for no reason at all. To require a company to be alert to the preference of a member for one or another address would be to impose an obligation that is overly onerous and unwarranted. Using the address in the register of members is far more efficient and fair and places the onus on the addressee (who, after all, is the person who should elect where he wants to receive his correspondence) to express and notify the company of his choice.

18 The fact that the Plaintiff's ex-wife, Ms Cheng, may have been aware of his other address, or even that she failed to inform him of the notice of EGM was immaterial. The obligation to inform and give notice of the EGM was the Company's, not that of an individual shareholder or officer. Any failure to inform had to be laid at the feet of the Company. As the Company sent the notices in question to the registered address, there was no failure to inform on the part of the company.

19 In this respect, the Plaintiff also argued that the Company knew that the Plaintiff could be contacted at the address of Stateline International Co. Ltd ("Stateline"), a company owned by the Plaintiff. This was shown by correspondence from Ms Lim to the Plaintiff which was sent to Stateline's address. Alternatively, the Plaintiff argued that he could also have been reached through his then solicitors in Singapore.

20 Again, the answer to these contentions is that the duty to give notice is framed in terms of an obligation to give notice at the address registered with the company. If one of these other addresses invoked by the Plaintiff were more suitable as a correspondence address, he should have had that address registered with the company.

21 The Plaintiff relied on para 6.31 of *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Rev 3rd Ed, 2009) ("*Woon*") as authority for the proposition that the company must take reasonable steps to ensure that every member is served with the notice of the meeting. The Plaintiff's argument was that the Company here had failed to do so. However, that paragraph of *Woon* was concerned with an irregularity in the notice given — *ie*, whether the notice was properly a notice — and not with the question of whether there exists a general duty of notification. Furthermore, the discussion in the commentary was made in the context of the operation of s 392 of the CA, which states that a deficiency in notice does not invalidate proceedings unless substantial injustice is caused. Section 392 was not canvassed in arguments before me and its application was not necessary for my decision given my finding that notice had been given. It was hard to see what substantial injustice would have been caused on the facts here given that the Plaintiff chose not to amend his registered address. Had s 392 had been invoked, the fact that the Plaintiff had only 19% of the shares might have been material in determining whether substantial injustice had been caused. But that would have had to be balanced against the Plaintiff's right to be notified of and to attend

the meeting. The Plaintiff, whatever the proportion of his shareholding, was entitled to be informed. On the facts, I found that he was informed in the prescribed manner.

Reversal of winding up

22 I did not find that there was any ground made out for the winding up of the company to be reversed. The power to reverse is broad. Section 343(1) of the CA reads:

> Where a company has been dissolved, the Court may at any time within 2 years after the date of dissolution, on application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

The company was ordered dissolved on 5 December 2012; the present proceedings were filed on 4 December 2014, just within the prescribed period.

23 There were two bases for the Plaintiff's application on this ground:

(a) there was an irregularity in the declaration of solvency; and

(b) there were claims and other matters requiring investigation.

24 The Defendant raised an issue about the Plaintiff's standing to pursue relief under s 343 of the CA. The Defendant cited *Vasudevan v Icab Pte Ltd* [1987] SLR(R) 46 ("*Vasudevan*") as authority for the proposition that the Plaintiff did not have an unsatisfied claim against the Company and therefore lacked standing to commence the present application. *Vasudevan* concerned a plaintiff with an unsatisfied claim against the company for personal injuries. It was not concerned with the general determination of who would have standing under s 343 of the CA. Section 343 only stipulates that the applicant be a "person who appears to the Court to be interested". In *Re Wood and Martin (Bricklaying Contractors)* [1971] 1 WLR 293 at 297 ("*Re Wood and Martin*"), Megarry J (as he then was) construed s 352(1) of the Companies Act 1948 (c 38) (UK) ("UK Companies Act 1948"), which is *in pari materia* to s 343(1) of our CA, to mean that applicants must demonstrate an "interest of a proprietary or pecuniary nature in resuscitating the company. He held that there was no need to show that the "interest is one which is firmly established or highly likely to prevail: provided it is not merely shadowy." It is clear that this definition encompasses a shareholder of the company, whether or not that shareholder has any unsatisfied claims. A shareholder is a part owner of the company such ownership must confer standing to apply to the Court to reverse a winding up. If it were not so, his ability to exercise meaningful ownership rights would be circumscribed.

25 Section 343(1) clearly confers a *discretion* on the court: the section provides that the court "*may*… make an order upon such terms as the Court thinks fit declaring the dissolution to have been void" [emphasis added]. The general approach in determining whether the Court's discretion is to be exercised does not appear to have received extensive consideration. As the statute does not impose any express constraints on that discretion, the general consideration would be to exercise that discretion carefully and judicially, bearing in mind the likely objectives of the grant of that power: that in some instances, a winding-up ought to be reversed to ensure fairness and justice. The commentary at *Woon's Corporations Law* (Walter Woon and See Mun Yee gen eds) (LexisNexis, 2005) at para 6804 identifies a number of instances where a reversal would be warranted. These include the presence of overlooked realisable assets, prejudice or fraud, or reasons stemming from broader considerations of justice as was the case in *Vasudevan*. It would not do much good to attempt to enumerate all

possible instances where the discretion of the court will be exercised. Furthermore, it must be stressed that not every claim of unfairness, without more, should trigger reversal. A minimum standard is required, though it should not be so high as to hinder *bona fide* claimants.

26 The Plaintiff referred to commentary such as Edward Bailey, Hugo Groves, *Bailey and Groves: Corporate Insolvency Law and Practice* (LexisNexis, 3rd ed, 2007) at para 19.15 as authority for the proposition that the claim for reversal must be something more than the "merely shadowy". Among the cases cited was *Re Wood and Martin*. As I noted above, this was in the context of the establishment of a sufficient interest by a person proceeding under the equivalent of s 343. The question of whether the Court's discretion is to be exercised is strictly a separate issue. However, I am prepared to accept that the standard required of proof of such harm or prejudice should be of a similar standard to that required for an interest, *ie*, that it is more than merely shadowy. To set too high a standard may prejudge unfairly possible claims by the company before all proper evidence is brought before the court.

27 With these considerations in mind, I was of the view that the Plaintiff had not made out a case for the exercise of the court's discretion to grant a reversal either on the basis of the breach of the requirements for a declaration of solvency or on the basis of the various matters he alleged should be investigated.

The declaration of solvency

28 The Plaintiff took issue with whether the declaration of solvency was properly made. He raised two points: first, the board of directors never met to consider whether the company was solvent before issuing the declaration of solvency; second, he had not received a copy of the resolution. Furthermore, it would seem that the resolution was made by circulation. Counsel for the First Defendant was instructed that there was a meeting of the Directors but there was no evidence of this in the affidavits. In the circumstances, I had to proceed on the basis that there was no actual meeting of the directors at which they considered the solvency of the company or issued a declaration of solvency pursuant to their deliberations. In the end, I was satisfied that, while there was a failure to comply with the requirements in s 293 of the CA, the circumstances were not such as to call for the exercise of the court's power to reverse the winding-up.

29 The relevant sections of s 293 of the CA read:

> (1) Where it is proposed to wind up a company voluntarily, the directors of the company, or in the case of a company having more than 2 directors, *the majority of the directors shall*, in the case of a members' voluntary winding up before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, *make a declaration to the effect that they have made an inquiry into the affairs of the company, and that, at a meeting of directors, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.*
>
> …
>
> (3) A declaration so made ***shall have no effect for the purposes of this Act unless*** it is —
>
> (a) *made at the meeting of directors referred to in subsection (1) …*
>
> [emphasis added in italics and bold italics]

30 Under s 293(1), a declaration of solvency can only be made after (a) there has been "an inquiry into the affairs of the company"; and (b) the "majority of the directors… *at a meeting of directors*, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up." Furthermore, the declaration of solvency itself has to be made at a meeting of the directors (see s 293(3)(*a*) of the CA). On the facts, there was no evidence that the directors ever met to consider the solvency of the Company or that the declaration of solvency was issued at such a meeting. On this basis, the Plaintiff submitted, citing para 17.113 of *Woon* (which, in turn, cites *De Courcy v Clement and Another* [1971] 1 Ch 693 ("*De Courcy*")), that this rendered the declaration of solvency a nullity.

31 It was clear from the wording of s 293(3)(*a*) of the CA that a declaration of solvency which is not made at a meeting of the directors of the company "shall have no effect". However, this did not automatically mean that the winding up of the Company had to be invalidated and the dissolution of the Company reversed. This was so for two reasons.

32 The first is that the specific issue which was before the court was whether the court ought to declare the dissolution of the Company void under s 343(1) of the CA. The court does not do so lightly. In the exercise of the court's discretion under s 343(1), the court has to consider whether considerations of fairness and justice necessitate the reversal of the winding up (see [25] above). This required the existence of prejudice. Nothing was shown that the affairs were other than what was stated in the resolution. The objective of the declaration of solvency is to protect the interests of creditors rather than the members. As there was no question of creditors being prejudiced, that issue did not arise in the present case. In the circumstances then I did not find that this was a sufficient reason to reverse the winding-up.

33 Additionally, s 392, already referred to above, preserves proceedings from irregularities unless injustice is caused. Without injustice in the form of prejudice or harm, it was difficult to see why the Court should exercise its discretion to reverse a winding-up: nothing would be gained from it save the vindication of a breach of legal requirements which did not have any impact on anyone. Ultimately, the Plaintiff had not shown that he had suffered any harm or prejudice that would call for reversal.

34 The Plaintiff also relied on the fact that he did not receive a copy of the resolution at the time. However, there was no requirement that all shareholders had to be provided with a copy of such a resolution.

Claims requiring investigations

35 I did not find that there was anything raised about the alleged claims that was more than shadowy. Thus, they did not give rise to any need for an exercise of the court's discretion to reverse. In particular, quite a few of the facts he raised related to matters that occurred or arose several years in the past and were not the sort of matters that would be suspicious in the context of an active company.

36 One of the allegations made by the Plaintiff centred on monies supposedly unaccounted for in the company's Citibank account. The Plaintiff was not able to give a definite figure of the amount, stating that it was between US$500,000 and US$1m. The deeper problem, however, was the fact that his knowledge of these accounts dated back to 2007 but his queries about the monies were only sent in March 2011, some 4 years later. In the circumstances, it was hard to see how any claim about these monies could be more than merely shadowy — the fact that there were funds in a company account 2 years before a resolution to wind up but which were not found in the declaration of solvency did not, in itself, indicate that any wrong had been committed nor would it be enough to

trigger any inquiry. The Plaintiff did not put forward any reason for believing that there had been any defalcation of the monies. His contention was simply that an inquiry should be made of what had happened to the funds. That was not enough.

37 Other points were made in respect of the plaintiff's removal as signatory of that account and the obtaining of credit facilities in 2002. The Plaintiff contended that there was no proper resolution in respect of those accounts and that he was neither aware of nor had he approved the 2002 credit facility. It was hard to see how the removal of the Plaintiff as signatory goes to support a reversal of the winding up. The changing of signatories is one of many actions that are taken in many companies. Disputes in management are not uncommon, even in healthy organisations. Without a link to something more, this allegation could not be anything more than merely shadowy. The same applies to a 2002 credit facility that the Plaintiff claimed he did not know about. It was also notable that this facility was taken out about 10 years before the final resolution but the matter was only being raised now.

38 To make out that there was something requiring investigations and hence a reversal of winding up, there should generally be some contemporaneity between the events complained of and the winding up; or, alternatively, some link between events and the state of the company at the time of the winding up. Otherwise, the matters raised are not material at all.

The Taiwanese Proceedings

39 The First Defendant relied on proceedings were taken in the Taiwanese Court by the Plaintiff against Ms Cheng and her relatives ("Taiwanese proceedings"). In the Taiwanese proceedings, the Taiwanese court determined various issues, including those concerning the establishment of the Defendant, the issuing of shares, the liquidation of the 2nd Defendant, and the withdrawal of funds. The First Defendant contended that the doctrine of issue estoppel applied here. On the other hand, the Plaintiff, while accepting that the Taiwanese court made findings of fact in relation to these issues, argued that the doctrine of issue estoppel did not apply as there was no identity of parties.

40 I accepted the Plaintiff's submission — the absence of identity of parties meant that the doctrine of issue estoppel did not apply (see *The "Bunga Melati 5"* [2012] 4 SLR 546 at [80(c)]). With that being said, however, the fact that there were previous proceedings at which similar issues were canvassed and considered by another judicial body was relevant as to the cogency and strength of the allegations that were before me. It would be relevant, in an application under s 393 of the CA, that proceedings in respect of similar allegations took place in another forum took place and that the allegations were found to be unfounded. The fact that an allegation of fact has been examined by another forum and found to be unsustainable would, all other things being equal, make it would be harder for a plaintiff, in an application to this court, to make a sufficient case for relief based on *the very same allegations* that had been adjudged untrue. Some of the allegations made in the Taiwanese proceedings, such as the increase in shares, were not part of the present proceedings; but others, including the alleged withdrawal of funds and matters relating to the winding up, were the same or similar. In the present case, though, it was not necessary for me to consider fully the impact of the Taiwanese proceedings as I had come separately to the conclusion that the grounds relied upon by the Plaintiff were not sufficient.

Miscellaneous matters

41 There was a question as to whether the application was but an attempt to obtain information before other more substantive proceedings were instituted — in other words, that it was a fishing expedition. In the end, I was satisfied that I should take the application on its face, and my

determination was not founded on whether it was indeed a fishing expedition.

42 The Defendant also highlighted that the current application was made just before the expiry of the limitation period under s 343 of the CA, *ie*, 2 years after dissolution. I did not think that this ought to be held against the Plaintiff. The point, ultimately, is that the application was filed in time.

43 I would note, though, that it was apparent that the Plaintiff's real complaint was that he was dissatisfied with the dilution of his holding in the Company and with the actions of Ms Cheng and the other officers or shareholders of the Company. The allegations made by him that he had not known of the contents of the documents signed by him were of the same ilk and showed that the source of his grievance stemmed from the perception that he was being marginalised. This being the case, he really ought to have pursued other remedies *before* the dissolution of the company. It is now too late to turn back the clock.

Costs

44 Costs of $8000 and disbursements were fixed by me following the hearing. On request for clarification, I indicated to the parties that this sum included any Goods and Services Tax due.