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

[2022] SGHC 250

Originating Summons No 1121 of 2021

Between

Management Corporation
Strata Title Plan No 4339

… *Applicant*

And

Coral Edge Development Pte
Ltd (dissolved)

… *Respondent*

And

(1) Thio Khiaw Ping Kelvin
(2) Terence Ng Chi Hou

… *Non-parties*

GROUNDS OF DECISION

[Companies — Winding up — Voiding of dissolution of company]

TABLE OF CONTENTS

Management Corporation Strata Title Plan No 4339
v
Coral Edge Development Pte Ltd (dissolved)
(Thio Khiaw Ping Kelvin and another, non-parties)

[2022] SGHC 250

General Division of the High Court — Originating Summons No 1121 of 2021
Chua Lee Ming J
4 July, 22 August 2022

7 October 2022

Chua Lee Ming J:

Introduction

1 The respondent, Coral Edge Development Pte Ltd (Dissolved) was placed under a members' voluntary liquidation and was dissolved on 28 November 2020 after the liquidators distributed its surplus assets to its members. In these proceedings, the applicant, the Management Corporation Strata Title Plan No 4339, sought a declaration that the dissolution of the respondent was void so that it could commence legal proceedings against the respondent.

2 I dismissed the application on 22 August 2022. The applicant has appealed against my decision.

Facts

3 The applicant is the management corporation of the Waterwood Executive Condominium at Punggol Field Walk, Singapore (the "Condominium"). The Condominium was a joint development by Sing Holdings Ltd ("Sing Holdings") and UE E&C Ltd. The respondent was incorporated in 2013 for the purpose of developing the Condominium.[1] Sing Holdings held 70% of the share capital in the respondent.[2]

4 The main contractor for the development was Greatearth Corporation Pte Ltd ("Greatearth"). The Temporary Occupation Permit for the Condominium was issued on 1 December 2015.[3]

5 From around early 2019, multiple residents of the Condominium discovered various building defects such as water seepage in their units and cracks in the external building wall.

6 On 7 November 2019, the members of the respondent passed a special resolution to wind up the respondent voluntarily. Mr Thio Khiaw Ping Kelvin and Mr Terence Ng Chi Hou were appointed as the liquidators of the respondent (the "Former Liquidators"). On 16 November 2019, the Former Liquidators placed an advertisement in The Business Times for any and all creditors of the respondent to file their claims within 30 days of 16 November 2019. The Former Liquidators did not receive any claim or proof of debt against the

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1 Affidavit of Tan Lian Poh Richard dated 4 April 2022 ("TLP-1") paras 5–7.

2 Affidavit of Thio Khiaw Ping Kelvin dated 4 April 2022 ("TKPK-1") para 8.

3 TLP-1 paras 8 and 11.

respondent, nor were they aware or informed of any potential claims that the applicant may have had against the respondent.[4]

7 On 3 April 2020, the Condominium Manager, Mr Tan Lian Poh Richard ("Tan"), informed Greatearth that a crack had been discovered in the external wall of one of the Condominium blocks.[5] On 20 April 2020, Tan informed Greatearth and three representatives from Sing Holdings that more cracks in the external walls of the Condominium had been discovered (the "external wall defects").[6]

8 Over the next year or so, the applicant and Greatearth had several discussions on how the external wall defects would be rectified but no agreement was reached. Meanwhile, on 23 June 2020 and 28 July 2020, the Former Liquidators distributed the surplus assets of the respondent to its members, including Sing Holdings. The final meeting of the respondent was held on 28 August 2020. On the same day, the Former Liquidators lodged the return of the final meeting with the Accounting and Corporate Regulatory Authority. Pursuant to s 308(5) of the Companies Act (Cap 50, 2006 Rev Ed) (the "CA"), the respondent was dissolved three months later, on 28 November 2020.[7]

9 In late August 2021, Greatearth declared that it was insolvent.[8] Upon discovering this, Tan wrote to Sing Holdings on 26 August 2021 seeking

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4 TKPK-1 paras 10, 12 and 17.

5 TLP-1 p 500.

6 TLP-1 p 504.

7 TKPK-1 paras 12 and 14.

8 TLP-1 para 11.

clarification on how the issue of the external wall defects would be resolved.[9] On 13 September 2021, Sing Holdings replied, stating that the respondent was the developer of the Condominium and Sing Holdings was not responsible for any defects in the Condominium.[10]

10 It appeared that it was then that the applicant turned its attention to the respondent. The applicant claimed that it only found out about the dissolution of the respondent when it appointed legal counsel in September 2021.[11]

11 On 6 November 2021, the applicant filed the present application seeking:

(a) a declaration that the dissolution of the respondent be declared void; or

(b) alternatively, an order:

(i) deferring the date on which the dissolution of the respondent was to take effect, to such time that the debt owed by the respondent to the applicant was determined and paid to the applicant or otherwise settled with the applicant, arising from defects to the Condominium; and

(ii) granting leave to the applicant and all subsidiary proprietors thereof to commence legal proceedings against the respondent for defects in the Condominium.

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9 TLP-1 p 513.

10 TLP-1 p 514.

11 TLP-1 para 37.

During the course of the hearing before me, the applicant abandoned its application for the alternative orders and the hearing proceeded on only the application to void the dissolution of the respondent.

12 On 22 February 2022, the Former Liquidators received a letter of demand from the applicant's solicitors addressed to the respondent.[12] The letter of demand claimed a sum of S$3.9m for rectification of the external wall defects. According to the Former Liquidators, this was the first time they learnt of the applicant's claim against the respondent. The Former Liquidators subsequently applied to intervene in the present application as non-parties and were permitted to do so by the Assistant Registrar at a pre-trial conference held on 5 May 2022.

Whether the IRDA or the CA applied

13 The applicant brought its application to void the dissolution of the respondent under s 208(1) of the Insolvency, Restructuring and Dissolution Act 2018 (No 40 of 2018) (the "IRDA"). The Former Liquidators submitted that the CA remained the applicable legislation in the present case. I agreed with the Former Liquidators.

14 Sections 526(1)(*h*) and 526(8) of the IRDA provide as follows:

> **Saving and transitional provisions relating to amendments to Companies Act**
>
> **526.**—(1) Parts 3 to 12 and 22 do not apply to or in relation to the following, and despite section 451, the Companies Act as in force immediately before the appointed day continues to apply to or in relation to the following, as if Parts 3 to 12 and 22 and section 451 had not been enacted:
>
> …

[12] TKPK-1 paras 16–17 and TLP-1 pp 944–945.

> (*h*) any voluntary winding up that commences within the meaning of section 291(6) of the Companies Act before the appointed day …
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> …
>
> (8) In this section, 'appointed day' means the date Parts 3 to 12 and 22 and section 451 come into operation.

Section 208(1) of the IRDA (which the applicant relied on) is found in Part 8 of the IRDA. The "appointed day" referred to in s 526(8) is 30 July 2020.

15 Pursuant to s 291(6) of the CA, the voluntary winding up of the respondent commenced on the date of the special resolution for the voluntary winding up, *ie*, 7 November 2019. It therefore followed that s 208(1) of the IRDA did not apply to the present application; instead, the applicable provision was s 343(1) of the CA. That said, the relevant legal principles are the same since s 343(1) of the CA is *in pari materia* with s 208(1) of the IRDA. The submissions on s 208(1) of the IRDA were thus equally applicable to s 343(1) of the CA.

Whether the dissolution of the respondent should be voided

16 Section 343(1) of the CA states as follows:

> **Power of Court to declare dissolution of company void**
>
> **343.**—(1) 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.

17 Three requirements must be satisfied for an application to succeed under s 343(1):

(a) The application must be made within two years of dissolution.

(b) The applicant must be either the liquidator of the company or an interested person.

(c) The case must be a proper one for the court to exercise its discretion to void the dissolution.

Application must be made within two years of dissolution

18 Section 343(1) of the CA requires the application to be made within two years after the date of dissolution. This requirement was clearly satisfied in this case and no issue arose in this regard.

Whether the applicant was an interested person

19 Any person who appears to the court to be interested may make an application under s 343(1). It has been said that applicants must demonstrate an interest of a proprietary or pecuniary nature (which is not shadowy) in resuscitating the company: *Lee Hung Pin v Lim Bee Lian and another* [2015] 4 SLR 1004 ("*Lee Hung Pin*") at [24], citing *Re Wood and Martin (Bricklaying Contractors)* Ltd [1971] 1 WLR 293 ("*Re Wood and Martin*") at 297.

20 In *Re Wood and Martin*, the court found that interest of a proprietary or pecuniary nature (which was not shadowy) was sufficient to bring the applicant within the terms of s 352(1) of the Companies Act 1948 (c 38) (UK) which is *in pari materia* to s 343(1) of the CA. It is not clear that *Re Wood and Martin* went so far as to say that *only* interest of a proprietary or pecuniary nature will suffice. However, it was not necessary for me to decide this point. The applicant's objective in seeking to void the respondent's dissolution was to

enable it to bring a claim against the respondent. Its interest in resuscitating the respondent was clearly of a pecuniary nature. The question was whether it was shadowy.

21 The Former Liquidators submitted that the applicant's interest was shadowy because its claim against the respondent was without merit. The Former Liquidators argued that:

(a) The applicant could not bring a claim for breach of contract because it was not a party to the sales and purchase agreements entered into between the respondent and the subsidiary proprietors. Even if the applicant was authorised to act on behalf of the subsidiary proprietors, it had failed to mitigate its losses by its refusal to accept Greatearth's offers to rectify the external wall defects.[13]

(b) The applicant could not bring a claim in tort against the respondent as the respondent would be able to rely on the "independent contractor" defence, *ie*, the respondent would not be liable for the negligence of its independent contractor. In this case, the respondent had delegated the construction of the Condominium to Greatearth.[14]

22 The applicant provided evidence that the subsidiary proprietors of 295 out of 373 units in the Condominium (about 79%) had authorised it to sue the respondent.[15] As for the issue of mitigation, that rested on disputed facts that ought fairly to be tried in court. It seemed to me that the applicant's intended

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13 Written Submissions of the Former Liquidators dated 27 June 2022 ("FLWS"), paras 43–44.

14 FLWS para 46.

15 Supplemental affidavit of Tan Lian Poh Richard dated 1 July 2022, para 4.

claim against the respondent for breach of contract could not be said to be shadowy. In any event, it was not necessary for me to decide whether the applicant was an interested person for purposes of making this application. As explained below, I found no reason to exercise my discretion to void the dissolution of the respondent.

Whether it was proper to void the dissolution

23 In deciding whether to void the dissolution of a company under s 343(1) of the CA, a court will exercise its discretion carefully and judicially; a winding up ought to be reversed if it is necessary to do so to ensure fairness and justice: *Lee Hung Pin* at [25]. Not every claim of unfairness, without more, should trigger reversal, though the standard should not be so high as to hinder *bona fide* claimants: *Lee Hung Pin* at [25].

24 In this regard, I agreed with the Former Liquidators that a relevant consideration was whether making the order would simply be an exercise in futility. This position is supported by authorities. In *Re Kilkenny Engineering Pty Ltd (In Liquidation)* (1976) 1 ACLR 285, Wells J observed that in deciding whether to void the dissolution of a company under s 307(1) of the Companies Act 1962–1972 (SA) (which is *in pari materia* with s 343(1) of the CA), the court is entitled to consider whether "if the order sought were to be granted, good use could be made of it, or whether the order would be made in vain" (at 290). Wells J noted that (a) the purpose of the petitioner's application was to enable it to sue the company, but that there were no assets in the company available for execution; and (b) any writ filed by the petitioner against the company would also be out of time, as the relevant limitation period had lapsed (at 293). Accordingly, Wells J concluded that the order sought by the petitioner would be in vain and dismissed the application (at 295).

25 Similarly, in *Stanhope Pension Trust Ltd and another v Registrar of Companies and another* [1994] 1 BCLC 628 ("*Stanhope Pension Trust*"), the question was whether the dissolution of a company should be voided under s 651(1) of the Companies Act 1985 (c 6) (UK) (the "UK CA 1985") (*in pari materia* with s 343(1) of the CA). Hoffman LJ noted that "[t]here is usually little point in reviving a company to enable a new claim to be made because … all its assets will have been distributed" (at 630h). Rather, the purpose of an order under s 651(1) of the UK CA 1985 would ordinarily be to enable the liquidator to distribute an asset of the company that had previously been overlooked, or to enable a creditor to obtain a judgment against the company that could be enforced against a third party, such as an insurer (at 632c–e).

26 On the facts of the present case, even if the dissolution of the respondent were to be voided, it would have no assets available to meet the applicant's intended claim. As stated earlier, the surplus assets of the respondent were distributed to its members on 23 June and 28 July 2020, a few months before the respondent was dissolved on 28 November 2020.

27 The applicant did not appear to dispute that it would be pointless to make an order voiding the dissolution if the respondent had no assets to meet the applicant's claim. The applicant tried to make the case that the distributions made to the respondent's members, in particular Sing Holdings, could be recovered. However, the applicant's submissions were less than clear, not least because it was changing its submissions during the course of the hearing. Ultimately, the applicant's submissions appeared to be as follows:

(a) Under s 343(1) of the CA, the court could, in addition to declaring the dissolution void, also make orders which have the effect

of voiding the distributions made by the Former Liquidators before the respondent was dissolved.

(b) Voiding the dissolution could give rise to a possibility of recovery of the surplus assets that had been distributed to the respondent's members.[16] In particular, before me, the applicant submitted that the respondent could sue Sing Holdings to recover the distributions made to Sing Holdings.

(c) The applicant had a claim against Sing Holdings because Sing Holdings failed to inform the Former Liquidators of the applicant's claim against the respondent.

Whether the court can void the distributions that had been made

28 Section 343(1) of the CA provides that the court may "make an order upon such terms as the Court thinks fit declaring the dissolution to have been void". The applicant submitted that since the court could make the voiding order on terms, the court could also void the steps taken by the Former Liquidators before the date of the dissolution. More specifically, the applicant submitted that the court should void the steps taken by the Former Liquidators after April 2020, which would include the distributions made to Sing Holdings.

29 The applicant's arguments appeared to be as follows:

(a) Sing Holdings became aware of the applicant's claim against the respondent in April 2020 and should have informed the Former Liquidators of the claim. Sing Holdings failed to do so.

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16 Applicant's Supplemental Submissions No 2 dated 16 August 2022, para 9.

(b) Had Sing Holdings informed the Former Liquidators of the applicant's claim in April 2020 or soon after, the Former Liquidators would have realised that the respondent was insolvent. Presumably, this assertion was based on the fact that the applicant's claim as stated in its letter of demand dated 22 February 2022[17] was for the sum of S$3.9m whereas the surplus assets distributed to the respondent's members amounted to S$3,870,903 (comprising S$70,903 distributed in cash and S$3.8m *in specie*).[18] Consequently, pursuant to s 295(1) of the CA, the Former Liquidators would have had to convert the winding up to an insolvent winding up and summon a meeting of the creditors. The Former Liquidators therefore would have had to notify the applicant about the winding up.

(c) The court should restore the assets of the respondent to its position in April 2020 to "reflect the creditors' interests in an insolvent winding up".[19]

30 I disagreed with the applicant. First, in my view, it was clear that I did not have the power under s 343(1) of the CA to make orders which voided or had the effect of voiding actions taken by the Former Liquidators (including the distributions of the surplus assets) before the date of the dissolution. There was simply no basis for the applicant's arguments. In my view, the phrase "upon such terms as the Court thinks fit" in s 343(1) refers to terms that may be necessary to address the consequences of the dissolution being voided.

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17 TLP-1 pp 944–945.

18 TKPK-1 p 35.

19 Applicant's Supplemental Submissions No 2 dated 16 August 2022, p 10.

31 Second, the authorities did not support the applicant's contention that under s 343(1), the court can make an order voiding the distributions that had been made.

32 In *Morris v Harris* [1927] AC 252, the House of Lords had to construe s 223 of the Companies (Consolidation) Act 1908 (c 69) (UK) (*in pari materia* with s 343 of the CA). Lord Sumner remarked (at 257) that the order referred to in s 223 "is not expressed to be one setting anything aside". As he explained (at 259):

> … The object of the provision was, I think, to give a fresh start to proceedings, which owing to the dissolution had been impossible and had not been taken, and thereupon it was to be open to those concerned to take them in the future as if the dissolution had not happened. …

33 In *James Smith & Sons (Norwood) Limited v Goodman* [1936] Ch 216, Lord Hanworth MR had this to say (at 231) about s 294(1) of the Companies Act 1929 (c 23) (UK) (*in pari materia* with s 343(1) of the CA):

> … The effect of such a declaration would be to restore the company to being, but with what result? There has been a distribution of the surplus assets to the shareholders, *and a recalling of the dissolution will not give animation to the company in the sense that it will once more restore to the coffers of the company the money that has been distributed to the shareholders*. …
>
> [emphasis added]

34 Further, in *Stanhope Pension Trust*, Hoffman LJ observed (at 630h) that "[i]t is a general principle of insolvency law that … distributions which have already been properly made cannot be disturbed".

35 In the present case, there was no question that the distributions to the members of the respondent were properly made. The Former Liquidators complied with the applicable rules and placed an advertisement notifying

creditors to file their claims. The distributions were made on 23 June 2020 and 28 July 2020, more than six months after the deadline for creditors to file their claims had expired. The Former Liquidators were not aware of the applicant's claim until 22 February 2022.

36 In *Butler and another v Broadhead and others* [1975] Ch 97 ("*Butler*"), the company went into voluntary liquidation. The liquidator mistakenly conveyed a plot of land (which the company had previously conveyed to someone else) to the plaintiffs. The liquidator then paid the company's debts and distributed the surplus assets amongst the contributories. The plaintiffs were dispossessed by the original buyer of the land and sued the company's contributories for such sums overpaid to them by mistake, claiming that sums would otherwise have been available to the plaintiffs as compensation or damages.

37 The court struck out the claim. Templeman J held that r 106 of the Companies (Winding up) Rules 1949 (SI 1949 No 330) (UK) ("UK CWU Rules 1949") applied to distributions to contributories and that under that rule, the plaintiffs were excluded from the benefit of any distribution made before they proved their claims (at 109G, 110D–E). It did not matter whether the creditor's failure to put in a claim was due to his fault or not (at 110H).

38 Rule 106(1) of the UK CWU Rules 1949 provides that creditors are to prove their debts or claims on or before the date fixed by the liquidator or "be excluded from the benefit of any distribution made before such debts are proved". In the present case, the applicable rule was r 91 of the Companies (Winding Up) Rules (1990 Rev Ed) ("CWU Rules"), which contains language identical to that set out above.

39 In *In re R-R Realisations Ltd (formerly Rolls-Royce Ltd)* [1980] 1 WLR 805, Sir Robert Megarry VC referred to *Butler* and said (at 810G):

> … Once the liquidators have duly advertised for creditors, any creditor who could have proved his debt in the liquidation has no claim against any of the assets in the hands of the creditors or the members of the company to whom that distribution has been made. What has gone has gone. There is no question of reopening the distribution …

40 *Butler* concerned a creditor's right to claim against contributories who had received their distributions. This was not the case here. Nevertheless, *Butler* showed that under the insolvency framework, the applicant in the present case would have no claim against the respondent's members to recover any of the distributions that had been made to them. The applicant's contention that under s 343(1) of the CA, the court could void those distributions was an attempt to achieve what it could not have achieved by suing the respondent's members directly. I saw no reason why s 343(1) should be interpreted to allow this. On the contrary, s 343(1) should be interpreted in a manner that is consistent with the jurisprudence in *Butler*.

41 The applicant had only itself to blame for its failure to file its proof of debt within the timeline stated in the notice advertised by the Former Liquidators. Having failed to file its proof of debt, r 91 of the CWU Rules excluded the applicant from the benefit of the distributions that had been made.

Whether the respondent could recover the distributions from its members

42 Initially, the applicant submitted that the respondent could recover the distributions made to Sing Holdings on the ground that Sing Holdings had failed to inform the Former Liquidators of the applicant's claim and had thereby induced the Former Liquidators to breach their duties. This submission was laid

to rest when the applicant subsequently conceded that the Former Liquidators had not breached any duties.[20]

43 The applicant did not elaborate further on how the respondent could recover the distributions from its members. In my view, it was clear that the respondent could not recover such distributions: *Stanhope Pension Trust* (see [34] above).

The applicant's claim against Sing Holdings

44 The applicant contended that it had a claim against Sing Holdings because Sing Holdings had acted in bad faith and fraudulently in not informing the Former Liquidators about the applicant's claim. It was unnecessary for me to deal with the merits or otherwise of the applicant's claim against Sing Holdings. The reason was simple: an order voiding the dissolution was unnecessary for this purpose. The applicant could sue Sing Holdings regardless.

Conclusion

45 For the reasons set out above, I concluded that it was pointless to make an order declaring the dissolution of the respondent void. The respondent had no assets to meet the applicant's intended claim. There was no basis in law to unwind the distributions that had been made to the respondent's members. Accordingly, I dismissed the application in its entirety.

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[20] Applicant's Supplemental Submissions No 2 dated 16 August 2022, para 52.

46 I ordered the applicant to pay costs to the Former Liquidators fixed at S$18,000 (including disbursements).

Chua Lee Ming
Judge of the High Court

Daniel Tay Yi Ming (Chan Neo LLP) for the applicant;
The respondent absent and unrepresented;
Sim Kwan Kiat and Wong Ye Yang (Rajah & Tann Singapore LLP)
for the first and second non-parties.