

Management Corporation Strata Title Plan No 2677 v Hock Chuan Ann Construction Pte Ltd
(in liquidation)
[2007] SGHC 162

Case Number : OS 1304/2007
Decision Date : 01 October 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Yeow Hiang and Juliana Yong (Kelvin Chia Partnership) for the plaintiff; Tan Mingfen (Drew & Napier LLC) for the defendant
Parties : Management Corporation Strata Title Plan No 2677 — Hock Chuan Ann Construction Pte Ltd (in liquidation)

*Insolvency Law – Winding up – Main contractor under creditors' voluntary winding up
– Management corporation applying for leave to commence legal proceedings against main contractor – Whether application for leave should be granted*

1 October 2007

Choo Han Teck J:

1 This was an application by the plaintiff, for leave to commence legal proceedings against the defendant pursuant to s 299(2) of the Companies Act (Cap 50, 2006 Rev Ed). The plaintiff is the Management Corporation of a condominium known as Carissa Park. The defendant was the main contractor in the construction of the condominium. The defendant was placed under a creditors' voluntary winding up on 10 December 2004.

2 The plaintiff claimed that there were various defects in the condominium which were caused by poor workmanship and for which it was entitled to sue the contractor defendant for damages in tort. The defects were first noticed in 2002, but Mr Tan Yeow Hiang ("Mr Tan"), counsel for the plaintiff, submitted that "the limitation period in respect of certain of the defects will expire on 30 September 2007".

3 This application was filed on 5 September 2007 and heard on 11 September 2007. Having considered the affidavits filed on behalf of the plaintiff on 5 September 2007 and 17 September 2007, and the submissions of Mr Tan and Miss Tan Mingfen ("Miss Tan"), for the defendant (in liquidation), I dismissed the plaintiff's application for leave on 20 September 2007.

4 The plaintiff's claim was estimated at \$1.5m. There were no particulars as to how much would be owing to the other general creditors who had filed their proofs of debt. If the plaintiff was given leave to proceed, the defendant may not have the means to defend the action and a judgment in default for \$1.5m is far too unfair, in my view, to the other creditors.

5 If the plaintiff did have a sufficiently strong claim, the application ought to have been made much sooner. The application was made barely three weeks before the time bar for suing. The defendant was wound up in December 2004.

6 Furthermore, Mr Tan had not disputed Miss Tan's submission that many of the sub-contractors' indemnities were already assigned to the plaintiff. Many of the defects were related to specialist sub-

contractors' work, and if there was any liability in tort, the plaintiff will have recourse against the sub-contractors.

7 I also formed the view that the lateness in this application was entirely unjustifiable even though Mr Tan submitted that there was effectively no Management Council for a great part of this year (after it had sent a letter of demand on 9 April 2007) until 14 July 2007. The circumstances seemed to me to indicate that the plaintiff was actuated by a desire to keep too many options open. That is legitimate, but it must then accept the risk that some of the options might be closed to it – such as this application, if it is unable to persuade the court that the merits tilt in its favour for leave to proceed.

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