

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

[2023] SGHC 43

Originating Application No 873 of 2022

Between

Yap Sze Kam

... Applicant

And

Yang Kee Logistics Pte Ltd

... Respondent

Originating Application No 883 of 2022

Between

Koh Kien Chon

... Applicant

And

Yang Kee Logistics
(Singapore) Pte Ltd

... Respondent

JUDGMENT

[Companies — Receiver and manager — Judicial management order]

[Insolvency Law — Judicial management]
[Credit and Security — Remedies — Receivership]

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Yap Sze Kam
v
Yang Kee Logistics Pte Ltd and another matter

[2023] SGHC 43

General Division of the High Court — Originating Application No 873 of 2022 and Originating Application No 883 of 2022
Philip Jeyaretnam J
6, 17 February 2023

24 February 2023

Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 These proceedings seeking the appointment of different judicial managers over a holding company and its wholly owned subsidiary raise the question of the interplay between the judicial management regime and the rights of bondholders, who are the largest creditors of the holding company. The bondholders have, via the security trustee, appointed receivers and managers not over the holding company itself but over the majority of the shares in it, thus achieving, as contractually intended between them and the founders, effective control of the boards of both the holding company and the subsidiary. Those receivers and managers have been in place for some time, and have already taken a number of steps.

Facts

The parties

2 Yang Kee Logistics Pte Ltd (“YK HoldCo”) is the parent holding company of a group of companies that provide integrated international logistics services (the “Yang Kee Group”). Mr Koh Kien Chon (“Mr Koh”) and his family (the “Koh Family”) own 89.45% of YK HoldCo.¹ The other key family member is his father, Mr Koh Yang Kee, and I shall refer to them collectively as the Founders.

3 Yang Kee Logistics (Singapore) Pte Ltd (“YK LogCo”) is the logistics business arm of the Yang Kee Group.² YK LogCo is a wholly owned subsidiary of YK HoldCo.³

4 Yang Kee Holdings Pte Ltd (the “YK PropCo”) is the property holding arm of the Yang Kee Group.⁴ YK HoldCo holds 50.99% of the shares in YK PropCo. The remaining 49.01% is held by LSAV Project 1 Pte Ltd, an investment vehicle owned by LOGOS Property Pty Ltd (“LOGOS”).⁵

5 YK HoldCo, YK LogCo, and YK PropCo are the principal entities within the Yang Kee Group. The Group’s aim is to be “a Singapore head-quartered, fully integrated, end-to-end, logistics solutions provider”, with four

¹ 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [10].

² 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [10].

³ 1st Affidavit of Koh Kien Chon dated 27 December 2022 (HC/OA 883/2022) at [47].

⁴ 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [10].

⁵ 1st Affidavit of Yap Sze Kam dated 22 December 2022 (HC/OA 873/2022) at [8].

main service lines, namely freight forwarding, contract logistics, transportation and container depot.⁶ The Yang Kee Group is insolvent.

6 On 22 December 2022, by HC/OA 873/2022 (“OA 873”), Mr Yap Sze Kam (“Mr Yap”) applied for the appointment of judicial managers over YK HoldCo. He does so as a creditor, having lent \$6m, which was due to be repaid on 31 December 2020 but was not in fact repaid.⁷

7 On 27 December 2022, by HC/OA 883/2022 (“OA 883”), Mr Koh applied for the appointment of different judicial managers over YK LogCo. Mr Koh is the Group Chief Executive Officer of the Yang Kee Group.⁸ However, he makes this application ostensibly as a creditor of YK LogCo. YK LogCo owes a total debt of close to \$16m to a third-party investor, which the parties have referred to as Phillip Capital for convenience, a label I adopt for this judgment.⁹ Mr Koh purports to be a creditor of YK LogCo on the basis that, as guarantor of this debt, he made a payment of the relatively small sum of \$30,000 on 20 December 2022, seven days prior to commencing OA 883.

8 OA 873 and OA 883 (collectively, the “JM Applications”) are opposed by both YK HoldCo and YK LogCo (collectively, “the Companies”).

9 Mr Koh also sought the appointment of interim judicial managers over YK LogCo by HC/SUM 4548/2022. When this came up for hearing before me

⁶ Respondents’ written submissions dated 3 February 2023 (HC/OA 883/2022) at [14].

⁷ 1st Affidavit of Yap Sze Kam dated 22 December 2022 (HC/OA 873/2022) at [11]-[17].

⁸ 1st Affidavit of Koh Kien Chon dated 27 December 2022 (HC/OA 883/2022) at [10].

⁹ 1st Affidavit of Koh Kien Chon dated 27 December 2022 (HC/OA 883/2022) at [77]-[81].

on 4 January 2023, I took the view that the better approach was to expedite the hearing of the main judicial management application and hear both JM Applications together. I heard arguments for both JM Applications on 6 and 17 February 2023.

Background to proceedings

10 On 17 November 2017, YK HoldCo issued various fixed rate convertible bonds secured by a charge over the Koh Family’s 89.45% shareholding in YK HoldCo (the “YK HoldCo Charged Shares”) pursuant to a Share Charge Agreement dated 21 November 2017, and over YK HoldCo’s 50.99% shareholding in YK PropCo (the “YK PropCo Charged Shares”) pursuant to a Share Charge Agreement dated 21 May 2020. Watiga Trust Pte Ltd is the security trustee for the bondholders, who presently comprise:

- (a) United Orient Capital Pte Ltd (“UOC”);
- (b) Singapore Warehouse Co (Pte) Ltd (“SG Warehouse”); and
- (c) Rising Horizon SPC (acting for and on behalf of and for the account of Rising Horizon I SP), an investment vehicle of China Construction Bank Investments (“CCBI”).¹⁰

The amount YK HoldCo owes to these bondholders is in the order of \$110m.¹¹ In addition to the debts identified above, YK PropCo owes about \$265m to three secured lenders, namely three well-known banks DBS, UOB and CIMB (the “YK PropCo Secured Loans” and “YK PropCo Secured Lenders”). However, it

¹⁰ 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [12]-[13].

¹¹ Affidavit of Ngu Chia Yi Florence dated 20 January 2023 at [31]; 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [20].

appears that the security (three Singaporean warehouses) holds value exceeding the respective debts owed to the YK PropCo Secured Lenders. Nonetheless, the YK PropCo Secured Loans are currently in default and guarantee obligations on the part of other members of the Yang Kee Group have been triggered.

11 In 2018, YK HoldCo defaulted on its interest payment obligations and in 2020, YK HoldCo further defaulted upon maturity of the bonds.¹² From about August 2021, the Founders have been engaged in a fundraising exercise to restructure the Yang Kee Group.¹³ To date, this has apparently failed to draw even serious expressions of interest, let alone offers.

12 On 12 May 2022, just over seven months before the JM Applications were filed, Watiga Trust Pte Ltd exercised its power to appoint receivers and managers over the YK HoldCo Charged Shares and the YK PropCo Charged Shares (collectively, the “Charged Shares”).¹⁴ I will refer to the receivers and managers collectively as the Receivers. It is important to note at the outset that they are not receivers and managers of the entire undertaking of the Companies, but only of the Charged Shares. However, by virtue of controlling a majority stake in both YK HoldCo and YK PropCo,¹⁵ the Receivers have effective management control over YK HoldCo and YK PropCo, as well as over YK LogCo because it is a wholly owned subsidiary of YK HoldCo. The Receivers are represented by a controlling majority of directors on the boards of the

¹² 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [16]-[18]; Affidavit of Ngu Chia Yi Florence dated 20 January 2023 at [11].

¹³ 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [18], [35].

¹⁴ 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [1], [19]; Affidavit of Ngu Chia Yi Florence dated 20 January 2023 at [11].

¹⁵ Affidavit of Ngu Chia Yi Florence dated 20 January 2023 at [12].

Companies.¹⁶ These directors are drawn from Kroll Pte Ltd, a company which provides professional insolvency services, among other services.

13 The Receivers commenced their own sales process, commencing 1 July 2022. By the terms of a Withdrawal Agreement dated 13 June 2022 between the Receivers and, among others, the Founders, it was agreed that both processes (that of the Founders and that of the Receivers) were to run concurrently.¹⁷

14 In November 2022, the Receivers elicited two binding offers, one from LOGOS, which owns 49.01% of YK PropCo, and another from Guangdong Provincial Port & Shipping Group Company Limited (“GDPS”).¹⁸

15 After evaluating these offers, the Receivers considered that there were unfulfillable conditions precedent proposed by GDPS standing in the way of successfully completing any deal with them.¹⁹ By contrast, the Receivers considered that the LOGOS offer was clear and capable of completion, while providing clear benefits,²⁰ namely:

- (a) Cash of \$35m for the YK PropCo Charged Shares (for the benefit of the bondholders).

¹⁶ Affidavit of Ngu Chia Yi Florence dated 20 January 2023 at [12]; 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [23].

¹⁷ 1st Affidavit of Cosimo Borrelli dated 20 January 2023 (HC/OA 873/2022) at [36]-[40].

¹⁸ 1st Affidavit of Cosimo Borrelli dated 20 January 2023 in HC/OA 873/2022 at [50].

¹⁹ Respondents’ written submissions dated 3 February 2023 (HC/OA 883/2022) at [48].

²⁰ Respondents’ written submissions dated 3 February 2023 (HC/OA 883/2022) at [38]-[39].

(b) Refinancing of the outstanding YK PropCo Secured Loans, and corresponding release of the guarantees provided by other members of the Yang Kee Group.

(c) Waiver by YK PropCo of all outstanding rental arrears and late fees accrued and owed by YK HoldCo to YK PropCo under a master lease agreement for the Singaporean warehouses.

16 Accordingly, the Receivers decided to move forward with LOGOS, seeking to achieve a definitive agreement by 28 February 2023, until which date LOGOS was granted exclusivity.²¹

17 It was this decision by the Receivers that prompted the JM Applications, seven months after the appointment of the Receivers.

Parties' cases

18 Mr Yap's concern with the LOGOS offer is that it meant that YK HoldCo's shares in YK PropCo will be sold, resulting in YK HoldCo no longer being an integrated offering.²² His counsel contends that the Receivers were acting in the interests of the bondholders rather than in the interests of the creditors of YK HoldCo generally. If judicial managers are appointed, they can independently assess whether to proceed with LOGOS or seek to overcome the alleged difficulties with the GDPS offer.

19 Mr Koh shares these concerns. His counsel contends that if judicial managers are appointed and are then able to negotiate directly with GDPS, there

²¹ 1st Affidavit of Cosimo Borrelli dated 20 January 2023 in HC/OA 873/2022 at [51].

²² 1st Affidavit of Yap Sze Kam dated 22 December 2022 (HC/OA 873/2022) at [34]-[35].

is a real prospect that GDPS might potentially offer a better deal than LOGOS, and, in particular, might offer to buy the business as a whole.²³ As the judicial managers will only be appointed for a limited time, if they fail to obtain a better offer from GDPS or anyone else, their appointment will come to an end at the end of that period. Moreover, the bondholders are not creditors of YK LogCo, but only of YK HoldCo. Their interest in YK LogCo is via the YK HoldCo Charged Shares, which represents the majority stake in YK HoldCo. Leaving aside DBS, the largest creditor of YK LogCo is Phillip Capital, and Phillip Capital supports the making of a judicial management order in OA 883.²⁴ DBS for its part took no position at the hearing. In addition, Mr Koh urged the court to make a judicial management order in the public interest, given the Yang Kee Group's position in the container trade.²⁵

20 Counsel for the Companies contends that there is no basis to find any real prospect of a better deal, whether with GDPS or others. The Founders have had the opportunity to seek other and better solutions and have failed to find any. The LOGOS deal will stabilise the operations of the Companies, and the Receivers continue to work on separate deals in respect of the logistics business. In that regard, they have two potential buyers. They also suggest that appointing judicial managers might imperil the LOGOS deal.²⁶ To this end, they exhibited an email from Jurong Town Corporation (“JTC”) dated 8 February 2023,²⁷ indicating that JTC was awaiting the outcome of the JM Applications before

²³ Koh's written submissions dated 28 December 2022 at [23] and [29]; Koh's written submissions dated 3 February 2023 at [2] and [29].

²⁴ Koh's written submissions dated 3 February 2023 at [2] and [34].

²⁵ Koh's written submissions dated 3 February 2023 at [49]-[54].

²⁶ Respondents' written submissions dated 3 February 2023 (HC/OA 883/2022) at [101]-[107].

²⁷ 2nd Affidavit of Cosimo Borrelli dated 16 February 2023 at 26.

assessing whether to approve the LOGOS deal. Counsel for the Companies also contended that the LOGOS deal alone would benefit the creditors of YK LogCo, because YK LogCo's guarantee given to DBS would be released.²⁸ Further, they contended that Mr Koh has no standing to make the application in OA 883, because a guarantor who has paid off only part of what is owed to the creditor is not entitled to prove in the insolvency of the debtor.²⁹

21 Counsel representing Watiga Trust Pte Ltd, the security trustee, and several other creditors also addressed me. I mention three of them:

(a) UOC, a bondholder and the largest unsecured creditor of YK HoldCo, opposes the JM Applications. They made the point that they are secured creditors and Mr Koh had agreed to their contractual right to appoint the Receivers, which had been the result of negotiations. Even after the default on the bonds in 2018 (see above at [11]), the bondholders had given Mr Koh and his management team time to find an alternative solution. It was only in 2022 that they exercised their rights and appointed the Receivers. Since appointment, the Receivers have achieved substantial progress. Therefore, any allegation of a conflict of interest was simply beside the point and clouded the issue because the right to appoint the Receivers was something that had been freely agreed to. Moreover, Mr Yap and Mr Koh failed to identify *any* detriment if the judicial managers are not appointed.

²⁸ Respondents' written submissions dated 3 February 2023 (HC/OA 883/2022) at [40].

²⁹ Respondents' written submissions dated 3 February 2023 (HC/OA 883/2022) at [70]-[71].

(b) Maybank, creditors of both YK HoldCo and YK LogCo, also opposes the JM Applications. Maybank believes that the LOGOS deal is in the interests of creditors of both YK HoldCo and YK LogCo.

(c) Phillip Capital, creditors of YK LogCo, support the JM Applications. At the hearing, counsel for Phillip Capital said that they want to avoid the possibility of a sale that is not the best possible deal. They also complained that they had not been consulted.

Applicable Law

22 The relevant statutory provisions are ss 89 and 91 of the Insolvency, Restructuring and Dissolution Act 2018 (the “IRDA”). Counsel agree that both YK HoldCo and YK LogCo are insolvent, thus the focus is on whether the making of judicial management orders is likely to achieve one or more of the purposes of judicial management, in particular either:

- (a) their survival, in whole or in part, as going concerns; or
- (b) a more advantageous realisation of their assets or property than on a winding up.

23 While there was mention of the possibility of a scheme of compromise or arrangement in the future, no present scheme was outlined. Rather, this was raised as a possibility in the event of “viable offers”.³⁰

24 For completeness, s 91(6) IRDA does not apply as the Receivers were not appointed over substantially the whole of the undertakings or property of the Companies, but only over the Charged Shares (see above at [12]).

³⁰ Koh’s written submissions dated 3 February 2023 at [37].

25 If one or more of the statutory purposes in s 89(1) IRDA are achievable, the court retains a discretion whether to make the judicial management order. Mr Yap’s counsel put this in terms of whether there was a reason *not* to make such an order, notwithstanding the fulfilment of the conditions in s 91(1) IRDA. Further, s 91(10)(a) IRDA makes clear that the court may make a judicial management order if the public interest so requires.

Decision

26 The thrust of Mr Yap’s and Mr Koh’s submission is that there is a real prospect that judicial managers will be able to reach a “holistic” deal with GDPS (or possibly others). This would be better for the creditors as a whole compared to proceeding with the LOGOS deal. The LOGOS deal is characterised by Mr Yap and Mr Koh as piecemeal rather than holistic. In short, proceeding with the LOGOS deal entails the end of the Founders’ vision of an integrated end-to-end logistics solutions provider.³¹ It is perhaps the approach a liquidator might take. Hence, appointing judicial managers will likely achieve the survival of the Companies or part of them as going concerns (perhaps together with a future scheme of compromise or arrangement) or a more advantageous realisation of their assets than a winding up.

27 The fundamental premise of their submission is that there is a real prospect of a “holistic” and achievable offer from GDPS (or others).

28 In my judgment, the evidence put before the court does not demonstrate any such real prospect. It does not rise above a possible, speculative, hoped for

³¹ Koh’s written submissions dated 3 February 2023 at [18]-[21]; Yap’s written submissions dated 3 February 2023 at [33]-[35].

outcome, the likelihood of which, given the Companies’ experience of the past few years, is relatively low.

29 The most important reason for my conclusion is that there is insufficient evidence that GDPS is seriously interested in reaching a workable deal. Mr Koh’s counsel said that to the “best of Koh’s knowledge and belief, GDPS remains willing to negotiate their investment, and will do so with the JM if appointed”.³² Mr Koh also confirmed that GDPS is aware of the JM Applications.³³ But when asked whether there is any direct evidence from GDPS setting out their current intentions, all that Mr Koh’s counsel could point to was an email exchange between Mr Koh and a GDPS representative, one Ms Amanda Zhang, dated 23 and 25 January 2023.³⁴ This exchange concerned a possible deal between *LOGOS* and *GDPS*. Ms Zhang’s response to Mr Koh was that GDPS was interested to talk to *LOGOS*, but only concerning *LOGOS*’s 49.01% share in *YK PropCo*. She added the assurance that “GDPS highly valued founders and the current management team and our position to maintain stability and keeping the group as a whole has not changed”. This exchange does not even relate to a possible deal *with the judicial managers* if any are appointed and falls far short of substantiating a real prospect that GDPS will make a workable and “holistic” offer if the JM Applications are granted.

30 No doubt recognising the lacuna in his counsel’s submissions, Mr Koh thereafter obtained an email update from Ms Zhang dated 20 February 2023, after the conclusion of submissions. Mr Koh’s solicitors provided this email to

³² Koh’s written submissions dated 3 February 2023 at [30].

³³ 3rd Affidavit of Koh Kien Chon dated 2 February 2023 at [60].

³⁴ 3rd Affidavit of Koh Kien Chon dated 2 February 2023 at 76.

the court on 21 February 2023 by way of a letter.³⁵ In the email, Ms Zhang advocated for the feasibility of their previous proposal that had not been accepted by the Receivers. In response, the Companies' solicitors pointed out Ms Zhang's update did not address the Receivers' fundamental concerns with the GDPS proposal.³⁶ I do not think that this belated update provides any assistance to Mr Koh's case. If anything, its continued lack of clarity after all this time makes it less likely that further exploration with GDPS will lead to a deal, let alone a better one. Moreover, GDPS had the opportunity to participate in the sales process run by the Receivers, but did not make a clear, workable and acceptable proposal. Following the running of that process, LOGOS now holds accrued rights. The context for any assessment of what is in the best interests of creditors is necessarily dynamic, both in relation to market conditions and the steps taken by other potential buyers. Thus, the untimeliness of GDPS's conduct weighed against the clock being turned back in its favour.

31 It is also material that the Founders have had the opportunity to achieve a "holistic" solution but have not to date been able to. There is nothing to suggest that judicial managers will be able to achieve what the Founders could not.

32 Importantly, the making of the judicial management orders will only serve to displace the boards of YK HoldCo and YK PropCo. The Receivers will remain in place as receivers over the YK HoldCo Charged Shares. Mr Yap and Mr Koh accept that any "holistic" deal will likely involve the sale of the YK PropCo Charged Shares (already included in the LOGOS deal) as well as sale of the YK HoldCo Charged Shares. This means that any sale process following the making of judicial management orders will require prospective buyers to

³⁵ Letter from Sim Chong LLC dated 21 February 2023.

³⁶ Letter from Providence Law Asia dated 22 February 2023.

deal with *three* sets of insolvency professionals rather than just one. It is hard to see how this will be to the advantage of any potential sale process.

33 This brings me to the principal advocated advantage of making the judicial management orders, namely that the judicial managers will be independent of the bondholders and will more objectively evaluate the LOGOS deal. First, the evidence suggests that the Receivers have in fact been objective and professional, as well as diligent in their efforts. This is evident from Maybank’s support for the LOGOS deal. Indeed, neither Mr Yap nor Mr Koh (nor anyone else) has come out against the LOGOS deal. The support for the JM Applications is rooted in the hope that some better deal may eventuate.

34 Second, that the Receivers are accountable to the bondholders is something that was built into the security arrangements for the bonds, arrangements which the Founders had obviously agreed to. The fact that the Receivers were appointed pursuant to such agreed arrangements undercuts the Founders’ complaint that the Receivers are accountable to the bondholders rather than to creditors generally. That was precisely the intent of the security arrangement. Here I find that Mr Koh, while ostensibly a creditor of YK LogCo (as of the week before the filing of OA 883), brought these proceedings because of his concerns stemming from his position as one of the Founders. I infer that Mr Koh sought to portray himself as a “creditor” for the purpose of filing OA 883. It is not surprising that he is concerned that his vision of an integrated end-to-end logistics solutions provider may not endure, but that eventuality is not the fault of the Receivers. Mr Koh became a creditor knowing full well that the Receivers were in place and proceeding with the LOGOS deal.

35 In relation to OA 873, it bears emphasis that the bondholders are the largest creditors of YK HoldCo. In relation to OA 883, the bondholders are not creditors of YK LogCo, but it is nevertheless apparent that the LOGOS deal will bring benefit to the creditors generally, as confirmed by Maybank's counsel.

36 For avoidance of doubt, I have not come to a concluded view that Mr Koh has standing as a creditor of YK LogCo. It is not necessary for me to do so given my conclusion on the merits of OA 883.

37 Thus, I conclude that there is no real prospect that the statutory purposes of judicial management will be achieved by the JM Applications in the case of either YK HoldCo or YK LogCo. Additionally, I hold that in all the circumstances of this matter, judicial management orders would not be in the best interests of the creditors considered as a whole. Consequently, I would not have exercised my discretion to make such orders in any event. Lastly, and for completeness, I hold that public interest does not require the making of judicial management orders in this case. There really was no basis for the submission that it did.

38 I dismiss both OA 873 and OA 883. I will hear counsel on costs.

Philip Jeyaretnam
Judge of the High Court

Nair Suresh Sukumaran and Tan Tse Hsien, Bryan (Chen Shixian)
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Applications No 873 of 2022 and No 883 of 2022;
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2022 and No 883 of 2022;
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Mohan Gopalan (Drew & Napier LLC) for United Overseas Bank
Ltd (non-party) in Originating Applications No 873 of 2022 and No
883 of 2022;
Poon Guokun Nicholas (Breakpoint LLC) for Phillip Enterprise Fund
Limited and Phillip Ventures Enterprise Fund 5 Ltd (non-parties) in
Originating Application No 873 of 2022;
Siew Guo Wei (Shao Guowei) (Tan Kok Quan Partnership) for
Watiga Trust Ltd (non-party) in Originating Application No 873 of
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Mohamed Nawaz Kamil, Alston Yeong and Huang Xinli, Daniel
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