

WHEN WILL A JUDICIAL MANAGER'S ACTIONS CAUSE UNFAIR PREJUDICE?

Singapore Court of Appeal lays down the test under Section 227R of the Companies Act

Introduction

In *Yihua Lifestyle Technology Co., Ltd and another v HTL International Holdings Pte. Ltd. and others* [2021] SGCA 87, the Singapore Court of Appeal considered whether certain conduct on the part of judicial managers would constitute unfair prejudice under s 227R of the Companies Act (Cap. 50) (now s 115 of the Insolvency, Restructuring and Dissolution Act 2018). In a landmark decision, the Court of Appeal, in an *ex tempore* judgment¹, laid down a two-stage test. The Court of Appeal, upheld the decision of the High Court² which rejected the challenge of the shareholders vis-à-vis the Judicial Managers' sale of the group for US\$100 million.

This case update provides a summary of the Court of Appeal's decision.

Brief Facts

HTL International Holdings Pte. Ltd. ("**the Company**") is the holding company of the HTL Group, an international furniture group with subsidiaries all around the world. The Company's sole shareholder is Ideal Homes International Ltd, which is wholly owned by Yihua Lifestyle Technology Co Ltd (collectively referred to as "**the Shareholders**"). On 13 July 2020, the High Court appointed Messrs Andrew Grimmett, Lim Loo Khoon and Tan Wei Cheong from Deloitte & Touche LLP were appointed as the Judicial Managers ("**JMs**").

To meet the aims of the judicial management, the JMs proposed to sell the Company's main asset being its ownership of its subsidiaries (referred to as "**the Asset**").

The JMs (at that time interim judicial managers) entered into a sale and purchase agreement ("**SPA**") with Golden Hill Capital Pte Ltd ("**Golden Hill**") which is owned by the original founders of the HTL Group for the sale of the Asset for US\$80million. Shortly before completion of the SPA, the JMs received another offer from a Hong Kong listed entity called Man Wah Holdings Ltd ("**Man Wah**") for US\$100million.

Faced with competing bids, the JMs invited both bidders to send their final offers by 31 August 2020. The JMs would then consider both offers before making a decision.

Prior to the submission of final offers, Man Wah had insisted that the JMs disclose the accounts of the HTL Group which included the accounts of all its subsidiaries. The reason for the request was to ascertain whether the accounts were qualified. If the accounts were qualified, Man Wah stated that they

¹ *Ex tempore* judgment can be viewed via this link: https://www.elitigation.sg/gdviewer/SUPCT/gd/2021_SGCA_87

² *Re HTL International Holdings Pte Ltd* [2021] SGHC 86

would need to hold a shareholders meeting under Hong Kong listing rules to approve the acquisition, with such a meeting taking up to 2 months to convene. If the accounts were not qualified, Man Wah could complete the acquisition within 5 days. The JMs did not accede to the request for the accounts but confirmed that the accounts were qualified.

On 31 August 2020, the following offers were received by the JMs:-

Offer by Golden Hill -Golden Hill offered US\$100 million, interim financing of US\$3 million (pending completion of the acquisition) plus working capital of up to US\$20 million post-acquisition.

Offer by Man Wah- Man Wah offered US\$10million above any consideration offered by Golden Hill i.e. US\$110million. Man Wah offered interim financing of US\$20million (pending completion of acquisition) plus working capital of US\$20 million post-acquisition.

Both offers would result in all creditors being repaid in full and a considerable return to the Shareholders. Notably, Golden Hill's offer could be completed immediately whereas, Man Wah's offer would most likely require between 2 to 6 months to complete.

After carefully evaluating both offers, the JMs decided to sell the Asset to Golden Hill. The JMs were of the view that in light of the time needed to complete the acquisition under the Man Wah offer, the entire interim financing of US\$20 million would be fully drawn down. This would translate to a liability owed by the Company resulting in a lower return to the Shareholders under the Man Wah offer. Further, it was too risky to wait for 2 to 6 months for completion in light of the parlous financial state of the HTL Group.

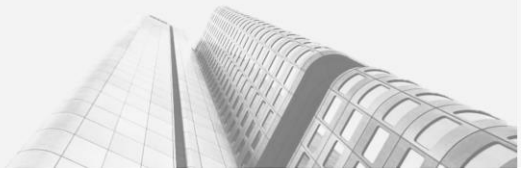
The Shareholders favoured the Man Wah offer and claimed that the JMs' decision unfairly prejudiced them. Accordingly, the Shareholders challenged the JMs' decision under s 227R on the basis that the return to the Shareholders under the Man Wah offer was higher, and that the JMs' failure to disclose the accounts had prevented Man Wah from improving their offer.

The High Court dismissed the Shareholders' application. The Shareholders appealed.

Court of Appeal Decision

The Court of Appeal held that the court would only interfere with the JMs' decision if it could be shown that the JMs' conduct had been plainly wrongful, conspicuously unfair or perverse. This was a high threshold as the JMs are to be given a wide discretion to employ their skills.

Further, the Court of Appeal (agreeing with the High Court) drew guidance from English authorities interpreting paragraph 74 to Schedule B1 of the Insolvency Act 1986 (UK) (which is *in pari materia* with s 227R of the Companies Act), and laid down a two-stage test to be applied to determine whether a judicial manager has acted or proposed to act in a manner which would unfairly harm the interests of its creditors or members:



- (a) **First**, it must be shown that the action complained of has caused, or would cause, the complainant to suffer harm in his capacity as a member or creditor.
- (b) **Second**, the harm caused by the action complained of must be unfair. In this regard, unfairness may stem from the following:
 - (i) conspicuously unfair or differential treatment to the disadvantage of the applicant (or applicant class) which cannot be justified by reference to the objective of the judicial management or the interests of the members or creditors as a whole; or
 - (ii) a lack of legal or commercial justification for a decision which causes harm to the members or creditors as a whole. Examples include a decision to sell the company's assets at an undervalue, or a course of action that is based on a wrong appreciation of law. However, in such cases, the court will not interfere with the JMs' decision unless it is **perverse** (i.e. unable to withstand logical analysis).

The Court of Appeal held that there was no reason to disagree with the High Court's finding that Golden Hill's offer yielded a higher shareholder return than the Man Wah offer.

As for the allegation relating to the failure to disclose the accounts, the Court of Appeal rejected the allegation. In conclusion, the Court of Appeal found that the JMs were justified in accepting the Golden Hill offer and that the JMs did not act in an unfairly prejudicial manner.

The Judicial Managers were represented in the High Court and Court of Appeal by Pradeep Pillai, Joycelyn Lin, Jonas Wong and Lek Haokai of PRP Law LLC.

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