

NOMINATING A PRIVATE TRUSTEE IN BANKRUPTCY – THE LEGAL PRINCIPLES WHEN NOMINATIONS ARE OPPOSED

Introduction

In *Re Lim Oon Kuin and other matters* [2024] SGHC 328, the Singapore High Court had to decide who to appoint as the private trustees in bankruptcy (“**PTIBs**”) *vis-à-vis* debtor’s bankruptcy applications where the majority creditors objected to the debtors’ nominees. The Court considered the issue of whether the majority creditors’ preference should be determinative of the appointment of the PTIBs.

This case update provides a summary of the High Court’s decision.

Brief Facts

The debtors, Mr Lim Oon Kuin, his son, Mr Lim Chee Meng, and his daughter, Ms Lim Huey Ching (collectively, the “**Lim Family**”), had filed debtor’s bankruptcy applications and proposed the appointment of Mr Tam Chee Chong and Ms Oon Su Sun as the joint and several PTIBs (“**the Lim Family’s Nominees**”). The Lim Family was facing debts of close to S\$6 billion and there was no dispute that they were insolvent.

Hin Leong Trading (Pte.) Ltd (In Compulsory Liquidation) (“**HLT**”) as well as Mr Goh Thien Phong (“**Mr Goh**”) and Mr Chan Kheng Tek (“**Mr Chan**”) in their capacity as the joint and several Liquidators of HLT (the “**Liquidators**”) objected to the Lim Family’s Nominees, and, for that matter, any nominees put forward by the Lim Family, primarily because the bankruptcies had come about due to the fraud committed by the Lim Family. HLT together with certain other creditors represented the majority creditors of the Lim Family (“**the Majority Creditors**”).

The Liquidators (on behalf of HLT) proposed the appointment of Mr Sam Kok Weng (“**Mr Sam**”) of PricewaterhouseCoopers Advisory Services Pte Ltd and Mr Tham Chee Soon of iCFO Advisors Pte. Ltd (“**the HLT Nominees**”). The Liquidators contended that the principles involved in the appointment of insolvency officeholders in the corporate insolvency context should similarly apply to bankruptcies. In this regard, they asserted that “*majority creditor support is determinative of the choice of private trustee*”.

The Lim Family accepted that weight should be given to the Majority Creditors’ preference but rejected the notion that those preferences should be determinative. The Lim Family also raised objections to the HLT Nominees based on a lack of experience and conflict of interest.

Decision

A. Weight to be accorded to the preferences of the Majority Creditors

The Court rejected the Liquidators’ submission that “*majority creditor support is determinative of the choice of private trustee*”. The Court drew a distinction between corporate insolvencies and bankruptcies and held that the bankruptcy regime stands on a different footing. Apart from securing repayment of a bankrupt’s debts, the PTIBs have considerable powers in relation to the bankrupt’s affairs which include determining the bankrupt’s monthly contributions to his estate, commencing or defending legal proceedings relating to the bankrupt’s property and giving permission to the bankrupt to travel overseas. As these are considerable fetters on the bankrupt’s personal liberties, the PTIBs must act with a view to striking a balance between the interests of the bankrupt and his creditors. Thus,

the Court agreed with the Lim Family's submission that while weight should be accorded to the creditors' preferences, it must be weighed alongside other relevant considerations such as independence and proficiency.

B. Independence of the HLT Nominees

The Court did not find the HLT Nominees to be suitable. This was not because of any lack of experience or expertise but rather because of perceptions of a lack of independence. There was a potential conflict of interest in relation to Mr Sam who was from the same firm as Mr Chan (and who Mr Goh worked with closely). The Lim Family were also involved in certain pending legal actions against Rajah & Tann Singapore LLP, and the PTIBs would have conduct of or will need to sanction those actions. As it was an open question as to whether Mr Goh would be a witness in those actions, Mr Sam would potentially face a conflict of interest if he were appointed as one of the PTIBs.

C. The Lim Family's Nominees

The Court found that there were valid reasons for the Liquidators' opposition to the Lim Family's Nominees. Since the PTIBs would have to investigate the assets of the Lim Family, in all the circumstances, the creditors' interests would not be seen to be fulfilled by PTIBs nominated by the Lim Family if creditors had objected to these nominees and other suitable alternative nominees were available.

D. The Alternative Nominees

The Liquidators proposed two sets of alternative nominees (i.e. the RSM Nominees and the BDO Nominees). The Court found that the alternative nominees were more suitable than the Lim Family's Nominees, whether appointed by themselves or as part of a joint appointment with one of the alternative nominees. As the Lim Family did not have substantive objections to the BDO Nominees and preferred them to the RSM Nominees, the Court appointed the BDO Nominees as the PTIBs.

The Lim Family was represented by Pradeep Pillai, Joycelyn Lin, Rashpal Singh Sidhu and Lydia Lee of PRP Law LLC.



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