Eltraco International Pte Ltd v Sennet Electrical Engineering Pte Ltd and Others [2003] SGHC 40

Case Number : OS 1028/2002

Decision Date : 26 February 2003

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Steven Lee (Chen Lee & Ng) for the plaintiff; Ravi Chelliah and Lee Hwai Bin (ComLaw LLC) for the second, fifth, sixth and seventh defendants); Lee Eng Beng and Hilbert Lee (Rajah & Tann) for third defendant; Eusoff Ali (Tan Rajah & Cheah) for eighth defendant

Parties : Eltraco International Pte Ltd — Sennet Electrical Engineering Pte Ltd; Yi Wee Pools & Fountains Pte Ltd; Hitachi Plant Engineering & Construction Co Ltd; Sterling Wood International Pte Ltd; Nature Landscapes Pte Ltd; Wing Tai Enterprises Pte Ltd; Equip-Design & Supply Pte Ltd; Pine View Holdings Pte Ltd

Introductory

1 In these proceedings, the issue for determination revolved around the scope and operation of a scheme of arrangement put forward by the judicial manager of the plaintiffs and duly approved by the court, pursuant to s 210 (read with s 227X) of the Companies Act (Cap 50) ('the Act') in relation to the debts of the plaintiffs.

Background facts

2 The plaintiffs are the main contractors for a building project known as Pine Springs at 7B Balmoral Road ('the project'). The eighth defendants, Pine View Holdings Pte Ltd are the owner-developers of the project ('project owners'). The other seven defendants are some of the unsecured creditors, being nominated sub-contractors of the project to whom various amounts were due and outstanding from the plaintiffs.

3 The plaintiffs were placed under judicial management by an order of court dated 21 January 2000 in Originating Petition No 36 of 1999. Mr Chee Yoh Chuang ('Chee') and his colleague Lim Lee Meng were appointed joint and several judicial managers of the plaintiffs by the said order. At the time the plaintiffs were placed under judicial management, their accounts with the project owners were not finalised and had yet to be certified for payments by the project architects.

4 Following their appointment, the judicial managers, in exercise of their powers and functions convened a meeting of the creditors of the plaintiffs to consider and approve a scheme of arrangement with a view to avoiding the compulsory winding-up of the plaintiffs and restructuring and preserving all or part of the business of the plaintiffs as a going concern.

5 By an order of court dated 12 July 2000, Chee was one of the persons appointed by the court to act as chairman of the court-directed creditors' meeting. Notices were published both in the English press as well as the Chinese media and the said meeting was duly convened on 11 August 2000.

6 As it transpired, 62 creditors (including the first to the seventh defendants) either personally or by

proxy attended the meeting. A poll taken showed that the result was that the majority of the creditors, representing 86.5% in value voted in favour of the scheme of arrangement. The results of the poll tabulated in the affidavit of Chee were as follows:

Proposed scheme of arrangement	FOR		AGAINST	
	No.	Amount(S$)	No.	Amount S$
	57	5,403,436.81	4	843,369.99
Percentage	93.4%	86.5%	6.6%	13.5%

7 The scheme which was accepted by the requisite majority of creditors contained amongst other things, the following proposals:

> (a) The realisation from the Company's assets (mainly accounts receivable from completed projects) after meeting the costs of realisation and administration shall be paid entirely to the creditors in the manner set out [in the scheme] (para 1.2)0;
>
> (b) The claims of unsecured creditors shall be extinguished upon receipt of their entitlements under the said scheme (para 1.2.2);
>
> (c) The judicial managers shall apply to the court for the discharge of the judicial management order immediately after the scheme is approved by the creditors (para 1.2.3); and
>
> (d) Chee shall be the scheme administrator of the scheme (para 5.1) to:
>
> > (i) invite claims and adjudicate such claims; and
> >
> > (ii) authorise payments to creditors in accordance with the scheme and to keep account of such payments (para 5.3 (i) and (ii)).

8 Paragraph 2 of the scheme dealt with the distribution mechanism. Under the heading 'Creditors' Entitlement', it was provided therein as follows:

2.1 Preferential creditors

Preferential creditors as defined in Section 328 of the Companies Act (Cap 50) will be paid 100% of their claims admitted by the JMs/Administrator as and when funds are available.

2.2 Unsecured creditors

Unsecured creditors whose claims have been admitted by the JMs/Administrator shall be paid on a pro-rata basis within two weeks of receipt of payment provided the claims of the preferential creditors have been met in full. There shall be no payment and the funds shall be held by the JMs/Administrator to consolidate with future receipts if the sum is not sufficient to make a payment of at least 5%.

2.3 Contingent creditors

In the event the claims of the contingent creditors materialise, they shall be paid in the same manner as any other unsecured creditors. The JMs/Administrator shall make a provision for the contingent claims if same are not resolved at the time of payment to unsecured creditors.

2.4 Secured creditors

Secured creditors shall be paid out of the net proceeds from the sale of their security as and when the net sale proceeds are received. If assets are not sold at the time of payment, the secured creditors shall be paid based on the estimated shortfall if any, in the same manner as any other unsecured creditors.

The Scheme shall not in any way prejudice or affect the rights of the secured creditors.

9 In the event, by way of Originating Summons No 1017 of 2000, Chee applied to the court for the approval of the scheme duly passed at the meeting of creditors and thereafter obtained the court's approval by an order of court dated 4 October 2000. Chee thenceforth became the scheme administrator.

10 The matter, however, took a turn when the plaintiffs received a letter dated 15 January 2002 from the project architects. The said letter read:

15 January 2002

…

PINE SPRINGS AT 7B BALMORAL ROAD FOR PINE VIEW HOLDINGS PTE LTD – Claims by Nominated Sub-Contractors/Suppliers (NSC/S) for Direct Payment

Please note that we have received claims from the NSC/S [nominated sub-contractors] that amounts certified for payment are still not paid by yourselves, and they are requesting for direct payment from the Employer.

Without prejudice to adjustment and increased entitlements in the final account, please find attached a copy of the NSC/S' respective claims for direct payment.

The Employer is considering these claims and any direct payments are intended to proceed subject to any substantiated objections in accordance with the Contract, after 31 January 2002 (giving you 14 days' notice to respond, as required under the Conditions of Contract).

You have already been notified separately of the 'Allowance for Defects' and Costs of Other Contractors' Works through our respective Architect Directions and Certificates.

…

[Signed]

11 The scheme administrator replied to the architects on 25 January 2002. The said reply read:

25 January 2002

…

Pine Springs At 7B Balmoral Road For Pine View Holdings Pte Ltd

Claims By Nominated Sub-Contractors/Suppliers (NSC/S) For Direct Payment

We refer to your letter dated 15 January 2002 on the captioned subject.

As you are aware, the Company was placed in judicial management earlier. Currently, there is a Scheme of Arrangement between Eltraco International Pte Ltd ("the Company") and all it's unsecured creditors. Under the circumstance, all payments due from the Employer should either be made to the Company and/or the Scheme Administrator. Please note that payments made by the Employer directly to the Company's nominated sub-contractors ("NSCs") may be construed as undue preference payments. The Company and Scheme Administrator hereby reserve their rights to claim against the Employer and/or the NSCs for all payments made directly to the NSCs by the Employer.

…

[Signed]

12 The demand by the plaintiffs was apparently not viewed with favour by the project owners. On 29

January 2002, the project owners wrote to the architects in the following terms:

29th January 2002

…

Re: Pine Springs at 7B Balmoral Road

Claims By Nominated Sub-Contractors/

Suppliers (NSCs) for Direct Payment

We refer to the above and to the letter to you dated 25th January 2002 from Eltraco International Pte Ltd ("Eltraco") signed by Mr. Y C Chee as the Scheme Administrator of the Company.

We are of the view that any alleged scheme of arrangement between Eltraco and all its unsecured creditors does not impact our contractual rights under our main contract with Eltraco.

We are not privy to the scheme of arrangement and no official notice nor details of the scheme whatsoever were made available to us. Even if they were, it would not in our view, have impacted our contractual position.

Eltraco is also not currently under judicial management, and even if they were, the placement of Eltraco under judicial management would not impact our legal rights under the contract.

The Scheme Administrator has not forwarded any satisfactory or legally substantive reason as to why direct payments to NSCs legitimately made under contract conditions between Eltraco and ourselves pursuant to certifications by yourselves as Architects, amount to any form of undue preference.

We reiterate that direct payments made to the NSCs by the Employer are deemed to be payments made to the Contractor so long as NSCs' claims have been duly certified by yourselves as Architects.

Unless Eltraco and/or the Scheme Administrator are able to substantiate or rationalise the position taken in their letter, we continue to reserve our right to effectuate direct payments in discharge of our obligations in accordance with the terms of the contract. We also reserve our right alternatively to make payment to Court if we deem such necessary for purposes of our own interest and convenience.

…

[Signed]

13 Disturbed by the stand taken by the project owners, the plaintiffs through their solicitors' two letters dated 6 March 2002 informed the project owners as well as the other defendants, that any direct payment to the nominated sub-contractors by the project owners would be in contravention of the approved scheme of arrangement and would constitute an undue preference to one group of unsecured creditors. Notwithstanding the said communication, the architects, nevertheless, issued their final certificate on 22 June 2002, purportedly under clause 31(10) of the Conditions of Contract in respect of the project and further authorised the first to the seventh defendants to present the certificate to the project owners to receive direct payments from them.

14 The said final certificate and the final account summary purported to show that there was a nil balance in favour of the plaintiffs and an intended direct payment to the nominated sub-contractors in the amount of $578,604.35. A footnote added to the architects' final account summary said: 'The amount of actual direct final payment from employer to NSC/S will be reduced from the total outstanding balance claimed to offset the amounts owing to the Employer from the Main Contractor.'

15 Following the said certificate by the architect, the plaintiffs once again through their solicitors on 1st July 2002 served notice on all the nominated sub-contractors to put them on notice that if they had indeed received the certified sums from the project owners under the said certificate of direct payments to nominated sub-contractors or suppliers dated 22nd June 2002, they were required within the next forty-eight (48) hours, to pay over the said certified sums to the scheme administrator for administering under the scheme of arrangement; or if they had not received the certified sums, then they were to give a written authorization to the project owners to pay the said certified sums to the scheme administrator.

16 There was no response from any of the defendants. In the result, the plaintiffs applied to the court in this originating summons for the following reliefs:

> 1 that the 8th defendants be restrained and injuncted from effecting payments directly to any one and/or all of the 1st to 7th defendants under the Certificate of Direct Payment to Nominated Sub-Contractor or Supplier dated 22nd June 2002 issued by the architect in respect of the project;
>
> 2 that the 1st to 7th defendants be ordered to direct and/or authorise the 8th defendants to effect payment of all such sums of money as is due to them as certified by the architect under the Certificate of Direct Payment to Nominated Sub-Contractor or Supplier dated 22nd June 2002 to the plaintiffs instead;
>
> 3 alternatively, if any one and/or all of the 1st to 7th defendants shall have received direct payment from the 8th defendants under the said Certificate of Direct Payment to Nominated Sub-Contractor or Supplier dated 22nd June 2002 issued by the Architect, then they are to forthwith pay all such sums received by them to the plaintiffs.

17 The plaintiffs' application was resisted by the second, third, fifth, sixth defendants and the project owners. The first and the fourth defendants made it known to the court that they would abide by whatever decision the court may deem fit to hand down.

Arguments

18 In a nutshell, the plaintiffs' argument was that so long as the scheme of arrangement had received the requisite majority consent of the creditors and the subsequent all-important judicial endorsement, it had statutory force and could not be resiled by the very creditors who had submitted their proof of debt, attended the meeting and partaken in the voting process. He reiterated the point that once the scheme had been approved by the court, it became unimpeachable.

19 Counsel for the third defendants contended that inasmuch as the scheme did not make any specific reference to the sums due and payable to the nominated sub-contractors from the project owners and did not expressly or impliedly contain any provision which affected the third defendants' rights to receive direct payment from the project owners, the plaintiffs' present application against his clients should be dismissed. In this regard, he invited the court to the principles enunciated in *Daewoo Singapore Pte Ltd v CEL Tractors Pte Ltd* [2001] 4 SLR 35 and contended that in the absence of an express provision, a scheme of arrangement affected only the rights of the creditors against the company and did not affect the rights of the creditors against a third party such as a guarantor for the same debts and liabilities of the company. He emphasised that the third defendants in this case had a right to receive direct payment from the project owners in accordance with the terms of the main contract. Counsel for the third defendants further highlighted an instance of one of the creditors, Uni-Strong Pte Ltd, ('Uni-Strong') being allowed by the plaintiffs to receive a sum of $43,000 direct from the project owners.

20 Insofar as the second, fifth, sixth and seventh defendants were concerned, their counsel's submission was that the scheme administrator in drafting the scheme did not address his mind to the rights of the defendants as regards their contractual rights to receive direct payments from the project owners and as such it did not prevent his clients from receiving direct payments from the project owners for the amounts certified. When asked by the court whether any of his clients who attended the meeting convened to discuss the scheme had taken any objection at the meeting, his reply was that they had not.

21 As regards the project owners, the position adopted by his counsel was that his clients were not a party to the scheme of arrangement and as such the application citing them as one of the defendants had been ill-conceived and in any event, his clients had not been intending to make any direct payments to any of the nominated sub-contractors direct but, subject to further adjustments or deductions, were only desirous of making payments into a special account under the name of the President of the Singapore Institute of Architects in accordance with cl 31(10)(b) of the conditions of contract or alternatively into court. Insofar as is material, cl 31(10)(b) of the conditions of contract reads as follows:

> 31.(10)(b) In addition the Architect, within the said three months before issuing the Final Certificate and after giving 14 days' written notice to the Contractor, may, but shall not be obliged to, certify direct payment by the Employer to any Nominated Sub-Contractor or Supplier (or any Designated Sub-Contractor or Supplier whose

work materials or goods are the subject of a P.C. Item) of any outstanding balance due to such Sub-Contractor or Supplier and unpaid at that time. Should the Contractor within the period of notice object to such direct payment showing prima facie cause why any monies are not due from him to the Designated or Nominated Sub-Contractor or Supplier and the Architect nevertheless certifies such direct payment, the Employer, in lieu of payment direct may, but shall not be obliged to, pay any such sum into a special bank account made available for this purpose in the name and under the control of the President of the S.I.A. to await the final determination of any dispute between the Contractor and the Sub-Contractor or Supplier by an arbitrator or the Courts, or its release in whole or in part in accordance with any agreement between the Contractor and the Sub-Contractor or Supplier duly notified by them to the President. In either event any amounts so paid may be taken into account by the Architect in the Final Certificate or, if not, may be deducted by the Employer from any sums then certified as payable by him, or may be otherwise recovered by the Employer from the Contractor.

Conclusion

22 It must be observed at the outset that it was not in dispute that the scheme propounded by the judicial managers was presented at a duly convened meeting of the creditors pursuant to s 210(1) of the Act; it received more than the requisite statutory majority consent and was subsequently accorded a judicial imprimatur. The relevant provisions of s 210 as well as s 227X of the Act read as follows:

210.-(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members to be summoned in such manner as the Court directs.

(3) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to any compromise or arrangement, the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors or class of creditors or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(10) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between

the company and its creditors or any class of such creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member or creditor of the company restrain further proceedings in any action or proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.

227X. At any time when a judicial management order is in force in relation to a company under judicial management –

(a) section 210 shall apply as if for subsections (1) and (3) thereof there were substituted the following:

(1) Where a compromise or arrangement is proposed between a company and its creditors, the Court may on the application of the judicial manager order a meeting of creditors to be summoned in such manner as the Court directs.

(3) If three-fourths in value of the creditors present and voting either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement, if approved by the Court, is binding on all the creditors and on the judicial manager."; …

23 The effects of a court-sanctioned scheme of arrangement came up for discussion in New South Wales in *Hill v Anderson Meat Industries Ltd* [1971] 1 NSWLR 868 as well as before the Singapore Court of Appeal in *Daewoo* (*supra*). Both Street J in *Hill v Anderson* and Yong Pung How CJ in *Daewoo* reaffirmed the view that a scheme of arrangement duly passed and sanctioned by the court inherited a statutory effect upon the relationship between the debtor company and its creditors. Street J, particularly reiterated the principle that the point of distinction between a composition within the bankruptcy legislation or a scheme within a winding up and a scheme outside the winding up is too fine to be recognised.

24 In *Daewoo*, the respondent ('CEL Tractors') proposed a scheme of arrangement to be made with ten of its creditors, one of whom was the appellant ('Daewoo'). The ten creditors all held guarantees in respect of the loans and liabilities owed to them by CEL Tractors. Daewoo in particular held a guarantee given by one of the directors of CEL Tractors in respect of its loan to the company.

25 The scheme provided that CEL Tractors would make certain scheduled payments and grant share options to the creditors, in consideration of which, under cl 4.3, the creditors would release both CEL Tractors and their respective guarantors from liability under the loans. A meeting of the ten creditors was duly convened and the scheme was approved by the requisite majority representing not less than three-fourths in value of the debts of the creditors present and voting, namely eight of the ten creditors, holding 95.62% of the debts. One creditor abstained, and only Daewoo voted against the scheme. When CEL Tractors applied to the High Court for approval of the scheme under s 210(3) of the Companies Act (Cap 50, 1994 Ed) ('the Act'), Daewoo objected to cl 4.3 on the basis that a scheme of arrangement bound only the company and the creditors and therefore could not discharge or affect the liability of a third party guarantor to the debts of the company. The judge sanctioned

the scheme and Daewoo appealed against his decision.

26 In dismissing *Daewoo's* appeal, the Court of Appeal (per Yong Pung How CJ) held that notwithstanding the general rule that a scheme of arrangement or compromise made between a company and its creditors and sanctioned by the court affected only the rights of the creditors against the company and did not affect the rights of the creditors against a third party, it saw no reason in principle why such a scheme could not incorporate such a term specifically.

27 Returning to the issues before me, it was argued by third defendants' counsel as well as counsel for the second, fifth, sixth and seventh defendants that the scheme as approved did not expressly exclude the defendants' rights to receive direct payment from the project owners and as such the plaintiffs could not now prevent the defendants from receiving payments from the project owners.

28 In my view, the above argument appeared to ignore and sideline a significant feature of the scheme, appearing in paras 1.2.1 and 2 therein (*supra*) where it was stated in simple and uncomplicated language that the sums receivable by the plaintiffs from the project owners would be distributed as spelt out in the scheme.

29 In my determination, it was a compelling inference that all the unsecured creditors (which group includes the first to seventh defendants) who attended the meeting could not have missed the significance of para 1.2.1 as well as para 2 of the scheme. There was indeed a pointed and unmistakable reference to accounts receivable in para 1.2.1 of the scheme and a further clear enunciation as to how the realised amount would be distributed to the various classes of creditors in para 2 thereof.

30 In the premises, the present assertion that the scheme did not prevent the first to seventh defendants from receiving direct payments from the project owners could only be characterised as double-speak. Furthermore, what was more remarkable was that when the scheme was presented the second, fifth, sixth and seventh defendants did not even raise any objection to the scheme. This was admitted by their counsel.

31 It must be remarked at this stage that the relationship between the project owners and the defendants/nominated sub-contractors did not appear to be one of guarantors and beneficiaries; nor was there any independent legal obligation on the part of the project owners to pay the nominated sub-contractors. In any event, as mentioned in *Daewoo*, in the case at hand too the phraseology employed in paras 1.2.1 and 2 of the scheme clearly supported the plaintiffs' contention that when the poll took place at the court-directed meeting, the focus of parties was in relation to the distribution of monies receivable by the plaintiffs from the project owners.

32 Plaintiffs' counsel also submitted that once the scheme had been sanctioned by the court, any direct payment by the project owners under the direct payment cl to the first to the seventh defendants would be contrary to public policy. In this regard, the court's attention was invited to *Joo Yee Construction Pte Ltd (in liquidation) v Diethelm Industries Pte Ltd & Ors* [1990] SLR 278, a case under the companies winding-up regimen and not one dealing with any scheme of arrangement. The facts of the case as could be gathered from the headnotes of the case are as follows.

33 A winding-up order was made against the plaintiff on 10 February 1989. On 12 September 1986, the plaintiff entered into a building contract ('the main contract') with the government of Singapore ('the government') for the construction of the Blood Transfusion Services/Department of Scientific Services Complex at the General Hospital, Singapore, and International Development and Consultancy Corp Pte Ltd (Indeco) was appointed for the purpose of administering the main contract. The first, second, third and fourth defendants ('the four defendants') were the nominated sub-contractors for the development. Each of the four defendants, as the nominated sub-contractors, on divers dates entered into a sub-contract with the plaintiff, and the terms of each sub-contract were identical in all material respects. In respect of works carried out by the plaintiff and the sub-contractors at various stages of the development, certificates of payment under cl 38 of the conditions of the main contract had been issued by Indeco for payments to be made to the plaintiff as the main contractor; included in the certificates were the amounts payable by the plaintiff to the nominated sub-contractors respectively for the works carried out and materials and goods supplied by them, and these amounts were set out in a list annexed to each of the certificates. Up to the date of commencement of liquidation of the plaintiff, 19 certificates had been issued, and payment of the full amount thereunder had been made to the plaintiff. Except in respect of two certificates, namely, certificate Nos 16 and 17, the plaintiff had, on receipt of the amount under each certificate, paid the amounts stated in the list to the respective sub-contractors. In respect of certificate Nos 16 and 17, though full amounts thereunder had been paid by the government to the plaintiff, certain amounts remained unpaid to the first, third and fourth defendants.

34 Since the payment under certificate No. 19, no further certificate had been issued by Indeco. The plaintiff's liquidators took out an application to determine whether upon the true construction of cl 20(e) of the main contract, any direct payment made pursuant to the said provision by the government to the four defendants would, having regard to the winding-up order made against the plaintiff, be in contravention of s 329 of the Companies Act (Cap 50, 1988 Ed) (the Act). The true issue before the court was whether any direct payment to be made by the government to the nominated sub-contractors pursuant to cl 20(e) of the main contract contravened the combined operation of ss 280(1) and 327(2) of the Act.

35 In deciding in favour of the plaintiffs, Thean J held that:

> Upon liquidation of an insolvent company (whether voluntary or compulsory), subject to the rights of preferential creditors and also secured creditors, if any, its property must be applied in settlement of its liabilities pari pasu, and any contract made by the company which provided for a distribution of any of its property for the benefit of one or more of its unsecured creditors which ran counter to or sought to vary this rule was contrary to public policy, and the law as regards distribution of the insolvent's property under the insolvency legislation must prevail.

36 In my view, there was no reason why the public policy approach adopted by Thean J should not, perforce, be applied to the case at hand although the present situation, no doubt, fell into a scheme outside the winding-up regimen. In my view, the wording as well as the spirit of s 210 and s 227X of the Act left no room for ambiguity. They lay down the law that if three-fourths in value of the creditors present and voting either in person or by proxy at the meeting were to agree to any

compromise or arrangement, the said compromise or arrangement, if approved by the court, would be binding on all the creditors. The argument that the scheme did not specifically exclude the defendants under reference from receiving direct payments from project owners, was found by me to be unmeritorious. Furthermore, to scuttle the scheme sanctioned by the court to benefit only a handful of unsecured creditors as against the rest who had not come forward to resist it, would most certainly be against public policy.

37 Now let me deal with the defendants' arguments concerning a direct payment of $43,000 to Uni-Strong, one of the nominated sub-contractors, by the project owners with the consent of the scheme administrator. It was contended on behalf of the defendants such selective treatment amounted to lack of bona fide on the part of the scheme administrator. The explanation offered by the plaintiffs (see paras 4 to 15 of the affidavit of Tan Soon How filed on 10 September 2002) was that the said payment was a compromise forced upon the scheme administrator, by the acts of Uni-Strong as well as the project owners. According to the plaintiffs, upon Uni-Strong claiming that they be paid first before they issued the waterproofing warranty and at the same time the project owners making it difficult that they would not release the retention sums and would not finalise the final accounts with the plaintiffs until the said warranty from Uni-Strong was obtained, the scheme administrator had no option but to allow the project owners to pay Uni-Strong the sum of $43,000 direct. Having heard the explanation, I was persuaded that the scheme administrator had little choice but to yield to the demands of Uni-Strong. In the circumstances, the allegation that the scheme administrator's acts were not bona fide was not made out.

38 Having considered all the submissions, I found that the arguments advanced on behalf of the project owners as well as the second, third, fifth, sixth and seventh defendants lacked merit. As I said earlier the first and the fourth defendants had no strong views on this. In the circumstances, I granted the injunctive reliefs prayed for by the plaintiffs.

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