Max Sun Trading Ltd v Elda Instinct Garments Pte Ltd
[2009] SGHC 219

Case Number : CWU 113/2009

Decision Date : 25 September 2009

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Ramesh Bharani s/o K Nagaratnam (Aequitas Law LLP) for the plaintiff

Parties : Max Sun Trading Ltd — Elda Instinct Garments Pte Ltd

Companies – Winding up – Winding-up application – Procedure for service of winding-up application and supporting affidavit

25 September 2009

Woo Bih Li J:

1 This was an application by the plaintiff to wind up the defendant. I granted the application which was not contested. That result was not remarkable. However, I wish to mention a point of interest that came to my attention.

2 An affidavit of service of the application and supporting affidavit was filed but this affidavit was unlike the ones usually filed by practitioners. The latter usually states that service has been effected on a defendant by leaving the relevant papers at the registered office of the defendant, without more.

3 However, in the present case, the affidavit of service mentioned that the relevant papers were left at the registered office of the defendant after the process server had failed to find any member, officer or employee of the defendant at its registered office.

4 Counsel for the plaintiff, Mr Ramesh Bharani, informed me that as this was the first time he was acting for a plaintiff to wind up a defendant, he had simply complied with the applicable rules. He referred to r 26(1) of the Companies (Winding Up) Rules (Cap 50, R 1, 2006 Rev Ed) which states:

> **Service of winding up application and supporting affidavit**
>
> **26**. —(1) Every winding up application and supporting affidavit shall, unless filed by the company, be served upon the company at the registered office of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any can be found, by leaving a copy with any member, officer or employee of the company there, or in case no such member, officer or employee can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member or members of the company as the Court may direct;…

5 It is not easy to grasp what r 26(1) means at first reading. In summary, it states that service is to be effected by leaving a copy of the relevant papers at the registered office of the company in question by leaving a copy of the relevant papers with any member, officer or employee of the company there and if no such person can be found there, then by leaving a copy of the relevant papers at the registered office.

6 The implicit requirement to look for any member, officer or employee ofthe company at the location mentioned is not confined to the situation where there is no registered office and where service is to be effected at the principal or last known principal place of business.

7 Thus, service is to be effected as follows:

(a) at the registered office of the company or, if there is no registered office, then at the principal or last known principal place of business;

(b) by leaving a copy of the relevant papers with any member, officer or employee of the company there;

(c) if no such person can be found there, then by leaving a copy of the relevant papers at the registered office or, if none, at the principal or last known principal place of business.

Form 6 which is referred to in r 26(1) follows these requirements.

8 Rule 26(1) makes sense as the winding up of a company is a matter more serious than normal litigation. However, usually the second step is not even attempted as it has been assumed that service by leaving the relevant papers at the registered office, without more, is sufficient.

9 The above incident is a timely reminder that one should not get too comfortable with experience and, from time to time, one should go back to basics.