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

[2022] SGHC 117

Originating Application No 29 of 2022

In the matter of Section 310 of the Companies Act (Cap 50, 2006 Rev Ed)

Castlewood Group Pte Ltd (in creditors' voluntary liquidation)

… *Applicant*

BRIEF REMARKS

[Insolvency Law — Winding up — Third-party litigation funding]

Re Castlewood Group Pte Ltd (in creditors' voluntary liquidation)

[2022] SGHC 117

General Division of the High Court — Originating Application No 29 of 2022
Aedit Abdullah J
26 April 2022

23 May 2022 Judgment reserved.

Aedit Abdullah J:

1 These brief remarks address primarily the argument that under the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act") the proceeds of a cause of action pursued by the liquidator of a company are considered as property of the company, and may be assigned. While the position has been made clear under s 144(1)(*g*) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) (the "IRDA"), as a number of cases remain to be decided under the Companies Act, these remarks are published for the benefit of those in practice.

2 The applicant seeks orders allowing the liquidator of the applicant to enter into a funding arrangement, under which the benefits or proceeds of claims are assigned and, further or alternatively, a declaration that the funding arrangement does not amount to maintenance or champerty.

Preliminary points

3 It suffices for me to note in passing that a sealing order was sought and granted. I also accept the applicant's arguments that the present application is governed by the Companies Act rather than the IRDA, as the date of the resolution of the creditors' voluntary winding up was passed on 29 October 2019 before the commencement of the IRDA.

Whether proceeds of a cause of action count as property under s 272

4 It is not argued by the applicant that post-liquidation causes of action vesting in a liquidator are property of the company and hence assignable. The decision of the Court of Appeal in *Neo Corp Pte Ltd (in liquidation) v Neocorp Innovations Pte Ltd* [2006] 2 SLR(R) 717 ("*Neo Corp*") controls the issue.

5 The applicant argues, though, that the proceeds of causes of action arising in liquidation are property of the company which may be sold by the liquidator under s 272(2)(*c*) of the Companies Act. Just as no distinction is drawn between pre and post-bankruptcy assets, as was the case in *Re Fan Kow Hin* [2019] 3 SLR 861 ("*Fan Know Hin*"), neither should any be drawn in respect of the corporate insolvency context. The English decision in *In re Oasis Merchandising Services Ltd* [1998] Ch 170 ("*Re Oasis*") which ruled that a liquidator could only sell pre-insolvency assets should not be followed. The Singapore Court of Appeal's decision in *Neo Corp* only endorsed *Re Oasis* for the narrow position in law concerning the assignment of causes of actions only, but does not bar the proceeds of post-liquidation causes of actions from being part of the property of the company which may be assigned by the liquidator.

6 However, as I did in *Fan Kow Hin* (at [17]), I do not find that it is open to me to go behind the Court of Appeal's endorsement of *Re Oasis* in *Neo Corp*.

I have considered much the same arguments in *Fan Kow Hin*. While the applicant has tried to narrow the scope of the endorsement of *Re Oasis* by *Neo Corp*, it is not appropriate for me to so distinguish the Court of Appeal's decision. I find that the scope of the *Neo Corp* adoption or endorsement is wider than that characterised by the applicant. There was no limitation as argued for.

7 It may be that it would be more rational to not distinguish between the position under the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("Bankruptcy Act"), as determined by *Fan Kow Hin*, and that under the Companies Act, but that is where we are: avoiding that differentiation is not reason enough for this court to go behind *Neo Corp*. It was not argued by the applicant that the position under the IRDA shows the clear parliamentary intention to do away with that distinction between the Bankruptcy Act and the Companies Act. But I would have rejected that argument in any event: the fact that Parliament enacted the provision in IRDA does not change the proper interpretation to be given to the Companies Act provision as indicated in *Neo Corp*.

8 In fact, the very enactment of s 144(1)(*g*) of the IRDA supports the proposition that it was not previously possible to assign the proceeds from post-liquidation causes of action under the Companies Act, following the principle that "Parliament shuns tautology and does not legislate in vain" *(Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [38]). This is made clear from the parliamentary debates discussing, *inter alia*, s 144(1)(*g*) of the IRDA (*Singapore Parliamentary Debates, Official Report* (1 October 2018) vol 94 (Edwin Tong Chun Fai, Senior Minister of State for Law)):

> … These new provisions allow the judicial manager to assign proceeds from such an action to a third party, in exchange for funding of the action. This new avenue of funding may increase the likelihood of such an action being pursued. This will, in turn, benefit stakeholders by providing higher recoveries, if

> such actions are successful. This new power is similarly provided to liquidators in clauses 144(1)(g) and 177(1)(a).
>
> To avoid doubt, these new provisions are only intended to provide for the assignment of proceeds from such an action brought by the judicial manager or liquidator. …

The enactment of s 144(1)(*g*) of the IRDA was described as a "new power" provided to liquidators and would introduce a "new avenue of funding".

No maintenance or champerty

9 The approach in *Re Vanguard Energy Pte Ltd* [2015] 4 SLR 597 applies to the present case. I find on what is before me that the funding arrangement does not violate the rule against champerty or maintenance. Those standing behind the arrangement, namely creditors of the company, have an interest in the litigation. The proceedings will be under the control of the liquidator and allowing the arrangement to proceed will ensure access to justice since, otherwise, the company would not be able to investigate and pursue the claim.

10 This is sufficient for the applicant to be granted the substance of its application. The court thus grants the declaration sought by the applicant.

Aedit Abdullah
Judge of the High Court

Andrew Chan Chee Yin (Allen & Gledhill LLP) (instructed), Clarence Lun Yaodong, Ang Minghao, Wong Changyan Ernest, Christopher Lim and Chua Qin En (Fervent Chambers LLC) for the applicant.