

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

[2023] SGHC 208

Originating Application No 220 of 2023 (Summonses Nos 1510 and 1511 of 2023)

In the matter of Section 181(1)(a) of the
Insolvency, Restructuring and Dissolution Act
2018

And

In the matter of CST South East Asia Pte Ltd (In
Members' Voluntary Liquidation)

Between

- (1) Lin Yueh Hung
as Liquidators of CST South East Asia Pte
Ltd (in Members' Voluntary Liquidation)
- (2) Ng Kian Kiat
as Liquidators of CST South East Asia Pte
Ltd (in Members' Voluntary Liquidation)

... Applicants

And

- (1) Andreas Vogel & Partner, Rechtsanwaelte,
AV & P Legal LLP
- (2) Andreas Vogel Pte Ltd
- (3) Andreas Vogel

... Defendants

JUDGMENT

[Civil Procedure — Self-representation of company]
[Insolvency Law — Void dissolution of company]

TABLE OF CONTENTS

BACKGROUND FACTS	2
THE PRESENT APPLICATIONS.....	4
THE APPLICABLE LAW	6
THE DIFFERENCES BETWEEN THE RELEVANT PROVISIONS IN THE ROC 2021 AND THE ROC 2014.....	7
THE BROAD APPROACH UNDER O 4 R 3(3) OF THE ROC 2021.....	8
THE PROCEDURAL REQUIREMENT UNDER O 4 R 3(3)(A) OF THE ROC 2021.....	9
THE SUBSTANTIVE REQUIREMENT UNDER O 4 R 3(3)(B) OF THE ROC 2021.....	10
MY DECISION: THE PRESENT APPLICATIONS ARE ALLOWED.....	12
SUM 1510	12
SUM 1511	13
CONCLUSION.....	14

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**Lin Yueh Hung (as liquidators of CST South East Asia Pte Ltd
(in members' voluntary liquidation)) and another**

v

**Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP
and others**

[2023] SGHC 208

General Division of the High Court — Originating Application No 220 of
2023 (Summonses Nos 1510 and 1511 of 2023)

Goh Yihan JC

6 July 2023, 10 July 2023

2 August 2023

Judgment reserved.

Goh Yihan JC:

1 There are two applications before me which concern HC/OA 220/2023 (“OA 220”). In HC/SUM 1510/2023 (“SUM 1510”), the defendant, Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP (“AVPLLP”), is applying for permission to be self-represented by one of its partners, Mr Andreas Dieter Vogel (“AV”), in OA 220. Similarly, in HC/SUM 1511/2023 (“SUM 1511”), the defendant, Andreas Vogel Pte Ltd (“AVPL”), is applying for permission to be self-represented by its Company Secretary, who also happens to be AV, in OA 220. In support of SUM 1510, AV filed an affidavit in his capacity as one of the two partners of AVPLLP. In support of SUM 1511, one Mr Loh Kong Hon (“LKH”) filed a supporting affidavit in his capacity as the director of AVPL.

2 I first heard AV in relation to the applications on 6 July 2023. I directed him to file a supplementary affidavit to address some gaps in the applications. He filed a supplementary affidavit on 10 July 2023. Having considered the applications with the supplementary affidavit, I allow both applications for the reasons that I will explain in this judgment. Furthermore, because these applications are taken out under O 4 r 3(3) of the Rules of Court 2021 (“ROC 2021”), as opposed to O 9 r 9(2) of the Rules of Court (2014 Rev Ed) (“ROC 2014”), I also take this opportunity to explain the applicable principles in respect of the relevant provisions in the ROC 2021.

Background facts

3 I begin with the brief background facts. The underlying action, OA 220, was taken out by the joint and several liquidators (“the Liquidators”) of CST South East Asia Pte Ltd (In Members’ Voluntary Liquidation) (“the Company”). AVPLLP, AVPL, and AV are the creditors of the Company. Pursuant to s 181(1)(a) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (“IRDA”), the Liquidators seek the determination of the following question in OA 220:

Whether the Liquidators’ decisions to reject in their entirety all three of the claims, all dated 13 August 2021, each filed by (i) [AVPLLP], [(ii) AVPL] and (iii) [AV], respectively (collectively referred to as the “Creditors”) (collectively referred to as the “Claims”) are valid and correct.

For convenience, I will likewise refer to AVPLLP, AVPL, and AV collectively as the “Creditors”, and their claims against the Company collectively as the “Claims”, at the appropriate junctures below.

4 The Company was placed under members’ voluntary liquidation on 7 June 2021. After the Liquidators were appointed, they wrote to the Creditors on

22 June 2021 to request that they submit any claims against the Company for the Liquidators' evaluation. The Liquidators did this because the Company was aware of potential claims by, among others, the Creditors. Subsequently, the Liquidators received the Claims and the supporting invoices from the Creditors. The Claims and the supporting invoices were all dated 13 August 2021.

5 After reviewing the Claims and the supporting invoices, and conducting further investigations, the Liquidators concluded that the Claims should be rejected. The Liquidators came to this conclusion because of, among other reasons: (a) the lack of capacity in making the Claims; (b) the lack of basis; (c) the fact that some of the Claims were time-barred; and/or (d) insufficient evidence. It is not necessary for me to elaborate on these reasons further, save to say that they have been explained at some length in the supporting affidavit filed for OA 220.¹

6 The Liquidators wrote to the Creditors on 1 April 2022 by letter to inform them of their decision to reject the Claims. The Creditors did not respond to this letter. On 10 May 2022, the Liquidators wrote to AV by letter to reiterate their decision to reject his claim. On 2 June 2022, AVPLLP objected to the Liquidators' decision to reject its claims by an email sent by AV, in his capacity as a partner of AVPLLP. Similarly, on 2 June 2022 as well, AVPL objected to the Liquidators' decision to reject its claim by an email sent by LKH. However, these emails did not contain detailed reasons to substantiate the objections within. In fact, the email from AVPLLP was a bare objection with no reason provided at all. On 14 June 2022, the Liquidators wrote back to AVPLLP and

¹ Affidavit of Lin Yueh Hung dated 13 March 2023.

AVPL to seek further clarification, stating that, failing which the Liquidators would proceed with the liquidation and dissolution of the Company without further correspondence.

7 The Liquidators have not received any further response from the Creditors to date. Nor has any of the Creditors filed any application pursuant to ss 144(3) and/or 190 of the IRDA, in their capacity as potential creditors, to challenge the Liquidators' decision to reject the Claims.

8 Although the Liquidators believe that they are entitled to proceed with the dissolution of the Company, they commenced OA 220 because they are concerned that the Creditors may, within two years after such dissolution, apply to court pursuant to s 208 of the IRDA for a declaration that the dissolution is void. More specifically, the Liquidators would like the issue of the validity of their decision to reject the Claims to be resolved now rather than having to address them possibly two years later. As such, this is not a case where the Creditors have proactively applied to court to challenge the Liquidators' decision to reject the Claims.

9 It is against this background that AVPLLP and AVPL have taken out SUM 1510 and SUM 1511, respectively.

The present applications

10 As I mentioned above, AV and LKH each filed an affidavit in support of SUM 1510 and SUM 1511, respectively.

11 In respect of SUM 1510, AV attests that AVPLLP has authorised him, in his capacity as "Manager of the LLP", to act by a "Letter of Authorisation"

dated 17 May 2023.² This Letter of Authorisation is signed by AV himself in his capacity as “the partner of [AVPLLP]” to authorise himself in his capacity as the “Manager of [AVPLLP]” to represent AVPLLP in OA 220.³ Before me, AV explained that the other partner of AVLLP is a sole proprietorship based in Germany, of which he is the sole proprietor. As such, he is the only person who can sign off on this affidavit.

12 As for the substantive reasons why AVPLLP is seeking to be self-represented by AV, AV attests to three such reasons. First, the deposit amounts requested by the different law firms to represent AVPLLP in OA 220 “are substantial and would cause [AVPLLP] to incur extensive and unpredicted expenses”, and would risk the need to retrench employees, reduce their salaries or fall out in paying rental or other business expenses due to reduced funds.⁴ AV further explained in his supplementary affidavit that AVPLLP had incurred losses of \$50,965 for the Year of Assessment 2022.⁵ Second, the litigation in OA 220 has been forced on AVPLLP by the Liquidators unexpectedly.⁶ In this regard, AV suggests that the projected legal costs in OA 220 are severely disproportionate to any potential payment of the Claims. Third, the “Manager of [AVPLLP]”, who is AV, is able to offer assistance in OA 220 because, among others, he has obtained “three (3) Master [*sic*] Degrees from universities of three different European countries, thereof one Master [*sic*] Degree from the

² Affidavit of Andreas Dieter Vogel dated 18 May 2023 (“AV’s Affidavit”) at para 5 and p 6.

³ AV’s Affidavit at p 6.

⁴ AV’s Affidavit at para 6.

⁵ Supplementary Affidavit of Andreas Dieter Vogel dated 10 July 2023 at para 4 and p 12.

⁶ AV’s Affidavit at para 7.

University of London and he speaks fluently [*sic*] English”.⁷ AV exhibited the actual degree scrolls in his supplementary affidavit. The degree scrolls indicate that these master’s degrees were all in the field of law.

13 In respect of SUM 1511, LKH makes essentially the same points that AV makes in SUM 1510. LKH attests that AVPL has authorised its Company Secretary, AV, to act by a Letter of Authorisation dated 17 May 2023.⁸ This Letter of Authorisation is signed by LKH in his capacity as the director of AVPL.

14 As for the substantive reasons why AVPL is seeking to be self-represented by AV, LKH provides two such reasons. First, the proposed legal fees for representation would place AVPL “into a debt situation and risk increasing the losses of the company”.⁹ Indeed, LKH says that AVPL suffered a loss in the Year of Assessment 2022. Second, AV is able to offer assistance in OA 220, for the same reasons that AV raised in his affidavit in support of SUM 1510.¹⁰

The applicable law

15 Although the Company was wound up before 1 April 2022 – the date when the ROC 2021 came into operation – it is clear that the ROC 2021 applies in relation to SUM 1510 and SUM 1511. This is for the obvious reason that

⁷ AV’s Affidavit at para 9.

⁸ Affidavit of Loh Kong Hon dated 18 May 2023 (“LKH’s Affidavit”) at para 5 and p 6.

⁹ LKH’s Affidavit at para 6.

¹⁰ LKH’s Affidavit at para 8.

SUM 1510 and SUM 1511 were commenced in 2023, when the ROC 2021 was well and truly operating. The applicable provision for present purposes is O 4 r 3(3) of the ROC 2021 (“O 4 r 3(3)”), which provides as follows:

(3) For the purposes of section 34(1)(ea) of the Legal Profession Act, the Court may, on an application by a company, variable capital company or limited liability partnership, give permission for an officer of the company, variable capital company or limited liability partnership to act on behalf of the company, variable capital company or limited liability partnership in any relevant matter or proceeding to which the company, variable capital company or limited liability partnership is a party, if the Court is satisfied that —

(a) the officer has been duly authorised by the company, variable capital company or limited liability partnership to act on behalf of the company, variable capital company or limited liability partnership in that matter or proceeding; and

(b) the officer has sufficient executive or administrative capacity or is a proper person to represent the company, variable capital company or limited liability partnership in that matter or proceeding.

The differences between the relevant provisions in the ROC 2021 and the ROC 2014

16 Although neither the *Civil Justice Commission Report* (2017) (Chairperson: Justice Tay Yong Kwang) nor the *Report of the Civil Justice Review Committee* (2018) (Chairperson: Indranee Rajah SC) explicitly discusses O 4 r 3(3) in its current form in the ROC 2021, it is clear from a plain reading that it is meant to be different from O 1 rr 9(2) and 9(4) of the ROC 2014. Indeed, whereas O 1 r 9(4) of the ROC 2014 sets out in some detail the form and contents of the supporting affidavit concerned, O 4 r 3(3) is silent on this issue. Also, as the learned authors of *Singapore Rules of Court – A Practice Guide (2023 Edition)* (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) (“*Singapore Rules of Court*”) point out at pp 41–42,

O 4 r 3(3) is identical to O 1 r 9(2) of the ROC 2014, “except that the requirements for permitting an officer of an entity to act on behalf of the entity in any relevant matter or proceeding has been modified”.

17 Despite the clear intent for O 4 r 3(3) of the ROC 2021 to chart a new course, the key authorities which discussed O 1 rr 9(2) and 9(4) of the ROC 2014 remain relevant with the appropriate modifications. Indeed, these cases, which include the High Court decisions of *Bulk Trading SA v Pevensey Pte Ltd and another* [2015] 1 SLR 538 (“*Bulk Trading*”), *Allergan, Inc and another v Ferlandz Nutra Pte Ltd* [2015] 2 SLR 94 (“*Allergan*”), *Elbow Holdings Pte Ltd v Marina Bay Sands Pte Ltd* [2015] 5 SLR 289 (“*Elbow Holdings*”), and *HG Metal Manufacturing Ltd v Gayathri Steels Pte Ltd and others* [2016] 5 SLR 238 (“*HG Metal*”), have, in my respectful view, explored the genesis and application of O 1 rr 9(2) and 9(4) of the ROC 2014 so comprehensively that it would be unnecessary to cover the same ground again. Instead, with the introduction of the new O 4 r 3(3) of the ROC 2021, what is necessary, and what I will endeavour to provide below, is guidance on how these authorities, which were decided in relation to the ROC 2014, should apply to O 4 r 3(3).

The broad approach under O 4 r 3(3) of the ROC 2021

18 As a starting point, in line with the authorities on O 1 rr 9(2) and 9(4) of the ROC 2014, an application under O 4 r 3(3) must satisfy two conjunctive requirements (see *Singapore Rules of Court* at p 41). First, as a procedural requirement embodied in O 4 r 3(3)(a), the court has to be satisfied that the officer has been duly authorised by the entity concerned to act on its behalf in the matter or proceeding at hand.

19 Second, as a substantive requirement embodied in O 4 r 3(3)(b), the court then has to be satisfied that the officer: (a) has sufficient executive or administrative capacity; *or* (b) is a proper person to represent the entity concerned in the matter or proceeding at hand.

The procedural requirement under O 4 r 3(3)(a) of the ROC 2021

20 I begin by explaining the procedural requirement under O 4 r 3(3)(a) in greater detail. In *HG Metal* (at [6]), the High Court held that “the procedural steps set out in O 1 r 9(2), O 1 r 9(3) and O 1 r 9(4)(c) of the [ROC 2014] must be strictly complied with before an application may be considered”. However, it is noteworthy that the detailed procedural requirements under the ROC 2014 are no longer found in the ROC 2021. Therefore, it may not be necessary to adhere to the holding by the High Court in *HG Metal*. The focus of O 4 r 3(3) is seemingly more on the substance of the application, leaving the court with a wider discretion to decide how and if the procedural requirement under O 4 r 3(3)(a) has been satisfied.

21 More specifically, previously, under O 1 r 9(4) of the ROC 2014, the application pursuant to O 1 r 9(2) had to be supported by an affidavit in a particular form and substance. For example, O 1 r 9(4)(c) provided that the affidavit needed to be “made by any other officer” of the entity concerned. This means that the affidavit in support of the application must be made by an officer other than the officer to be appointed to represent the company in the proceedings at hand. The High Court in *Bulk Trading* held (at [91]) that the purpose of this requirement is “to ensure that the application is made objectively with the authority of the company”. The High Court further held (at [91]) that if there was non-compliance with the requirement in O 1 r 9(4)(c) as to the

maker of the affidavit, this would not be fatal so long as the court is satisfied that the application was made objectively with the authority of the company.

22 In my view, while O 4 r 3(3) does not now refer to any detailed procedural requirement such as the maker of the affidavit, as in O 1 r 9(4)(c) of the ROC 2014, those requirements found in O 1 r 9(4) of the ROC 2014 can continue to be useful pointers that a court can take into account in deciding whether an officer has been “duly authorised” by the entity concerned. For example, the fact that the affidavit in support of an application made under O 4 r 3(3) is made by an officer other than the officer to be appointed to represent the company would point towards the officer to be appointed being “duly authorised”. I caveat that even if the said affidavit is made by the officer to be appointed to represent the company, this would *not necessarily* point towards the officer to be appointed *not* being “duly authorised”. However, in saying this, I do not suggest that a court considering an application under O 4 r 3(3) needs to consider the detailed procedural requirements under O 1 r 9(4) of the ROC 2014. That would defeat the whole point of not reproducing those requirements in the ROC 2021.

The substantive requirement under O 4 r 3(3)(b) of the ROC 2021

23 I turn to examine the substantive requirement under O 4 r 3(3)(b) in greater detail. As the learned authors of *Singapore Rules of Court* explain at p 42, the previous requirement of whether leave was “appropriate” to be given in the circumstances has now been replaced by a “disjunctive assessment of whether the officer ‘has sufficient executive or administrative capacity’ or ‘is a proper person’ to represent the entity”. I respectfully agree with the learned authors that this new test in O 4 r 3(3)(b) puts the focus of the analysis on the

characterisation and abilities of the officer in question (see *Singapore Rules of Court* at pp 42–43).

24 Accordingly, it is necessary to consider the relevance of the factors identified by the previous authorities on O 1 r 9(2) of the ROC 2014 in this light. Those factors, as summarised by the High Court in *Elbow Holdings* (at [7]), with reference to *Bulk Trading* and *Allergan*, include:

- (a) whether the application for leave has been properly made pursuant to the [ROC 2014];
- (b) the financial position of the corporate application and/or its shareholders;
- (c) the *bona fides* of the application;
- (d) the role of the company in the proceedings;
- (e) the structure of the company;
- (f) the complexity of the factual and legal issues;
- (g) the merits of the company;
- (h) the amount of the claim;
- (i) the competence and credibility of the proposed representative; and
- (j) the stage of the proceedings.

25 Having considered these factors in light of the reframed substantive requirement in O 4 r 3(3)(b), I am of the view that some of these factors may no longer be relevant. For example, whereas the financial impecuniosity of the company was said to be a “significant factor” (see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 1/9/3), I do not think that this factor is as relevant now, given that the focus of O 4 r 3(3)(b) is very much on the characterisation and abilities of the officer in question. That said, given the oft-cited sentiment that the rules of procedure should never stand in the way of substantive justice, as broadly embodied in the

Ideals found in O 3 r 1 of the ROC 2021, I will not go so far as to say that a court is prohibited from considering the factors identified in *Elbow Holdings* that have nothing to do with the characterisation and abilities of the officer in question. However, I would think that there needs to be a very good reason for a court to take these now extraneous factors into account when considering an application under O 4 r 3(3).

My decision: the present applications are allowed

26 With the above principles in mind, I come to SUM 1510 and SUM 1511. For the reasons that I will now develop, I allow both applications.

SUM 1510

27 In relation to SUM 1510, I find that first, the procedural requirement under O 4 r 3(3)(a) is satisfied. While the affidavit filed in support of SUM 1510 was made by AV, who is the very officer appointed to act for AVPLLP in OA 220, I am satisfied that he is the only person who can sign off on the affidavit. This is because, as he explained to me, the other partner of AVPLLP is a sole proprietorship based in Germany, of which he is the sole proprietor. Therefore, AV explained that he was signing off on the affidavit in support of SUM 1510 in his capacity as the sole proprietor of the other partner, even if he is, in effect, the very officer to be appointed to act for AVPLLP in OA 220. In any event, as the High Court held in *Bulk Trading* (at [91]), this is not fatal in and of itself to SUM 1510.

28 Second, I find that the substantive requirement under O 4 r 3(3)(b) is satisfied. As I explained above, the focus of O 4 r 3(3)(b) is now on the characterisation and abilities of the officer in question. In this regard, AV has

satisfactorily substantiated, through the subsequent exhibition of the actual degree scrolls, his claim that he has “three (3) Master [*sic*] Degrees from universities of three different European countries, thereof one Master [*sic*] Degree from the University of London”. These are clearly master’s degrees in the field of law, which must equip AV with the basic abilities needed to assist the court in the OA 220. I therefore conclude that AV has either “sufficient executive or administrative capacity” or “is a proper person” to represent AVPLLP.

29 While AV has also raised, as reasons in support of SUM 1510, AVPLLP’s financial status, as well as the fact that OA 220 was thrust onto AVPLLP, I do not, for reasons explained earlier, take these reasons into account. But if I were to take these reasons into account, I find that these reasons do support allowing SUM 1510. This is because AV has now explained that AVPLLP incurred losses in the Year of Assessment 2022, which circumstance supports the need for AVPLLP to be self-represented by AV, instead of engaging lawyers and thereby incurring legal fees.

SUM 1511

30 In relation to SUM 1511, I find that the procedural requirement under O 4 r 3(3)(a) is satisfied. For the reasons in relation to SUM 1510, I also find that the substantive requirement under O 4 r 3(3)(b) is satisfied. For completeness, in coming to this decision, I do not take into account LKH’s evidence that AVPL is financially distressed as, in my view, that is now not a relevant factor in an application under O 4 r 3(3). Further, even if it were a relevant factor, unlike AVPLPP, there is no evidence of AVPL’s financial status.

Conclusion

31 For all the reasons above, I allow SUM 1510 and SUM 1511. The parties are to attend before the Registrar to obtain a date for OA 220.

Goh Yihan
Judicial Commissioner

Lim Yee Ming (Kelvin Chia Partnership) for the applicants;
The third defendant in person.
