

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

[2024] SGHC 204

Originating Application No 571 of 2024

In the matter of Section 137 of the
Companies Act 1967

And

In the matter of Order 38 of the Rules
of Court 2021

CK Tan Law Corporation

... Applicant

FOUNDATIONS OF DECISION

[Credit and Security — Charges — Extension of time for registering charge
created by company]

TABLE OF CONTENTS

BACKGROUND FACTS	2
THE APPLICABLE PRINCIPLES	5
THE COURT’S DISCRETION TO EXTEND TIME FOR REGISTRATION OF A CHARGE PURSUANT TO S 137 OF THE CA	5
THE NEED TO PARTICULARISE THE CIRCUMSTANCES SHOWING INADVERTENCE TO REGISTER	7
THE RELEVANCE OF THE LENGTH OF TIME ELAPSED AFTER THE INADVERTENCE TO REGISTER A CHARGE	10
MY DECISION: THE APPLICATION WAS DISMISSED	12
CONCLUSION.....	14

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Re CK Tan Law Corp

[2024] SGHC 204

General Division of the High Court — Originating Application No 571 of 2024

Goh Yihan J

22 July 2024

12 August 2024

Goh Yihan J:

1 This was CK Tan Law Corporation's (the "applicant") application, filed on 13 June 2024, for the following order (to be amended) to extend the time to register an instrument of mortgage (the "Mortgage"), pursuant to s 137 of the Companies Act 1967 (2020 Rev Ed) ("CA"):

The time for registration for the Instrument of Mortgage, Instrument No. IF/705264P, which was registered on 19 February 2020 in the lands comprised in MK13-0116301T known as [address redacted] [the "Property"] with the Accounting and Corporate Regulatory Authority [the "ACRA"] in the prescribed form under Section 131 of the [CA] be extended until the expiration of thirty (30) days from the date of this order.

2 For completeness, s 137 of the CA confers on the court a discretion to extend time for the registration of a charge if one of the stipulated grounds are satisfied. Section 137 provides as follows:

Extension of time and rectification of register of charges

137. The Court, on being satisfied that the omission to register a charge (whether under this or any corresponding previous written law) within the time required or that the omission or mis-statement of any particular with respect to any such charge or in a statement of satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified.

3 I dismissed the application and now provide the reasons for my decision. I have chosen to do so because the circumstances surrounding this otherwise routine application raised several practical issues meriting articulation in written grounds. First, the original affidavit (the “Original Affidavit”) and the supplementary affidavit (the “Supplementary Affidavit”) (collectively, the “Affidavits”) filed in support of the application provided scant evidence of the ground relied on to justify the extension of time sought. Second, the Original Affidavit also provided no evidence that no petition for winding up of the company concerned had been presented. Third, the application was made some five months after it was discovered that the Mortgage had not been registered, and some four years after the Mortgage was supposed to have been registered. Fourth, despite the lengthy passage of time, the application did not include prayers for a proviso to preserve the rights of any person claiming any interest in the Property mortgaged pursuant to the Mortgage if such interest was acquired before the time of registration of the Mortgage with the ACRA.

Background facts

4 I begin with the background facts. By the Mortgage, the estate and

interest of L&H Plaster Ceiling Pte Ltd (the “Company”) in the Property was mortgaged to Maybank Singapore Limited on 20 December 2019. This was done to secure all banking facilities to the Company. Thus, pursuant to s 131 of the CA, the Mortgage was supposed to have been lodged with the ACRA in the prescribed form by 19 January 2020, being 30 days after the creation of the Mortgage.

5 Mr Yeo Siew Chye Troy (“Mr Yeo”), an associate with the applicant, deposed in the Original Affidavit that in or around January 2024, he discovered that the particulars of the Mortgage had not been lodged with the ACRA. He then confirmed in the Original Affidavit “that the omission to comply with the requirements of Section 131 of the Companies [*sic*] was wholly due to inadvertence”.¹ There was nothing further said about the circumstances surrounding the inadvertence. Finally, Mr Yeo deposed that, to the best of his knowledge, “no petition for winding up of the Company has been presented nor has any notice been given of any resolution to wind up the Company”.² There was no further evidence provided to substantiate this belief.

6 This application was first heard by Christopher Tan JC on 9 July 2024. The learned judge asked Mr Yeo, who appeared for the applicant, whether any searches had been done to ascertain if there had been any supervening security interests in the time since January 2020. When Mr Yeo replied that no searches had been done, the learned judge adjourned the hearing and directed him to file an affidavit to set out the result of such a search. The application was then fixed to be heard by me on 16 July 2024. However, on 12 July 2024, Mr Yeo sought a postponement of the hearing so that he could file the affidavit that Tan JC had

¹ Affidavit of Troy Yeo Siew Chye dated 13 June 2024 (“Original Affidavit”) at para 6.

² Original Affidavit at para 7.

directed him to do. Leaving aside the fact that Mr Yeo had adequate time from 9 July 2024 to have done this in time for the hearing on 16 July 2024, I allowed Mr Yeo some time not only to file the said affidavit, but also to address the various inadequacies in the Original Affidavit, including the ones that I have set out at [3] above.

7 Mr Yeo filed the Supplementary Affidavit on 19 July 2024. In this Supplementary Affidavit, Mr Yeo exhibited the Mortgage, which was not exhibited in the Original Affidavit. Mr Yeo also explained that he had mistakenly referred to the date of the Mortgage as 19 February 2020 – the date of the Mortgage’s registration with the Singapore Land Authority – in the Original Affidavit instead of the correct date of 20 December 2019 (when the Mortgage was executed with the mortgagee). He then deposed that “[t]he error in the date was due to inadvertence and the deponent apologies [*sic*] for the snafu [*sic*]”.³ On this point, I should note that “snafu” is informal language and contains an inelegant word that should have no place in a court document. Mr Yeo did not explain further as to how the inadvertence in relation to the failure to register the Mortgage on time with the ACRA had come about. Finally, Mr Yeo attested that he had performed an insolvency search on the Company, which showed that it was not subject to any winding up proceedings.⁴

8 It was against this background that I heard the application on 22 July 2024.

³ Affidavit of Troy Yeo Siew Chye dated 19 July 2024 (“Supplementary Affidavit”) at para 4.

⁴ Supplementary Affidavit at para 6.

The applicable principles

9 I turn now to discuss the applicable principles, including the points of practice that, if adhered to, would have negated the need for the various adjournments in this application.

The court's discretion to extend time for registration of a charge pursuant to s 137 of the CA

10 To begin with, as the Court of Appeal explained in *Media Development Authority of Singapore v Sculptor Finance (MD) Ireland Ltd* [2014] 1 SLR 733 (“MDA”) (at [29]), s 137 of the CA (or, more accurately, s 137 of the Companies Act (Cap 50) (2006 Rev Ed), which is worded the same as s 137 of the present CA) provides for the court’s discretion to grant an extension of time to register charges that come under s 131(3). This flows from s 131(1), which provides that the registration of charges created by a company with the ACRA is required under prescribed circumstances, as well as s 131(3), which sets out the types of company charges that are registrable. For completeness, I set out ss 131(1) and 137 of the CA:

Registration of charges

131.—(1) Subject to this Division, where a charge to which this section applies is created by a company there must be lodged with the Registrar in the prescribed manner for registration, within 30 days after the creation of the charge, a statement containing the prescribed particulars of the charge, and if this section is not complied with in relation to the charge the charge is, so far as any security on the company’s property or undertaking is thereby conferred, void against the liquidator and any creditor of the company.

Extension of time and rectification of register of charges

137. The Court, on being satisfied that the omission to register a charge (whether under this or any corresponding previous written law) within the time required or that the omission or mis-statement of any particular with respect to any such charge

or in a statement of satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified.

11 As the Court of Appeal also explained in *MDA* (at [30]), the purpose of the statutory requirement to register a charge under s 131(1) of the CA is “to protect unsecured creditors ‘from losing priority to undisclosed proprietary interests created by way of security’” (citing William James Gough, *Company Charges* (Butterworths, 2nd Ed, 1996) at p 736). In this context, s 137 provides for the court’s discretionary power to extend time for registration of a charge if there is sufficient evidence that the omission to register the charge was one or more of the following (see the High Court decision of *Sculptor Finance (MD) Ireland Ltd v Media Development Authority of Singapore* [2013] 2 SLR 311 (“*Sculptor Finance*”) at [12], as well as *MDA* at [33]):

- (a) accidental;
- (b) due to inadvertence;
- (c) due to some other sufficient cause;
- (d) not of a nature to prejudice the position of creditors or shareholders; or
- (e) just and equitable to grant relief on some other grounds.

12 However, as the Court of Appeal also made it clear in *MDA* (at [33]), the satisfaction of one of these grounds “is a necessary but insufficient criterion

to obtain an extension of time”, since the applicant “must go on to persuade the court to exercise the discretion in its favour”. In other words, even if an applicant establishes one of the abovementioned bases for relief, the court is not *obliged* to order the relief sought (see Andrew Keay, “The Power to Extend Time to Lodge Notice of Corporate Charges” (1996) 14 Company and Securities Law Journal 136 (“*Keay’s Power to Extend Time*”) at 141).

The need to particularise the circumstances showing inadvertence to register

13 It is important that the Court of Appeal in *MDA* emphasised (at [33]; see also at [11] above) that there must be “sufficient evidence” that one of the grounds spelt out in s 137 of the CA is satisfied. This means that the court needs to be “fully informed of the circumstances which have given rise to the omission to register [the charge] within the proper time” (see *Woon’s Corporations Law* (Walter Woon SC gen ed) (LexisNexis, Desk Ed, 2022) at para 6405). It is not enough that the affidavit filed in support of the application merely states that the omission was accidental and due to inadvertence without particularising the reasons for the non-compliance and the surrounding circumstances. This flows from the simple premise that an affidavit must provide sufficient evidence for a court to make a finding of fact on a balance of probabilities that the legal criteria for granting the relief sought are more likely than not to be satisfied.

14 This was similarly explained in *Keay’s Power to Extend Time* at 141–142:

Usually, a court will be confronted with competing equities. On the one hand, the applicant will suffer if no extension is granted, and, on the other, if an extension is granted creditors will be hurt. ...

Clearly, the courts have to engage in a delicate and complicated balancing act, weighing up the interest of all parties. This is succinctly stated by Martin J in *Citibank Ltd v Linput Pty Ltd* (*in*

liq) in relation to the usual situation where the company that gave the charge is being wound up:

“the object of the grant of the discretion to extend time for lodgment of the notice of charge, the company being wound up, is to enable the court to balance the prejudice to the creditor whose security is void against the liquidator, against that of the other creditors and anyone else concerned whose position may be prejudiced if the avoidance is displaced.”

It follows therefrom that the court must be furnished with all necessary information to enable it to perform the requisite “balancing act” referenced above. Accordingly, these must be provided by the applicant in its supporting affidavit for an extension of time to lodge a company charge with the ACRA.

15 Thus, in the English High Court Chancery Division decision of *Re Kris Cruisers Ltd* [1948] 2 All ER 1105 (“*Re Kris*”), the chargees had applied under s 101 of the (UK) Companies Act 1948 (c 38) (which is substantially similar to s 137 of the CA) for an extension of time for the registration of the charges. However, the chargees only provided what Vaisey J labelled (at 1105) as “meagre” evidence in support of their application. The evidence provided was that company’s secretary had thought that the chargees had registered the charges, while the chargees thought that the secretary had done so (see *Re Kris* at 1107). The learned judge emphasised that an applicant needs to go beyond merely stating that the omission was “due to inadvertence”, so that the court can be sufficiently apprised of the circumstances under which an extension of time is sought (see *Re Kris* at 1107). Indeed, the learned judge’s statement to this effect is worthy of being quoted in full, as follows (at 1105–1106):

... In this case, as in others which have come before me, I desire to call attention to the meagre character of the evidence filed in support, which, however, in this case seems to me to be just, though only just, sufficient to satisfy the provisions of the section. I think it is most important that the court should be fully informed of the circumstances which have given rise to the

omission to register within the proper time and that the evidence should not, as is so often the case, merely state that the matter was accidental and due to inadvertence without particularising the reasons for the breach of the statutory requirements and the surrounding circumstances. People seem to be under the impression that, or their merely saying that the omission was “due to inadvertence,” the court is practically obliged to exercise the power, which I hold to be a discretionary power, under the Companies Act, 1948, s 101. ...

16 Similarly, in the Kuala Lumpur High Court case of *Re Public Bank Bhd* [2001] 6 MLJ 330 (“*Re Public Bank*”), the applicant had sought an extension of time for it to lodge the registration of two charges it had created in relation to two pieces of land. Kang Hwee Gee J, having referred to *Re Kris*, held (at 337–338) that the supporting affidavit in that case was insufficient because “[a]ll that was disclosed by the deponent is that the omission to register was due to inadvertence without so much as to state how it was brought about and by whom”, and that “[n]othing was said as to why the omission was left to linger for over five years”. Further, the learned judge pointed out (at 338) that the deponent also did not “commit himself to say whether the making of the order applied for would prejudice any creditor or member of the company, an important factor which the court is bound to consider before making the order – more so in this case where the delay was considerable”. Kang J therefore dismissed the application for an extension of time, with liberty for the applicant to make a fresh application with all the requisite materials.

17 In my view, it is important to adhere to the sentiment expressed in *Re Kris* at 1105–1106 and *Re Public Bank* at 337–338 that an applicant under s 137 of the CA must provide sufficient evidence that one of the grounds for extension is made out and that the balance of interests between the applicant and other affected parties (see at [14] above) militates in favour of the court exercising its discretion to grant the relief sought. It is not sufficient in the

present case for the applicant to have merely provided in the Original Affidavit “that the omission to comply with the requirements of Section 131 of the Companies [*sic*] was wholly due to inadvertence”.⁵ There was scant information about how the inadvertence happened, who might have caused the inadvertence, and why, similar to *Re Public Bank*, the inadvertence was left to linger for more than four years. Indeed, I consider the lapse of time before the omission to register the Mortgage with the ACRA was discovered to be rather serious, warranting further consideration.

The relevance of the length of time elapsed after the inadvertence to register a charge

18 It bears repeating that, according to Mr Yeo, the Mortgage was supposed to have been registered in January 2020. This means that the applicant is more than four years out of time. Moreover, despite Mr Yeo discovering the omission to so register in or around January 2024, the present application was only filed on 13 June 2024. It is important that these lapses of time are adequately considered in the present application.

19 As a general point, as Vaisey J said in *Re Kris* (at 1107), the British equivalent of s 137 of the CA is “rather a benevolent section in the sense that it appears to give the mortgagee or the chargee a complete and unfettered opportunity for repentance and to place him in the same position as if he had been careful and not careless – diligent and not negligent”. Similarly, Kang J said in *Re Public Bank* (at 336) that a court exercising its discretion under the Malaysian equivalent of s 137 of the CA “is in fact dispensing equity to moderate the strict requirement of statute”, such that if “it could be ascertained with certainty that the failure to register was only due to the accidental act or

⁵ Original Affidavit at para 6.

inadvertence of any party and that the interest of others would not be affected by the extension, the application should as a matter of conscience be allowed”. Indeed, the learned judge further observed (at 336) that “[d]elay or procrastination in making the application, being merely a secondary factor should not under the circumstances be an impediment to the making of the order”. Indeed, in *Sculptor Finance*, Tay Yong Kwang J (as he then was) likewise (at [25]) did not consider the two-month delay (after discovering the omission to register) in commencing the application to be a weighty factor in the overall balance.

20 With these cases in mind, the length of time elapsed after the inadvertence to register a charge should be considered from three points. First, a court must consider whether the lapse of time was due to some sinister reason which would make it inappropriate to grant the extension of time. For example, in *Re Kris*, Vaisey J referred (at 1107) to an example of such a case as one “in which there was some fraudulent or improper motive in withholding the knowledge of the existence of the charge from the public, to whom its registration would have given the appropriate notice”. I do not go so far as to say that the lengthier the time elapsed, the stronger the presumption (if any) that there has been such a sinister motive. But it is conceivable that the lengthy passage of time can sometimes show, depending on the factual matrix at hand, that there was an improper motive in not registering the charge in the first place.

21 Second, a court should consider whether any third party right was affected or potentially affected within the time period from when the charge was to have been registered with the ACRA to when an application for extension was eventually brought. Given that s 137 of the CA can be regarded as a rather benevolent section in so far as the forgiving of the chargee’s inadvertence is concerned, an important consideration is whether a third party right has been

affected due to the failure to register. If a third party right has been affected, that would make it inappropriate to grant an extension, at least not without some proviso to cater for such right. Indeed, it is incumbent on an applicant to state, with adequate evidence, whether an extension of time for registration would (or would not) prejudice the position of any creditors or members of the company (see *Re Public Bank* at 336). And if a third party right is so affected, the applicant should explain how they would be affected to allow the court to assess the application holistically (see *Re Public Bank* at 336). Indeed, where there has been considerable lapse of time from when the charge was to have been registered to when an application for extension was eventually brought, the applicant should voluntarily pray for an order, in addition to an extension of time for registration, that the extension of time would be without prejudice to the rights of any person claiming any interest in the property charged if such interest was acquired before the time of registration of the relevant charge.

22 Third, the length of time between the discovery of the inadvertence to register and the eventual making of the application to seek an extension of time is seldom relevant in a court's decision whether to grant an extension of time under s 137 of the CA. It seems to me that the cases of *Re Public Bank* and *Sculptor Finance* either disregarded this factor or relegated it to near irrelevance in their decisions. In my view, this is consistent with the benevolent character of s 137 – so long as the failure to register was not due to an improper motive and third party rights have not been adversely affected by such failure, then a court should be inclined to grant the extension sought.

My decision: the application was dismissed

23 With these principles in mind, I come to the present application. I dismissed the application for the following reasons.

24 First, the Affidavits were sorely lacking in particulars as to the circumstances leading to the inadvertence to register the Mortgage. Mr Yeo had simply confirmed that the failure to register was due to “inadvertence” without detailing who was responsible for the failure, and under what circumstances. Further, like *Re Public Bank*, there was a lengthy lapse of time between the date at which the Mortgage was supposed to have been registered, and when the failure was discovered. This called for a lengthier explanation as to how the inadvertence occurred, which Mr Yeo did not provide even in the Supplementary Affidavit.

25 Second, while I was satisfied by Mr Yeo’s subsequent search that the Company is not subject to any insolvency proceedings, the applicant had not applied for a proviso to protect the rights of third parties who may have acquired interests in the Property in the meantime. Due to the lengthy lapse of time, I would have been minded to impose a proviso to the order for an extension of time. I would have ordered that the extension of time would be without prejudice to the rights of any person claiming any interest in the Property if such interest was acquired before the time of registration of the Mortgage. In the circumstances, no such prayer was made in the application nor any “catch all” prayer for the court to make any such orders or directions as it thinks fit under the circumstances. Hence, in the circumstances, I dismissed the application as opposed to granting it in this modified form.

26 Despite the above, I was satisfied that the applicant’s five-month delay in filing the present application after first discovering the inadvertence was largely immaterial here. This follows from *Re Public Bank*, where Kang J reached a similar conclusion on the delay in bringing an application to extend the time for registration. While this may be an inadvertence above an inadvertence, I did not think this was material because the focus of s 137 of

the CA is specifically on the inadvertence to register the charge concerned.

Conclusion

27 For all these reasons, I dismissed the present application but with liberty for the applicant to reapply.

28 In closing, I take the opportunity to emphasise that even though an application for an extension of time under s 137 of the CA may be regarded as routine and simple, it is still important for applicants to provide sufficient evidence to enable a court to reach its decision. It must not be taken for granted that a court will grant an order as a matter of course, even if s 137 may be (rightly) regarded as a peculiarly benevolent provision in the face of even quite serious carelessness.

Goh Yihan
Judge of the High Court

Yeo Siew Chye Troy (CK Tan Law Corporation) for the applicant.
