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

[2024] SGHC 326

Originating Application No 701 of 2024

Between

Management Corporation
Strata Title Plan No 2567

… *Claimant*

And

Tan Eng Siang

… *Defendant*

JUDGMENT

[Insolvency Law — Administration of insolvent estates — Conduct of legal proceedings]

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Management Corporation Strata Title Plan No 2567
v
Tan Eng Siang

[2024] SGHC 326

General Division of the High Court — Originating Application No 701 of 2024
Mohamed Faizal JC
12 December 2024

24 December 2024 Judgment reserved.

Mohamed Faizal JC:

1 The present application is one for leave to be granted for the claimant, the Management Corporation Strata Title Plan No 2567, to proceed with a claim in the District Court (DC/OA 21/2024) ("OA 21") to, *inter alia*, exercise its powers of entry into a strata lot owned by the two defendants (the "Unit") in order to undertake necessary repair and repainting works (the "R&R works"). The issue arises as one of the two defendants in OA 21, Mr Tan Eng Siang (who is the sole defendant in the present proceedings), is an undischarged bankrupt. The second defendant in OA 21 is the defendant's wife and other co-owner of the property, Mdm Quah Kim Lui @ Quah Kim Luan ("Mdm Quah"). The present application turns on an important question of practice: would leave be required for commencing proceedings against bankrupt individuals in relation to non-pecuniary matters that do not involve creditors?

2 For the reasons I have set out below, I am of the view that leave is not required where the proceedings in question do not involve any creditors or underlying debt. Accordingly, I am making an order that no leave is required in the present case. Given the nature of the legal question placed before the court (as well as the journey these proceedings have traversed which culminated in the application before me), and so that there is no misunderstanding as to the court's reasoning for not making an order granting leave in this case, I thought it useful to set out the reasoning for my conclusions.

Background

The parties

3 The claimant is the management corporation ("MCST") of a condominium development known as "Guilin View" (the "Development").[1] The defendant and Mdm Quah are the registered subsidiary proprietors of the Unit, which is located at the topmost level of one of the blocks in the Development.[2] The defendant is an undischarged bankrupt, having been made a bankrupt some 12 years ago.[3]

4 The parties have a long and unfortunately extremely strained relationship over the years, with the documents before me reflecting a considerable level of animus that has developed over the past decade and a half at least. Since at least 2008, the parties have engaged in litigation (often, through counsel) by correspondence, effectively making allegations followed by

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1 Mr Lau Kim Koon's affidavit on behalf of the claimant dated 18 July 2024 ("MCST 18 July Affidavit") at para 5 (Claimant's Bundle of Documents dated 20 September 2024 ("CBOD") at p 255).

2 MCST 18 July Affidavit at paras 3 and 6 (CBOD at pp 254–255).

3 B 1282/2012.

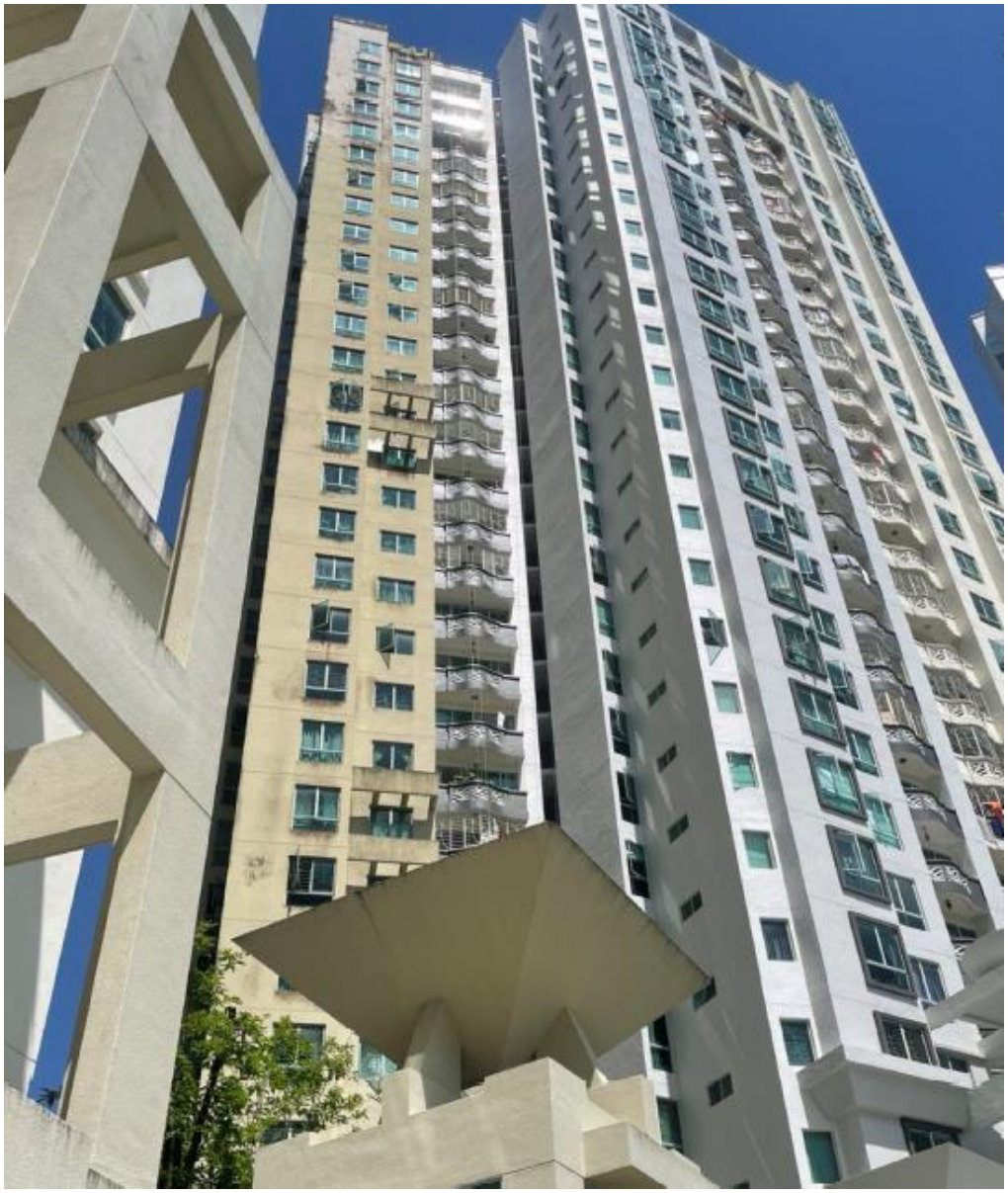
counter-allegations on various matters, including matters relating to the issue of access to the Unit to facilitate the R&R works. From time to time, police reports were lodged, hostile letters were written, legal suits were filed and orders of payments were made.[4] OA 21 represents the latest instalment of such factious correspondence between the claimant on one hand and the defendant and Mdm Quah on the other.

The dispute regarding access to the Unit

5 There are five apartment blocks in the Development. Each block, including the block that the Unit is in (the "Block"), comprises multiple stacks as seen in the picture of the Block on the next page:[5]

[4] Mdm Quah's affidavit dated 5 April 2024 in OA 21 ("Mdm Quah's Affidavit") at pp 3–11 (CBOD at pp 110–118).

[5] Mr Lau Kim Koon's affidavit on behalf of the claimant dated 6 February 2024 ("MCST 6 February Affidavit") at p 30 (CBOD at p 37).



6 It would be observed from the picture above that, in contrast with the other stacks in the Block, the façade of the leftmost stack (the "Stack") appears not to be particularly well-maintained, and seemingly in urgent need of a fresh coat of paint and ostensibly other repairs. According to the claimant, this is because the façade of the Stack has been left unrepaired and unpainted since

2008.[6] The Stack appears to be in poor condition with its painted colour differing from that of the other stacks within the same block, as it retains the original painted colour of the Development when it was first constructed in 1999.[7] The state of apparent disrepair and disamenity has apparently become sufficiently intolerable that a complaint was filed (by one or more subsidiary proprietors of the Development) with the Building and Construction Authority ("BCA") regarding the need to effect the necessary R&R works on the Stack. The BCA, understandably, then wrote to the claimant urging that the necessary urgent remedial steps be undertaken.[8] The BCA did so because pursuant to s 29(1)(*b*)(i) of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) ("BMSMA"), the claimant is charged with the duty to properly maintain and keep the common property of the Development in a state of good and serviceable repair.[9] Indeed, under r 3(1) of the Building Maintenance and Strata Management (Lift, Escalator and Building Maintenance) Regulations 2016 ("BMSMR"), there is a duty for all external walls of such developments to be repainted at least once every seven years unless otherwise directed by the Commissioner of Buildings.[10]

7 According to the claimant, the state of disrepair of the Stack is the result of the defendant's and Mdm Quah's refusal over the years to allow the claimant's appointed contractors to access the Unit.[11] For context, the only financially-feasible and safe way to undertake the R&R works is to install a rope

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6 MCST 18 July Affidavit at para 11.1 (CBOD at p 258).

7 MCST 18 July Affidavit at para 11.1 (CBOD at p 258).

8 MCST 6 February Affidavit at para 8 (CBOD at p 11).

9 MCST 18 July Affidavit at para 7 (CBOD at pp 256–257).

10 MCST 18 July Affidavit at para 7 (CBOD at pp 256–257).

11 MCST 18 July Affidavit at para 11.2 (CBOD at pp 258–259) .

rigging system that is tethered to the roof of the Stack which would allow the appointed contractors to paint the external façade of the Stack.[12] As the Unit sits at the top floor of the Stack, access to the Unit, and the staircase within the Unit that leads to the roof, is necessary for the workers of the appointed contractors to get to the roof of the Stack to install the necessary equipment and carry out the R&R works.[13] It appears to be undisputed that there is no other meaningful or feasible way to access the roof of the Stack that does not either result in a breach of the law (*eg*, by committing the tort of trespass) or the endangerment of the workers of any appointed contractor (*eg*, by requiring the said workers to access the roof of the Stack from the roofs of other stacks at the unacceptable risk of falling down 30 levels).[14] As is apparent from the picture of the Block reproduced above at [5], the other stacks in the Development appear ostensibly to be in a much healthier and acceptable state as access was granted to the appointed contractors by the relevant unit owners for them to undertake the necessary work.[15]

8 Mdm Quah does not deny that she and the defendant have been refusing entry to the Unit on the terms requested by the claimant and/or the appointed contractors. However, she highlights certain perceived unfair or improper conduct by the claimant and/or the appointed contractors over the years that, she contends, make it reasonable for them to refuse access. It would be unnecessary for me to go into the specifics of this as some aspects of these proceedings remain live in the District Court. Suffice it to say, such allegations broadly relate to what they perceived to be unacceptable behaviour by the

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12 MCST 18 July Affidavit at para 11.3 (CBOD at p 259).

13 MCST 6 February Affidavit at para 10 (CBOD at pp 11–12).

14 MCST 6 February Affidavit at para 11 (CBOD at p 12).

15 MCST 6 February Affidavit at para 10 (CBOD at pp 11–12).

claimant and/or the various contractors over the years as and when the defendant and Mdm Quah did initially grant permission for such contractors to access the Unit for the R&R works, as well as many other related and unrelated disagreements about matters within the Development over the years.[16]

9 More recently, sometime earlier this year, there was also a dispute between the parties regarding a notice being sent to the defendant and Mdm Quah for the payment of interest for overdue maintenance payments when no such moneys were in fact actually owed[17] – on this, I pause to observe that the claimant conceded that such a notice seeking these payments was sent out by the managing agent of the claimant in error and it had already rectified the error and apologised for the same.[18] Mdm Quah, in one of her written submissions for OA 21, also alluded to an apparent failure on the part of the appointed contractors to take necessary care, causing defects that she contends could have "seriously injured or even killed [her]".[19]

Proceedings before the District Judge

10 It is in that context that the claimant filed OA 21 in the court below on 6 February 2024. In gist, OA 21 sought the following orders:[20] (a) the claimant be allowed to exercise its powers of entry into the Unit to carry out the R&R works until such works are completed and without obstruction from the defendant and Mdm Quah; (b) the recovery as debt of additional costs incurred

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16 Mdm Quah's Affidavit at pp 3–11 (CBOD at pp 110–118); and MCST 6 February Affidavit at paras 19–33 (CBOD at pp 14–19).

17 Mdm Quah's Affidavit at paras 10(25)–10(33) (CBOD at p 116).

18 MCST 6 February Affidavit at paras 34–36 (CBOD at pp 19–20).

19 Mdm Quah's written submissions for OA 21 dated 13 June 2024 at para 1.

20 MCST 18 July Affidavit at para 7 (CBOD at pp 256–257); and Originating application for OA 21 dated 6 February 2024 (CBOD at pp 4–5).

in light of the delays in the R&R works caused by the defendant and Mdm Quah; (c) in the alternative, the recovery as debt of the costs of other (and much more expensive) means of carrying out the R&R works; and (d) for the defendant and Mdm Quah to bear the costs of and incidental to OA 21 on an indemnity basis. As I will explain later, by virtue of a summons, the claimant has applied to amend the relief sought in OA 21 (see [12] below) such that the only order being sought in respect of the defendant specifically is one of access.

11 The District Judge presiding over the matter then sought confirmation as to whether leave of the court was necessary and/or had been obtained for the purposes of commencing these proceedings to the extent it related to the defendant. In the present case, the apparent need for leave to commence proceedings against a bankrupt in respect of a provable debt stems from s 76(1)(*c*)(ii) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("Bankruptcy Act"). The claimant could not file the necessary application in the State Courts (as part of OA 21) because pursuant to ss 2 and 3 of the Bankruptcy Act, the court which may grant leave to proceed with or commence proceedings against the bankrupt (where such leave is necessary) is the High Court.

12 Before the District Judge, the claimant took the view that leave under the said provision was unnecessary. This was because, in its view, the requirement for leave under s 76(1)(*c*) of the Bankruptcy Act only applies *vis-à-vis* a "debt provable in bankruptcy". It opined that an application to gain entry into the Unit did not constitute such an action, and accordingly, no leave is required.[21] To ensure that it could not be argued that there may have been any ancillary pecuniary order that could be made *vis-à-vis* the defendant amounting

[21] Claimant's written submissions for OA 21 dated 30 May 2024 ("CWS 30 May") at para 8.

to an action that would contravene the need for leave under s 76(1)(*c*) of the Bankruptcy Act, the claimant applied, by way of DC/SUM 1009/2024 ("SUM 1009"), to amend the application to the extent that any prayers in OA 21 relating to the recovery of costs related only to Mdm Quah.[22] I would parenthetically note that if SUM 1009 were allowed, this effectively denuded any potential financial implications to the defendant arising out of the application (the "revised OA 21"), as the only relief sought in the revised OA 21 *vis-à-vis* the defendant would be the right to exercise access to the Unit.

13 The District Judge then convened a preliminary hearing in order to deal with the specific point of whether leave would be required for the claimant to proceed against the defendant.[23] The arguments advanced on behalf of the claimant are broadly as summarised in the preceding paragraph. The defendant did not participate in nor turn up for such proceedings as he did not obtain leave from the Official Assignee to defend the matter (as is required under the law for him to make such arguments).[24] Mdm Quah similarly offered no submissions on the specific point being advanced as this was a legal matter.

The decision below

14 After considering such submissions, the District Judge found that leave from the High Court was necessary before even the revised OA 21, where the only relevant order that could be made *vis-à-vis* the defendant was in relation to the right of access to the Unit, could be further advanced. In so far as the original

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22 CWS 30 May at para 9.

23 District Judge's minute sheet for OA 21 dated 21 June 2024 ("DJ Minute Sheet") at pp 1–2.

24 MCST 18 July Affidavit at Tab-2 para 2 (CBOD at p 275).

OA 21 sought the recovery of costs against the defendant, such an action clearly fell within s 76(1)(*c*)(ii) of the Bankruptcy Act.[25]

15 In coming to that conclusion, the District Judge noted that the issue of whether leave would be required turns on the proper interpretation of s 76(1)(*c*)(ii) of the Bankruptcy Act. The District Judge first opined that the purpose of the said provision was to prevent the liquidator's or administrator's task from being made difficult by a scramble amongst creditors to raise actions, obtain decrees or attach assets. He noted that the joint tenancy of the Unit would have been severed by law by virtue of the defendant's bankruptcy (*Chan Lung Kien v Chan Shwe Ching* [2018] 2 SLR 84 at [66]) and the defendant's share of the Unit would thus vest in the Official Assignee and become divisible to creditors by virtue of s 76(1)(*a*) of the Bankruptcy Act. As such, according to the District Judge, even the revised OA 21 would require leave under s 76(1)(*c*)(ii) of the said act as the action ultimately "seeks remedies against the property of the [defendant], and thus would affect the bankrupt's estate".[26] The District Judge also observed that the claimant had previously, in a separate application (DC/OA 61/2023) against the defendant and Mdm Quah to have them remove objects from the common property of the Development, obtained leave from the High Court (HC/OA 874/2022) to proceed against the defendant. According to the District Judge, this was suggestive of the fact that the claimant in fact understood that leave would be required in such circumstances.[27]

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25 DJ Minute Sheet at p 2.

26 DJ Minute Sheet at p 3.

27 DJ Minute Sheet at p 3.

16 After the District Judge's decision, the claimant wrote to the Official Assignee, who confirmed that the defendant had not been given any formal sanction to take any steps in OA 21 and SUM 1009, and that the Official Assignee did not object to the claimant's application to obtain the High Court's leave to proceed with OA 21 and SUM 1009, save that the claimant should not look to Official Assignee or the defendant's bankruptcy estate for any compensation, claims, costs, disbursements and/or other fees incurred.[28]

The present application

17 It is in the above context that the present application was filed by the claimant to seek leave to proceed with SUM 1009 and the revised OA 21 against the defendant in the District Court. In its written submissions, the claimant, noting the above developments, contends that the present circumstances warranted the granting of leave. Before me, upon my query on the matter, the claimant noted that its view remained what it had advanced initially before the District Judge, namely that as a matter of law, no leave was required. Nonetheless, given that the District Judge had concluded otherwise, they found themselves with little choice but to file this application. The defendant, who was in attendance, took no position on this application, once more noting that he was not given permission by the Official Assignee to defend himself, or make any arguments, here.[29]

18 As such, the issue to be determined is whether leave is necessary for such an action to be commenced against the defendant and, if leave is necessary, whether such leave would be granted.

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28 MCST 18 July Affidavit at para 18 and Tab-2 (CBOD at pp 262 and 275).

29 Minute sheet for HC/OA 701/2024 dated 28 August 2024; and Minute sheet for HC/OA 701/2024 dated 12 December 2024 ("12 December Minute Sheet") at p 3.

My decision

Leave is not necessary

19 As explained in greater detail later (see [29]–[33] below), if leave was indeed necessary for this action to be commenced, this would be an obvious case for the granting of such leave.

20 Nonetheless, having considered the arguments, as I take the view that leave is not required in the present case, I make an order in those terms instead. As the District Judge rightly noted, the matter of whether leave is required turns on the proper contours of s 76(1)(*c*)(ii) of the Bankruptcy Act. For ease of reference, s 76(1) of the Bankruptcy Act reads as follows:

> **Effect of bankruptcy order**
>
> **76.**—(1) On the making of a bankruptcy order —
>
> (*a*) the property of the bankrupt shall —
>
> (i) vest in the Official Assignee without any further conveyance, assignment or transfer; and
>
> (ii) become divisible among his creditors;
>
> (*b*) the Official Assignee shall be constituted receiver of the bankrupt's property; and
>
> (*c*) unless otherwise provided by this Act —
>
> (i) no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy shall have any remedy against the person or property of the bankrupt in respect of that debt; and
>
> (ii) no action or proceedings shall be proceeded with or commenced against the bankrupt in respect of that debt,
>
> except by leave of the court and in accordance with such terms as the court may impose.

21 On 30 July 2020, when the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") came into operation, s 76(1)(*c*) of the

Bankruptcy Act was replaced by s 327(1)(*c*) of the IRDA. The former is largely *in pari materia* with its successor (*Ong Jane Rebecca v Lim Lie Hoa and other appeals and other matters* [2021] 2 SLR 584 ("*Rebecca Ong*") at [64] and *Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation) v An Rong Shipping Pte Ltd (in liquidation)* [2024] 1 SLR 233 at [7]). Hence, much of the analysis of the interpretation of s 327(1)(*c*) of the IRDA would be equally applicable to s 76(1)(*c*) of the Bankruptcy Act.

22 The Court of Appeal observed in *Rebecca Ong* (at [63]) that s 327 of the IRDA (and thus, s 76 of the Bankruptcy Act) is "creditor-targeted" and "operates automatically and disallows creditors to commence or sustain actions in debt against the bankrupt without the leave of court" [emphasis in original omitted]. Additionally, based on the wording of s 327(1)(*c*) of the IRDA, the bar against commencing or continuing any action against the bankrupt is "in respect of that debt", whereby "debt" is a reference to "any debt provable in bankruptcy" (*Rebecca Ong* at [64]).

23 The observations in the preceding paragraph align with the policy rationale behind these provisions in the IRDA and the Bankruptcy Act. The courts have repeatedly pointed out that the *raison d'etre* of the need for leave under our bankruptcy laws is to ensure that the court can exercise a certain level of supervision on court proceedings with a view to ensuring that there is no rush on the part of creditors to try and obtain or seize assets in order to secure repayment before other equally-situated creditors. The Court of Appeal in *Overseas Union Bank v Lew Keh Lam* [1998] 3 SLR(R) 219, for example, noted (at [35]) that the entire point of s 76(1)(*c*)(ii) of the Bankruptcy Act was to "prevent the liquidator's or administrator's task being made more difficult by a scramble among creditors to raise actions, obtain decrees or attach assets". For that reason, in *Caltong (Australia) Pty Ltd (formerly known as Tong Tian See*

Holding (Australia) Pty Ltd) and another v Tong Tien See Construction Pte Ltd (in liquidation) and another appeal [2002] 2 SLR(R) 94, the same court noted (at [51]) that the "requirement to obtain leave is to ensure that the court could guard against any inequity on account of such a scramble [amongst creditors]". In the same vein and more recently, the Court of Appeal also noted in *Rebecca Ong* (at [68]), when discussing s 327(1)(*c*) of the IRDA (as I stated earlier, the progeny of s 76(1)(*c*) of the Bankruptcy Act which is, for our present purposes, effectively the same provision):

> The rationale behind the provision is to prevent a scramble of creditors going after the bankrupt and potentially violating the *pari passu* principle of distribution which is a key pillar of our insolvency regime. That is why the provision confers on the court the discretion to grant leave, where appropriate, for such proceedings to continue, and to *impose conditions* to manage such litigation.
>
> [emphasis in original]

24 Therefore, when properly understood, the requirement for leave is engaged in cases where the claim could conceivably have financial implications or pertain to a debt or ostensible debt on the part of the bankrupt, such as where creditors are involved. In the absence of such features, there is very little for the court to meaningfully supervise. This is because if the entire premise for supervision is to ensure that no one unsecured creditor seeks to overcome the *pari passu* principle by way of engaging in a collateral court proceeding, such concerns possess no scope for application in a matter like the present, where the party seeking to take action against the bankrupt is not a creditor and/or is not otherwise seeking to deal with any of the assets of the bankrupt in a way that diminishes its value (in a bankruptcy) in any substantive or meaningful manner. In sum, these proceedings have no direct effect on the administration of the bankrupt's estate, nor on the operation of the *pari passu* principle in the bankruptcy.

25 I pause here to note that such an understanding of s 76 of the Bankruptcy Act coheres with the statutory approach in other jurisdictions, in which analogue provisions with the same underlying motivations specifically limit the commencement or continuation of proceedings against a bankrupt without leave. To take a couple of illustrative examples, under s 285 of the Insolvency Act 1986 (c 45) (UK), the bar against commencing proceedings without leave applies to "a creditor of the bankrupt in respect of a debt provable in the bankruptcy", while similarly, in Australia, under s 58(3) of the Australian Bankruptcy Act 1966 (Cth), creditors are barred from so commencing such actions without leave and only "in respect of a provable debt". The approach taken in these jurisdictions only serves to reinforce the idea that in any jurisdiction, the mischief that the leave mechanism (involving proceedings taken against bankrupts) seeks to address is, generally speaking, the matter of creditors using the court process to engage in an opportunistic grab of the remaining assets of the bankrupt to the prejudice of other creditors.

26 Such an approach to s 76 of the Bankruptcy Act has, I would suggest, another reason to commend it. The "primary mode of enforcement of claims against a debtor upon the onset of bankruptcy or insolvent liquidation" is that of the proof of debt regime, unless the court considers it necessary or expedient for the claim to be resolved outside the regime (*Re Medora Xerxes Jamshid (in his capacity as the private trustee in bankruptcy of Tan Han Meng) (Planar One & Associates Pte Ltd (in liquidation), non-party)* [2024] 5 SLR 1006 at [83]). One of the motivations behind s 76 is to ensure that creditors do not seek recourse to expensive court processes when enforcing their claims instead of filing a proof of debt (Kala Anandarajah *et al*, *Law and Practice of Bankruptcy in Singapore and Malaysia* (Butterworths Asia, 1999) at p 200). Indeed, as observed by the District Court in *JA v JB* [2005] SGDC 104 (at [13]),

s 76(1)(*c*)(ii) of the Bankruptcy Act "serves the purposes of the bankruptcy regime by preventing a multiplicity of actions erupting or bubbling on – actions which have been or would be filed by creditors in the (mistaken) belief that doing so will give them greater priority amongst all the unsecured creditors when the bankrupt's assets are distributed by the Official Assignee". Seen through such lenses, and if the aim of reducing and streamlining court processes is one of the key features of a bankruptcy regime, then advancing a broad reading of the provision would effectively frustrate that intent since it would be (for the reasons I highlight below) inevitable that leave would be granted for all *bona fide* applications of this nature, meaning the court actually has little role to play in any supervision but nonetheless must insist that costs be expanded for such leave to be sought. Such a multiplicity in proceedings is, in my view, unprofitable and fundamentally detracts from one of the ideals of bankruptcy to have a streamlined process to ensure that as many assets as possible are retained in the pool of assets for distribution to creditors.

27 Finally, I note the District Judge's concern that the claimant had previously sought leave from the High Court to proceed with DC/OA 61/2023, where the claimant had sought an order for the defendant and Mdm Quah to remove various objects from the common property of the Development, and that failure to do so would result in the claimant doing so at the defendant's and Mdm Quah's expense, accompanied by an order to seek indemnity costs against them collectively.[30] I note that leave was given by the High Court to proceed with that application with no order as to costs,[31] and subsequently, in the District Court, the order was largely given in the terms sought, save that the costs order

30 Originating application dated 29 March 2023 in DC/OA 61/2023.

31 Order HC/ORC 716/2023 dated 15 February 2023.

of that application was limited to Mdm Quah.[32] In the absence of any grounds of decision issued by the High Court in that case for granting leave, it would not be sensible for me to second-guess or critically scrutinise the merits of that decision. Based on what the claimant informed me,[33] and from my own perusal of the records of both DC/OA 61/2023 and HC/OA 874/2022, it seems quite apparent that the application for leave there was uncontested and the matter of whether leave was, in fact, legally required simply never came up in those proceedings. It therefore appears that the matter had been decided without any of the parties raising the preliminary matter of whether leave was even required.

28 In the circumstances, I am of the view that leave would not be necessary for the proceedings in SUM 1009 and in the revised OA 21, which primarily seeks an order against the defendant for the right of entry into the Unit for the purposes of facilitating the R&R works. As an aside, given that the claimant, in the revised OA 21, was explicitly avoiding seeking any pecuniary order against the defendant as part of the application,[34] I did not have to deal with the question of whether any secondary order that potentially involves the recovery of costs against the bankrupt defendant would then amount to an "action or proceeding" as found in s 76(1)(*c*)(ii) of the Bankruptcy Act. Nonetheless, on this point, I am of the preliminary view that the mere fact costs orders were sought or made would not necessarily mean that the underlying application is caught by s 327(1)(*c*) of the IRDA (and thus, also s 76(1)(*c*) of the Bankruptcy Act). Put another way, costs orders do not necessarily constitute "debt" within the meaning of the said provisions. Otherwise, almost all proceedings (which may

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32 Order DC/ORC 2373/2023 dated 12 September 2023.

33 12 December Minute Sheet at p 2.

34 MCST 18 July Affidavit at para 14.3 (CBOD at p 261); and Claimant's written submissions dated 20 September 2024 ("CWS 20 Sept") at para 43.

invariably entail the imposition of consequential costs orders whether the underlying matter relates to a debt or not) would end up requiring the court's leave (*Rebecca Ong* at [65]). Ultimately, what must be examined is the nature of the underlying matter from which such costs arise and whether these involve enforcement of a debt (*Rebecca Ong* at [65]). While I did think that a strong case can be made that the seeking of consequential costs orders of the application *per se* should not require the granting of leave (since such an order is, by definition, consequential to an order entirely unrelated to the issue of any debt owed to a creditor), I do think that the seeking of specific order of costs independent of court proceedings (for example, any attempt to independently pursue a claim for damages in this case specifically against the defendant and Mdm Quah for from their purported delay in granting access to the Unit) may likely require the court's leave. Be that as it may, I say no more on these specific matters (and reiterate the fact that my views on these matters are very much tentative) since the issue is not one that is directly engaged in this case, and the parties did not specifically address these issues.

If leave is necessary, the application would be granted

29 For completeness, in the event leave is required for the revised OA 21 to be advanced, I would have granted such leave. In assessing whether leave ought to be granted for proceedings to be taken against a bankrupt, this Court in *Wang Aifeng v Sunmax Global Capital Fund 1 Pte Ltd and another* [2023] 3 SLR 1604 ("*Wang Aifeng*") observed (at [32]), albeit in the context of s 327(1)(*c*)(ii) of the IRDA (as I have noted above, it is, for present purposes, *in pari materia* with s 76(1)(*c*)(ii) of the Bankruptcy Act), that the following considerations are of salience:

(a) the timing of the application for permission;

(b) the nature of the claim;

(c) the existing remedies;

(d) the merits of the claim;

(e) the existence of prejudice to creditors or to the orderly administration of the bankruptcy; and

(f) other miscellaneous factors such as the potential of an avalanche of litigation being unleashed if permission were granted, the proportionality of the cost of the proceeding to the bankrupt's resources, and the views of the majority creditors.

30 In applying these factors, it would be pertinent to note, as I observed earlier, that these considerations are engineered with one eye to effectively ensure that granting leave does not result in a scramble from creditors to go after the bankrupt's assets and to try and overcome the application of the *pari passu* principle. For that reason, none of these factors are decisive, and neither are the considerations set out in the preceding paragraph exhaustive (*Wang Aifeng* at [15]). Furthermore, as observed in *Korea Asset Management Corp v Daewoo Singapore Pte Ltd (in liquidation)* [2004] 1 SLR(R) 671 ("*Korea Asset*") (at [45]), albeit in the context of granting leave to commence or continue proceedings against a company after the commencement of winding up, such discretion ought to be "exercised rationally in the context of the insolvency scheme".

31 In my view, on an application of the factors in this case before me, it becomes even more clear that the courts have little supervisory role to play in *bona fide* applications of the present nature that do not involve creditors. I illustrate why this is so by dealing with each factor in turn:

(a) *Timing of application for permission*: As observed in *Wang Aifeng* (at [33] and [34]), early applications are generally viewed more charitably. The closer the application date is to the bankruptcy, the less likely the court would allow for such proceedings to continue, given that it could be inferred that the aim of such an application was to grab the bankrupt's assets. Such a consideration simply has no scope for application in the context of the present application. In an application like the one before me, there is simply no way to meaningfully infer, from the timing of the application, that the applicant is out to seize assets and to avoid the strictures of the bankruptcy regime. In any event, as the claimant also points out, the defendant was made bankrupt some 12 years ago.[35]

(b) *Nature of the claim*: In assessing this particular factor, the court would lean towards granting leave when "[t]he claim must be of a type which should proceed by action rather than through the proofing procedure in bankruptcy" (*Wang Aifeng* at [35]). It would be axiomatic that all claims like the present one cannot be properly handled by the proofing process which, by definition, is to deal with the creditor debt resolution process. In the present case, the claimant is only seeking an order against the defendant that it be allowed to exercise its powers of entry into the Unit, and any monetary claims (if at all) are only being sought in respect of Mdm Quah.[36]

(c) *Existing remedies*: Under this head, the court considers whether the claim can be dealt with sensibly within the bankruptcy regime and/or

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35 CWS 20 Sept at para 22.

36 CWS 20 Sept at paras 25–26.

whether such a claim may dissipate the bankrupt's assets (*Wang Aifeng* (at [37] and [38]). Again, in my view, for rather self-evident reasons, an assessment of this factor clearly leans very much to the granting of leave for the present claim.

(d) *Merits of the claim*: As pointed out in *Wang Aifeng* (at [40]), the threshold here is whether the proposed claim has "a serious question to be tried". In other words, the court must be satisfied that the proposed claim is "not clearly unsustainable". To be sure, such a test applies whether a claim involves a creditor or otherwise. Having said that, there are, of course, other ways in which such a claim can be properly dealt with *vis-à-vis* the court process. After all, if, as *Wang Aifeng* (at [39]) suggests, the need to consider merits would be because "[i]t would be better to preserve the resources of the bankrupt for distribution, rather than expanding a part of those on defending sterile litigation", then in theory, necessitating leave applications which are going to be largely *pro forma* would be potentially an even worse outcome, since this would just promote the outcome of escalating costs independent of the merits. In any event, for the avoidance of doubt, on the merits, I find that the case is clearly not an unsustainable one, though I make no specific finding on the merits as that question is not immediately before me.

(e) *Existence of prejudice*: Once more, the focus of this analysis lies in the matter of whether allowing the claim to proceed could seemingly negate or otherwise compromise the bankruptcy regime (*Wang Aifeng* at [42] and *Korea Asset* at [48]). It is clear that applications such as OA 21 involving no creditor debt claims will almost invariably never have this effect.

(f) *Any other factors*: It does not appear to me that any of the other factors are relevant. Certainly, on the facts, it would be odd to speak of majority creditors having a veto over whether the necessary R&R works should be done at the Development, or about whether repairs that relate to the safety and habitability of any development could invite a rash of litigation.

32 As can be seen above, the application of the test outlined in *Wang Aifeng* on these facts possesses a certain air of artificiality to it, since the test in question simply was not designed to deal with claims such as the one before me. Indeed, the difficulties stem again from the point I made earlier that the entire regime was designed to ensure that creditors do not try to overcome the *pari passu* principle through satellite action or litigation. That simply does not happen in most actions not involving creditor debt.

33 That said, to the extent leave is at all necessary, in my view, leave clearly ought to be granted since there is nothing that militates against the granting of leave when applying the *Wang Aifeng* framework. At the risk of reiterating what I had emphasised earlier, none of that, of course, changes the reality that the fact that leave would inevitably be granted as a matter of course only proves that the leave process represents a non-meaningful hurdle to the initiation of legal proceedings in cases such as the present and militates against the conclusion that leave is required to begin with.

Coda

34 Before I end, it would be apt for me to make one final observation. It is sometimes said that litigation is a win-lose proposition as outcomes from litigation are almost always binary, in that one party wins and the other loses.

However, on these facts, litigation appears clearly to be a lose-lose proposition. No matter which party wins the (court) battle here, both sides will lose the war. No good can be had from prolonging these proceedings in the State Courts.

35 Indeed, it would seem obvious that the only feasible outcome in this case would be for the defendant and Mdm Quah to permit access to be granted to any appointed contractor(s) with reasonable conditions imposed and advance notice given to minimise the inconvenience to them. I say this because, when one understands the statutory schema, no other outcome, to my mind, is legally tenable. If the defendant and Mdm Quah are allowed to deprive the claimant of access to the roof of the Stack indefinitely, this would mean that the R&R works would never be undertaken. Such an outcome would contradict the law and may even amount to the commission of criminal offences by the claimant, the defendant and Mdm Quah by virtue of s 31 of the BMSMA and r 3 of the BMSMR. If the claimant enters the Unit by force without notice, they potentially commit trespass, resulting in potential civil and criminal liability as such forced access would typically only be allowed in an emergency as set out in s 31(*e*) of the BMSMA – I might add that doing so would also be acting in contradiction to the hallowed principle that an MCST simply has no right, save an emergency, to enter a subsidiary proprietor's unit, or for that matter, to deprive them of access to the unit, without due notice being given and only for the specific reasons that the law affords.

36 All of what I have highlighted in the preceding paragraph underscores the self-evident point that the entire litigation in this case seems futile. The outcome in this case must necessarily cohere to the law, and the obvious, if not inevitable, outcome would be along the lines of the claimant giving reasonable notice of the R&R works to be undertaken and the defendant and Mdm Quah granting reasonable access to the Unit. While it is, of course, entirely possible

for the parties to mediate an arrangement where the terms of access are defined in a way that meets the needs of the various parties (since there is, of course a spectrum of "reasonable" options that exist that would achieve that underlying aim), there is simply no other entirely distinct factual outcome possible that is outside the parameters set out in the preceding paragraph. It would seem to me to be self-evident that s 31 of the BMSMA necessarily requires the outcome I have stated above.

37 The parties, and I say this in particular to the defendant and Mdm Quah, can therefore decide whether they wish to mediate to set their own terms for access that would be most meaningful to them, as is obviously more ideal, or whether they wish to expand even more moneys and energies for the court to eventually dictate the terms for all of them to live with, however inconvenient such court-ordered terms might be for them. Should they choose to pursue the former scenario, the parties should ultimately be reasonable and meet each other halfway. With respect, suggestions that the claimant and/or their appointed contractors do not require sustained access to the Unit as "4 days is more than enough [for the completion of the R&R works]", and that the claimant's intended installation of the rope rigging system, amongst other equipment, was unnecessary since "the workers just need [to install] some rope to abseil from the rooftop [to do the R&R works]", cannot be taken as a proposal for serious terms of access.[37]

38 On the present facts therefore, it is plain that any mediated conclusion would be much more beneficial to *all parties* than litigation. No benefit is to be had from litigation save to sate bruised egos that demand a court victory for its own sake. Indeed, even then, mediation is the better platform to deal with these

[37] Mdm Quah's Affidavit at paras 10(42)–10(43) (CBOD at p 118).

issues. After all, bruised egos are akin to leaky tyres in that if one does not get to the underlying problem in order to fix it, the onward journey will never be a smooth one. As Mdm Quah herself notes, "[t]his has been going on for 14 years".[38] This is, with respect, a journey that is already 14 years too long. The parties, and indeed, everyone in the Development who represent interested, and affected, spectators to this unfortunate series of events, rightfully deserve better.

39 With those observations in mind, as I informed the parties during the oral hearing as well, I very much urge the parties to seriously consider mediating the matter to resolve the underlying simmering issues that have gone on for far too long at the expense of the entire Development.

Conclusion

40 For the reasons above, I make an order that no leave is required in the present case. For the avoidance of doubt and for completeness, as I observed earlier, if leave were required, it would have been granted as a matter of course on these facts.

41 On the matter of costs, I should emphasise that the claimant is not to be blamed for filing this application before me. Given what had transpired in the proceedings in the court below, the claimant's decision to file this application, and its decision to take the stance that leave should be granted, was both understandable and entirely rational. It would have been rather awkward after all, for the claimant to apply for leave before me, only for it to then take the somewhat self-defeating position in its written submissions that leave was never required anyhow. I should also concomitantly highlight that the defendant is

[38] Mdm Quah's Affidavit at para 1 (CBOD at p 109).

similarly faultless on the question of how the issue of leave came to be before me, since he did not make any substantive argument insisting that leave is required under the law.

42 In light of these somewhat unique circumstances in which the application has come before me, I am of the view that it would be appropriate to make no order as to costs. I note that in any event, counsel for the claimant accepted, in the hearing before me, that such an order would be appropriate.[39] Doing so has the additional salutary effect of not ascribing blame to either party for the matter coming before me, and hopefully, would represent the first step to having the parties work together to resolve the underlying problems.

Mohamed Faizal
Judicial Commissioner

Subir Singh Grewal and Shermaine Ang (Aequitas Law LLP) for the claimant;
the defendant in person.

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[39] 12 December Minute Sheet at p 3.