CNPLAW LLP REPRESENTED THE PLAINTIFF BEFORE THE HIGH COURT - CASE UPDATE: INTEROCEAN HOLDINGS GROUP (BVI) LTD V ZI-TECHASIA (SINGAPORE) PTE LTD (IN LIQUIDATION) [2014] SGHC 09

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Category: Deals and cases

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The Lawyer Acting On The Case: See Tow Soo Ling.

Introduction

In the decision of ***Interocean Holdings Group (BVI) Ltd v Zi-Techasia (Singapore) Pte Ltd (in liquidation)*** SGHC 09, the High Court of Singapore (the "**High Court**") filled a lacuna in the law relating to the effect of a cessation of a members' voluntary winding up.

In the absence of local judicial authority, the High Court held that a stay of voluntary winding up proceedings would enable the officers of Zi-Techasia (Singapore) Pte Ltd (the "**Defendant**") company to resume their duties and/or management of the company.

CNPLaw LLP formerly known as Colin Ng & Partners LLP represented the Plaintiff before the High Court.

The Facts

Interocean Holdings Group (BVI) (the "**Plaintiff**") made an application for an order under section 279(1) of the Companies Act (Cap 50, 2006 Rev Ed) (the "**Act**") to stay altogether the members' voluntary liquidation of the Defendant.

The Plaintiff was a holding company beneficially entitled to all the issued shares of the Defendant. At an extraordinary general meeting, the members of the Defendant resolved to put the company into voluntary winding up. The reason given for this resolution was that the Defendant had not had a business transaction for over 12 months.
The Plaintiff subsequently changed its mind for the following reasons:

1. It wanted the business of the Defendant to continue in order to profit from new potential business opportunities;
2. There were financial and tax incentives to reinstate the Defendant; and
3. The Defendant continued to retain substantial goodwill in its corporate name.

Hence, an extraordinary general meeting of the Defendant was convened and a special resolution was passed to withdraw the Defendant's winding-up petition. In furtherance of this objective, they resolved to apply to stay the winding-up proceedings altogether.

The Issues

The issues before the High Court of Singapore were as follows:

1. Did the Court have the power to order a stay of winding up proceedings altogether?

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2. Was this power discretionary? If so, what were the principles that governed this power?
3. What would be the effect of a stay on the powers of the company officers?

The Decision

The Court was satisfied that it had the power to order a stay of winding up proceedings altogether. This was based on a reading of 279(1) of the Act which sets out the general power of the Court to stay the winding-up process. The Court held that section 279(1) could be applied to voluntary winding up proceedings due to the effect of section 310 of the Act, which governs applications made to the Court to have questions determined or powers exercised.

Discretionary Power

The Court was satisfied that the exercise of its power to order a stay was a discretionary one. The principles of **In re Calgary & Edmonton Land Co Ltd (In Liquidation)** 1 WLR 355 ("**Re Calgary**") were applied in setting out the parameters of this discretion. They are as follows:

1. An application for a stay must make out a case that carries conviction;
2. The court should consider the interests of several parties in making its decision. These parties are the creditors, the liquidator and the members of the company

The presence of consent on the part of the relevant parties was pivotal in guiding the Court towards granting a stay. However, the Court added that the party seeking a stay must be able to demonstrate “in full and forthright detail” (at) the reasons for doing so.
In this instance, all the relevant parties had been notified and consented to the application. Furthermore, all the creditors had been paid off in full and confirmed that they no longer had any interest in the matter.

The High Court expressed reservations about separately considering whether a stay would be conducive or detrimental to "commercial morality" and public interest. Nevertheless, the Court was of the opinion that the business carried on by the Defendant was "above board" (at).

Effect of a Stay

The Court recognised an absence of local case authorities relating to the effect of a stay on the powers of the officers of the company and undertook an analysis of foreign authorities in making its decision.

In addition, the Court examined authorities relating to the effect of a stay on cases in which winding-up proceedings had been ordered. It held that these authorities applied equally strongly to instances in which a company was voluntarily wound up.

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The Court observed the absence of a statutory provision in the Act permitting a winding-up order to be set aside or revoked. Based on an analysis of the older English and Australian jurisdictions, the Court concluded that the only remedy in such cases would be to stay the winding up.

The High Court reasoned that winding up proceedings did not extinguish the powers of the officers of the company. Furthermore, it agreed with the court in **Austral Brick Co Pty Ltd v Falgat Constructions Pty Ltd** (1990) 2 ACSR 766 ("**Austral**"). In **Austral**, the court held that a stay on winding up proceedings would merely remove the "cloud" over the company's normal activities (at). This meant that a stay would allow the directors to resume their duties once again.

The Court also held that a stay would take effect only from the date of the pronouncement of the stay. In obiter, the Court observed that a stay would not undo any actions taken by the liquidator prior to the commencement of the stay.

Final Thoughts

The High Court of Singapore has set out certain principles to be used in granting a stay on voluntary winding up proceedings in Singapore. Furthermore, the Court has filled a legal lacuna by determining the effect of a stay on voluntary winding up proceedings in Singapore. This is particularly useful for companies which have commenced winding up proceedings and subsequently decide against liquidation, whether for financial reasons or otherwise.

In choosing to stay winding up proceedings, it would be prudent for companies to keep the interests of their creditors, liquidators and members in mind. They should ensure that all outstanding liabilities to these parties have been discharged. In addition, companies should obtain the consent of these parties to a cessation of the winding up and ensure that their creditors no longer have any interest in the matter. Once a company has been granted a stay, it may resume activities carried out prior to the commencement of winding up proceedings, subject to any actions that have already been carried out by the liquidator.

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