

INSOLVENCY

Singapore Court of Appeal Endorses Test for “Unfair Prejudice” and Intervening in Judicial Managers’ Decisions

Authored by Partners Joel Chng and Daniel Liu, with contribution from Senior Associates Clayton Chong and Muhammed Ismail Noordin

The Singapore Court of Appeal has, for the purposes of determining “unfair prejudicial” conduct under section 227R(1) of the Companies Act (now section 115(1)(a) and (b) of the Insolvency, Restructuring and Dissolution Act 2018 (“IRDA”)), endorsed a two-stage test to determine whether a judicial manager has acted or proposed to act in a manner which would unfairly harm the interests of the applicant: *Yihua Lifestyle Technology Co, Ltd and another v HTL International Holdings Pte Ltd and others* [2021] SGCA 87.

Our Comments

This case update examines the Court of Appeal's decision. For our commentary on the Singapore High Court's decision at first instance in *Re HTL International Holdings Pte Ltd* [2021] SGHC 86, please see Law Watch, June 2021, Navigating Between Scylla and Charybdis: Singapore High Court Clarifies Test for “Unfair Prejudice” and Intervening in Judicial Managers’ Decisions.

The Court of Appeal broadly agreed with the High Court's exposition of the relevant principles in determining when the court would interfere with a judicial manager's decision. Generally, there appears to be a high threshold in applying the test for intervention. Among other things, the conduct complained of must either be conspicuously unfair to the complainant or lack legal or commercial justification such as to be perverse. In the case, the focus of the court's analysis was whether the conduct complained of was perverse, i.e., whether the judicial managers' decision was able to withstand logical analysis.

It is noteworthy that the court held that the burden of proof in showing that the conduct complained of was perverse lies on the complainant. The complainants in this case were unable to adduce any compelling evidence to rebut the judicial managers' financial assessment and merely asserted that the judicial managers had not produced any accounts to support their projections. The court disagreed with these assertions as it held that doing so would constitute an “impermissible reversal of the burden of proof” to the judicial managers.

Background

The appellants (“**Shareholders**”) were the direct and ultimate shareholders of HTL International Holdings Pte Ltd (“**Company**”), a company placed under interim judicial management in May 2020, and then judicial management in July 2020.

The first respondent was Golden Hill Capital Pte Ltd (“**Golden Hill Capital**”), whose beneficial owners were the original founders of the Company and also the second and third respondents.

While the Company was under interim judicial management, the interim judicial managers, on behalf of the Company, entered into a share purchase agreement with Golden Hill Capital to sell the Company’s interests in its subsidiaries (“**Assets**”) to Golden Hill Capital.

On 19 August 2020, after the Company was placed under judicial management and nine days before the completion of the sale and purchase of the Assets, another prospective buyer, Man Wah Holdings Ltd (“**Man Wah**”) offered to buy the Assets at a higher price than Golden Hill Capital’s.

Five days after Man Wah’s initial offer was received, the judicial managers (“**JMs**”) of the Company invited both Golden Hill Capital and Man Wah to provide – by 26 August 2020 – “anything further” they wished to communicate in relation to their respective offers.

Man Wah then sought a court order for the JMs to provide a full set of the Company’s financial accounts and requested an extension of the 26 August 2020 deadline. The JMs did not agree to Man Wah’s request for the provision of the financial accounts, but agreed to extend the deadline to 31 August 2020.

On 31 August 2020, both Golden Hill Capital and Man Wah submitted revised and final offers. After considering both parties’ offers, the JMs accepted Golden Hill Capital’s 31 August 2020 offer and sold Golden Hill Capital the Assets.

The Shareholders, however, considered Man Wah’s offer superior to Golden Hill Capital’s, and applied to the High Court for the discretion exercised by the JMs in choosing to sell the Assets to Golden Hill Capital to be set aside and for the JMs to be directed to accept Man Wah’s offer.

The Shareholders’ application was brought under section 227R of the Companies Act (now section 115 of the IRDA) (“**Section 227R**”), which sought relief on the basis that the JMs had acted in a manner that was unfairly prejudicial to the Shareholders’ interests. The salient portions of Section 227R read as follows:

227R.—(1) At any time when a judicial management order is in force, a creditor or member of the company may apply to the Court for an order under this section on the ground —

(a) that the company’s affairs, business and property are being or have been managed by the judicial manager in a manner which is or was **unfairly prejudicial to the interests of its** creditors or **members** generally or of some part of its creditors or members (including at least himself) or of a single creditor that represents one quarter in value of the claims against the company; or

(b) that **any actual** or proposed **act or omission of the judicial manager is or would be so prejudicial**.

(Emphasis added)

The Shareholders took the view that, in interpreting the term “unfairly prejudicial” in Section 227R, unfair harm could arise from a decision by a judicial manager to sell a company’s assets at an undervalue, which they claimed was what had transpired here. The Shareholders also contended that the JMs’ general conduct lacked transparency and was unfair to the Shareholders, and thus perverse.

The High Court's Decision

The High Court dismissed the Shareholders' application, holding that the court would interfere with the JMs' decision only if it could be shown that their conduct had been plainly wrongful, conspicuously unfair or perverse, and that this high threshold had not been met on the facts of the case.

The High Court also found, on the facts of the case, that the JMs were justified in weighing the interests of creditors over those of the members or shareholders of the Company.

Our earlier update on the High Court's decision is available [here](#).

The Shareholders appealed to the Court of Appeal against the High Court's decision.

The Court of Appeal's Decision

The Court of Appeal upheld the High Court's decision, and broadly agreed with the High Court's discussion of the principles governing the displacement of a judicial manager's decision made in its discretion pursuant to Section 227R (which were, in any event, unchallenged by the parties on appeal).

However, the Court of Appeal, drawing guidance from English authorities, set out a two-stage test for the court to determine whether a judicial manager has acted or proposed to act in a manner which would unfairly harm the interests of an applicant seeking recourse under Section 227R:

- (a) First, it must be shown that the action complained of has caused, or would cause, the applicant to suffer harm in his capacity as a member or creditor; and
- (b) Secondly, the harm caused by the action complained of must be unfair. Unfairness may stem from the following:
 - (i) conspicuously unfair or differential treatment to the disadvantage of the applicant (or applicant class) which cannot be justified by reference to the objective of the judicial management or the interests of the members or creditors as a whole; or
 - (ii) a lack of legal or commercial justification for a decision which causes harm to the members or creditors as a whole. This might include, for example, a decision to sell the company's assets at an undervalue, or a course of action that is based on a wrong appreciation of the law. However, in such cases, the court will not interfere with the judicial manager's decision unless it is perverse (i.e., unable to withstand logical analysis).

Before the Court of Appeal, the Shareholders contended that:

- (a) The JMs erred in concluding that Golden Hill Capital's offer would yield higher shareholder returns than Man Wah's offer, and in support of this contention, alleged that the JMs' calculations were flawed in a number of respects; and
- (b) The JMs' refusal to provide Man Wah a full set of the Company's financial accounts prevented Man Wah from improving its offer.

Based on the evidence before it, the Court of Appeal rejected both contentions as being meritless and speculative or baseless, and agreed with the High Court that the JMs did not act in an unfairly prejudicial manner by selecting Golden Hill Capital's 31 August 2020 offer over Man Wah's 31 August 2020 offer.

The Court of Appeal therefore dismissed the appeal with costs.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



Joel CHNG

Partner – Restructuring & Insolvency

d: +65 6517 8707

e: [joel.chng](mailto:joel.chng@wongpartnership.com)

[@wongpartnership.com](https://www.wongpartnership.com)

Click [here](#) to view Joel's CV.



Daniel LIU

Partner – Restructuring & Insolvency

d: +65 6416 2470

e: [zhaoxiang.liu](mailto:zhaoxiang.liu@wongpartnership.com)

[@wongpartnership.com](https://www.wongpartnership.com)

Click [here](#) to view Daniel's CV.

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