Re Raffles Town Club Pte Ltd
[2005] SGHC 173

Case Number : OS 1164/2005, SIC 4541/2005

Decision Date : 15 September 2005

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Molly Lim SC, Roland Tong and Ambrose Chia (Wong Tan and Molly Lim LLC) for the applicants; Andrew Chan, Stanley Lai, Candace Ler and Andrew Yeo (Allen and Gledhill) for the respondent

Parties : —

Companies – Schemes of arrangement – Defendant club ordered to pay damages to litigant-members – Club proposing scheme of arrangement – Club unable to convene requisite meeting within prescribed time – Whether club's proposed timeline acceptable – Whether scheme of arrangement could be rejected without meeting being convened for litigant-members to vote on proposed scheme – Section 210 Companies Act (Cap 50, 1994 Rev Ed)

15 September 2005

Kan Ting Chiu J:

1 On 23 August 2005, the Court of Appeal delivered its judgment ([2005] SGCA 40) and awarded $3,000 damages to each of the 4,895 members of the Raffles Town Club who had joined in the action. I shall refer to these 4,895 members as the litigant-members to distinguish them from the approximately 14,000 other members of the Club who did not join in the action.

2 After receiving the judgment, the defendant, Raffles Town Club Pte Ltd ("the Club"), took steps under s 210 of the Companies Act (Cap 50, 1994 Rev Ed) ("the Act") to put forward a scheme of compromise and arrangement to its creditors. An application was filed to set this in motion.

3 When the Club's application came before me on 31 August 2005, its counsel stated that the Club was not ready to take the usual directions for the convening of the meeting under s 210 of the Act to vote on the proposed scheme. It needed time to prepare additional information, accounts and recommendations with input from external financial advisers. In the meantime, it had only prepared and circulated a preliminary draft scheme to its creditors. Counsel sought a stay of all proceedings till 20 September 2005 when the Club would be ready to return to court to take directions for the meeting to be held by 15 December 2005.

4 The timelines proposed were not acceptable to me. The action against the Club has been ongoing for years. The Club ought to have started preparatory work on a scheme before the Court of Appeal judgment. It was not good enough to say that it did not know the Court of Appeal was to increase the damages. Furthermore, there was no justification for not holding a meeting on a proposed scheme for three and a half months till 15 December 2005.

5 Counsel for the litigant-members told me that his clients were opposed to anything that would affect their right to enforce the judgment against the Club, but he added that he did not have time to take full instructions and was not ready to argue against the Club's application.

6 I gave the Club the opportunity to submit a scheme, but on tighter timelines than were proposed. I directed that the Club give notice of the meeting and circulate the scheme to the Club's creditors by 28 September 2005, and that the meeting was to be convened by 26 October 2005. In

the meantime, all other actions are to be stayed pending the meeting.

7 My intention for making those directions was to allow the scheme to be put forward, and discussed, and voted on, without unnecessary delay. However, I also wanted to preserve the litigant-members' right to object to the Club's application, so I added an order that any creditor can apply to set aside the orders that I made with respect to the meeting and the injunction against other actions.

8 The litigant-members duly used that opportunity and filed Summons in Chambers No 4541 of 2005 to set aside the orders, and for other alternative reliefs. The application to set aside the directions of 31 August 2005, if granted, will bring the proposed settlement to an end without it being voted on by the creditors of the Club covered by the scheme.

9 When the summons in chambers came before me on 8 September 2005, counsel for the Club raised a preliminary point with regard to the authority of the solicitors of the litigant-members. He referred to a document entitled "Raffles Members' Group Notes on Nomination Form" which was used at the outset of the action against the Club. The form provided for the election of a pro-tem committee to represent the 4,895 litigant-members.

10 Term 4 of the form set out the powers of the pro-tem committee:

> The Committee will have the following functions and authority:
>
> a. to continue with the mandate as given to WTL [litigant-members' solicitors] by the Pro-Tem Committee;
>
> b. to continue to assist WTL as regards matters to be communicated to the rest of the Participating Members and to give the requisite instructions whenever requested or required by WTL;
>
> c. to continue to represent the Participating Members in all matters relating to the Representative Action;
>
> d. to do whatever is necessary and as it thinks best for and in the interests of the majority of the Participating Members in relation to the Representative Action;
>
> e. to participate, if and when advised by WTL and together with WTL, in any negotiations or mediation proceedings;
>
> f. to make decisions on behalf of the Participating Members on all matters relating to the Representative Action *except as regards the terms of settlement to be accepted*;
>
> g. to call for a meeting of all Participating Members for the purpose of making *a decision on the acceptability or otherwise of the terms of settlement. The decision shall be arrived at by a simple majority* of Participating Members present and voting; ...
>
> [emphasis added]

11 It was not disputed that no meeting of the 4,895 litigant-members had been convened to decide or vote on the preliminary draft scheme the Club has put up.

12 Counsel for the Club drew my attention to terms 4f and 4g, and submitted that the pro-tem

committee's mandate to make decisions on behalf of the litigant-members does not extend to the rejection of any offer of settlement such as a scheme under s 210 of the Act unless there is a vote to reject it. Without that, the pro-tem committee does not have the mandate to apply in the name of the litigant-members to set aside the directions and kill the proposed scheme, or to seek any alternative relief.

13 I recognised the merits in the argument and suggested to the applicants' counsel that the pro-tem committee should convene a meeting of the litigant-members and ascertain that they want to reject the scheme before proceeding with its application. Who can say that the majority of the litigant-members will not accept the scheme if they are to meet and vote on it? Even if the members of the pro-tem committee believe that the majority will reject the proposal, the terms of their mandate require that there must be a meeting and a vote.

14 Counsel for the litigant-members did not see things in that light, and asked me to dismiss the application, and certify that I did not require further arguments, so that an appeal can be filed against my decision instead. I believe that counsel's intention is to apply for an expedited appeal to have my ruling on the preliminary point overturned, and to have the application heard on its merits before 26 October 2005 without the meeting and the vote. I acceded to both requests. I dismissed the application on the preliminary point, and confirmed that I did not want to hear further arguments.