

Re Raffles Town Club Pte Ltd
[2005] SGHC 198

Case Number : OS 1164/2005, SIC 5275/2005
Decision Date : 20 October 2005
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Stanley Lai and Candace Ler (Allen and Gledhill) for the applicant; Roland Tong and Ambrose Chia (Wong Tan and Molly Lim LLC) for the respondent
Parties : —

Companies – Schemes of arrangement – Company applying to court to extend timelines to hold creditors' meeting to discuss scheme and to advertise notice of creditors' meeting and proposed scheme – Timelines set on two previous occasions – Whether company discharging onus of proof that valid grounds existing for further extension of timelines

1 The Raffles Town Club saga moves on. After the primary dispute had been determined by the Court of Appeal on 23 August 2005 in [2005] 4 SLR 351 and the defendant company, Raffles Town Club Pte Ltd (“the Company”), applied to put forward a scheme of arrangement to its creditors, one would have thought that the next steps in the matter would be the presentation of the scheme proposal, and then the vote thereon.

2 That was not to be. First, the plaintiffs, a group of members of the Raffles Town Club (“the Club”), applied for the appointment of a Special Receiver and Manager for the Company and a Mareva injunction against it. I rejected that application, which then went up to the Court of Appeal on an expedited appeal and met with the same result.

3 Next, the plaintiffs took out another application, this time with the purpose of restraining the Company from instituting actions against a few of the plaintiffs for unpaid subscriptions, although the application was framed in wider terms. I rejected that, and there is no appeal.

4 Then, it is the Company’s turn. On 12 October 2005, it applied to have the timelines for the consideration of the scheme proposal and the convening of the meeting to discuss the scheme moved back a second time.

5 There is a history to the timelines. This started with the Company’s application relating to the scheme proposal. The application (Summons in Chambers No 4437 of 2005) was not the usual application under s 210 of the Companies Act (Cap 50, 1994 Rev Ed) in that it did not seek directions as to when notice of the proposed scheme was to be given to the potential scheme members. The only date set out in the application was that the meeting was to be held on or before 15 December 2005.

6 When parties appeared before me on that application, I felt that the Company should be given the opportunity to propose a scheme of arrangement, but on tighter timelines. After conferring with counsel for the Company, I gave directions that the meeting to discuss the scheme was to be held by 26 October 2005 and that notice of the meeting and copies of the proposed scheme were to be advertised and posted by 28 September 2005.

7 Subsequently, the timelines were moved with the consent of the parties. This was recorded in an order of court of the Court of Appeal of 19 September 2005, whereby the two dates were changed to 19 October 2005 for the advertising and posting of the scheme proposal and 16 November

2005 for the meeting.

8 Thus, when the Company filed the present application, it was seeking to extend timelines it had assented to twice before. In this application, the Company wanted the dates to be moved to 7 November 2005 and 2 December 2005.

9 The application was not viewed unfavourably because of the previous extension *per se*. There may be valid grounds which necessitate an extension. The onus is on the Company to show that there are good reasons.

10 What were the grounds put forth? An affidavit was sworn by Graham Kiy ("Kiy"), the general manager of the Club, which set out the reasons for the application. In paras 4, 5 and 6 of the affidavit, Kiy deposed:

4. Firstly, the Company has been actively seeking ways to work out a package which would be more palatable to Scheme Creditors. I have been advised that the Company's solicitors had at a previous hearing informed the Honourable Justice Kan Ting Chiu that the Company was prepared to offer up to one-third of the Approved Scheme Claims of the Scheme Creditors in cash by way of instalments. After consultation with several Scheme Creditors and others involved in the process, the Company has agreed to a further significant enhancement and is now in the process of finalising the details, the financing and the mechanics of the enhancement.

5. Secondly, in relation to the financing and mechanics of effecting the enhancement and funding, the Company also wishes to inform this Court that the shareholders of the Company who would be providing the finance are separately advised by separate lawyers.

6. Finally, the process of furnishing the necessary information to the Scheme Managers and the Company's solicitors has also taken longer than expected.

11 Counsel for the Company also explained that more time was needed because the cash component of the proposed scheme, which was contemplated to be paid in instalments, was being increased.

12 Counsel for the plaintiffs opposed the application and argued that it should be rejected, and I agreed with him.

13 The Company has been holding out this promise of a scheme proposal since 30 August 2005, when its application was first filed. Even at that time, its counsel stated that it was already working on a preliminary draft scheme with its external financial advisers. When it sought yet more time to put up the proposal, one would expect, at the minimum, some disclosure on:

- (a) what had been done in the meantime towards the finalisation of the proposed scheme;
- (b) which components of the proposal were outstanding;
- (c) how much time was required to complete each of the outstanding components; and
- (d) why the Company waited till 12 October 2005 (one week before the time for issuing the notice and posting the proposed scheme) to make the application.

14 Kiy's affidavit is clearly inadequate. He stated his position as the General Manager of the Club. He deposed that the Company is the proprietor of the Club, but he did not state if he had any

duties and responsibilities in the Company and did not say if he is involved in any way in the preparation of the proposed scheme.

15 The statements in paras 4, 5 and 6 of his affidavit are unacceptably vague. They lead the reader to ask:

- (a) did Kiy get his information from the persons involved in putting up the proposal?
- (b) what are the "further significant enhancement" and "the details, the financing and the mechanics of the enhancement"?
- (c) how many shareholders will be providing the financing, and how much financing is envisaged to be coming from them?
- (d) why has the furnishing of the necessary information taken longer than expected, and how much effort has been exerted to get the information? and
- (e) why could the timelines agreed to on 19 September 2005 not be met?

16 I have some doubts as to whether Kiy is the proper person to depose the affidavit in support of the application. Those directly involved, *eg* the directors of the Company, the external financial advisers and the legal advisers, are better placed than him to do that. As things were, I found that the Company had not done nearly enough to discharge its onus.