

Casebook on Insolvency and the Construction Industry BY PHILIP C.F. CHAN
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Insolvency law is one branch of the law that has seen considerable development in recent years. Yet there continues to be a dearth of local research and writings. Dr Philip Chan has therefore done both students and practitioners a monumental service in writing this book. As the author acknowledges in the preface, a casebook of Singapore cases is “a powerful way of appreciating the essence of the applicable principles as expressed by judgments of the courts”. This is, however, no ordinary casebook. The 46 recent Singapore decisions, within the book’s 10 chapters, are preceded by a useful introductory commentary on the main principles that these cases illustrate.

In Chapter 1, entitled “Defining Insolvency”, the author gives a good summary of the different tests of insolvency as determined by the courts, such as the “the quick assets test” and Grimberg’s practical and theoretical tests. It is useful to know if there is one judicial test to determine insolvency in the corporate world or a combination of tests, amidst the presumption of insolvency, before one begins to read the full case reports themselves.

The author begins Chapter 2 (“Scheme of Arrangement”) with a discussion of the nature of schemes of arrangement, types of such schemes, court’s role, company’s duty and the controversies as regards CPF contributions of company employees and the position of the 3rd party. Again, this is of considerable assistance, especially to readers unfamiliar with schemes of arrangement, and makes for a better understanding of the 3 cases that are reproduced in this chapter. What follows in the next three chapters is a clear exposition, by way of introduction, of Receiverships (Chapter 3), Judicial Management (Chapter 4) and Winding-Up (Chapter 5), leading to 17 case reports within these chapters. These include the landmark Court of Appeal decisions in *Roberto Building Material Pte. Ltd. v. OCBC*, [2003] 3 S.L.R. 217, *Hinckley Singapore Trading Pte. Ltd. v. Sogo Department Stores (S) Pte. Ltd.* [2001] 4 S.L.R. 154 and *Good Property Land Development Pte. Ltd. v. Societe-Generale*

[1996] 2 S.L.R. 239. The different roles and functions of receivers, judicial managers and liquidators, often the source of confusion even amongst insolvency practitioners, is made clear by both the commentary and the accompanying case reports. For example, in *Roberto Building Material*, the Court of Appeal explained that the primary duty of the Receiver is to the debenture holders and not to the company. On the other hand, a judicial manager and liquidator must be concerned with the interests of the company and the creditors.

In Chapter 6, entitled “Company in Liquidation”, the author has assembled 12 cases under a variety of miscellaneous topics including provisional liquidators, liquidators, directors, role of the Courts, unfair transactions and undervalue transactions. In respect of unfair preference, there is now the case of *ECRC Land Pte. Ltd. (in liquidation) v. Wing On Ho Christopher* [2004] 1 S.L.R. 105, in addition to the case noted by the author of *Soh Gim Chuan v. Koh Hai Keong* [2002] 4 S.L.R. 212, where the question was whether payment of solicitor’s fees constitutes an unfair preference.

In the last three chapters of the book on Building-Related Issues (Chapter 8), Garnishee Orders (Chapter 9) and Other Matters Relating to Insolvency (Chapter 10), the author seems to specially address those in the construction industry. In Chapter 8, the author has 5 cases which he states show the “extent of the recession on issues that may arise from building contracts”. These include direct payment to sub-contractors (an undue preference), performance bond improperly called, in an attempt to solve problem of insolvency, removal of fixtures by unpaid contractor, settlement agreement, and a novation contract with an insolvent contractor (an undervalue transaction). It is not clear why the last 2 cases on unfair preference and undervalue transactions could have not been included in Chapter 6 which deals with cases on both subjects.

Chapter 9 deals with 3 cases to illustrate the effect of garnishee orders on pay-if-paid clause, set-off, winding-up petition and wages and salaries. It includes the celebrated decision of Lai Kew Chai J. in *American Express Bank v. Abdul Manaff bin Ahmad* [2003] 4 S.L.R. 780 which has finally ended attempts by creditors to garnish the salaries or wages of debtors.

The final chapter (10) deals with 2 cases on only two miscellaneous matters. The first case reiterates the effect of the Project Accounts scheme set up under the Housing Developers (Control and Licensing) Act. It protects monies paid by purchasers of new housing units, in the event the developer becomes insolvent, by vesting the monies in the liquidator and to be used for authorised purposes to the benefit of the purchasers, before claims of unsecured creditors are met. In the second case of *Chuan & Co. Pte. Ltd. v. Ong Soon Huat* [2003] 2 S.L.R. 205, the Court of Appeal explained that the statutory scheme of the Limitation Act did not render a time-barred debt non-existent, but only irrecoverable if limitation was pleaded and judgment could be entered if there had been a subsequent acknowledgment of a time-barred debt. The need to devote a whole chapter for just 2 cases is again doubtful as both cases could have been more conveniently dealt with in Chapter 6 on Company Liquidation.

The reader may be forgiven for asking why, having filled 9 out of 10 chapters with local insolvency cases, has the author chosen the title of this book as a “Case-book on Insolvency and the Construction Industry”? After all, only in Chapter 8 entitled “Building-Related Issues” does the author appear to intend this book for the construction industry. The answer lies in the fact that there is a slant towards

insolvent construction company cases throughout this book, although the general principles that can be gleaned from the chosen cases should be of equal interest to all practitioners doing insolvency work.

Finally, the author would perhaps have done well in confining this casebook to corporate insolvency cases. Individual bankruptcy cases would, of course, be of considerable interest even to those in the construction industry. This is because the winding up of companies in many instances also results in directors, who have signed personal guarantees for company loans, being subject to personal insolvency proceedings. But the author's treatment of bankruptcy in Chapter 7 ("Bankrupt") seems wholly inadequate. He summarily deals with bankruptcy under 4 cases and in just 3 topics entitled proof of debt (1 case), unfair preference (1 case) and criminal offences (2 cases). He refers to unfair preference but not to undervalue transactions as discussed, for example, in the case of *D&C Property Ltd. v. Lew Guan Seng* [1998] 1 S.L.R. 849. The cases under the 3 topics provide a rather cursory understanding of the subject matter. For example, as regards bankruptcy offences, only 2 cases involving obtaining credit and leaving Singapore without the Official Assignee's permission have been included. The latest decision of the Chief Justice in *PP v. R Sekhar s/o RG Van* [2003] 2 S.L.R. 456 of a bankrupt obtaining credit has also been omitted.

On the whole, this book will certainly be useful to students and practitioners who need a quick understanding of the main principles of corporate insolvency as illustrated in the leading Singapore cases.

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