

HONG KONG / JUDGMENT

RE FIVEOCEANS SUPPLY SERVICES LTD. (IN LIQUIDATION)

COURT

Court of First Instance

DECIDED

29 April 2002

CASE / FILE NUMBER

HCCW1379/2001

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bjbj HCCW 1379/2001 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE COMPANIES WINDING-UP NO. 1379 OF 2001

IN THE MATTER OF the Companies Ordinance, Chapter 32 and IN THE MATTER OF FIVEOCEANS SUPPLY SERVICES LIMITED (IN LIQUIDATION)

Before: Hon Yuen J in Court Dates of Hearing: 29 April 2002 Date of Judgment: 29 April 2002

J U D G M E N T

On 20 December 2001, a petition was presented for the winding-up of Fiveoceans Supply Services Limited (which I shall refer to as the Company) by the Petitioner to whom the Company owed a sum of about \$10,000,000.00 by way of facilities. Shortly after the petition was presented on 31 December 2001, an application was made by the Company for a validation order in order to enable it to carry on operations, it being alleged that administrative expenses had been incurred. That application was subsequently withdrawn on 5 February 2002 without the matter having been heard by a court. It transpired that on 21 January 2002, the Company had been placed in liquidation under the provision in section 228A. Mr Wardell and Mr Chan were appointed provisional liquidators. It would appear that as far as this Company is concerned, there is one major creditor, being the bank (to the tune of about \$15,000,000 now) but there may be other smaller creditors. The Petitioner has now asked for an order that the winding-up under section 228A be stayed and that the Company be wound-up compulsorily. The reason for this application is that it has been shown that a substantial amount of money has been taken out of the Company after the presentation of the petition and the purpose of the stay of the winding-up under section

228A and a compulsory winding-up is so that the provisions of section 182 of the Companies Ordinance can be relied upon. Section 182 provides that in a winding-up by the court, any disposition of the property of the Company made after the commencement of the winding-up shall, unless the court otherwise orders, be void. In other words, it is the Petitioner's intention that at least some of the payments out could be recovered under this provision which would not have been available under a section 228A application. The liquidators support this application and I see no reason why I should not grant it. Accordingly, I would stay the winding-up under section 228A and I would wind-up the Company compulsorily with the usual winding-up order. In this regard, the usual winding-up order provides that the Official Receiver shall, by virtue of his office, become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such. That is under section 194(1)(a) of the Companies Ordinance.

7. Miss McKenna has asked by way of a motion that Mr Wardell and Mr Chan be appointed joint and several provisional liquidators in place of the Official Receiver and it is said that section 194(2) permits the court to make such an order. I have some difficulty accepting that submission as section 194(1)(a) specifically refers to it being subject to paragraph (aa) and subsection 1(A) but not to subsection (2). Therefore I would have thought that the appropriate procedure would be for the Official Receiver being, by virtue of his office, the provisional liquidator, to apply to appoint Mr Wardell and Mr Chan (if he considers it necessary or desirable to do so) to be special managers until the first meeting of creditors, at which time, if all creditors or the relevant percentage of creditors agree, Mr Wardell and Mr Chan could continue as full liquidators. (MARIA YUEN) Judge of the Court of First Instance High Court Mr William Wong, instructed by Wilkinson & Grist, for the Petitioner Miss Linda Chan, instructed by Wilkinson & Grist, for Provisional Liquidators Miss McKenna from the Official Receiver's Office PAGE - PAGE - &`#\$ \zh: \zh: & 6" HCCW 1379/2001 Pinky Normal.dot setup Microsoft Word 9.0 nKva nKva HCCW 1379/2001 Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 26 October 2026 · Esheria