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Case Update: *Yeo Ann Kiat & Ors v Hong Leong Bank Bhd & Anor* [2016] 6 MLJ 499 (CA)

This is a note on a recent Court of Appeal decision that addresses several important issues relating to the role and duties of a liquidator in a compulsory winding-up.

On 24 January 2007, a company called Jade San Realty Sdn Bhd was wound up by the court. The company had sold some bungalow lots in a development project which was abandoned three years before the winding up. At the request of the purchasers, the liquidators of the company attempted to rehabilitate the project and to sell the unsold portion of the lands to various white knights introduced by the purchasers. This exercise was attempted over five years without success. Eight years into the liquidation, the purchasers applied to the court to remove the liquidators. The High Court disallowed the application and on appeal, the Court of Appeal reversed the High Court's decision and ordered the liquidators to be removed.

In essence, the Court of Appeal held that in a compulsory winding-up, the liquidator's principal role is to wind up the business of the company and realise its assets to pay off its creditors and other dues. In the discharge of their statutory duties, liquidators are required to act with due and proper despatch, that is, they must "transact or dispose of the liquidation process promptly or expeditiously" (see judgment, at [27]-[29]).

The Court of Appeal found that the liquidators had deviated from their primary duty to wind up the business of the company. Instead, they had gone into the business of attempting to revive the project over a period of eight years. The Court of Appeal held that it is not the business of the liquidators to engage in activities which run counter to the objective of winding up the company and, for this reason, found that the liquidators had failed to act with due despatch and diligence (at [33]-[34]). The liquidators are applying for leave to appeal to the Federal Court.

In this case, the liquidators had attempted to revive the project at the request of the purchasers and with the consent of the chargee of the project land. However, this did not prevent their eventual removal. Therefore, it would appear that the prudent course for a liquidator would be to apply for court directions before undertaking any activities which may not fall within his principal role to wind up the business of the company (at [34]). With a court order, the liquidator would be in a better position to defend any subsequent allegation that he has deviated from his duties.

The Court of Appeal decision may also be viewed here:

[http://www.kehakiman.gov.my/directory/judgment/file/W-02\(IM\)-1864-11-2015.pdf](http://www.kehakiman.gov.my/directory/judgment/file/W-02(IM)-1864-11-2015.pdf)

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