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24 JUNE 2020

Judicial Management: Unsecured Creditors May Intervene

Goldpage Assets Sdn Bhd v Unique Mix Sdn Bhd (unreported)

The High Court recently allowed unsecured creditors to intervene and file affidavits in their attempt to oppose a judicial management application. This decision casts doubt on the commonly held perception that only secured creditors with a debenture can be heard in opposition to an application for a judicial management order.

In coming to this decision, the judicial commissioner found that the Companies Act 2016 did not expressly prohibit an unsecured creditor from taking part in the hearing of a judicial management application. In this regard, a distinction was made between the right of a secured creditor (debenture in hand) to exercise a veto over a judicial management application and the right of any other creditor to oppose the same. The judicial commissioner was also of the view that Rule 13 of the Companies (Corporate Rescue Mechanism) Rules 2018, being subsidiary legislation, which appears to provide that only a special type of creditor can oppose an application for a judicial management order, must be read in conjunction with its parent legislation, the Companies Act 2016. Relatedly, the judicial commissioner further held that Rule 2 of the Companies (Corporate Rescue Mechanism) Rules 2018 allows for recourse to the Rules of Court 2012, specifically the provisions setting out the procedure for intervention.

It should be noted, however, that the judicial commissioner was not referred to the High Court decision in *Million Westlink Sdn Bhd v Maybank Investment Bank Berhad & Ors* [2019] MLJU 1721. In that case, the judge dismissed the unsecured creditors' application to intervene in the judicial management application. It was held that the unsecured creditors did not come within the special class of creditor, and therefore did not have the necessary standing to intervene and oppose the judicial management application.

There are now conflicting decisions on this important issue. It will be interesting to see how the High Court deals with this issue when it arises again in future matters or if the Court of Appeal will have the opportunity to clarify the issue.

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Published by the Dispute Resolution Practice

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