

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2025] SGHC 97

Originating Application No 96 of 2025

Between

Park Hotel Group Management
Pte. Ltd.

... Claimant

And

- (1) Aw Eng Hai (in his capacity as a joint and several liquidator of Park Hotel CQ Pte. Ltd. (in liquidation))
- (2) Kon Yin Tong (in his capacity as a joint and several liquidator of Park Hotel CQ Pte. Ltd. (in liquidation))
- (3) Park Hotel CQ Pte. Ltd. (in liquidation)

... Defendants

JUDGMENT

[Insolvency Law — Winding up — Proof of debt — Liquidators' decision accepting proof of debt of a creditor challenged by another creditor — Burden

of proof — Rule 133 of the Insolvency, Restructuring and Dissolution
(Corporate Insolvency and Restructuring) Rules 2020]

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Park Hotel Group Management Pte Ltd
v
Aw Eng Hai (in his capacity as a joint and several liquidator of
Park Hotel CQ Pte Ltd (in liquidation)) and others

[2025] SGHC 97

General Division of the High Court — Originating Application No 96 of 2025
Audrey Lim J
9, 16 April 2025

23 May 2025

Judgment reserved.

Audrey Lim J:

1 Park Hotel Group Management Pte Ltd (“PHGM”) is a creditor of the third respondent, Park Hotel CQ Pte Ltd (“PHCQ”), which is in liquidation. PHGM applied to expunge or reduce the proof of debt (“POD”) filed by another creditor of PHCQ, namely Perpetual (Asia) Ltd (as Trustee of Ascendas Hospitality REIT (“AH-REIT”)) (“Perpetual Asia”), which PHCQ’s liquidators (“Liquidators”) had admitted in full. Unlike an application under r 132(1) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (“CIR Rules”) by a creditor or contributory to reverse or vary the decision of a liquidator who has rejected its POD, this application is brought under r 133(2) by a creditor against the liquidator’s admission of a POD pertaining to another creditor.

Background

2 PHCQ entered into a lease dated 5 April 2013 with AH-REIT to lease a property at 1 Unity Street (the “Property”) for 10 years commencing 28 June 2013 (the “Lease”).¹ Under the Lease, PHCQ was to pay “Gross Rent”, the furniture, fittings and equipment (“FF&E”) contributions and the relevant taxes, pursuant to cll 3.1, 3.3, 3.4 and 3.6.²

3 In 2020, PHCQ defaulted on its obligations to pay the rent and other charges under the Lease.³ In early 2021, a letter of demand was issued on AH-REIT’s behalf to PHCQ to recover sums due under the Lease as at 1 March 2021. This went unmet. On 25 June 2021, Perpetual Asia (as trustee of AH-REIT) wrote to PHCQ, to inform PHCQ that it was required to pay \$5,922,268.89 (outstanding to AH-REIT under the Lease as of 17 June 2021) by 30 June 2021, failing which AH-REIT would take steps to repossess the Property.⁴

4 On 2 July 2021, AH-REIT informed PHCQ that it had not received payment of the sum of \$5,922,268.89 and would be taking steps to repossess the Property. AH-REIT informed PHCQ that it would need to conduct an inspection of the Property and requested for various documents in accordance with the terms of the Lease.⁵

¹ Tan Shin Hui’s affidavit dated 24 January 2025 (“Tan’s Affidavit”) at [11], pp 93–228 (the Lease) and pp 230–231; Aw Eng Hai’s affidavit dated 7 March 2025 (“Liquidators’ Affidavit”) at [6]–[7].

² Liquidators’ Affidavit at [7].

³ Beh Siew Kim’s affidavit dated 7 March 2025 (“Beh’s Affidavit”) at [9].

⁴ Tan’s Affidavit at [12(a)]–[12(b)] and pp 230–231; Liquidators’ Affidavit at [8] and pp 28–29.

⁵ Beh’s Affidavit at [15] and pp 20–21.

5 On 5 July 2021, AH-REIT informed PHCQ that Ascott International Management Pte Ltd (“AIMPL”), an entity related to AH-REIT, would be appointed to take over the hotel operations at the Property, and that it was targeting to repossess the Property in two to three weeks depending on the outcome of various work streams.⁶

6 After further correspondence between the parties, and with the outstandings remaining unpaid, AH-REIT terminated the lease on 28 August 2021 and took possession of the Property.⁷

7 PHCQ was wound up by the court on 19 November 2021.

8 On 1 August 2024, the Liquidators informed AH-REIT that they had adjudicated its revised claims totalling \$32,066,825.30 against PHCQ, based on its revised POD dated 30 July 2024 (the “AH-REIT POD”), and admitted it in full. The Liquidators conveyed their decision to AH-REIT in a one-page letter dated 1 August 2024.⁸

9 On 2 October 2024, PHGM’s lawyers (“TSMP”) wrote to the Liquidators to inspect the AH-REIT POD and to be provided with the Liquidators’ decision on whether they had admitted or rejected the AH-REIT POD. On 23 October 2024, the Liquidators’ lawyers (“A&G”) extended a copy of the AH-REIT POD (together with AH-REIT’s supporting documents), as

⁶ Beh’s Affidavit at [16]; Tan’s Affidavit at p 898.

⁷ Tan’s Affidavit at [12(c)] and pp 233–235.

⁸ Tan’s Affidavit at [20] and p 764 (Liquidators’ 1 August 2024 letter to Perpetual Asia).

well as the Liquidators’ adjudication of the AH-REIT POD dated 1 August 2024, to TSMP.⁹

PHGM’s challenge of the AH-REIT POD

10 Originally, PHGM challenged five items in the AH-REIT POD as follows:

- (a) charges payable during the handover period of the Property from 1 July to 27 August 2021 of approximately \$2.4m;
- (b) rental on the Property from 28 August 2021 to 27 June 2023;
- (c) property tax incurred by AH-REIT on the Property from 28 August 2021 to 27 June 2023;
- (d) a claim for “[c]ost for replacement” of \$1,555,841; and
- (e) a claim for “[l]egal cost” of \$73,761.50.

PHGM subsequently withdrew its challenge against the charges payable during the handover period of the Property.¹⁰

11 From November to December 2024, PHGM asked the Liquidators to reconsider the above items in the AH-REIT POD. Correspondence between them ensued and the Liquidators maintained their position that the AH-REIT POD was properly adjudicated.¹¹

⁹ Tan’s Affidavit at [15] and [18], p 240 (TSMP’s 2 October 2024 letter to the Liquidators), p 247 (A&G’s 23 October 2024 e-mail to TSMP), pp 252–763 (AH-REIT POD and supporting documents) and p 764 (Liquidators’ adjudication of AH-REIT POD).

¹⁰ Applicant’s Written Submissions dated 2 April 2025 (“AWS”) at [35].

¹¹ Tan’s Affidavit at [21]–[29] and pp 766–767, 870–872, 892–893 and 895–896.

Basis of PHGM’s application

12 PHGM’s application is made pursuant to r 133(2) of the CIR Rules (“r 133(2) application”), whereby the court may expunge or reduce a POD upon the application of a creditor or contributory if the liquidator declines to interfere in the matter.

13 In a r 133(2) application, a creditor (“disputing creditor”) is challenging a liquidator’s admission of a POD of another creditor (“POD creditor”). This is unlike r 132(1) where a creditor who is dissatisfied with the liquidator’s decision to reject its POD may apply to the court to reverse or vary that decision (“r 132(1) application”). Essentially, applications under r 132(1) and r 133(2) of the CIR Rules are both made to the court to scrutinise a liquidator’s decision in rejecting or admitting a POD in a court-ordered or creditors’ voluntary winding up of a company. Thus, as with a r 132(1) application, the court would hear a r 133(2) application *de novo* and render a decision based on the evidence before it at the time of the application. The parties accept this.¹² The Liquidators and AH-REIT’s representative (Ms Beh Siew Kim or “Beh”) have filed affidavits to attest to matters which were not raised, or were not readily apparent, when the AH-REIT POD (and its supporting documents) were submitted to the Liquidators or when the Liquidators decided to admit the AH-REIT POD. The Liquidators and Beh also adduced further documents in their affidavits.

14 Thus, the court’s function is not merely to say whether the liquidator’s decision is right or wrong but may vary the liquidator’s decision in any way it thinks necessary in light of the evidence before it (*Rich Construction Co Pte Ltd*

¹² Minute Sheet dated 9 April 2025 (“9/4/25 Minute Sheet”).

v Greatearth Construction Pte Ltd (in liquidation) and others and another matter [2024] 5 SLR 570 at [17]). At the end of the day, a liquidator adjudicating the validity or quantum of debt claimed by a creditor is exercising a quasi-judicial function, and the court may set aside that decision on the basis that it was wrong (*MWA Capital Pte Ltd v Ivy Lee Realty Pte Ltd (in liquidation)* [2017] SGHC 216 at [44]; *Feima International (Hongkong) Ltd (in liquidation) v Kyen Resources Pte Ltd (in liquidation) and others* [2024] 4 SLR 101 at [48]–[50]). In my view, the standard of review applied by the court should not differ between a r 132(1) application and a r 133(2) application. In both cases, the court examines whether a POD was properly adjudicated.

15 Who then bears the burden of proof in a r 133(2) application to expunge or reduce a POD where the liquidator has declined to interfere in the matter? In my view, where a *bona fide* challenge is brought by a disputing creditor regarding the admission of a POD of the POD creditor, the liquidator must satisfy the court on a balance of probabilities that it had adjudicated the POD properly. In effect, the POD creditor should establish on a balance of probabilities that the POD was rightly admitted (see *Levi Solicitors LLP v David Frederick Wilson and another* [2022] EWHC 24 (Ch) at [18]–[20]). This is consistent with the position in a r 132(1) application where a creditor challenging a liquidator’s rejection of his POD bears the burden of proving the debt on a balance of probabilities.

16 Regardless of whether a challenge against a liquidator’s decision is brought under r 132(1) or r 133(2) of the CIR Rules, the liquidator’s duty in the adjudication of a POD remains the same, *ie*, to ensure that assets of the company are only distributed to the creditors who have debts that were genuinely created and remain legally due (*Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 (“*Fustar*”) at [20]). The

liquidator must assess every POD lodged and may call for further evidence in support of the POD (*Fustar* at [13]). As a liquidator exercises a quasi-judicial function in adjudicating a POD, it should support its decision with proper basis and be prepared to defend it when it is challenged. The verification of a POD “is not a mere administrative function” (*Fustar* at [20]).

17 Thus, the liquidator cannot merely claim that the disputing creditor has failed to provide evidence to support its opposition. It is the liquidator who has all the information and documents on which the liquidator relied to make its decision, as such materials would have been submitted by the POD creditor *to the liquidator*. Importantly, the liquidator’s decision to admit a POD affects not only the POD creditor but also the general body of creditors and contributories (*Tanning Research Laboratories Inc v O’Brien* (1990) 169 CLR 332 at [184], cited in *Fustar* at [14]).

18 In a r 133(2) application, the applicant must serve the application on the POD creditor as well, to give the latter an opportunity to reply to the application, which was done in the present case. I turn then to deal with the items challenged by PHGM.

Charges during the handover period from 1 July to 27 August 2021

19 The AH-REIT POD included a claim for charges during the handover period of the Property from 1 July to 27 August 2021 of approximately \$2.4m (“Handover Charges”).

20 PHGM argues that there was no explanation provided as to why the handover of the Property by PHCQ to AH-REIT took nearly two months when

it could have been done within a day, and why the Lease was only terminated on 28 August 2021.¹³

21 The Liquidators assert as follows:¹⁴

(a) To ensure a proper handover, sufficient time was required for AH-REIT to obtain information on the hotel operations on the Property, and for PHCQ to prepare the asset listing and liaise with various parties on the novation or termination of its existing contracts.

(b) PHCQ had an agreement with the Singapore Land Authority to operate the Property as a Government Quarantine Facility (“GQF”) until 27 August 2021. The Liquidators understood from AH-REIT that it was unable to operate the Property as a GQF until it had obtained the relevant licences or approvals from the authorities.¹⁵ Hence, it was not unreasonable for AH-REIT to defer the handover of the Property until it had obtained the licences or approvals, if this would enable the Property to generate a steady stream of income and reduce the amounts payable by PHCQ.

(c) Until the handover on 28 August 2021, PHCQ continued to receive and retain any revenue from operating the Property as a GQF.

22 Beh, on AH-REIT’s behalf, attests as follows:¹⁶

¹³ Tan’s Affidavit at [34]–[39].

¹⁴ Liquidators’ Affidavit at [20]–[24].

¹⁵ Liquidators’ Affidavit at p 119.

¹⁶ Beh’s Affidavit at [17].

(a) PHCQ and AIMPL had to work with the National Trades Union Congress (“NTUC”) to ensure a smooth handover of employees. On 19 July 2021, PHCQ informed AIMPL that the handover would have to be deferred to accommodate a transition plan suggested by NTUC in which an official handover would only occur on around 30 August 2021.¹⁷

(b) AIMPL’s ability to inspect the Property was limited due to the GQF operations. It was also unable to operate the Property as a hotel until it obtained the relevant licenses and approvals from the authorities.

(c) On 29 July 2021, AH-REIT informed PHCQ that it intended to take over the Property on 16 August 2021 subject to the necessary licenses and approvals being obtained. On 10 August 2021, AH-REIT informed PHCQ that the handover would be deferred to 28 August 2021, again subject to obtaining the necessary licenses and approvals.¹⁸

23 Before me, TSMP stated that it was no longer pursuing its objections pertaining to the Handover Charges, given the (albeit belated) explanations of the Liquidators and Beh. For completeness, I deal briefly with the Handover Charges, which I am satisfied the Liquidators had properly admitted.

24 I am satisfied that the two-month handover period was not objectionable, based on explanations of the Liquidators and Beh and the evidence provided. In particular: (a) AH-REIT needed sufficient time to find out about the hotel operations on the Property; (b) PHCQ needed time to prepare an asset listing and liaise with other parties on its existing contracts; (c) there were issues

¹⁷ Beh’s Affidavit at pp 23–28.

¹⁸ Beh’s Affidavit at pp 33–34 and 36.

pertaining to the Property being used as a GQF; and (d) there were issues pertaining to the handover of employees that involved the NTUC.

25 Whilst AH-REIT's 5 July 2021 e-mail (see [5] above) initially contemplated a two to three-week handover period, the subsequent correspondence shows the parties needed to defer the handover date for good reasons. It must be remembered that the Property comprised a hotel which was operating. PHGM's suggestion, that the Property could have been handed over "within a day" by simply cutting off systems and telling staff to leave immediately, is clearly untenable.

Rental from 28 August 2021 to 27 June 2023

26 The AH-REIT POD included a claim for net rent for the remainder of the Lease from 28 August 2021 to 27 June 2023 of \$20,387,563.30. This comprised \$27,180,014.81 of rent (payable under the Lease), less the "income earned" by AH-REIT during that period amounting to \$8,179,892 ("Earned Income"), and with goods and services tax ("GST") added.

27 PHGM does not dispute that the quantum of rent for the above period (in the AH-REIT POD) was the sum that PHCQ would have had to pay as fixed rent if it had completed the Lease.¹⁹ However, PHGM argues that the Liquidators had accepted the Earned Income figures in the AH-REIT POD without properly considering whether AH-REIT had taken adequate measures to mitigate its loss, such as by considering whether it was reasonable to allow AIMPL to operate the Property, whether AH-REIT had taken active steps to market the Property, and whether there was any third party willing to lease the

¹⁹ 9/4/25 Minute Sheet.

Property. PHGM points out that, instead of leasing the Property to an independent third party, AH-REIT had entered into a related-party transaction with Ascott Hospitality Business Trust (“AHBT”).²⁰ PHGM also asserts that the Property was closed for refurbishment for at least seven months, relying on an article published in the *Business Traveller* dated 17 February 2024 wherein it was stated that The Robertson House (which was the re-branded Property) was “opened in October 2023 following a seven-month refurbishment project” (the “BT Article”). The Liquidators should not have accepted AH-REIT’s claim for the seven-month period when the Property was closed for refurbishment (the “Refurbishment Period”), and the consequences of AH-REIT’s decision to refurbish the Property should not be visited on PHCQ’s creditors. There was no reason why AH-REIT could not have carried on operations without such a lengthy Refurbishment Period (or any renovation at all) since it was operating until 2023 without any renovations being done.²¹

28 In rebuttal, the Liquidators argue that AH-REIT is an established hospitality REIT (*ie*, real estate investment trust) with a portfolio of hotels globally, and it was not unreasonable for the Property to be managed by a related entity with due expertise. It is also speculative to assume that AH-REIT could have quickly found a more suitable tenant willing to pay a higher rent. AH-REIT had also accounted for the Earned Income amounting to \$8,179,892. The Liquidators were thus satisfied with the mitigatory steps AH-REIT took after it repossessed the Property.²² Additionally, the Liquidators claim that the BT Article does not show as a fact that the Property was closed for seven months. The Liquidators had been informed by AH-REIT that the Property continued

²⁰ Tan’s Affidavit at [21], [48] and [51]; AWS at [45]–[47].

²¹ Tan’s Affidavit at [45]–[47] and p 883; AWS at [38]–[44].

²² Liquidators’ Affidavit at [14(4)] and [46]–[48].

operations and received guests in 2023 whilst replacement works were ongoing.²³

29 Beh attests as follows:²⁴

(a) Between 28 August 2021 and 29 September 2022, AH-REIT appointed AIMPL under a management agreement to manage the hotel and Property. The income earned by AH-REIT during this period was calculated based on the gross profit (excluding property tax payable) earned by AH-REIT from the operations of the Property.

(b) The Property was leased to AHBT from 1 October 2022 onwards (“AHBT lease”), with AIMPL continuing to manage the Property. Under the AHBT lease, AHBT would pay variable rent to AH-REIT and AH-REIT would bear the property tax.

(c) AH-REIT’s Earned Income was computed by taking the revenue earned by AH-REIT and AHBT (as the case might be) and deducting from it the expenses and fees relating to operating the Property.

(d) Replacement works were carried out in phases, and the Property was only partially closed where works were carried out. Hotel operations continued and guests were received.

(e) It was challenging for AIMPL to carry out replacement works immediately after the handover of the Property from PHCQ as it was during the COVID-19 period. AIMPL also required time to design and

²³ Liquidators’ Affidavit at [14(2)] and [43].

²⁴ Beh’s Affidavit at [21]–[26] and [27]–[28].

plan the replacement works. The works were then carried out in 2023, when the COVID-19 situation in Singapore had further stabilised.

30 I find that the Liquidators had not erred in allowing AH-REIT’s claim for rental from 28 August 2021 to 27 June 2023. Whilst AH-REIT had a duty to mitigate its loss after it terminated the Lease (*FXA Investment Holdings Pte Ltd v Tan Wei Cheong (in his capacity as a joint and several liquidator of Fusionex Pte Ltd (in liquidation)) and others* [2025] SGHC 23 at [29]), I do not find it unreasonable for AH-REIT to have arranged for AIMPL to manage the hotel operations when the Property was first handed over by PHCQ to AH-REIT, and subsequently for the Property to be leased to AHBT (with AIMPL continuing to manage it). The question is “whether the mitigation measures taken by the aggrieved party were reasonable, and not whether the aggrieved party took the best possible measures to reduce its loss” (*The “Asia Star”* [2010] 2 SLR 1154 at [44]).

31 PHGM does not dispute that AH-REIT is an established hospitality REIT with a portfolio of hotels globally. Hence, it was not unreasonable for AH-REIT to have AIMPL manage the Property, even if it was a related entity. I agree with the Liquidators that it was speculative to assume that AH-REIT could have quickly found a more suitable tenant willing to pay a higher rent. The Property was essentially a hotel and the remaining duration of the Lease, had it not been terminated, was short. At the time, Singapore was also just emerging from the COVID-19 pandemic. It is unclear how AH-REIT would have been able to find another tenant who would have been willing to take over the Lease of the Property and run the hotel situated on it. Balanced against these considerations, PHGM’s bare assertion that AH-REIT’s Earned Income was lower than what it could have earned from PHCQ under the Lease is insufficient to show that AH-REIT had failed to mitigate its loss.

32 Further, the BT Article does not conclusively prove that the Property was fully closed during the Refurbishment Period. I accept Beh’s testimony that the Property was never fully closed as replacement works were carried out in phases and the Property continued its hotel operations and receiving guests. This is supported by an article published on CapitaLand’s webpage dated 19 October 2023 which stated that “[The Ascott Limited] worked closely with its sponsored lodging trust, CapitaLand Ascott Trust ... to renovate two of its assets. ... the hotel was re-branded as The Roberson House by The Crest Collection in Singapore after a *phased renovation from March 2023*” [emphasis in original omitted; emphasis added in italics].²⁵ This was pointed out in A&G’s letter to TSMP dated 19 November 2024 (“Liquidator’s 19/11/24 Letter”).²⁶ Such a “phased” approach to doing works whilst keeping the hotel open for business to generate income cannot be considered an unreasonable measure taken by AH-REIT, even if the Earned Income (to be set off against the rental claim in the AH-REIT POD) is correspondingly reduced.

33 As for the quantum of the Earned Income, PHGM argues that AH-REIT did not provide any documents or materials to support the basis for the Earned Income, other than a simple profit and loss spreadsheet pertaining to the Property belatedly exhibited in Beh’s affidavit.²⁷ That said, I have no reason to doubt the veracity of the figures in that spreadsheet which Beh attests was provided by AH-REIT’s finance team.²⁸

²⁵ Tan’s Affidavit at p 783.

²⁶ Tan’s Affidavit at p 871.

²⁷ AWS at [47(c)]; Beh’s Affidavit at pp 40–42.

²⁸ Beh’s Affidavit at [25].

34 In sum, I am satisfied that the Liquidators had properly admitted AH-REIT’s claim pertaining to the outstanding net rent of \$20,387,563.30 for the period from 28 August 2021 to 27 June 2023.

Property tax from 28 August 2021 to 27 June 2023

35 The AH-REIT POD included a claim for property tax for the period from 28 August 2021 to 27 June 2023 totalling \$562,409.54 with GST added.

36 In TSMP’s letter to A&G dated 7 November 2024 (“PHGM’s 7/11/24 Letter”), PHGM queried whether the Liquidators had sought an explanation from AH-REIT on how the sum of \$562,409.54 was derived. The Liquidator’s 19/11/24 Letter replied explaining that the AH-REIT POD provided a breakdown of the property tax based on the Inland Revenue Authority of Singapore’s valuation notices which were enclosed in the letter.²⁹

37 PHGM maintains that the Liquidators have not substantiated or explained how the sum of \$562,409.54 was derived. It also asserts that it is common for property tax to be paid by tenants under commercial leases and it is unclear why AH-REIT had claimed these sums from PHCQ during the remainder of the Lease when the Property was taken over by a replacement tenant. It claims that, if the replacement tenant did not have to pay the property tax, AH-REIT should explain why it was reasonable to not pass the property tax on to the replacement tenant.³⁰

38 Beh attests that, when the Property was leased to AHBT from 1 October 2022 onwards, the AHBT lease provided that the property tax would be borne

²⁹ Tan’s Affidavit at pp 767 and 871.

³⁰ Tan’s Affidavit at [41]–[43].

by AH-REIT (see [29] above). The Liquidators argue that, as the property tax was borne by AH-REIT, AH-REIT was entitled to claim it from PHCQ as the terms of the Lease provided that property tax would be borne by PHCQ.³¹

39 Clause 3.6.1 of the Lease stipulates that the tenant (PHCQ) must pay the landlord (AH-REIT) all property tax imposed on the Property for the duration of the Lease. Clause 3.6.3 further stipulates that the liability of the tenant to pay the property tax in respect of any period during the term of the Lease would not be affected by the expiry or earlier determination of this Lease.³²

40 I have accepted that it was reasonable for AH-REIT to have initially arranged for AIMPL to manage the Property from 28 August 2021 to 29 September 2022. Thus, pursuant to cl 3.6 of the Lease, the Liquidators did not err in determining that PHCQ should bear the property tax for this period.

41 I have also accepted that it was reasonable for AH-REIT to lease the Property to AHBT from 1 October 2022 onwards. That said, neither AH-REIT nor the Liquidators have explained why AH-REIT did not impose the obligation to pay property tax on AHBT under the AHBT lease, nor why the tax was borne by AH-REIT. AH-REIT had a duty to take reasonable steps to mitigate its loss. That the AHBT lease did not include an obligation on AHBT to bear the property tax is to be contrasted with the Lease wherein PHCQ bore such an obligation. Indeed, the Liquidators' acceptance of AH-REIT's property tax claim in this regard, without any scrutiny it would seem, was unsatisfactory. This is particularly when AH-REIT was leasing the Property *to a related party*, and the Liquidators should have been alive to a potential conflict of interests.

³¹ Liquidators' Affidavit at [31].

³² Tan's Affidavit at p 112.

AH-REIT appears to have treated AHBT more favourably (compared to PHCQ) by not imposing an obligation on AHBT to pay property tax, only to then claim the property tax from PHCQ instead. The complete lack of explanation from Beh and the Liquidators as to why this was the case merely reinforces my view that the conflict of interests was more real than apparent.³³ Hence, I find that AH-REIT had not taken reasonable mitigatory steps in this regard.

42 Given the above, I reduce the AH-REIT POD to exclude the claims for property tax for the period from 1 October 2022 to 27 June 2023, as follows:

- (a) \$57,940.50 (inclusive of GST) from 1 October to 31 December 2022 (computed at 3/12 months x \$231,762 for year 2022); and
- (b) \$215,851.50 (inclusive of GST) from 1 January to 27 June 2023.

Costs for replacement

43 The AH-REIT POD included a claim for “[c]ost for replacement” comprising a list of 15 items (the “List”) totalling \$1,555,841 (“Costs of Works”), for which AH-REIT provided supporting documents.³⁴

44 In PHGM’s 7/11/24 Letter, the Liquidators were asked whether they had verified if the Costs of Works were for replacement and not enhancement works. In the Liquidators’ 19/11/24 Letter, A&G merely directed PHGM to the supporting documents in the AH-REIT POD.³⁵ On 4 December 2024, TSMP replied (“PHGM’s 4/12/24 Letter”) to state that the documents in the AH-REIT

³³ 9/4/25 Minute Sheet.

³⁴ Tan’s Affidavit at pp 680–737; AWS at [61].

³⁵ Tan’s Affidavit at p 767 (PHGM’s 7/11/24 Letter) and p 871 (Liquidators’ 19/11/24 Letter).

POD do not show that the Costs of Works were incurred for replacement rather than enhancement works, and asked the Liquidators to confirm that that they had verified that the costs were for replacement works. A&G replied on 18 December 2024 (“Liquidators’ 18/12/24 Letter”) directing PHGM to “please refer to our letter dated 19 November 2024”.³⁶

45 PHGM does not dispute items one, two and 11 on the List.³⁷ For the remaining 12 items, PHGM asserts the Liquidators have been evasive and refused to provide confirmation on whether they verified that the Costs of Works were indeed for replacement works. As the invoices in the supporting documents appear to indicate that the works were carried out in 2023 and 2024 and around the time the Property was re-branded as “The Robertson House by The Crest Collection”, PHGM argues this raises the question of whether the works were for enhancement to facilitate the re-branding. PHGM also argues that it is questionable whether the works were for defects which existed at the time of handover such that PHCQ would be liable for them, as they included works to deal with “fair wear and tear” which the Lease expressly excludes from PHGM’s obligations.³⁸

46 The Liquidators attest as follows.³⁹

(a) They had verified the supporting documents submitted by AH-REIT and were satisfied that it had only claimed for replacement works.

³⁶ Tan’s Affidavit at p 893 (PHGM’s 4/12/24 Letter) and p 896 (Liquidators’ 18/12/24 Letter).

³⁷ AWS at [61]; 9/4/25 Minute Sheet.

³⁸ Tan’s Affidavit at [54]–[55]; AWS at [61].

³⁹ Liquidators’ Affidavit at [33]–[39].

(b) AH-REIT had earlier filed a POD in respect of Park Hotel Management Pte Ltd (“PHMPL”), which is also in liquidation, for more than \$12m in costs for re-branding and renovations pertaining to the Property. PHMPL is the parent entity of PHCQ and guarantor for PHCQ’s obligations under the Lease. The Liquidators then asked AH-REIT to identify only the costs for replacement works, and AH-REIT revised its claim to \$1,555,841. AH-REIT then claimed this sum of \$1,555,841 against PHCQ in the AH-REIT POD. The Liquidators argue that this was a reasonable sum as PHCQ had occupied the Property for over eight years.

(c) As for the timing of the works, the Liquidators were informed by AH-REIT that replacement works could not be carried out immediately after the handover due to the COVID-19 restrictions then and because AH-REIT needed time to design and plan for the replacement works. The Liquidators considered these reasons to be reasonable.

(d) The Liquidators were not required to verify that the replacement works remedied defects which were existing at the time of handover because PHCQ was not in Liquidation then.

47 The Liquidators rely on cll 3.12 and 3.5.1 of the Lease.⁴⁰ Clause 3.12.1 essentially stipulates that, at the expiry or sooner determination of the Lease, the tenant (PHCQ) must at its own cost reinstate the Property to its original condition (except for fair wear and tear), and clean, repair and decorate the Property, to the reasonable satisfaction of the landlord (AH-REIT). Clause 3.12.2 further stipulates that, if the tenant fails to comply with cl 3.12.1,

⁴⁰ 9/4/25 Minute Sheet.

the landlord may carry out the necessary works at the tenant's expense. Clause 3.5.1 also stipulates that, save for fair wear and tear, the tenant is to: (a) keep the Property clean and in a state of good and tenantable condition; and (b) keep the FF&E in good and tenantable condition and working order.

48 I do not agree that the Liquidators did not need to verify that the Costs of Works were in respect of defects existing at the time of handover merely because PHCQ was not in liquidation then. The reference point for PHCQ's obligations under cll 3.12 and 3.5.1 in respect of the condition of the Property is during the term of the Lease up till its expiry or sooner determination. If the Costs of Works were in respect of matters arising after the determination of the Lease, PHCQ should not be liable for them.

49 The AH-REIT POD included supporting documents (quotations, invoices and other documents provided by third-party contractors), of which the authenticity PHGM does not dispute. In relation to items three, five, six and 10 on the List, pertaining to "[s]taining of all existing joinery & furniture", "[r]eplacement of damage pool deck awning", "[r]ectify[ing] water seepage at public areas" and "[m]old remediation works", I accept that these were not mere fair wear and tear (as PHGM asserts), but are more akin to damage to the Property or items therein which had to be repaired.

50 However, I find that there is insufficient evidence to show that the following items on the List were remedial works that fell within PHCQ's obligations under the Lease.

- (a) First, item 4 described as "[w]allpaper replacement for guestroom and corridor wall" at \$360,144. The only supporting document is a one-page letter from Infield Projects Pte Ltd dated 29 July

2024 (“29/7/24 Letter”) which merely provides the aforesaid item description.⁴¹ The letter is unhelpful as it does not explain whether the existing wallpaper was replaced because of damage, or whether it was replaced as part of AH-REIT’s re-branding exercise (as PHGM asserts).

(b) Second, items seven, eight and nine described as “[r]eplacement of public area speaker” at \$3,554, “[r]eplacement of jacuzzi pump” at \$42,960 and “[r]eplacement of chill water FCU at speakeasy bar” at \$12,396. Again, the 29/7/24 Letter is the only supporting document which merely provides the aforesaid item descriptions and is similarly unhelpful to show the nature of the works, in particular whether they were replacement works (because the original items were damaged or not in good tenable condition) rather than enhancement works.

(c) Third, items 12 and 13 described as “[r]eplacement of pool deck umbrella” (at \$7,000) and “[r]eplacement of pool deck lounge cushion” (at \$3,200), are based on invoices issued by GM2000 Pte Ltd and Forbes Industries Asia Pte Ltd between August and October 2023.⁴² Again, it is unclear from the documents the nature of the work done. For instance, the invoices from GM2000 Pte Ltd, which described the works done as “Replac[ing] Fabric for Existing Centre-Pole Umbrella” as opposed to replacing the umbrella entirely, might suggest that the works were the result of fair wear and tear of the umbrellas.

(d) Fourth, item 14 described as “[f]açade cleaning works” at \$41,000. This is based on two quotations from Prope Success Pte Ltd dated 21 August 2023 (for \$37,000) and 25 September 2023 (for

⁴¹ Tan’s Affidavit at pp 681.

⁴² Tan’s Affidavit at pp 695–697.

\$4,000), for which invoices and completion reports were also issued.⁴³ The invoices and completion reports indicate that the façade cleaning was done in late September to early October 2023.⁴⁴ Based on the “before” and “after” pictures of the Property in the completion reports, I accept PHGM’s assertion that this was fair wear and tear which PHCQ was not obliged to make good under the Lease. Notably, the works were carried out some two years after AH-REIT repossessed the Property from PHCQ.

(e) Fifth, item 15 described as “[r]eplacement of ADD kitchen FCU + replacement of PAHU” at \$209,200. This is based on various invoices from EVAR Air-Conditioning & Engineering Pte Ltd issued between March and May 2024, which describe the works as “install chilled water ducted unit” and “reassembly work for PAHU”.⁴⁵ Again, it is unclear whether these works fell within the scope of works which the tenant (PHCQ) is obliged to make good under the Lease or whether they were to address fair wear and tear (as PHGM asserts).

51 In coming to my findings above, I make a few observations. The Liquidators must satisfy the court that they had rightly admitted the AH-REIT POD. It is insufficient for them to merely assert that they are satisfied that all the items on the List were replacement (and not enhancement) works, without an explanation as to how they came to such a conclusion.⁴⁶ There must be some evidence to support that the disputed items were indeed works that the tenant

⁴³ Tan’s Affidavit at pp 702–703 and 729–730.

⁴⁴ Tan’s Affidavit at pp 699–701 and 704–728.

⁴⁵ Tan’s Affidavit at pp 731–737.

⁴⁶ Liquidators’ Affidavit at [33].

(PHCQ) was obliged to make good under the Lease. Tellingly, Beh has been silent on this. Beh did not assert that the items on the List were works that the tenant (PHCQ) was obliged to rectify at its own expense under the Lease, or even state that the works were not matters of fair wear and tear. This is especially pertinent since the supporting documents do not shed much light on the matter. It must be remembered that the works on the List were performed in 2023 or 2024, some two or more years after the Property was repossessed by AH-REIT, and around the same time as the Refurbishment Period and the rebranding exercise for the hotel (see [32] above). Thus, there is some force in PHGM's assertion that at least some of the works were to enhance the Property to facilitate the re-branding.

52 I am also cognisant of Beh's explanation that it was challenging to carry out replacement works immediately after the handover of the Property in August 2021 given that this was in the midst of the COVID-19 pandemic, that AIMPL (who was managing the Property) required time to design and plan for the replacement works, and that the works were then carried out in 2023 when the COVID-19 situation in Singapore had further stabilised.⁴⁷ But Beh's explanation is neutral and at best suggests that any works AH-REIT or AIMPL intended to carry out on the Property (including works to re-brand the hotel) would have been held in abeyance during the material time. This explanation does not show that the works eventually carried out were replacement works of the nature which PHCQ was obliged to effect at its expense under the Lease.

53 As for the Liquidators' claim that they had scrutinised AH-REIT's initial POD against PHMPL which included a claim for re-branding and renovation costs amounting to over \$12m (see [46(b)] above), I give no weight to this point

⁴⁷ Beh's Affidavit at [28].

as it is a bare assertion unsupported by evidence. While the issue of double recovery was not raised by parties before me, I note for completeness that the Liquidators should be alive to any potential double recovery in relation to overlapping claims in the PODs of AH-REIT filed against PHCQ and PHMPL, especially in view of the court’s recent pronouncements in *Shim Wai Han v Lai Seng Kwoon and another* [2025] SGHC 88 at [34] and [36].

Legal costs

54 The AH-REIT POD included a claim for “[l]egal cost” comprising the following:⁴⁸

- (a) Colliers International Consultancy & Valuation (Singapore) Pte Ltd (“Colliers”)’s expert opinion fee of \$5,000 (“Colliers’ Fees”); and
- (b) Dentons Rodyk & Davidson LLP (“Denton”)’s professional fees of \$61,151, \$5,610 and \$2,000 (“Dentons’ Fees”).

55 In PHGM’s 7/11/24 Letter, TSMP pointed out that the invoices for Dentons’ Fees were redacted and queried whether the Liquidators had verified that the work done were indeed in respect of matters relating to PHCQ. The Liquidators’ 19/11/24 Letter replied stating that “[t]he liquidators are satisfied that the work done as regards the ‘legal cost’ were in respect of matters relating to PHCQ”. PHGM’s 4/12/24 Letter replied stating that the Liquidators’ 19/11/24 Letter did not provide any explanation for its position. Subsequently, the Liquidators’ 18/12/24 Letter merely said, “please refer to our letter dated 19 November 2024”.

⁴⁸ Tan’s Affidavit at pp 738–760.

56 PHCQ contends that the Liquidators have been evasive and have not shown that the legal costs pertained to works carried out in relation to PHCQ.⁴⁹ The Liquidators' short reply is that they had confirmed in the Liquidators' 17/11/24 Letter that they were satisfied that the works were in respect of matters relating to PHCQ.⁵⁰

57 The Liquidators rely on cl 6.10.1 of the Lease which stipulates that the tenant (PHCQ) is to pay, on a full indemnity basis, the landlord's (AH-REIT's) legal and other costs incurred as a result of the tenant's default in the payment of rent, taxes and other obligations under the Lease.⁵¹

58 In relation to Colliers' Fee, this was for Colliers to produce an expert opinion "for the purposes of assessing the damages, that the [Property] may suffer as a result of [PHCQ's] breach of contract/termination", as stated in Colliers' letter to Perpetual Asia dated 31 August 2021 ("31/8/21 Letter").⁵² TSMP does not dispute that this item of expenditure is claimable but asserts there is no evidence of Colliers having produced such a report.⁵³ A&G conceded before me that there was no evidence of a report having been produced by Colliers and no such report was included in the supporting documents to the AH-REIT POD.⁵⁴ That said, I am satisfied that an expert report was produced by Colliers, based on an invoice from Colliers to AH-REIT for \$5,000 issued

⁴⁹ Tan's Affidavit at [57]–[59].

⁵⁰ Liquidators' Affidavit at [49].

⁵¹ Respondents' Written Submissions dated 2 April 2025 at [6(6)].

⁵² Tan's Affidavit at p 739.

⁵³ AWS at [66]; 9/4/25 Minute Sheet.

⁵⁴ 9/4/25 Minute Sheet.

some three months after the 31/8/21 Letter pertaining to an expert report.⁵⁵ It is unlikely that Colliers would have invoiced AH-REIT for a non-existent report, and TSMP has not challenged the authenticity of that invoice. Hence, I am satisfied that the Liquidators had properly admitted this claim.

59 As for Dentons' Fees, the supporting documents to the AH-REIT POD included an invoice titled "Application for Assessment as a Tourism Contract" and two invoices titled "Claim against Park Hotel CQ Pte Ltd". Before me, TSMP stated it was no longer disputing the invoice relating to an application for assessment as a tourism contract.⁵⁶ In any case, all the invoices were redacted and thus unhelpful to my determination of the matter. I therefore directed A&G to show an unredacted copy of the remaining two invoices to TSMP for TSMP's consideration as to whether it still intended to challenge the sums therein after it has examined the invoices.

60 After A&G and TSMP conferred on the matter, TSMP informed the court that it would not be disputing the remaining two invoices. Although TSMP asserts that three items therein were not claimable, it did not wish to challenge them in the interest of time and costs, given that they amounted to only \$3,570. TSMP however reiterated that the unredacted invoices should have been provided to it when it first queried the Liquidators on the basis for accepting AH-REIT's claim for legal costs.⁵⁷ I thus make no finding on Dentons' Fees.

⁵⁵ Tan's Affidavit at p 747.

⁵⁶ 9/4/25 Minute Sheet.

⁵⁷ TSMP's letter to the court dated 14 April 2025.

Conclusion and closing observations

61 In conclusion, I allow PHGM’s application and reduce the AH-REIT POD by excluding the following:

- (a) property tax on the Property from 1 October 2022 to 27 June 2023 totalling \$273,792 (see [42] above); and
- (b) the Costs of Works in relation to items four, seven to nine, and 12 to 15 of the List, totalling \$679,454 (see [50] above).

62 I make some final observations on the matter.

63 First, a disputing creditor of a company in insolvency has a right to inspect a POD submitted by a POD creditor (*The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213 at [87]–[92]). Where the disputing creditor is dissatisfied with the liquidator’s decision to accept that POD and requests the liquidator to clarify how it came to its decision, it is unhelpful for the liquidator to respond by merely pointing the disputing creditor to the documents filed by the POD creditor in support of its POD, especially when the situation calls for an explanation. Here, when PHGM asked the Liquidators whether the Costs of Works pertained to replacement or enhancement works, the Liquidators’ reply referring PHGM to the supporting documents for the AH-REIT POD without more was unhelpful (see [44] above). Likewise, when PHGM asked whether the Liquidators had verified that the Dentons’ Fees related to PHCQ (since the invoices were redacted and contained little to no information), the Liquidators’ responses were equally unhelpful (see [55] above). It must be remembered that the Liquidators did not give any grounds or reasons for its decision to admit the AH-REIT POD in full, as can be seen from their one-page letter to AH-REIT

dated 1 August 2024 (see [8] above). It should have been apparent to the Liquidators that the disputing creditor (PHGM) had insufficient information to assess for itself whether the AH-REIT POD was properly admitted. Had the Liquidators given some thought to the matter and provided helpful answers as to how they came to assess and admit the various claims in the AH-REIT POD, parties could have avoided unnecessary litigation to some extent.

64 The Liquidators' affidavit filed in this application was also unsatisfactory. When a liquidator's decision to admit a POD is challenged before the court, the liquidator has a duty to explain how it came to its decision to admit each claim in the POD with reference to specific documents supporting that claim and how the quantum of that claim was computed. It was unhelpful for the Liquidators to merely exhibit all the supporting documents that AH-REIT had provided alongside the AH-REIT POD. This is particularly when the court did not have the benefit of any reasons provided by the Liquidators to AH-REIT as to their decision to admit the AH-REIT POD.

65 I will hear the parties on costs.

Audrey Lim J
Judge of the High Court

Thio Shen Yi SC, Nanthini d/o Vijayakumar and Terence Yeo
(TSMP Law Corporation) for the applicant;
Ong Boon Hwee William, Lee Bik Wei, Kay Tan Jia Xian and Tang
Jia Ding Justin (Allen & Gledhill LLP) for the respondents.