

DREW & NAPIER

Pitfalls When Winding Up a Debtor Company Occupying a Co-working Space

Gunvor SA v Atlantis Commodities Trading Pte Ltd **[2024] SGHC 192**

7 August 2024

LEGAL UPDATE



In this Update

We examine some lessons learnt from the recent Singapore High Court case of *Gunvor SA v Atlantis Commodities Trading Pte Ltd* [2024] SGHC 192, where the claimant failed in its application to wind up the defendant debtor company which was occupying a co-working space as its registered office address.

03
INTRODUCTION

03
SERVICE OF STATUTORY DEMANDS

04
DISPUTED DEBT

04
KEY TAKEAWAYS

INTRODUCTION

In the recent Singapore High Court case of *Gunvor SA v Atlantis Commodities Trading Pte Ltd* [2024] SGHC 192, the claimant failed in its application to wind up the defendant debtor company which was occupying a co-working space as its registered office address. In the result, the claimant was liable to pay costs to the defendant.

SERVICE OF STATUTORY DEMANDS

When seeking to apply to court to wind up a company on the ground that the debtor company is unable to pay its debts, creditors often choose to do so on the basis that the debtor is indebted in a sum exceeding $15,000 then due, and the creditor has served on the debtor company, by leaving at the registered office of the debtor company, a written demand requiring the debtor company to pay the sum so due (this is commonly referred to as a "statutory demand"). The debtor company has three weeks after service of the statutory demand to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor.

In *Gunvor SA*, the defendant's registered office address was 10 Collyer Quay, #37-50 Ocean Financial Centre, Singapore 049315. Level 37 was occupied by "The Executive Centre", which operated a co-working space. The claimant's service agent had left the statutory demand at the reception of The Executive Centre at Level 37. There was also a dispute as to how the winding up cause papers were subsequently served.

The High Court held that it was the claimant's burden to prove that the statutory demand and winding up cause papers had been left at the registered address of the defendant, i.e. at unit #37-50, as statutorily required. The claimant, however, did not succeed in doing so.

In particular, the claimant could not show how the reception at Level 37 could be considered the registered office address of the defendant at unit #37-50. In particular, the defendant occupied a designated unit (albeit without a unit number displayed) within The Executive Centre which was identifiable from a sign next to the door of the unit. However, the claimant had not located this designated unit.

It was not sufficient that the reception served all the occupants such that letters would be handed to the respective addressed occupants. It also did not matter that the tenant directory of Ocean Financial Centre listed the defendant as occupying the same units as The Executive Centre, namely #37-01/10, since that was not the registered address of the defendant. The claimant also suggested that the defendant's unit may not be accessible to the public, and the claimant's service agent claimed not to have seen the defendant's name displayed on any of the doors in The Executive Centre. However, there was no evidence that the claimant had made any inquiries about whether unit #37-50 existed or where it was located.

DISPUTED DEBT

In order to stave off a winding up application, a debtor company need only raise triable issues by showing that there exists a substantial and bona fide dispute, whether in relation to a cross-claim or a disputed debt. If so, the disputes ought to be determined by way of writ action where there will be a process for discovery of evidence and examination of evidence at trial.

In this case, the claimant alleged that the defendant was liable for unpaid instalments under a settlement agreement. The defendant, however, alleged that it did not enter into any agreements with the claimant because the defendant's director's signatures had been forged, and the persons whom the claimant had dealt with were independent contractors and not employees of the defendant, and were not authorised to enter into any of the relevant agreements.

The court held that there was some cogent evidence supporting the defendant's positions to prove a triable issue as to the authenticity of the signatures. This was notwithstanding that some aspects of the defendant's case on this issue were not satisfactory.

KEY TAKEAWAYS

Gunvor SA presents a realistic example of the kinds of challenges a creditor might face when attempting to serve a statutory demand and winding up court papers on a debtor company occupying a co-working or shared space, as well as the risks that the debt may be disputed.

Experienced legal counsel and service agents can go a long way to mitigating these risks.

The content of this article does not constitute legal advice and should not be relied on as such. Specific advice should be sought about your specific circumstances. Copyright in this publication is owned by Drew & Napier LLC. This publication may not be reproduced or transmitted in any form or by any means, in whole or in part, without prior written approval.

If you have any questions or comments on this article, please contact:



Mohan Gopalan
Director, Corporate Restructuring & Workouts

T: +65 6531 2755
E: mohan.gopalan@drewnapier.com



Mitchell Yeo
Director, Corporate Restructuring & Workouts

T: +65 6531 2438
E: mitchell.yeo@drewnapier.com

Drew & Napier LLC
10 Collyer Quay
#10-01 Ocean Financial Centre
Singapore 049315

www.drewnapier.com

T : +65 6535 0733
T : +65 9726 0573 (After Hours)
F : +65 6535 4906

DREW & NAPIER