

THE IMPOSITION OF A REMEDIAL CONSTRUCTIVE TRUST COMPROMISES AN INSOLVENT ESTATE

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The remedial constructive trust arises out of an exercise of judicial discretion and provides claimants with a powerful proprietary remedy. In the insolvency context, the remedial constructive trust allows the successful claimant to circumvent the statutory scheme of pari passu distribution and recover his claims in priority to the creditors of the insolvent company. At present, the remedial constructive trust in Singapore is in its infancy. This article tracks the developments in the law of the remedial constructive trust in Singapore thus far and examines the arguments for and against its particular application in the insolvency context.

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I. Introduction

1 The constructive trust has been, and remains, a problematic and elusive concept that has persistently vexed practitioners and academics alike. In Singapore, the constructive trust gives rise to a unique dilemma in the insolvency context for both the insolvency courts and claimants.

2 This dilemma arises where claimants seek to establish a constructive trust over the assets of an insolvent company as a remedy for a claim in unjust enrichment.

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3 The establishment of a constructive trust over the assets of an insolvent company removes these assets from the insolvent estate, thereby placing these assets beyond the reach of the general body of creditors.

4 As such, the courts find themselves faced with the issue of balancing two fundamental, but competing, interests: that of the unfortunate claimant, on the one hand, and those of the insolvent company's general body of creditors, on the other.

5 What then guides the courts in deciding which claimants should be entitled to establish a constructive trust against the assets of an insolvent company?

6 The response of the Singapore courts to this question, drawing from the principles of Canadian, Australian and New Zealand law, appears to be the remedial constructive trust (the "RCT"). The Singapore courts' approach in this regard diverges significantly from that of the English courts, which have refused to recognise the RCT in favour of its alternative, the institutional constructive trust (the "ICT").

7 However, the RCT continues to be plagued by existential and conceptual uncertainty. As one writer puts it:¹

The task of writing a paper exhibiting a regulated, cohesive set of principles in the area of the so-called remedial constructive trust is akin to an academic cleaning of the Augean stables.

8 Nevertheless, the decisions of the Court of Appeal in *Ching Mun Fong v Liu Cho Chit*² ("*Ching Mun Fong*") and in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve*³ ("*Anna Wee*") provide a helpful roadmap to navigate the way forward for the RCT in Singapore.

1 Bruce Collins QC, "The Remedial Constructive Trust 'Between a Trust and a Catch-phrase'" (2014) 20(10) *Trusts & Trustees* 1055.

2 [2001] 1 SLR(R) 856.

3 [2013] 3 SLR 801.

9 The central thread of *Ching Mun Fong* and *Anna Wee* is that a finding of “unconscionability” on the part of the constructive trustee is a necessary prerequisite to the establishment of the RCT (the “Unconscionability Requirement”).

10 However, the decisions in *Ching Mun Fong* and *Anna Wee* do not go as far as to confirm the availability of the RCT as a remedy in the insolvency context. Indeed, these two decisions do not squarely address the particular nuances and considerations which would arise from the application of the RCT in the insolvency context.

11 The availability of the RCT as a proprietary remedy over an insolvent company’s assets is therefore a question which remains to be decided by the Court of Appeal. It is an important one.

12 This article first examines the guiding principles for the RCT that have been laid down by the Court of Appeal. This article then discusses, if the RCT is to be imported into the insolvency regime in Singapore, whether the principles which presently underpin the RCT in Singapore provide a sufficiently sound basis for the courts to circumvent the statutory scheme of *pari passu* distribution in insolvency.

13 These authors do not purport to articulate definitive solutions to what remains a difficult area of law. This article seeks only to highlight the issues facing insolvency judges and practitioners, with the hope that it will serve as a small step along the road towards greater clarity in this area of law.

II. Distinguishing between the institutional constructive trust and the remedial constructive trust

14 An in-depth exploration of the genesis of the ICT and the RCT, as they have evolved in the law of trusts, is beyond the scope of this article. It suffices for present purposes to note the distinction between them. In this regard, we turn to the oft-cited

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dicta of Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council*⁴ (“*Westdeutsche*”). His Lordship, after recognising that English law had been reluctant to recognise the concept of the RCT, opined:⁵

Under an institutional constructive trust, the trust arises by operation of law as from the date of the circumstances which give rise to it: the function of the court is merely to declare that such trust has arisen in the past. The consequences that flow from such trust having arisen (including the possibly unfair consequences to third parties who in the interim have received the trust property) are also determined by rules of law, not under a discretion. A remedial constructive trust, as I understand it, is different. It is a judicial remedy giving rise to an enforceable equitable obligation: the extent to which it operates retrospectively to the prejudice of third parties lies in the discretion of the court. Thus for the law of New York to hold that there is a remedial constructive trust where a payment has been made under a void contract gives rise to different consequences from holding that an institutional constructive trust arises in English law. [emphasis added]

15 The distinction, at least in principle, is clear.⁶

16 The ICT arises by way of the application of established legal rules to specific factual circumstances – and a trust would arise where the “conditions set down in those rules are met”.⁷ The court’s function is then limited to declaring that the ICT had come into existence at the point where the relevant conditions are met.

17 On the other hand, the RCT arises where “the court imposes a constructive trust *de novo* on assets which are not

4 [1996] AC 669.

5 *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 714–715.

6 Cf the criticism of this simplistic distinction between the institutional constructive trust and the remedial constructive trust in Ying Khai Liew, “Reanalysing Institutional and Remedial Constructive Trusts” (2016) 75(3) *Cambridge Law Journal* 528.

7 Charlie Webb, “The Myth of the Remedial Constructive Trust” (2016) 69(1) *Current Legal Problems* 353.

subject to any pre-existing trust as a means of granting equitable relief in a case where it considers just that restitution should be made”.⁸ In this way, the RCT arises by way of exercise of judicial discretion to achieve what the court considers “just”, and can arise “either retrospectively or prospectively from the date of the court order”.⁹

18 The article now turns to discuss the underlying principles which guide the courts’ exercise of judicial discretion to impose an RCT.

III. *Ching Mun Fong v Liu Cho Chit and Wee Chiaw Sek Anna v Ng Li-Ann Genevieve*

19 The Court of Appeal’s decision in *Ching Mun Fong* in 2001 was the first significant judicial acknowledgement, albeit a cautious one, that the RCT may be part of Singapore law.

20 In *Ching Mun Fong*, the plaintiff, the executrix of the estate of Mdm Tan, sued the defendant for a sum of US\$642,451.04 which Mdm Tan had paid to the defendant, Mr Liu, as part of the purchase price for Mr Liu’s wife, Mdm Lim’s, interest in a certain property. After receiving payment of US\$642,451.04 from Mdm Tan, it transpired that Mdm Lim did not have any interest in the property. One of the issues before the court was whether a constructive trust could be established over the US\$642,451.04 paid to Mr Liu.

21 In the court below, the judge had “held that even if remedial constructive trust applies in Singapore, no remedial constructive trust arose in this case”.¹⁰ The Court of Appeal, with reference to Lord Browne-Wilkinson’s observations in

8 *Per* Slade LJ in *Metall und Rohstoff AG v Donaldson Lufkin & Jenrette Inc* [1990] 1 QB 391; cited by L P Thean JA in *Ching Mun Fong v Liu Cho Chit* [2001] 1 SLR(R) 856 at [34].

9 *Goff & Jones: The Law of Unjust Enrichment* (Charles Mitchell, Paul Mitchell & Stephen Watterson eds) (Sweet & Maxwell, 9th Ed, 2016) at para 38-17.

10 See *Ching Mun Fong v Liu Cho Chit* [2001] 1 SLR(R) 856 at [36].

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Westdeutsche,¹¹ agreed with the findings of the judge below in this regard and laid down the following principles:

- (a) In order for a remedial constructive trust to arise, the payee's conscience must have been affected while the moneys still remain with him.¹²
- (b) If the payee learns of the mistake only after the moneys have got mixed with other funds or dissipated, no constructive trust in respect of these moneys can arise.¹³

22 The RCT was in issue before the Court of Appeal again in *Anna Wee* in 2013.

23 In *Anna Wee*, the plaintiff, Ms Wee, alleged that her ex-husband, Mr Ng, had made fraudulent misrepresentations to her which induced her to forgo her division of assets from their divorce. During their marriage, Ms Wee, who was herself from a wealthy family, had been under the impression that Mr Ng was a man of little means. Unbeknownst to Ms Wee, Mr Ng had entered into certain agreements for the consideration of US\$25,000,000 and RM900,000. Before his death, Mr Ng settled the moneys he earned under these agreements into four trusts. Upon discovering this state of affairs, Ms Wee commenced proceedings against the estate of Mr Ng and two of the said trusts, praying, *inter alia*, that an RCT be imposed over the trusts.

24 The Court of Appeal upheld the trial judge's finding that there was no fraudulent misrepresentation by Mr Ng. As such, the RCT issue was unfortunately moot by the time it came to be considered by the court, and the court declined to make a "definitive ruling on the matter".¹⁴ Nevertheless, the court made the following observations:

11 See para 14 above.

12 See *Ching Mun Fong v Liu Cho Chit* [2001] 1 SLR(R) 856 at [36].

13 See *Ching Mun Fong v Liu Cho Chit* [2001] 1 SLR(R) 856 at [36].

14 See *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [169] and [185].

- (a) In accordance with *Ching Mun Fong*, an RCT may only be imposed where the payee's conscience is affected.¹⁵
- (b) The basis of an RCT in Singapore law at its present stage of development therefore appears to be founded on fault.¹⁶
- (c) The RCT is predicated on a state of knowledge which renders it unconscionable for the recipient to keep the moneys.¹⁷
- (d) With reference to case law in Canada, Australia and New Zealand, *inter alia*, unconscientiousness or unconscionability affecting the knowledge of the recipient of assets in question is an additional element which must exist before an RCT may be imposed.¹⁸
- (e) The fact giving rise to the court's discretion to impose an RCT is not the fact of unjust enrichment, but the knowing retention of the moneys in a way that affects the recipient's conscience.¹⁹

25 The decisions of the Court of Appeal in *Ching Mun Fong* and *Anna Wee* therefore place paramount importance on the "conscience" of the recipient of the moneys and a finding of fault on the recipient's part. In this regard, as observed in *Anna Wee*, the RCT requires an element of "unconscionability" on the part of the recipient of moneys, which is in addition to the mere fact of the unjust enrichment, before it can be established (*ie*, the Unconscionability Requirement).

15 See *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [171].

16 See *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [172].

17 See *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [172].

18 See *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [182].

19 See *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [184].

IV. The remedial constructive trust in the Singapore insolvency context

26 The aforementioned principles espoused by the Court of Appeal in *Ching Mun Fong* and *Anna Wee* are useful starting points in the development of the RCT in Singapore. However, important questions still remain about the specific application, and indeed existence, of the RCT in insolvency law in Singapore.

27 Of these questions, perhaps the most pertinent is, if the RCT is to be brought into the insolvency framework, whether the principles which presently underpin the RCT in Singapore provide a sufficiently sound basis for the courts to circumvent the statutory scheme of *pari passu* distribution in insolvency.

28 It is this central concern of preserving the integrity of the statutory scheme of distribution in insolvency that has led the English courts to reject the RCT altogether. In essence, the objection is that the RCT, which arises by way of an exercise of judicial discretion, cannot be used to subvert the statutory scheme of distribution, which carries with it the force of Parliamentary mandate.

A. Re Polly Peck International plc (No 2)

29 In *Re Polly Peck International plc (No 2)*²⁰ (“*Re Polly Peck*”), the English Court of Appeal unequivocally rejected the existence of the RCT in English insolvency law.

30 Polly Peck International was the holding company for a worldwide group of over 200 subsidiary companies. Polly Peck International was placed in administration on 25 October 1990. The applicants sought leave under the relevant provisions of the Insolvency Act 1986 to commence proceedings against the administrators of Polly Peck International.

20 [1998] 3 All ER 812.

31 One of the causes of action which the applicants sought to establish against Polly Peck International was an RCT. The RCT, the applicants alleged, arose over proceeds received by Polly Peck International from the sale of some of its subsidiaries. The applicants alleged that the subsidiaries in question owned certain properties in Cyprus which were expropriated from the applicants in 1974.

32 The question before the English Court of Appeal was whether the applicants' statement of claim disclosed a seriously arguable case.

33 The Court of Appeal resoundingly rejected the applicants' submissions that they were entitled to establish an RCT over the sale proceeds received by Polly Peck International. The observations of Mummery LJ are particularly significant:²¹

*The essential characteristic of the statutory scheme is that the liquidator or administrator is bound to deal with the assets of the company as directed by statute for the benefit of all creditors who come in to prove a valid claim. There is a statutory obligation on the administrators of PPI to treat the general creditors in a particular way. A question may arise as to whether a particular asset was or was not the beneficial property of the company at the date of the commencement of the winding up (or administration). If it is established in a dispute that it is not an asset of the company then it never becomes subject of the statutory insolvency scheme: See *Chase Manhattan [Bank NA v Israel-British Bank (London) Ltd* [1979] 3 All ER 1025; [1981] Ch 105. If, on the other hand, the asset is the absolute beneficial property of the company there is no general power in the liquidator, the administrators or the court to amend or modify the statutory scheme so as to transfer that asset or to declare it to be held for the benefit of another person. To do that would be to give a preference to another person who enjoys no preference under the statutory scheme.*

In brief, the position is that there is no prospect of the court in this case granting a remedial constructive trust to the applicants in respect of the proceeds of sale of the shares held by PPI in its

21 *Re Polly Peck International plc (No 2)* [1998] 3 All ER 812 at 827.

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subsidiaries, since the effect of the statutory scheme applicable on an insolvency is to shut out a remedy which would, if available, have the effect of conferring a priority not accorded by the provisions of the statutory insolvency scheme. In her eloquent address Miss Dohmann submitted that ‘the law moves.’ That is true. But it cannot be legitimately moved by judicial decision down a road signed ‘No Entry’ by Parliament. The insolvency road is blocked off to remedial constructive trusts, at least when judge-driven in a vehicle of discretion.

[emphasis added]

34 Mummery LJ’s concerns in this regard were echoed by Nourse LJ in the same case.²² Their Lordships’ rationale for denying the existence of the RCT in *Re Polly Peck* evinces an important concern that, this article submits, resonates in the Singapore insolvency context.

35 In Singapore, the provisions of the Companies Act²³ expressly set out the statutory scheme for distribution of an insolvent company’s assets. The justifications for a judicial departure from the statutory scheme must therefore, this article submits, necessarily be cogent. These authors submit that the decision in *Re Polly Peck* casts fundamental doubt on the very existence of the RCT in the Singapore insolvency landscape.

36 Unfortunately, though it has taken the first tentative steps towards acknowledging the existence of the RCT in Singapore law generally, the Court of Appeal has not been presented with the opportunity to meaningfully address these questions surrounding the existence and application of the RCT in the insolvency context. Indeed, the decisions in *Ching Mun Fong* and *Anna Wee* do not make reference to *Re Polly Peck*.

37 In the Singapore High Court, the RCT was considered in the insolvency context in *Re Pinkroccade Educational Services Pte Ltd*²⁴ (“*Re Pinkroccade*”) and, to a limited extent, in *Zhou Weidong*

22 *Re Polly Peck International plc (No 2)* [1998] 3 All ER 812 at 830–831.

23 Cap 50, 2006 Rev Ed. See for instance ss 327 and 328.

24 [2002] 2 SLR(R) 789.

*v Liew Kai Lung*²⁵ (“*Zhou Weidong*”). The courts have also considered the RCT in other contexts.²⁶

B. Zhou Weidong v Liew Kai Lung

38 In the more recent decision of Audrey Lim JC in *Zhou Weidong*, it was alleged by the plaintiff, Zhou, that he had entered into certain investments on the basis of the fraudulent misrepresentations by the defendant, Liew. The moneys that Zhou invested were dissipated by Liew. Liew was subsequently declared bankrupt. One of the issues before the court was whether Zhou was entitled to establish an RCT over the moneys.

39 Lim JC dismissed the argument that Zhou was entitled to establish an RCT over the moneys because Zhou was unable to cross the initial threshold of identifying the assets that formed the subject matter of the RCT.²⁷

40 With Zhou’s RCT claim failing in this way, it was not then necessary for Lim JC to meaningfully examine or apply the principles laid down in *Ching Mun Fong* and *Anna Wee*, and only brief mention was made of these decisions in *Zhou Weidong*.²⁸

C. Re Pinkroccade Educational Services Pte Ltd

41 *Re Pinkroccade* provides a more suitable focal point for the present analysis.

42 In *Re Pinkroccade*, the claim arose in the context of the winding up of Pinkroccade Educational Services Pte Ltd (“Pinkroccade”). The claimant, PT HM Sampoerna TBK

25 [2018] 3 SLR 1236.

26 The courts have meaningfully discussed the remedial constructive trust in other contexts: see *Public Prosecutor v Intra Group (Holdings) Co Inc* [1999] 1 SLR(R) 154; *Comboni Vincenzo v Shankar’s Emporium (Pte) Ltd* [2007] 2 SLR(R) 1020; *Koh Cheong Heng v Ho Yee Fong* [2011] 3 SLR 125; and *Zhou Weidong v Liew Kai Lung* [2018] 3 SLR 1236.

27 See *Zhou Weidong v Liew Kai Lung* [2018] 3 SLR 1236 at [82].

28 See *Zhou Weidong v Liew Kai Lung* [2018] 3 SLR 1236 at [80].

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(“Sampoerna”), engaged Pink Elephant International Pte Ltd (“Pink Elephant”) for certain services. Pink Elephant rendered an invoice for A\$135,608 to Sampoerna’s Singapore office, which Sampoerna subsequently made payment on. Unfortunately, the payment instruction incorrectly cited the bank account of Pinkroccade (then known as PDA Pink Elephant Pte Ltd). Pinkroccade was subsequently placed in voluntary liquidation.

43 Lee Seiu Kin JC held that Sampoerna was entitled to establish a constructive trust over the mistaken payment. Lee JC adopted Lord Browne-Wilkinson’s rationale in *Westdeutsche* and held that mere receipt of a mistaken payment, without knowledge of the mistake, was incapable of giving rise to the declaration of a constructive trust. In *Re Pinkroccade*, however, the constructive trust arose on the basis of the following:

- (a) the persons in effective control of Pinkroccade had knowledge that the moneys were paid by mistake;²⁹
- (b) the moneys were not mixed with the other funds of the company;³⁰ and
- (c) the moment Pinkroccade learnt of the mistaken payment it was unconscionable on its part to retain it.³¹

44 It is noted that the constructive trust that was found in *Re Pinkroccade* was not expressed in terms of a remedial constructive trust. However, it is abundantly apparent that the Sampoerna trust was in the nature of an RCT given Lee JC’s reliance upon Lord Browne-Wilkinson’s *dicta* in *Westdeutsche* and Lee JC’s subsequent application of the Unconscionability Requirement to find that Pinkroccade’s retention of the mistaken payment was “unconscionable”.³²

45 It is perhaps more significant that Lee JC’s decision in *Re Pinkroccade* did not make reference to *Ching Mun Fong* and,

29 *Re Pinkroccade Educational Services Pte Ltd* [2002] 2 SLR(R) 789 at [21].

30 *Re Pinkroccade Educational Services Pte Ltd* [2002] 2 SLR(R) 789 at [21].

31 *Re Pinkroccade Educational Services Pte Ltd* [2002] 2 SLR(R) 789 at [22].

32 *Re Pinkroccade Educational Services Pte Ltd* [2002] 2 SLR(R) 789 at [22].

crucially, *Re Polly Peck*. As such, *Re Pinkroccade* represents somewhat of a missed opportunity for the courts to examine the interaction between the RCT and the statutory insolvency regime. The development of the RCT in insolvency law in the future must, it is submitted, necessarily involve consideration of the concerns raised by Mummery LJ in *Re Polly Peck* in respect of upsetting the statutory scheme of distribution.

D. Should the remedial constructive trust be part of the local insolvency regime?

46 It is, however, not these authors' view that *Re Pinkroccade* was wrongly decided *per se*. On the contrary, assuming that the RCT is indeed part of the Singapore insolvency framework, the facts of *Re Pinkroccade* presented the perfect conditions for it to be established. In particular, in *Re Pinkroccade*:

- (a) It was not in dispute that the moneys were paid in mistake.
- (b) The liquidators were notified by Sampoerna of the mistaken payment prior to the date on which the Pinkroccade was voluntarily wound up.
- (c) The mistaken payment was kept in a separate fund and was not mixed with the rest of Pinkroccade's funds.

47 Much of the uneasiness arising from Mummery LJ's judgment in *Re Polly Peck* falls away on the specific facts of *Re Pinkroccade*. It was clear at the time the winding up was commenced that the payment was made in mistake. This meant that it was clear to all parties, and most importantly the liquidators of Pinkroccade, that the mistaken payment did not form part of Pinkroccade's insolvent estate. Sampoerna's ability to establish the RCT at a time prior to the winding up was crucial. In this regard, as observed by Mummery LJ in *Re Polly Peck*:³³

33 *Re Polly Peck International plc (No 2)* [1998] 3 All ER 812 at 827.

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A question may arise as to whether a particular asset was or was not the beneficial property of the company at the date of the commencement of the winding up (or administration). If it is established in a dispute that it is not an asset of the company then it never becomes subject of the statutory insolvency scheme ...

48 The result in *Re Pinkroccade* and the return of the moneys to Sampoerna would seem to accord with the demands of justice. The RCT, in the circumstances of the case, afforded the court a simple and principled way to achieve the desired result.

49 However, one can easily imagine the variety of ways in which the RCT and the Unconscionability Requirement may be put to the test in the future.

50 For this, one need not look any further than the facts of *Re Polly Peck*.³⁴ In *Re Polly Peck*:

(a) It was not in dispute that the properties had been expropriated from the applicants in 1974 to the subsidiaries of Polly Peck.

(b) In addition, the proceeds of the sale of the relevant subsidiaries remained with the administrators of Polly Peck. There was therefore no difficulty in the identification of trust property or any issue of mixing.

51 Leaving aside Mummery LJ's concerns in *Re Polly Peck*, would the application of a *Re Pinkroccade*-esque RCT to the facts of *Re Polly Peck* achieve a different result in Singapore?

52 The answer certainly seems to be in the affirmative. The argument that it was unconscionable for the administrators of Polly Peck to retain the proceeds of sale of the subsidiaries, given that these moneys were essentially the fruits of egregious wrongs committed against the applicants, is certainly a forceful one.

34 See paras 29–34 above.

53 What then of Mummery LJ's concerns about upsetting the statutory scheme of distribution? In this respect, the following questions come to the fore:

- (a) whether the principles underpinning the RCT, as they have been expressed in *Ching Mun Fong*, *Anna Wee* and *Re Pinkroccade*, provide a sufficiently sound and principled basis on which the court may circumvent the statutory scheme of distribution in any given situation; and
- (b) whether the Unconscionability Requirement, being the touchstone of the RCT, provides a justifiable basis for elevating a particular claim over those of the rest of the unsecured creditors.

54 In these authors' cautious view, the RCT should be recognised as part of the local insolvency framework. The RCT's apparent utility, as a means of achieving a just outcome, as in *Re Pinkroccade*, cannot be denied. However, its application should be sparing and in accordance with a set of principles that is specifically tailored to the insolvency context.

55 This article suggests that the way forward is for the courts to better define the ambit and application of the Unconscionability Requirement. In determining whether the retention of assets by an insolvent company is "unconscionable", the courts' inquiry should also consider the converse: whether it would be just, fair and/or equitable for the court to take the assets away from the creditors of an insolvent company. This could be the case where, for instance, the assets in question are to be distributed under a scheme of arrangement that has already been sanctioned by the court.

56 This expands the scope of the courts' inquiry. While the courts' cautious approach thus far may be guided by the need to avoid venturing too far into the realm of policy-making, this article argues that it is necessary to expand the scope of the courts' inquiry as such in order to give proper weight to the

competing interests the insolvency courts are inevitably faced with.

57 In any event, the present lack of judicial authority on the issue places a definitive answer beyond the reach of this article. It is inevitable that a future court will find itself grappling with this difficult interplay between judicial discretion and statute. It may, for this reason, eventually fall to Parliament to define the ambits of the RCT in this context.

V. Conclusion

58 The insolvency courts in Singapore will undoubtedly continue to be faced with parties attempting to “skip the queue” of creditors by seeking to establish a proprietary remedy over their claims. The difficulty that then arises for the courts is determining which of these parties should be entitled to do so.

59 The RCT potentially presents the insolvency courts with a powerful tool in this exercise. In this respect, the Court of Appeal has taken the first cautious steps towards acknowledging the existence of the RCT in Singapore law in general and laying down some guiding principles.

60 However, in its present state of existential and conceptual uncertainty, particularly in the context of insolvency, the road ahead for the RCT is far from certain.