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Oppression, Disregard of Shareholders' Interests & Prejudice

Civil Litigation Practice Series

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“Section 216 of the Companies Act (cap. 50)”

Minority Shareholder Protection

A Statutory Remedy

Section 216 of the Companies Act (Cap 50) (“the Act”) provides an avenue for a minority shareholder who has been “suffering” at the hands of the controlling majority to seek redress.

Such specific remedies available to a “suffering” minority shareholder are listed at Section 216(2) of the Act, including; to compel a share buy-out, provide that the company be wound up, etc.

Who May Apply for Relief?

A shareholder with less than 50% shareholding in the company is naturally understood to be a “*minority*” shareholder entitled to file a minority oppression lawsuit.

However, the Singapore Court of Appeal clarified in ***Ng Kek Wee v Sim City Technology Ltd*** [2014] 4 SLR 723 that majority shareholders are not precluded from applying under Section 216.

The Court of Appeal explained that “*the touchstone is not whether the claimant is a minority shareholder of the company in question, but whether he lacks the power to stop the allegedly oppressive acts. Section 216(1) of the Companies Act states only that “any member…of a company” may bring an action for relief under that provision; there is no further requirement that only members who are minority shareholders are so entitled.*”

However, the Court of Appeal also cautioned that “*It would be contrary to the purpose and intent of s 216 of the Companies Act to permit a shareholder to seek relief where he possesses the power to exercise self-help by taking control of the company and bringing to an end the prejudicial state of affairs*”. It is always a question of fact whether in a particular case a shareholder claiming relief ought to be considered to lack control over the affairs of the company.

Greater Scrutiny over “Quasi-Partnerships”

The law subjects certain companies that are formed or managed on the basis of mutual trust and confidence to greater scrutiny. Such companies are known as quasi-partnerships.

Quasi-partnerships are companies whose affairs are conducted with a degree of informality, ie, where the members do not transact on an arms-length basis, do not distil their informal agreements into formal contracts, and do not record their understandings in writing.

The informal nature in which such companies conduct their internal affairs creates a greater risk that some members will be victims of exploitative conduct by the majority.

“Commercial Unfairness”

What Constitutes “Oppressive” / “Unfair” Conduct?

Section 216 provides a remedy for a wrong suffered in the shareholder’s *personal* capacity. The individual shareholder sues *in his own right* to protect his interests as a shareholder of the company. Of course, the conduct complained of must relate to the affairs of the company.

Whilst the local Courts used to rely on four different tests to establish “oppression”; i.e. (1) oppression, (2) disregard of interests, (3) unfair discrimination and (4) prejudice, ***Lim Kok Wah and others v Lim Boh Yong and others and other matters*** [2015] 5 SLR 307 has explained that “*There is … little utility in reading the four limbs disjunctively and attempting to draw a distinction between each limb.*”

The litmus test of “*commercial unfairness*” involves a consideration of whether there has been a **“*visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect*”**.

Possible instances of oppression under Section 216, include but is not limited to the following:-

a) **Dominant shareholders advancing their own interests**; Where the dominant shareholders pursue a course of conduct designed by them to advance their own interests to the detriment of the company or the other shareholders.

b) **Abuse of voting powers**; Where the majority shareholders abuse their voting powers by voting in bad faith or for a collateral purpose.

c) **Exclusion from management;** The exclusion of a shareholder from management of a company in breach of an express or implied understanding to allow him to participate in the management.

d) **Serious mismanagement;** Negligence in management may amount to unfairly prejudicial conduct. This does not mean that any negligent management, however minor, will suffice.

e) **No or inadequate dividends;** deliberate payment of low dividends by those in control of a company who obtained directors’ fees or remuneration may amount to unfairly prejudicial conduct.

f) **Alteration of company’s constitution mala fide and not in the benefit of the company.**

g) **Amendment or modification of class rights.**

Remedies for a Minority Shareholder

In deciding what relief to grant to an aggrieved minority shareholder, the Court exercises its discretion "*with a view to bringing to an end or remedying the matters complained of*".

Section 216(2) of the Act provides a list of such possible remedies:-

a) direct or prohibit any act or cancel or vary any transaction or resolution;

b) regulate the conduct of the affairs of the company in future;

c) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;

d) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

e) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

f) provide that the company be wound up.

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