

COMPANY LAW

Director – Retirement – Re-election as director – Defeated by shareholder’s resolution – Whether prior court order entitled respondent to remain as an executive director until the age of 70 – Whether respondent’s employment as executive director dependent upon his holding or maintaining office as director

Kian Joo Can Factory Bhd & Ors v See Teow Koon & Another Appeal

[2017] 8 CLJ 667, Court of Appeal

Facts The first appellant was a public listed company while the respondent was its director and executive director. The respondent’s contract of employment was silent on the retirement age. When the first appellant sought to impose a retirement age of 55, the respondent brought an action in the High Court challenging such introduction. The Court of Appeal decided that the respondent was entitled to be employed until the age of 70 years (“the CA ruling”). Later, a substantial part of the shareholding of the first appellant was acquired by another company which in turn became the largest shareholder. At the annual general meeting, the respondent had retired by rotation and offered himself for re-election as a director. However, the resolution for re-election was defeated by a shareholder’s resolution. The first appellant then notified the respondent that his position as an executive director had come to an end. The respondent filed an action in the High Court challenging the first appellant’s removal of the respondent as an executive director. The High Court allowed the respondent’s claim for retirement benefits in full until the age of 70 years. Aggrieved, the first appellant appealed.

Issues The issues were (i) what was the effect of the CA ruling with respect to the respondent’s retirement age; and (ii) whether the respondent’s entitlement to be appointed as executive director is conditional on holding office as director.

Held In allowing the appeal, the Court of Appeal held that the CA ruling did not support the respondent’s contention of entitlement to be permanently employed until the age of 70, and that the provisions of the Companies Act 1965¹ and the Main Market Listing Requirements² as well as the articles of association applied to the retirement and the re-election of the respondent as a director of the first appellant up to the age of 70. It was further held that when the shareholders decided not to re-elect the respondent as a director, it was an indication that they did not wish for the respondent to remain on the board of directors or be appointed as an executive director. Thus, the employment of the respondent as executive director was conditional upon him holding or maintaining the office as a director of the first appellant.

ZUL RAFIQUE & partners
{DECEMBER 2017\01541086}

¹ Sections 4, 33, 129, and 131B of the Companies Act 1965

² Para 7.26 of Main Market Listing Requirements