

COMPANY LAW

Suit by company – Appointment of solicitors – Whether Board Resolution required - Whether warrant by directors sufficient – Companies Act 1965, section 131B

Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd & Other Appeals

[2017] 2 CLJ 636, Federal Court

Facts The respondent, a company, filed a suit against Ulimas Sdn Bhd (first appellant), Bright Focus Sdn Bhd (second appellant), and Konsortium Lapangan Terjaya Sdn Bhd (third appellant) (“the appellants”) claiming shares or equity in the third appellant, a joint venture company. It was alleged that the appellants had unlawfully transferred the respondent’s shares in the third appellant to the first appellant (“the Suit”). Prior to the hearing, the appellants raised a preliminary objection claiming that the firm of Advocates and Solicitors acting on behalf of the respondent lacked authority to act in the Suit. One Ms Lim, a beneficial owner of the majority shares of the respondent, who was neither a party to the Suit or any other applications, *via* her counsel, also informed the court that she was not interested in pursuing the writ action. Learned counsel for the respondent failed to produce a resolution of the Board of Directors of the respondent authorising the firm to act on their behalf but instead submitted a warrant to act signed by two of the three directors of the respondent. The suit was subsequently struck out by the High Court. The Court of Appeal allowed the respondent’s appeal. The appellants appealed to the Federal Court.

Issue The main issue are (i) whether Ms Lim has *locus standi* to address the court *via* her counsel; and (ii) whether a Board Resolution was required for the respondent to commence the Suit.

Held In dismissing the appeal, the Federal Court held that since directors are only accountable to the company and not to the shareholders, Ms Lim, although a majority shareholder, has no *locus standi* to intervene in the matter. It was also held that there is no provision in the Companies Act 1965 requiring a formal Board Resolution in order for a company to appoint solicitors. Furthermore, section 131B of the Companies Act 1965 provides that the power of management in a company rests solely in the hands of the Board of Directors. Thus, the warrant to act was sufficient for the firm to act on behalf of the respondent company as there was unanimous assent by all directors of the respondent to commence and continue with the Suit.