
COMPANY LAW

SILENT... OR SILENCED: MINORITY OPPRESSION PROCEEDINGS

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Introduction

Idza Hajar Ahmad Idzam (assisted by Bailey Leong Pui Yee, Lee Sheen Yee and Yap Jia Cheng) from Zul Rafique & Partners' Litigation Practice Group had successfully acted for Ace Dynamic Team Sdn Bhd (a company holding majority shares of a public listed entity) ("**1st Defendant**") and its majority shareholder (who was previously a director) ("**2nd Defendant**") in defending against a minority oppression claim filed by one of the 1st Defendant's minority shareholders ("**Plaintiff**").

Brief Facts

The Plaintiff commenced this proceeding against the Defendants for remedies to be granted to him pursuant to section 346 of the Companies Act 2016 for being allegedly oppressed as a minority shareholder. The Plaintiff is a registered shareholder of the 1st Defendant's company, holding 15% shareholding therein.

The crux of the Plaintiff's complaint is in relation to the purported oppressive conduct committed by the 2nd Defendant involving a company known as Ace Capital Growth Sdn Bhd ("**ACG**") between the periods of 2011 to 2021. The purported oppressive conduct included, inter alia, non-declaration and non-payment of dividends when the group of companies as a whole had made a profit of RM10 Million, allegations of being precluded from managing ACG and the breakdown of mutual trust and confidence between the parties.

The undisputed facts before the Court would include the fact that the Plaintiff was never a registered shareholder of the shares in ACG and the 1st Defendant was only incorporated in year 2019. The plans and decision to restructure all the companies in the group including the listing of one of the companies therein known as Ace Innovate Asia Berhad ("**AIAB**") only occurred in the same year i.e.2019. During the said exercise, the Plaintiff was then allotted with 15% shareholding in the 1st Defendant (being the majority shareholder of AIAB).

Legal Arguments Raised

The Plaintiff argued that whilst he was not a registered shareholder of any shares in ACG, he was the beneficial owner of shares (held in his wife's name). These shares formed part of the consideration of his shares in the 1st Defendant. The Plaintiff also argued that it had always been the parties' intention that all the companies in the group are to be considered and seen as one entity. Any oppressive conduct committed by any of the other companies in the group such as ACG therefore could still be considered by the Court.

The Defendants as a response, submitted that minority oppression claims and remedies could only be pursued by a registered shareholder and not a beneficial owner of shares. The Defendants also argued that, as the 1st Defendant was only incorporated in year 2019, the Court cannot consider any allegations of oppression prior to the year 2019 as at the material time, the holding-subsidary relationship between the 1st Defendant and ACG did not exist. There was also no evidence before the Court to support the Plaintiff's contention that parties intended for all companies in the groups to be seen as one entity.

Findings of the Court

The Court in dismissing the Plaintiff's claim with costs held as follows:-

- (a) There was no evidence presented in Court to show the nexus between all the companies referred to, in particular ACG, before the incorporation of the 1st Defendant company. There was also no written agreement between the parties pertaining to the utilization or reliance on ACG being central to the business before Plaintiff acquired his shares in the 1st Defendant company;
- (b) The Court was of the view that there was no oppressive conduct perpetrated against the Plaintiff's in respect of the allegations of:-
 - (i) the Plaintiff being precluded from managing ACG; and
 - (ii) non-declaration and non-payment of dividends as the Court took note of the fact that the 1st Defendant company was only incorporated in year 2019 and any non-declaration and non-payment of dividends would have impacted all the shareholders of the 1st Defendant company and not just the Plaintiff alone.

Key Takeaways

This decision serves as a reinforcement of the legal position that minority oppression claims and remedies:-

- (a) could only be pursued by a registered shareholder;

- (b) that the complainant must be able to prove and show the nexus between the companies to which he/she does not hold any shares in (where oppressive conducts were alleged of) in order to overcome the first hurdle in an oppression claim;
- (c) that mere non-declaration and non-payment of dividends may not necessarily tantamount to oppressive conduct; and
- (d) a mere breakdown of mutual trust and confidence would not necessarily tantamount to oppression.

Authors



Idza Hajar Ahmad Idzam
(Partner)



Bailey Leong Pui Yee
(Partner)



Lee Sheen Yee
(Legal Associate)



Yap Jia Cheng
(Legal Associate)

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