LITIGATION - MALAYSIA

Oppression action: court's discretion has limits

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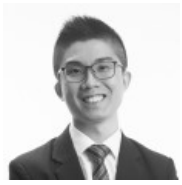
AUTHORS

Foo Joon Liang

Lee Xin Div



Section 346 of the Companies Act 2016 provides the courts with wide powers to grant remedies as they deem necessary to bring an end to the matters complained of in an oppression action (for further details please see "Oppression versus derivative actions: courts' wide discretion maintained"). However, the recent high court decision in *Chuah Seong Keat v Din Tan Yong Chia*(1) shows that such discretion is not absolute or unlimited.

Facts

The case involved a renowned business with multiple outlets offering Thai massage and spa services in Malaysia. The subject companies were Thai Odyssey Sdn Bhd and other related companies (Thai Odyssey Group). Shareholding arrangements and joint venture agreements regulated the parties' relationship.

In brief, the plaintiffs commenced an action to seek numerous usual remedies for oppression, including for the winding up of the companies or compelling the majority to buy out the plaintiffs' shares in the Thai Odyssey Group. The plaintiffs' complaints concerned:

- the termination of the first plaintiff as the group managing director;
- the appointment of additional directors;
- salaries and allowances paid to directors; and
- capital calls.

However, the claims which some of the defendants found objectionable and thus applied to strike out were those pertaining to the personal claim of trademarks and a domain name (IP claims) by the first plaintiff.

Issue

In the striking-out application, the main issue before the high court was whether the IP claims could be sought in the oppression action.

Decision

The high court allowed the striking-out application and struck out the IP claims principally on the premise that the orders sought and granted should be in connection with the impugned oppressive act with the ultimate aim of ending or remedying such act should oppression be proven. In other words, the remedies granted under Section 346 of the Companies Act should end the matters rightly complained of by the members.

Upon examining the facts in relation to the IP claims and the impugned oppressive acts, the court found that the IP claims involved wholly separate issues which did not arise from or were not contingent upon the impugned oppressive acts. Namely, the IP claims concerned the first plaintiff's personal claims involving a different set of facts and laws. The court was also guided by the fact that the IP claims were governed by their respective laws, the Trademarks Act 2019 and the Uniform Domain Name Dispute Resolution Policy, rather than by Section 346 of the Companies Act.

Hence, the court held that the IP claims would change the nature of the oppression action and cause unnecessary delay to its determination. Therefore, the court determined that the IP claims should be separately heard by the IP courts.

Comment

This decision may serve as a useful example for legal practitioners when drafting cause papers for clients in an

oppression action. There can be a diverse range of disputes or disagreements between rival shareholders but not all such disputes or disagreements are suitable or permitted to be pursued under the umbrella of an oppression action pursuant to Section 346 of the Companies Act. A decision would have to be made on whether to pursue all of the grievances of a particular client in an oppression action or whether it is more appropriate for some claims to be dealt with separately.

For further information on this topic please contact Foo Joon Liang or Lee Xin Div at Gan Partnership by telephone (+603 7931 7060) or email (joonliang@ganlaw.my or xindiv@ganlaw.my). The Gan Partnership website can be accessed at www.ganlaw.my.

Endnotes

(1) *Chuah Seong Keat v Din Tan Yong Chia* [2021] MLJU 843 (High Court).