



INSIGHTS

by

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CASE HIGHLIGHT

**Can a Majority Shareholder ever
be Oppressed by a Minority? -
“Reverse Oppression”**

In various shareholder / boardroom disputes handled by our directors, this exact question took centre stage.

In the first instance, we acted for the founder and CEO of a Singapore public listed company. Our client also held a majority (51%) shareholding in the company. As the company grew, the company's board composition evolved and our client found himself increasingly marginalised, outnumbered and isolated at the board level. At the shareholder front, our client was impeded from removing the errant directors through an ordinary resolution (in spite of Section 152(1) of the Companies Act (Cap. 50)) due to various manoeuvring by the minority on the appointment of successor directors.

In another instance, we acted for the majority shareholder (70%) of a group of companies (private limited). In this case, there were only two (2) directors on the board and it was deadlocked (i.e. the other director being the 30% shareholder). Whilst our client could have removed (by ordinary resolution) the minority shareholder from the board, the complication arose in that the minority shareholder was exerting pressure through an investment agreement and also by exerting control over various other companies that have business dealings/interests with the corporate group.

In both cases, amongst other issues, we contended that our client's had been oppressed notwithstanding their majority shareholding.

THE LAW

As a starting position, the express language of Section 216 of the Companies Act (Cap. 50) does not preclude a majority shareholder from bringing an oppression claim. Quite to the contrary, Section 216 stipulates that "any member...of a company" may bring an action for relief under that provision with no further qualification that the same is only reserved for minority shareholders.

_"Personal remedies in cases of oppression or injustice

216.—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part 9, the Minister, may apply to the Court for an order under this section on the ground —
...."

This was confirmed by the Singapore Court of Appeal in *Ng Kek Wee v Sim City Technology Ltd* [2014] SGCA 47 ("Ng Kek Wee").

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." More specifically, it was accepted that "the mischief which [Section 216] was intended to cure, viz. the abuse of power to the prejudice of shareholders who lack the power to stop that abuse."

In the High Court decision of *Ng Kek Wee*, the majority shareholder (53.6%) successfully made out a claim for oppression against the minority (15%). On appeal to the Court of Appeal, whilst agreeing in principle that the oppression remedy is not exclusive to minority shareholders, it was found that the majority shareholder could not mount an oppression complaint because (on the facts of that particular case) the majority had the power to cure the abuse in question.

"55 That, in our view, is the crux of the present case, and in our judgment, the fact that the Respondent has the majority voting power and was able to use it to take control of the company disentitles it from claiming relief under s 216. The Judge was correct in observing that as managing director of Singalab International, the Appellant had effective day-to-day control over the company. This, however, should not have been the end of the analysis. As the Judge noted, the Respondent, being the majority shareholder of Singalab International, could have voted its representatives onto its board of directors and did in fact do so after the commencement of the Suit (see above at [21]). Once it had effective control of the Board and the affairs of Singalab International in its hands, it could have removed the Appellant from the Board, or caused the company to claim against the Appellant for the assets which had been improperly siphoned away."

POSSIBLE INSTANCES OF REVERSE OPPRESSION

The question of when majority shareholders may complain of oppression is a question of fact centred on the issue of whether or not the shareholder seeking relief “lack the power to stop that abuse.”

This begs further questions because an examination of whether one has such “power” must necessarily then depend on what is the “abuse” that is sought to be cured / stopped.

Given the multitude of scenarios and commercial arrangements that companies / joint ventures may organise itself and demarcate its management powers, this exercise will undoubtedly be an intensively granular and fact sensitive inquiry.

Some possible (but non-exhaustive) factual scenarios where a majority shareholder may find itself the subject of oppressive conduct by a minority:-

a. Despite a majority shareholding, the shareholder cannot change the board of directors or take control of the company. Perhaps parties have an existing agreement that entrenches certain errant directors in power or recalibrates the usual shareholder voting requirements to remove a director.

b. Between shareholders, the minority shareholders have carved out certain reserve powers for themselves such that the majority has in reality very little say (or would perhaps always require minority consent) in major management / operational matters.

c. Shareholders may have overall shareholding majority but the voting rights attached to such shares may be such that the majority shareholder may not have a commensurate voting power.

d. Where such oppressive acts are not conducted through the minority's capacity as shareholder or director. For example, in our earlier illustrated case where the minority shareholder was exerting pressure through an investment agreement and also by exerting control over various other companies that have business interests with the company. In other words, a situation where the majority's shareholder voting power would not be able to cure the oppressive acts in question.

TAKE AWAY

In conclusion, for shareholders facing similar predicaments, a majority shareholder should not be too quick to dismiss the possibility of mounting a claim for oppression and to seek the relevant reliefs available.

That said, on that very same note, a minority shareholder should be equally careful with how it conducts itself vis-à-vis the company and never take for granted that a minority shareholder is immune to an oppression complaint.

For more information on the article, or if you wish to learn more about the topics discussed, please contact:-



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