

Case Summary: *Ong Heng Chuan v Ong Teck Chuan and other* [2021] SGHC 46

Introduction

Whilst it is normally understood that majority shareholders should get their way when it comes to corporate decision-making, the Courts have generally been wary of the untrammelled powers of majority shareholders.

Case Facts

OHC, OTC, OBC and OBA are shareholders of Tong Guan Food Products Pte Ltd (the “**Company**”). OHC commenced an oppression action against OTC and OBC under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) (the “**Act**”). OHC’s claim centred around the following acts:

1. Sale and diversion of “Tong Garden” and “NOI” trademarks (the “**Trademarks**”) from the Company and its subsidiaries and associated companies (collectively, the “**Group**”) (the “**Trademarks Sale**”);
2. A series of actions and disposals of assets that formed part of a broader restructuring exercise of the Group (the “**Restructuring**”); and
3. Disposal of the Group’s business in Thailand to OTC’s companies (the “**Thai Entities Sale**”).

OHC claimed that these acts had breached his legitimate expectations as to how the Company should be run based on his strict legal rights, such rights stemming from the Company’s Articles of Association, and OTC’s and OBC’s directors’ duties owed to the Company.

The Trademarks Sale

In 2000, the Group entered into an agreement with Villawood Holdings Ltd (“**Villawood**”), a company owned and controlled by OBC and his wife, to sell the Trademarks along with its associated goodwill. In 2015, Villawood transferred the Trademarks to Tong Garden Food (Singapore) Pte Ltd, which thereafter transferred the Trademarks to OTG Enterprise Pte Ltd, a company wholly-owned by OTC.

It was alleged by OHC that the agreement with Villawood was disingenuous, and that in fact, the Company retained beneficial ownership of the Trademarks. Furthermore, OHC asserted that the Trademarks were sold at an undervalue.

The Restructuring

In 2008, OBC and OTC entered into an agreement for OTC to purchase from OBC all of OBC’s shares in the Group, all of the debts owed to OBC by the Group, and the “Tong Garden” trademark owned by Villawood. In 2009, companies controlled by OTC entered into distributorship agreements with companies which were part of the Group.

OHC alleged that the agreement between OBC and OTC was an oppressive action targeted at him, and that there had been non-compliance with s 160 of the Act, which requires approval to be given at a general meeting where there is a disposal of the whole or substantially the whole of a company’s undertaking or property.

The Thai Entities Sale

The Thai Entities Sale was carried out by way of a Sale and Purchase Agreement in 2001 between OTC and the Company (the “**SPA**”), in which OTC contracted to purchase from the Company, the whole of the undertaking of Tong Guan in Thailand, Laos, Cambodia, Vietnam and Burma (Myanmar), and the goodwill and all other assets whatsoever and wheresoever situated. In 2009, OTC and the Company entered into an agreement to vary the 2001 agreement, providing for the completion date to be varied to 2009. A deed of waiver was also entered into, wherein the Company unconditionally waived its inter-company claims against Tong Garden Co Ltd, a company which was part of the Group.

OHC contended that there had been a repudiation and/or abandonment of the 2001 agreement by the time the 2009 variation was entered into, and that the decision to waive the inter-company balances led

to OTC being able to purchase the Thai Entities at an undervalue, which is commercially unfair and oppressive.

Decision of the Court of Appeal

OHC's claim of minority oppression under s 216 of the Act was dismissed, and despite the considerable body of local case law on the oppression action under s 216 of the Act, the Court of Appeal felt it pertinent to reiterate the following salient points:

- Plaintiffs must demonstrate that the wrong occasioned to him is a wrong occasioned to him in his personal capacity as a minority shareholder, as opposed to a wrong occasioned to the company.
- Asserting a purely corporate wrong is in and of itself insufficient and inappropriate to bring a claim within s 216 of the Act. While a corporate wrong may, in some instances, also amount to a personal wrong capable of vindication under s 216 of the Act, it is incumbent on the claimant to go a step further and show how the wrong occasioned to him is also a wrong suffered by him *qua* shareholder.

The Trademarks Sale

OHC failed to show how he had suffered a real injury as a shareholder that is distinct and not merely incidental to the injury suffered by the Company that an action under s 216 of the Act is aimed at.

The Restructuring

The agreement between OTC and OBC could not be characterised as an oppressive act targeted at OHC as it was entered into privately and did not purport to alter the Company's rights and obligations.

With regard to the non-compliance with s 160 of the Act, OHC did not sufficiently particularise which transactions ought to have been approved under s 160 of the Act, nor and did he not demonstrate how such assets represented the "whole or substantially the whole of the company's undertaking".

The Thai Entities Sale

OHC was unable to demonstrate that a net balance of debt in favour of the Group existed, nor the quantum of such debt that was waived. Even assuming the Company should not have entered into the deed of waiver, this was a wrong committed against the Company, and not a personal wrong against OHC.

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.



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*This article is intended to offer an overview of the case of *Ong Heng Chuan v Ong Teck Chuan and others* [2021] SGCA 46. It is not intended to be comprehensive, nor should it be construed as legal advice. This article is updated as of 10 June 2021.*

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