

# CASE SUMMARY



ADVOCATES & SOLICITORS

## WHAT WE ACHIEVED

Singapore High Court awards over S\$636,000 in director's fees and dividends to client and finds his fellow director and shareholder liable for "commercially unfair" acts

- *Court also grants S\$240,000 in costs to our client and full disbursements of S\$40,000*

DENIYAL BIN KAMIS V MAPO ENGINEERING PTE LTD & 2 ORS  
HC/S 331/2021

## INTRODUCTION

In a recent pronouncement by the Singapore High Court, the Court awarded to our client, Mr. Deniyal (the Plaintiff) an amount of \$636,408 in dividends and director's fees wrongfully rerouted from our client by the Plaintiff's fellow director and majority shareholder (the 3rd Defendant), Mr. Niew Bock Leng ("Mr. Niew") and ordered a buy out of the Plaintiff's shares on the basis of minority oppression.

These dividends and director's fees were declared between 2006 and 2013 in 2 companies in which the Plaintiff and Mr. Niew were shareholders – Mapo Engineering Pte Ltd ("MEPL"), and Mapo Marine Pte Ltd ("MMPL"), the 1st and 2nd Defendants respectively. However, it was the Plaintiff's case that none of these monies were actually received by the Plaintiff. It was eventually held by the Court that \$636,408 of these monies were rerouted by Mr. Niew on the basis of alleged "loans" taken up by the Plaintiff from the 3rd Defendant that did not actually exist.

In addition to the monies which the Court granted, the Court also ordered Niew to buy out the Plaintiff's shares without any discount in the 1st and 2nd Defendant companies for a sum yet to be determined by an independent valuer.

Walter Silvester, Walter Alexander and Tan Hoe Shuen from Silvester Legal LLC acted for the Plaintiff in successfully obtaining the judgment from the Singapore High Court in favour of the Plaintiff.

## **BACKGROUND FACTS**

The Plaintiff was a director and 10% shareholder of MEPL, and a director and 30% shareholder of MMPL. He was appointed as Senior Operations Manager of MEPL, MMPL, Matopo, and MMSPL. The Plaintiff did not contribute to the capital of MEPL or MMPL and did not furnish consideration for his shares. While the Plaintiff played a significant role in operational matters, he was not involved in non-operational matters. He had autonomy in making operational decisions and overseeing operations at Keppel Yard (a shipyard).

Mr. Niew is a director and 80% shareholder of MEPL and director and 60% shareholder of MMPL. He is also sole director of Matopo and MMSPL. Mr. Niew contributed startup capital to MEPL and MMPL, and both companies remain substantially indebted to him. He effectively exercised control over MEPL and MMPL, with full control over finance and business development.

Ms. Celesty Neo is daughter of Mr. Niew and 10% shareholder in both MEPL and MMPL.

The history of the dispute stemmed from the involvement in the Mapo Group including the incorporation of Mapo Marine Services (MMS) in 1986, with Mr. Niew starting the sole proprietorship and later incorporating it as MMSPL in 2010.

MEPL (Mapo Engineering Pte Ltd) and MMPL (Mapo Marine Pte Ltd) were incorporated in 2003 and 2006, respectively. The Plaintiff received a stake in both companies.

The Plaintiff claims that he initially had blind faith in Mr. Niew's management of their companies within the Mapo Group but later confronted him about irregularities in the financial management. Their relationship soured in 2019 when the Plaintiff raised concerns about financial irregularities and demanded disclosure of financial documents. He eventually sought legal counsel, leading to his removal as a cheque signatory in 2018. Demands for financial document disclosure were made, resulting in the Plaintiff's termination from MEPL and MMPL in February 2020.

The Plaintiff claimed the termination was a move to deny him access to financial documents, while Mr. Niew argued it was due to the Plaintiff's refusal to report to work and neglect of his duties. The dispute escalated when Ms. Celesty was appointed a director in April 2021. After commencing legal proceedings against the defendants Mr. Niew also extended two buy-out offers to the Plaintiff to settle the suit.

## **PLAINTIFF'S CASE**

The Plaintiff alleged that Mr. Niew conducted the affairs of MEPL and MMPL in an oppressive manner and in disregard of the Plaintiff's interests as a minority shareholder since 2011. The Plaintiff argued that their relationship was built on mutual trust and friendship and that they had a "quasi-partnership understanding" where the Plaintiff focused on operational aspects while Mr. Niew handled finance, marketing, and business development, although this division of responsibilities was not formally documented.

The Plaintiff's case was that Mr. Niew participated in various acts of commercial unfairness, including restricting his access to financial documents, fictitious loans to Matopo (controlled by Mr. Niew), increasing his own salary without proper approval, misappropriating funds, delaying the collection of receivables, unauthorized loans, inflating accounts, mismanagement, unexplained cash withdrawals, asset disposals, and unfair distribution of dividends and directors' fees. The Plaintiff argued that Mr. Niew's actions breached his legitimate expectations to be treated fairly and to have a share in the profits of the companies.

As relief, the Plaintiff sought an order for Mr. Niew to purchase his shares at fair value without discount, valuing the shares as if no oppressive conduct had occurred. He also requested an account of withdrawn funds, dividends, and directors' fees not received.

## **DEFENDANT'S CASE**

Mr. Niew contended that the Plaintiff's claims were groundless and driven by his desire for an undeserved windfall, as the shares in question were initially gifted to him by Mr. Niew. Mr. Niew denied the existence of a quasi-partnership, asserting that he was the sole decision-maker in the companies, and the Plaintiff was subordinate. Mr. Niew also disputed the character of loans extended to Deniyal, asserting that they were not gifts but loans for various expenses.

Mr. Niew argued that the Plaintiff did not provide sufficient evidence to support his allegations and that certain key claims were not raised during the trial. He also claimed that the Plaintiff's request for an account of financial transactions and unpaid fees was time-barred under the Section 6(2) of Limitation Act, 1959. Additionally, Mr. Niew alleged that this lawsuit was an abuse of process, as the Plaintiff declined two reasonable buy-out offers.

Mr. Niew also submitted that the Director's remuneration fee and dividends of our client were used to set-off loans that our client had taken from Mr. Niew.

## **ISSUES, ARGUMENTS & COURT'S DECISIONS**

The Court after hearing the initial arguments considered the following issues:

- Whether the claim for the remedy of an account was barred by s 6(2) of the Limitation Act, 1959;
- Whether the Plaintiff could prove his various allegations, and if so, whether they amount to commercial unfairness under s 216 of the Companies Act, 1967;
- Whether the action was an abuse of process; and
- What would be the appropriate reliefs.

## **A. WHETHER THE CLAIM FOR THE REMEDY OF AN ACCOUNT IS BARRED BY S 6(2) OF THE LIMITATION ACT, 1959?**

### ***Mr. Niew's Arguments:***

- Mr. Niew contended that the Plaintiff's claim for an account of monies withdrawn from the companies and unpaid dividends and directors' fees was time-barred under Section 6(2) of the Limitation Act, 1959, as these events occurred more than six years before the lawsuit was filed. Mr. Niew asserted that the Limitation Act applies to the remedy sought rather than the cause of action.

### ***The Plaintiff's Arguments:***

- The Plaintiff relied on *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30, where the court held that none of the limbs of s 6 of the Limitation Act, 1959 were applicable to a statutory action brought under S 216 of the Companies Act, 1967. He also submitted that an oppressive conduct may spread over a span of time, and the effectiveness of the relief sought could be undermined if provisions of Limitation Act, 1959 are applied on the earlier acts of oppression.

### ***Court's Ruling:***

The Court acknowledged that Section 6 of the Limitation Act, 1959 does not apply to Section 216 of the Companies Act, 1967, which grants the court unfettered discretion to make appropriate orders to address the matters complained of. The Court also ruled that in this case the perfect relief could be an order of buy-out.

Additionally, the Court noted that a shareholder's delay in initiating litigation for unfair treatment does not necessarily preclude them from later asserting a claim on that basis.

## **B. WHETHER THERE WAS COMMERCIAL UNFAIRNESS [WA1] UNDER SECTION 216 OF THE COMPANIES ACT, 1967?**

The Court noted that the parties operated with a considerable degree of informality, the Plaintiff's employment terms were not governed by any formal written contract, nor did the parties negotiate any written shareholder's agreement but was governed on an oral basis.

***The Plaintiff's Arguments:***

- The Plaintiff submitted that the parties had a shared relationship of mutual trust and confidence and contended that there existed a quasi-partnership. We further submitted that even in the absence of quasi-partnership, legitimate expectation arising from implied or informal understandings could be taken into account.
- The Plaintiff argued that Mr. Niew unjustly raised his own salary shortly after terminating Mr. Deniyal in February 2020. This increase was executed by shifting salary payments from Matopo and MMSPL to MEPL and MMPL, companies in which the Plaintiff had a stake. Mr. Niew withdrew approximately \$1.85 million from MEPL and MMPL post-dismissal, even though he previously received no compensation from these entities.
- The Plaintiff cited Article 80 of MEPL's Memorandum and Articles of Association and Article 70 of MMPL's Memorandum and Articles of Association, both specifying that director's remuneration should be determined in a general meeting. Unilateral revision of remuneration violated corporate institutions of both the companies.
- He also relied on Section 169 of the Companies Act, 1967 which provides that any increases in a director's salary must be determined by a board meeting.
- The Plaintiff also argued that the money given to him by Mr. Niew was actually a gift, not a loan. He maintained that he never consented to the setoffs and presented evidence suggesting that there were no records of loans in the general ledgers.

***Mr. Niew's Arguments:***

- Mr. Niew emphasized his dominant position in the firm and disputed the existence of quasi-partnership. He submitted that the Plaintiff dealt with only one specific entity of the Mapo Group, thus could not be considered quasi-partner in MEPL and MMP, and that he could only rely on legitimate expectations contained in the corporate institutions of MEPL and MMPL.

- Mr. Niew submitted that he, being the majority shareholder and director of both companies, had the full entitlement to determine his own salary. He justified the salary increases by highlighting his years of dedication to growing the business.
- Mr. Niew contended that the Articles referred to by the Plaintiff do not pertain to salary increases but rather to "directors' remuneration," which he distinguished from his salary.
- Mr. Niew maintained that the Plaintiff cannot claim a breach of legitimate expectations since the Plaintiff was unaware of the corporate constitution provisions of either company before the trial, and they had never discussed these provisions.
- Mr. Niew asserted that both MEPL and MMPL did not have a practice of requiring a board meeting or general meeting to decide on salary increases. He provided written minutes introduced during the trial to demonstrate that directors' remuneration had been properly ratified at general meetings.
- Mr. Niew claimed that substantial loans were indeed given to the Plaintiff, which he sought to support with "payment vouchers" under an informal system. He also presented a "loan return document" (PV 40/41) as evidence of the Plaintiff repaying a loan.

***Court's Ruling:***

The Court found that existence of a quasi-partnership should not be considered as a pre-requisite for considering legitimate expectations. The Court also observed that legitimate expectations should be based on the personal dealings and the relationships between individuals. The Court also relied on *Over & Over Ltd v Bonvests Holdings Ltd and another*[1], observing that the focus to determine the legitimate expectation should be on discerning the substance, parameters, and objectives of the parties' commercial agreement.

[1] *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776,

The legitimate expectations to which the court gives effect are those of a personal character and are not derived from the status of the corporate entity but from “a personal relationship or personal dealings of some kind between the party seeking to exercise the legal right and the party seeking to restrain such exercise, such as will affect the conscience of the former. Flowing from the personal relationship that existed between the parties, the Court held that the Plaintiff had a legitimate expectation to be treated fairly by Mr, Niew in relation to the success of MEPL and MMPL.

The Court also rejected Mr. Niew’s argument that the Plaintiff’s involvement was limited to one specific entity within the Mapo Group because the same issue was not taken by Mr. Niew in his pleadings and that in one of his defence arguments he stated that the Plaintiff was employed by MMS, MEPL and MMPL.

The Court found that Mr. Niew's actions of significantly increasing his own salary from MEPL and MMPL shortly after terminating the Plaintiff’s employment amounted to commercial unfairness.

The Court rejected Mr. Niew's claim that the increase in directors' remuneration had been ratified at a general meeting. The minutes of the general meetings were questionable, as they incorrectly represented Ms. Celesty's voting as a member when she had not acquired her shareholding at that time.

Furthermore, whether or not Mr. Niew breached the corporate constitutions of MEPL and MMPL, his actions were found to be commercially unfair. The court emphasized that the unfairness arose from how Mr. Niew placed himself on the payroll of these companies without proper approval or consultation, especially considering the Plaintiff’s legitimate expectation to be treated fairly and share in the company's profits.

With regards to the argument of loans cited by Mr. Niew, the court found several inconsistencies and contradictions in Mr. Niew's testimony and rejected his claim of substantial personal loans. The court determined that there was no documentary evidence to support Mr. Niew's claim that the Plaintiff knew about or consented to the set-off of his dividends and directors' fees.

Furthermore, Mr. Niew's reliance on the accounts department's involvement in these transactions was not substantiated by calling any accounts department members as witnesses. Thus, the Court rejected Mr. Niew's claim of substantial personal loans and found no evidence to support the set-off of the Plaintiff's dividends and directors' fees.

## **C. WHETHER THE ACTION BROUGHT BY MR. DENIYAL IS AN ABUSE OF PROCESS?**

### ***Mr. Niew's Arguments:***

- Mr. Niew contended that the action amounted to an abuse of process for two main reasons: first, the Plaintiff failed to accept reasonable buy-out offers from Mr. Niew, and second, the Plaintiff should have pursued a contractual claim against MEPL and MMPL for unpaid directors' fees and dividends instead of an action under Section 216 of the Companies Act, 1967
- Mr. Niew argued that the Plaintiff's claim should be considered an abuse of process under the Sakae test. He argued that the Plaintiff's actual grievance, related to unpaid directors' fees and dividends, should have been pursued through a contractual claim against MEPL and MMPL. Mr. Niew also highlighted that pursuing a contractual claim would have been time-barred due to Section 6(1) of the Limitation Act, 1959, making it inappropriate for Mr. Deniyal to use Section 216 of the Companies Act, 1967 to bypass the time constraint.
- Mr. Niew argued that pursuing the current action while rejecting these offers is an abuse of process, as the main remedy sought by the Plaintiff is a buy-out, which had already been offered.

### ***The Plaintiff's Arguments:***

- The Plaintiff submitted that he was unwilling to accept the buy-out offers as no price had been stated. He argued that any valuation undertaken at that juncture would fail to account for the diminution in value occasioned by Mr Niew's oppressive conduct, which had the effect of reducing the book value of the shares. Thus, litigation was therefore necessary to determine the effect of Mr. Niew's oppressive conduct on the value of the shares.

***Court's Ruling:***

The Court favoured the Plaintiff's submission. The Court observed that the buy-out offers relied on a valuer to investigate potential misappropriation or unfair conduct, which the Court found to be an unworkable approach. The valuer's role was not suited to resolving such issues effectively, and the proposals were essentially not feasible without Court involvement. Additionally, Mr. Niew's inadequate disclosure further complicated the valuer's task. These factors supported the Plaintiff's decision to decline the buy-out offers.

The Court applied the Sakae test (given in *Ho Yew Kong v Sakae Holdings Ltd* and other appeals and other matters<sup>[1]</sup>) to determine whether the action constituted an abuse of process. This test involves identifying the real injury the claimant seeks to address and whether the remedy sought effectively addresses this injury. The test primarily focuses on whether the claimant is the appropriate party to bring a personal claim based on what appears to be a corporate wrong. It does not solely consider whether the claimant could have pursued alternative causes of action.

[1] *Ho Yew Kong v Sakae Holdings Ltd* and other appeals and other matters [2018] 2 SLR 333.

In this case, the court emphasized that the corporate constitution represents a legally binding contract among the company's members and between the members and the company itself, as outlined in s 39(1) of the Companies Act, 1967. It underscored that this contract is enforceable. Moreover, it underscored that a breach of a company's constitutional documents can indeed lead to commercial unfairness.

Given these principles, the Court found that Mr. Niew's manipulation of corporate mechanisms to redirect the Plaintiff's dividends and directors' fees into his own account is a legitimate basis for seeking relief under s 216 of the Companies Act, 1967. Consequently, the Court concluded that this action was not an abuse of process by the Plaintiff.

**D. WHAT THE APPROPRIATE RELIEF IS, IF THE CLAIM IS MADE OUT?*****Court's Ruling:***

The Court found that a buy-out order was the most appropriate remedy in this case.

The Court ordered that the Plaintiff's shares be valued as of March 31, 2020, just before Mr. Niew placed himself on the payrolls of MEPL and MMPL. This valuation should be conducted without applying any discounts, including those for the Plaintiff's minority shareholding, illiquidity, or non-marketability.

Regarding the adjustment of the share valuation to account for Mr. Niew's rerouting of Mr. Deniyal's dividends and directors' fees, the court exercised its discretion under s 216(2) of the Companies Act, 1967. The Court deemed it fair and just in these specific circumstances to add the total amount of \$636,408.28 (representing the rerouted dividends and directors' fees) to the valuation of the Plaintiff's shares. This adjustment reflected the Plaintiff's sole entitlement to these funds, considering that he and Mr. Niew were the only shareholders of the companies involved, and Mr. Niew redirected these funds to himself.

## **CONCLUSION**

The case also helps us understand what the Court considers as commercial unfairness leading to a case of minority oppression and the wide ambit of a shareholders' legitimate expectations, which does not require the existence of a quasi-partnership. Directors and shareholders are expected to act fairly, and actions that violate reasonable expectations of fair treatment can be subject to legal action. The absence or presence of a quasi-partnership does not determine whether legitimate expectations arising from implied or informal understandings may be taken into consideration. Instead, the focus remains on whether the circumstances of the parties' personal relationship are such as to call for intervention.

This case also sets the precedent that pursuing a claim under Section 216 of the Companies Act, 1967, even if other options are available, may not necessarily constitute an abuse of process.

Finally, this case demonstrates the court's willingness to intervene and protect minority shareholders from oppressive actions by majority shareholders.

## REPRESENTED BY



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Walter Silvester is a Managing Director and Head of Commercial Litigation at Silvester Legal with a strong background in law and business.

Walter specializes in resolving commercial disputes, with a strong emphasis on guiding shareholders with expert counsel. Additionally, he earned accolades such as being named one of Asia's Super 50 Disputes Lawyers by Asian Legal Business, solidifying his status as an esteemed legal professional in Singapore.



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Walter Alexander specializes in corporate law, particularly in the realms of Commercial Dispute Resolution and Cross-Border Corporate affairs. This specialization has proven instrumental in offering guidance to companies and crafting intricate agreements tailored to meet clients' specific requirements.