CASE SUMMARY

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Business Failure Prevails over Unfair Prejudice in an Oppression and Mismanagement Application

GUI CHIEN CHEONG MARTIN V. FACILIT8TE PTE LTD [2021] SGHC 105

INTRODUCTION

In the recent decision of Singapore High Court wherein the court had categorically dismissed Plaintiff's claims against 2nd defendants ("**Our Client**"), further no order as to costs were made as the court had to deliberate on appropriate costs order as 2nd defendants conduct was found to unfairly prejudicial even though the Plaintiff's claim was unsuccessful.

BACKGROUND FACTS

In this case, the Gui Chien Cheong Martin ("**Plaintif**f") invested $203,799 in Facilit8te Pte Ltd ("**First Defendant**" hereinafter referred as F8), a company that offered home services organized and managed by vetted third-party vendors. The investment was made under a subscription agreement, and the plaintiff was to receive 5% equity in F8 after the conversion of director and shareholder loans into equity. The second defendant ("**Our Client**"), a co-founder and major shareholder of F8, agreed to this conversion.

The primary issue was the conversion of a $50,000 personal loan by the second defendant to F8 into equity. The second defendant initially denied the conversion but later, during trial, company witnesses confirmed that the loan had indeed been converted.

Despite the conversion, the second defendant still owed $50,000 to First Media, which he used F8's funds to pay off. F8 paid $13,000 to First Media in part-payment of the second defendant's loan without the plaintiff's knowledge. Additionally, the second defendant increased his and another co-founder's salaries to help repay the loan, resulting in a total increase of $35,000.

The business of F8 did not succeed, and in August 2018, the plaintiff requested to inspect the company's accounts. It was revealed that the increased salaries were to be considered a loan to the second defendant, and he promised to repay it. However, there is a dispute over how much of this loan was repaid. The plaintiff contends that the second defendant only repaid $13,000 of the $35,000. The second defendant argued that it could not be proven whether he repaid the remaining $22,000.

F8 eventually ceased operations by the end of 2018 due to financial difficulties. The exact reasons for the business failure were not fully established, and it was assumed to be related to a lack of market demand rather than mismanagement.

PLAINTIFF'S CASE

The plaintiff, Gui Chien Cheong Martin, invested $203,799 in Facilit8te Pte Ltd ("F8") under a subscription agreement. He alleged that the second defendant failed to convert a loan into equity, using F8's funds to repay a personal debt to First Media. The plaintiff expected his investment to be used for equity conversion, not debt repayment. He also claimed that the increase in salaries was a covert scheme to repay the personal loan, constituting unfairly prejudicial conduct. The plaintiff sought relief under Section 216 of the Companies Act (CA) and an alternative claim for rescission of the subscription agreement. However, the alternative claim failed due to his actions. The plaintiff relied on the Shareholder Agreement (SHA) for his primary relief claim, which required unanimous approval for salary increases. He argued that the second defendant's conduct was unfairly prejudicial and sought a buyout of his shares based on the subscription price or forecasted 2019 revenue.

DEFENDANT'S CASE

The Second Defendant in this case raise procedural objections and substantive defences in response to the Plaintiff's alternative claim for rescission of the Subscription Agreement (SA). His case was that the alternative claim was not pleaded by the Plaintiff in his initial complaint.

The second defendant raised multiple arguments to counter the plaintiff's claims. He contended that the plaintiff had no legitimate expectation regarding the use of his funds, he acted in the company's best interest, and any injury affected the company more than the plaintiff. He also claimed that the increase in salaries did not constitute minority oppression and suggested that disputes related to the shareholder agreement could be resolved through arbitration. Furthermore, he argued that the business would have failed regardless of his conduct and questioned the plaintiff's entitlement to a buyout remedy. Ultimately, he asserted that there was no current prejudice to remedy as the company had already ceased operations for unrelated reasons.

COURT'S RULING WITH REGARDS TO THE PLAINTIFF'S CLAIMS

- **With regards to the claim for rescission of the SA**

The court decided that the plaintiff's alternative claim for rescission of the subscription agreement (SA) must fail. The plaintiff had alleged that the SA was void due to a failure to enter into a new shareholder agreement (Future Agreements) within 30 days, as specified in clause 1 of the SA. However, the court found that the plaintiff's actions contradicted this claim. Despite the absence of a new shareholder agreement, he continued to make subsequent payments and assert his rights as a shareholder under the existing Shareholder Agreement (SHA). The court concluded that the plaintiff effectively treated the condition subsequent as having been fulfilled by his actions, and he relied on the SHA for his primary claim under Section 216 of the Companies Act (CA). Therefore, the court rejected the plaintiff's claim for rescission of the SA in the alternative.

- **With regards to the claim under Section 216 of the CA, 1967**

The court decided that it was not necessary to consider the plaintiff's original claim under Section 216 of the Companies Act (CA) based on the breach of a legitimate expectation that all loans be converted into equity. The evidence presented during the trial demonstrated that these loans had indeed been converted into equity. Therefore, the court focused on the alternative claim made by the plaintiff in response to the evidence presented at trial, which centered on the second defendant's alleged misuse of F8's funds.

COURT'S RULING WITH REGARDS TO SECOND DEFENDANT'S CONTENTIONS

Regarding whether the second defendant's conduct was unfairly prejudicial.

The court ruled that the second defendant's conduct was unfairly prejudicial to the plaintiff on various counts namely:

I. The plaintiff had a legitimate expectation that his funds would be used for operating expenses rather than to pay off loans, even without relying on a specific presentation deck.

II. The second defendant's argument that he acted for the benefit of F8 was rejected, as he used F8's funds to repay a loan he had personally taken, which was not in F8's best interests.

III. The increase in salaries, which was intended to repay the personal loan of the second defendant, was considered a covert machination and a breach of duty, regardless of any claims of arbitration under the SHA (Shareholder Agreement).

IV. The court emphasized that the real injury was to the plaintiff, as the source of the funds was the plaintiff's investment, and the second defendant's actions violated the plaintiff's legitimate expectation.

V. The second defendant's argument that his failure to repay the unjustifiably increased salaries could not amount to unfairly prejudicial conduct was dismissed. The prejudicial conduct lay in using the plaintiff's invested funds to repay a personal loan under the guise of increased salaries.

Thus, the plaintiff's claim for a buyout of his shares under Section 216 of the Companies Act was upheld.

Whether the prejudice caused by the second defendant was eliminated.

The court ruled against the second defendant's contentions regarding the elimination of prejudice on following counts:

I. The second defendant argued that the breach of the plaintiff's legitimate expectations was remedied with the plaintiff's agreement when salary increases were reflected as a loan. However, the court found that the partial repayment by the second defendant did not fully remedy the prejudice, and the breach was not fully resolved.

II. The second defendant contended that the plaintiff, as a minority shareholder, had the power to stop the prejudicial conduct by agreement. The court rejected this argument, as the second defendant did not specify what the plaintiff could have required to end the prejudice, and the agreed remedy was not fully performed.

III. The second defendant raised the question of whether the prejudice was eliminated by the fact that F8 would have ceased to be a going concern due to independent reasons. The court addressed this argument, noting that it would not absolve the second defendant of his unfairly prejudicial conduct.

Thus, the court ruled that the second defendant's conduct remained prejudicial and not fully remedied, and the independent reasons for F8's failure did not excuse the prejudicial conduct.

COURT'S RULING REGARDING PLAINTIFF'S REQUEST FOR A BUYOUT OR COMPENSATION BASED ON THE BUSINESS'S FAILURE

The court during submissions asked both the parties as to what appropriate order should be given in the present case, to which Plaintiff suggested buyout either at the subscription price for his shares, or on the basis of the revenue for 2019 that had been forecast in the presentation deck.

The first basis is that the plaintiff should be restored to the position he was in before making the investment. This is likened to the "white knight" scenario from a previous case, where an investor was excluded from management and sought a buyout. The court finds that the evidence does not support this basis because the defendant did not cause the business failure of F8, and the plaintiff's investment loss was primarily due to F8's business model not succeeding.

The second basis is that the plaintiff should be compensated based on the assumption of F8's success. However, the court determines that the defendant's conduct did not cause F8's business failure, and the plaintiff would have lost his investment even without the prejudicial conduct.

The court concludes that granting the remedy of a buyout on either basis would overcompensate the plaintiff and penalize the defendant unfairly. The plaintiff's continued engagement and enthusiasm for F8's business model, even after discovering the prejudicial conduct, suggests that the conduct was not fundamental to his investment decision.

Ultimately, the court finds that the plaintiff has not demonstrated that the defendant's conduct continues to have an effect on the business, and the business's failure was the primary reason for the investment loss. The court dismisses the plaintiff's request for a buyout and other related prayers for relief.

CONCLUSION

This case highlights the importance of demonstrating a causal connection between alleged unfairly prejudicial conduct and the losses suffered by the plaintiff. Courts will assess the impact of the alleged misconduct on the overall circumstances of the case, considering whether the claimed conduct continues to operate as a source of prejudice. While the court acknowledged the presence of such conduct by the second defendant, it concluded that the business failure of F8, unrelated to the misconduct, was the primary factor behind the plaintiff's investment loss. Consequently, the plaintiff's claims for a buyout were dismissed. In future cases, parties should carefully consider the overall circumstances, consequences, and available remedies, with a focus on proving the impact of the prejudicial conduct on the present situation.

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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Siraj's legal journey began in criminal defense as a CLAS Fellow, securing favorable outcomes for clients. He extended his commitment to community service through active participation in the Law Society's Criminal Practice Committee. Joining Silvester Legal, he transitioned into a Disputes Lawyer, with a passion for oral and written advocacy honed through debating and mooting. Inspired by seasoned legal professionals, Siraj excelled in both commercial and criminal domains, leading high-stakes cases from contractual disputes to intellectual property conflicts. Remarkably, he won a High Court victory in a minority oppression suit within one year at Silvester Legal.

Siraj was awarded the prestigious title of "Rising Star" by Asian Legal Business and achieved recognition as one of the Top 5 winners in the LexisNexis National Awards 2023, cementing his position as an influential figure in Singapore's legal landscape.