

# Minority shareholder oppression and the proper plaintiff rule – it gets personal

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Section 216 of the Companies Act (Cap. 50) affords protection for minority shareholders where their interests are oppressed by the manner in which the company's affairs are being conducted or by how the directors' powers are being exercised. The Singapore Court of Appeal has consistently upheld the proper plaintiff rule by distinguishing such minority oppression claims from statutory derivative actions brought under Section 216A. This distinction was recently affirmed in the recent decision in *Ng Kian Huan, Edmund v. Suying Design Pte Ltd and others and another appeal* [2020] SGCA 46.

## Introductory Facts

The plaintiff and the 3rd defendant were both directors and shareholders of Suying Metropolitan Studio Pte Ltd ("SMSPL").<sup>1</sup> Their shareholdings in SMSPL were 35% and 40% respectively. It was the plaintiff's position, amongst other things, that the 3rd defendant had acted in an oppressive manner by allegedly misappropriating SMSPL's funds and withholding payments which the plaintiff was entitled to.

The plaintiff had resigned from SMSPL's employ and he acknowledged that he had done so due to personal reasons. The plaintiff's case was that his resignation prompted the 3rd defendant to engage in a series of oppressive acts in order to prevent him from realizing the fair value of his shares in SMSPL, and that he has unknowingly been the subject of oppression throughout his tenure in SMSPL. The trial judge divided the alleged series of oppressive acts against

the plaintiff into "personal wrongs", ie, wrongs committed against the shareholder personally, and claims with overlapping features of corporate and personal wrongs, ie, a mixture of wrongs committed against a company and personal wrongs. Personal wrongs are generally pursued under section 216 of the Companies Act, while corporate wrongs are vindicated under section 216A of the Companies Act (otherwise known as the proper plaintiff rule).<sup>2</sup> In this regard, the Singapore Court of Appeal has consistently upheld the proper plaintiff rule by distinguishing such minority oppression claims from statutory derivative actions brought under Section 216A.<sup>3</sup>

## The trial judge's decision

The trial judge found that a case of oppression had been made out against the 3rd defendant. Amongst other things, the trial judge found that the 3rd defendant's

action in relation to the personal wrongs to be commercially unfair to the plaintiff.

The trial judge also held that the plaintiff's reliance on the overlap claims with features of corporate wrongs was not an abuse of process. He referred to the Court of Appeal's reasoning in *Ho Yew Kong v Sakae Holdings Ltd and another appeal and other matters* [2018] SLR 333 ("Sakae Holdings"), where the Court of Appeal set out an analytical framework to determine the appropriateness of a minority shareholder claim:

- a) Injury
  - i. What is the real injury that the plaintiff seeks to vindicate?
  - ii. Is that injury distinct from the injury to the company and does it amount to commercial unfairness against the plaintiff?

## b) Remedy

- i. What is the essential remedy that is being sought and is it a remedy that meaningfully vindicates the real injury that the plaintiff has suffered?
- ii. Is it a remedy that can only be obtained under section 216 (eg, a winding-up order or a share buyout order) and not under section 216A of the Companies Act?

The trial judge reasoned that the injury which the plaintiff sought to vindicate was that to his investment in SMSPL. In the same vein, the overlap claims concerning the 3rd defendant's misappropriation of SMSPL's were breaches of the plaintiff's legitimate expectation as a shareholder of SMSPL that funds would not be siphoned away, which in turn had a direct impact on his interests in SMSPL.

### Decision of the Court of Appeal

The Court of Appeal observed that the alleged oppressive acts must be viewed in light of the commercial relationship between the parties and the expectations they were entitled to hold at the material time. Having considered each claim of alleged personal wrongdoing against the plaintiff, the Court of Appeal found that these claims, when considered cumulatively, did not establish oppression.

In relation to the non-personal oppression claims, ie, the overlap claims, the Court of Appeal found that, while the plaintiff may have been entitled to expect that SMSPL's funds would not be siphoned away, the breach of this expectation did not in itself constitute a distinct injury under section 216 of the Companies Act. Any such wrongdoing was one done to the company, and should

have been pursued under a different cause of action such as a derivative action under section 216A of the Companies Act.

The trial judge's orders in respect of the plaintiff's claim for minority oppression were therefore set aside.

### Observations by the Court of Appeal

The Court of Appeal emphasised the distinction between "corporate wrongs" and "personal wrongs". As mentioned above, Section 216 of the Companies Act was intended for minority shareholders to pursue personal wrongs ("Minority Oppression Claim"), while pursuant to the proper plaintiff rule, the company was the proper party to vindicate corporate wrongs.

The Court of Appeal reiterated its view in *Ng Kek Wee v. Sim City Technology* [2014] 4 SLR 723 that "it would be an abuse of process to allow an essentially corporate wrong to be pursued under s 216."<sup>4</sup> If a minority shareholder wished to vindicate corporate wrongs, its recourse would be to commence a derivative action under Section 216A of the Companies Act ("Statutory Derivative Action").

The following observations were also made:

- A corollary to the proper plaintiff rule is the no reflective loss principle - Where a minority shareholder's loss merely reflects the company's loss, the company is the proper party to recover that loss provided that the company is able to enforce its rights
- For instance, where a company's assets are allegedly misappropriated, a minority shareholder cannot commence a Minority Oppression Claim simply by the fact that the value

of its shareholding has decreased due to the misappropriation. The loss to the minority shareholder (ie, the diminution of share value) is a reflection to the loss to the company

- A Director's breach of fiduciary duties is a corporate wrong and the proper plaintiff would *prima facie* be the company
- A Minority Oppression Claim can only be used to vindicate personal wrongs, and not corporate wrongs. It is irrelevant if the relief sought in a Minority Oppression Claim can be drafted such that there is no overlap between what is recovered by the minority shareholder and the company
- The main issue to be determined in a Minority Oppression Claim is "whether the plaintiff shareholder is relying on unlawful conduct and conduct that constitutes commercial unfairness to found his claim of oppression".<sup>5</sup> The question of whether or not there was commercial unfairness depends on the legitimate expectations of the minority shareholder in every case. A minority shareholder cannot rely on a Minority Oppression Claim simply because he unilaterally wishes to withdraw from his investment
- There will be cases involving "overlapping wrongs", ie, circumstances which could plausibly be categorized as both corporate wrongs and personal wrongs. The Court of Appeal emphasised that in such cases, the minority shareholder (in maintaining a Minority Oppression Claim) would be required to prove that: (a) it suffered an injury due to the overlapping wrong which is distinct from that suffered by the company; and (b) the distinct injury amounted to commercial unfairness against the minority shareholder.

## Conclusion

In light of the Court of Appeal's decision, it would be prudent for minority shareholders to be more circumspect in categorising wrongful acts by the majority shareholders as personal wrongs, corporate wrongs or overlapping wrongs. If a minority shareholder commences a Minority Oppression Claim to enforce a corporate wrong or an overlapping wrong without suffering a distinct injury to that suffered by the company, it risks having its claim struck out by the Courts.

## Notes

1. The authors of this article were the solicitors for Suing Metropolitan Studio Pte Ltd at the High Court trial of this dispute.
2. The proper plaintiff rule in *Foss v. Harbottle* (1843) 2 Hare 461 provides that in an action to remedy an alleged wrong to the company, the proper plaintiff is *prima facie* the company itself.
3. *Ho Yew Kong v. Sakae Holdings Ltd and other appeals and other matters* [2018] SGCA 33; *Ng Kek Wee v. Sim City Technology* [2014] 4 SLR 723.
4. Paragraph 31 of the Judgment.
5. Paragraph 32 of the Judgment.

## CONTACTS



**Yuankai Lin**  
Partner

T: +65 6422 3022

[yuankai.lin@rpc.com.sg](mailto:yuankai.lin@rpc.com.sg)



**Selina Toh**  
Senior Associate

T: +65 6422 3023

[selina.toh@rpc.com.sg](mailto:selina.toh@rpc.com.sg)



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