

THE RIGHT OF OPPRESSED MINORITY SHAREHOLDERS TO A BUY-OUT ORDER WHEN THE FINANCIAL CONDITION OF THE COMPANY HAS BEEN OBSCURED BY THE MINORITY'S OPPRESSORS

Posted on July 26, 2022



July 2022

**Our CNPUpdate
newsletter is out !**

Category: [CNPupdates](#)

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.



Authors: Ravindran Ramasamy and Daphne Tan.

Introduction

Wei Fengpin v Raymond Low Tuck Loong & 2 Ors SGCA 32 (“***Wei Fengpin***”) was an appeal by a minority shareholder to the Court of Appeal. The minority shareholder successfully established that he was oppressed by the defendants at trial. However, for various reasons, the High Court did not order the oppressors to buy out the oppressed minority’s shares. This part of the High Court’s decision was overturned on appeal.

The Court of Appeal clarified that buy-out orders ought to be made in favour of oppressed minority shareholders even where the financial condition of the company has been obscured by the oppressing majority. This article highlights some key takeaways from *Wei Fengpin*.

The facts of *Wei Fengpin* and the decision below

In *Wei Fengpin*, the minority shareholder had commenced an oppression action in the General Division of the High Court and successfully established that he was indeed oppressed by the defendant-majority shareholders. The High Court was minded to order a buy-out. However, the High Court did not do so, because a winding up order had been made and the company’s accounts were unaudited for a substantial period of time. In short, it was difficult and would likely be expensive and time-consuming to establish a fair value for the minority shares.

Accordingly, the High Court did not award the minority shareholder with a buy-out, but made other orders ostensibly aimed at remedying the personal wrongs committed against the minority shareholder. The

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

majority shareholders (who were also directors of the company) were ordered to return various sums which they had paid out to themselves in breach of the company's articles. These payments were also found to be acts of oppression, as the majority shareholders caused the company to make these payments to the exclusion of the minority shareholder, without giving him notice. The minority shareholder was also a director of the company.

The decision of the Court of Appeal

The Court of Appeal substituted this part of the High Court's decision with an order that the majority shareholders buy the minority shareholder out at US\$5 million. Among other things, the Court of Appeal confirmed that there is no strict requirement in law for share valuations to be carried out on the basis of fully audited accounts. Moreover, the Court of Appeal emphasized that the lack of financial information was a result of the majority shareholders' misconduct and acts of oppression. To therefore refuse to order a buyout on the basis of a lack of information caused by the oppressors would be "tantamount to sanctioning wrongdoings and rewarding the oppressor. That would be to turn justice on its head."

The Court of Appeal also held that the mere fact that the company was in liquidation and that the liquidator of the company could take appropriate steps to redress the wrongs committed by the oppressors was insufficient, precisely because such an act on the part of the liquidator addresses only corporate wrongs (namely, the wrongs committed against the company) and not the wrongs that have been committed against the minority shareholder personally. The latter is what section 216 seeks to address.

In *Wei Fengpin*, the Court of Appeal valued the shares at US\$5 million. This was the acquisition value of the minority's shares. The Court of Appeal held that this valuation was appropriate as the acts of oppression began almost immediately after the minority shareholder acquired his stake in the company. Moreover, the Court of Appeal did not find the mere fact that the minority shareholder paid this US\$5 million to a then-exiting shareholder as negating the propriety of a buyout order based on the oppressed shareholder's acquisition price. While the Court of Appeal acknowledged that this method of valuation was less than ideal, the Court of Appeal stated that the oppressors should not be permitted to rely on their own failure to argue that any valuation based on acquisition price would be unfair to them.

Conclusion

Wei Fengpin reinforces the principle that oppressed shareholders can legitimately expect the remedy of a buy-out order under section 216 of the Companies Act 1967, if they are able to establish that they have indeed been oppressed by the defendants in the action. The Court of Appeal's express clarification should also serve as a warning to potential disputants that the obscured financial condition of the company is not a bar to the remedy. This is even more so the case where the obscured financial condition of the company is the fault of the oppressors.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.