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DREW & NAPIER LLC

LEGAL UPDATE

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CASE UPDATE

FIRST CIVIL PENALTY ORDER MADE AGAINST FORMER CFO FOR INSIDER TRADING

Monetary Authority of Singapore v Lew Chee Fai Kevin [2010] SGHC 166

Executive summary

The Singapore High Court has found a former senior executive of a public listed company liable to pay a civil penalty to the Monetary Authority of Singapore (the “**MAS**”) for contravening the insider trading provisions under the Securities and Futures Act (the “**SFA**”).

This is the first time that the MAS has commenced civil proceedings since the civil penalty regime under the SFA came into operation in 2004.

Cavinder Bull SC, Yarni Loi and Gerui Lim of Drew & Napier LLC acted for the MAS, the successful plaintiffs.

Background

WBL Corporation Limited (“**WBL**”) is a public company listed on the Singapore Exchange Limited. The defendant, Lew Chee Fai Kevin (“**Lew**”), was WBL’s chief financial officer and subsequently became its Group General Manager in 2006.

On 2 July 2007, at a group management council meeting (the “**GMC Meeting**”), WBL’s financial forecasts for the third quarter of the financial year 2007 (“**Q3 FY07**”) were provided. The forecasts indicated that WBL was likely to incur a significant loss in Q3 FY07. It was also expected that WBL would very likely have to recognise a significant impairment for its Thai subsidiary, Wearnes Precision Thailand (“**WPT**”). Based on these forecasts, it was clear to the attendees of the GMC Meeting, including Lew, that WBL as a group would be reporting a significant loss for Q3 FY07.

Two days after the GMC Meeting, on 4 July 2007, Lew proceeded to sell 90,000 WBL shares (the “**WBL Shares**”). He informed WBL’s legal counsel about the sale of the WBL Shares and was told that his actions might be construed as insider trading. A Suspicious Transaction Report on Lew’s sale of the WBL Shares was filed on 17 July 2007. On 19 July 2007, Lew resigned from WBL with immediate effect.

The MAS commenced an action for insider trading against Lew, claiming payment of a civil penalty. It was the MAS’ case that at the GMC Meeting, Lew became aware of price-sensitive information which showed that WBL was on course to incur a significant loss in Q3 FY07.

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The High Court's decision

The court ruled that Lew had contravened the insider trading provisions of the SFA. It took the view that Lew was in possession of material information which was not generally available, and which might have a material effect on the price or value of WBL shares.

Information in Lew's possession

The court agreed with the MAS that Lew possessed the following information on 4 July 2007, when he sold the WBL Shares:

- (i) WBL had forecasted a loss of Q3 FY07; and
- (ii) WBL needed to take a full impairment for WPT in Q3 FY07, and the quantum of the impairment would be a significant one.

Lew had argued that this information, which he received at the GMC Meeting, was "indefinite and unreliable". He had also argued that it had not been decided at the GMC Meeting that a full impairment would be recognised, and that the quantum of impairment would be significant.

The court dismissed his arguments. In the court's view, there was "strong evidence" that it would have been clear to the attendees of the GMC Meeting that the decision to recognise the impairment was "almost a certainty".

Information not generally available

Lew also argued that the forecasted loss and impairment was generally available information. He contended that a person who considered WBL's results and forward-looking statements for the past six quarters would or could reach the deduction, conclusion or inference that WBL would suffer a loss in Q3 FY07.

The court did not accept this. On the evidence, the forecasted loss as well as the taking of an impairment were not generally available information. While the forward-looking statements or results announcements could be described as being "pessimistic", they did not allude to the possibility that WBL was going to suffer a loss in Q3 FY07. There was also no evidence of any report by any investor or analyst which deduced, inferred or concluded that WBL would very likely incur a significant loss in Q3 FY07.

Information had a material effect on WBL's share price

In the court's view, both the forecasted loss and the impairment and its quantum had a material effect on the share price of WBL.

It was likely that the common investor's decision to buy or sell WBL shares would be influenced by news of the forecasted loss. As for the impairment, there was evidence that the common investor would tend to look at an impairment as "something big", suggesting it would have a material effect on WBL's share price.

Comment

This decision by the High Court provides much-needed guidance on the operation of the civil penalty regime in respect of insider trading under the SFA. In particular, the case discusses what information is considered “generally available” such that insider trading concerns would not arise, as well as when information can be said to have a “material effect” on the price of shares.

If you would like more information about this case or wish to discuss how it may potentially affect you or your business, please feel free to contact the litigation and dispute resolution lawyers in Drew & Napier LLC (please refer to the Directors’ profiles on our [website](#)), or:

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