Quah Su-Ling v Inno-Pacific Holdings Ltd
[2001] SGHC 197

Case Number	: OS 601004/2001, SIC 601637/2001
Decision Date	: 24 July 2001
Tribunal/Court	: High Court
Coram	: Choo Han Teck JC
Counsel Name(s)	: Thio Ying Ying, Cheong Aik Hock and Lim Kwee Huat [Kelvin Chia Partnership] for the plaintiff; Melanie Ho and Philip Fong [Harry Elias Partnership] for the defendants
Parties	: Quah Su-Ling — Inno-Pacific Holdings Ltd

JUDGMENT:

Grounds of Decision

1. The applications before me on 20 July 2001 under this Originating Summons and summons-in-chambers 601637 of 2001 were made by the plaintiff who is a shareholder of the defendant company. The main prayer was for an order for an abridgement of time. A summary of the background in which this issue arose is as follows. The defendant is a public listed company. It convened its annual general meeting sometime in April this year. The meeting took about 13 hours and is still not over. It had been adjourned to 31 August 2001. In the interim, some shareholders ("the requisitionists") representing just a little over 10% of the total shareholders tried to convene an extra-ordinary general meeting (EOGM) - which they were entitled to do provided the requisite conditions under the Companies Act are met - with the aim of removing three directors from the board of directors. What grounds the requisitionists have are immaterial in these proceedings before me. They are matters for the company, the directors and the shareholders to muse and debate.

2. On 5 May 2001 various notices were given to the company by diverse groups of the requisitionists to convene the EOGM. Procedurally, under s 185 of the Companies Act, notice of the requisitionists must be given to the company not less than 28 days before the meeting. The company, in turn, must give notice of the resolutions and its notice of the meeting to members of the company either at the same time or at latest not less than 14 days before the meeting.

3. The solicitors representing the requisitionists asked the company whether it will send out notices of the resolutions and the EOGM as required under the Companies Act. There was no affirmative response and, fearing that a dereliction of duty by the company may scuttle the EOGM the plaintiff took out this Originating Summons to compel the company to do so.

4. This Originating Summons was originally fixed for hearing before Justice Judith Prakash on 17 July 2001 but at the hearing the company's counsel informed the court that Credit Agricole Indosuez, one of the requisitionists, may not be a registered member. The hearing was adjourned for this to be verified. It transpired that Credit Agricole Indosuez was a beneficial owner of shares in the company but the shares were registered in the register of shareholders in the name of their nominee company, Raffles Nominee Pte Ltd. On 18 July 2001 Raffles Nominee then signed the required notice and that was served on the company. The adjourned Originating Summons was ref-fixed for hearing before me on an urgent basis as the last day for the company to send out the notice of EOGM is Monday 23 July. By this time various other shareholders appeared as interveners in a related Originating Summons taken out by one of the directors.

5. Before me, Miss Thio on behalf of the plaintiff requisitionist asked for an abridgement of time from 5

July 2001 to 18 July 2001 in respect of the notice served by Raffles Nominees Pte Ltd and that the company be directed to issue notice of the meeting to the members. Miss Ho appeared on behalf of the company. She opposed the application on the ground that the provisions under the Companies Act were not complied with. Her point was that under s.177(1) any two or more members holding not less than 10% of the shareholding may call for a meeting of the company. On 5 July 2001 there was slightly less than 10% because Credit Agricole Indosuez was not a registered member. On the other hand, on 18 July when Credit Agricole's nominees served their notice they represented only 2% of the shareholding. Thus, her argument goes, there was not at any one time a notice called by two or more members representing at least 10% of the shareholding. It was not disputed that the shareholders who served their notices on 5 July and Raffles Nominees Pte Ltd together represent at least 10% of the shareholding. She cited the Australian case of *Gately v United Permanent Building Society*. The citation was not given but Miss Ho had undertaken to provide it. However, a copy of the case was printed from a LEXIS search and handed to me. Kearney J in construing the Australian provision R78 held as follows:

> "As a matter of construction of R78 it seems to me to be unnecessary that the requisition should not only have the minimum number of signatures but also that such signatures must be able to identified at that time as being entitled to vote. Otherwise … the entitlement to vote could never be accurately ascertained in relation to the date of delivery of the requisition."

This issue arose in the *Gately* case only incidentally. The main issue in that case concerned an application for security for costs and one of the incidental issues was that the plaintiff's claim was likely to fail because its requisition was invalid.

6. Therefore, what I had to decide here was whether the circumstances in this case permit the court to grant an abridgement of time; and if so, were there grounds to do so? In my view, a requirement as to the time for the doing of an act, unless it is a substantive time-bar provision, is a procedural requirement which the court has the power to abridge or extend. The requirement of 28 days under the Companies Act was clearly to give sufficient time for all concerned to prepare themselves. It is, therefore, a procedural limitation. The key consideration therefore must be whether there was or would be prejudice if such time was abridged. In this case, I enquired from counsel what prejudice lies against the company and the other shareholders if the abridgement of time was granted. No sufficient grounds were offered. There was only the weak response that if the application was refused the company need not have held the meeting. Counsel for one of the interveners said that it is an inconvenience to foreign shareholders who have to make the trip. I do not think that this is a valid point. If the meeting was properly convened they would have to make the trip anyway if they were so minded. Furthermore, in this case, the second time limit (of 14 days notice) by the company to its members, which is the more important one, required no abridgement of time. Miss Thio referred me to the various conduct of the company and the directors in placing obstacles in the way of the requisitionists. For example, they were refused access to inspect the register of members and they were eventually given an out-of-date list of members. She submitted that had the list been properly and expeditiously given the nominee shareholding of Credit Agricole would have been discovered in good time. It is not necessary for me to dwell on the conduct of the company and its directors save to observe that a company and its directors owe a duty to all shareholders, whether minority or majority, and the proper running and administration of the company include the granting access and facility to its members who are entitled to them or are reasonably and objectively considered to be so entitled. Such duties must be discharged even if the members have a personal motive of using the information or facility in order to impeach the directors.

7. For the above reasons I granted an order in terms of the plaintiff's application for an abridgement of time, and prayers 1 and 2 of the Originating Summons. I made no order on prayer 3 because it was unclear as to whose duty it was to give notice under s 177(4). In hindsight, it seems to me that either party, namely the requisitionists and the company may give that notice to its members. As it transpired, Miss Thio was content to undertake the exercise for the requisitionists provided that the list of members is given to her in good time. The other prayers as well as the related applications by one of the directors were adjourned to a later date.

8. The defendant has appealed and asked for the appeal to be heard on an expedited basis. It also applied for a stay of my orders of 20 July 2001. I am not fully convinced that this matter required an appeal to be heard on an expedited basis, but given the nature of the dispute, I exercised my discretion in allowing the application for the appeal to be heard on an expedited basis subject to the availability of court dates. However, I see no reason to grant a stay of my orders of 20 July 2001. Ordinarily, a stay would be granted if otherwise the appeal would be rendered nugatory. In this case, if the appeal is successful, the EOGM will be invalidated and the directors reinstated. If a stay is granted, the orders of 20 July 2001 would have been in vain. It is true that the plaintiff may convene a fresh EOGM if the orders of 20 July were reversed on appeal, but in balancing the inconvenience of the opposing parties, I think the balance tilts in favour of the one with the orders of court on his side. I say this on the assumption that the inconvenience to the company or the directors is greater than the inconvenience to the requisitionists although, in my view, from the difficulties faced in getting the co-operation of the company to call the EOGM, it appears that it would inconvenience the requisitionists more. The application for stay was therefore disallowed.

Sgd:

Choo Han Teck
Judicial Commissioner