



In The Supreme Court of Bermuda

**CIVIL JURISDICTION
(COMMERCIAL COURT)
2014 No. 288**

BETWEEN:

OUNG SHIH HUA JAMES

Plaintiff

-and-

PALADIN LIMITED

Defendant

**EX TEMPORE RULING
(in Chambers)**

Date of hearing: August 14, 2014

Mr. Jan Woloniecki, ASW Law Limited, for the Plaintiff

The Company did not appear¹

Background

1. The Plaintiff in this case has filed an Originating Summons dated 6th August 2014. And by that Summons the Plaintiff seeks a declaration or declarations that a lawfully convened special general meeting (“SGM”) of the Defendant company was held on the 1st of August and that various resolutions were validly passed thereat. Most significantly

¹ Mr. Andrew Martin and Ms. Jessica Faiella attended on behalf of past (or present) Chairman of the Company, Mr. Law Fong. Mr. Fong filed an Affidavit which his counsel commended to the Court. However, he declined to formally participate in the proceedings. Mr. Graham Collieson of Appleby Global (Bermuda) Ltd. observed the hearing.

the resolutions removed certain directors, or purportedly removed them, and appointed new directors.

2. The Plaintiff then, the following day, on the 7th of August issued a Summons seeking an expedited trial, and also seeking interim injunctive relief. The essence of the injunction sought is an Order restraining the Defendant and, in particular, the Board members the Plaintiff contends were validly removed at the 1st August SGM, from purporting to act on behalf of the Company generally and, in particular, purporting to convene a further special general meeting.
3. The background to the matter is explained in the First Affirmation of the Plaintiff Oung Shi Hua, James, and is set out at paragraph 26 et seq of that Affidavit. The background includes the first Bermuda application made on the 20th of May, 2014 where proceedings were commenced to challenge certain Board resolutions. And then in Hong Kong, on the 14th of June an attempt was made to prevent the holding of a 16 June meeting. In essence, the background to this application is that the Plaintiff and other family members took the view that the Board needed to be changed because it was not acting in the best interests of the Company and that Board took various steps to thwart the various actions to remove them.
4. The last action in Bermuda was the filing of a Summons on the 28th of July 2014, three days before the August 1, 2014 SGM was due to be held. This application unsuccessfully sought to restrain the holding of that meeting. A second attempt to restrain the holding of that meeting was then launched in the British Virgin Islands, the following day. That effort also failed and on the 1st August 2014 the SGM actually took place.

The 1st August 2014 SGM

5. Before any business could be conducted at the meeting, the Chairman Mr. Law Fong raised concerns about the propriety of certain nominees to the Board and purported to adjourn the meeting, in his discretion without seeking the direction of the meeting itself. The meeting continued with an Acting Chairman being ‘appointed’ and the proposed resolutions were duly passed. And when I say duly, I mean actually in fact passed. There is some lack of clarity as to what the voting percentage was. Certainly, the only document which I have seen, which are Minutes (admittedly incompletely signed Minutes) which were forwarded to the Hong Kong Stock Exchange shortly after the meeting by those persons who are linked to the Plaintiff and consider themselves to be the new Board,

suggests that there was a 100% vote in favour. Mr. Woloniecki for the Plaintiff said that his instructions are that the vote was 73%².

6. But the detail does not matter because Mr. Fong was represented by Mr. Martin today, although he did not choose to formally become a party. He has filed an Affidavit and there is no suggestion that the vote is in issue in numerical terms. The only question is whether the meeting was still alive. Mr. Fong contends that the meeting was validly adjourned and that point is a legal point which falls to be determined at trial.

The Plaintiff's case for an interim injunction

7. The Plaintiff's case is, and I find that there is in fact a serious issue to be tried, that according to the Bye-laws, there is no open-ended unfettered discretion in the Chairman of a general meeting to postpone or adjourn a meeting. That power to adjourn can only be exercised at the direction of the shareholders, so the shareholders actually control the meeting. That proposition appears to be consistent with general notions of English-based company law, and was supported in argument by reference to *National Dwellings Society-v-Sykes* [1894] 3 Ch. 159. And so there is a serious issue to be tried as to the question of whether the Meeting was in fact validly continued, and whether those persons who are purporting to be still Board members are not.
8. The balance of convenience clearly lies in favour of granting injunctive relief. The reasons for this are numerous but the most important are the following. Firstly, it seems that the 'rival Board', if I can put it that way, itself accepts and has accepted in a notification through the Hong Kong Stock Exchange, that there should be effectively a standstill until matters can be clarified. And perhaps most significantly, the Hong Kong Stock Exchange in a letter dated 11th August 2014 said this:

*“We are aware of the ongoing dispute over the composition of the Company's board of director's (the **Dispute**) as disclosed in the announcements made by the Company since May 2014 and various emails we received from Mr. Oung since 27 May 2014. We also note from the Company's announcement of 11 August 2014 that Mr. Oung is making an application to the Supreme Court of Bermuda (the **Court**) for an order for the purpose of, amongst other things, resolving the Dispute, and the Company is seeking Bermuda legal advice in response. We continue to closely monitor the situation until a resolution of the Dispute having been determined by the Court, and by then we will consider the Requests.”*

² Mr. Woloniecki explained that the persons originally engaged to tabulate the votes at the SGM apparently left the meeting with Mr. Fong.

9. And so it is clearly important, that the status quo, which is an uncertain Board composition, be preserved until a trial can take place as soon as possible. In those circumstances the case for an injunction is overwhelming. I say that despite the fact that Mr. Martin on behalf of Mr. Fong indicated this afternoon that the meeting proposed for tomorrow for the rival Board would not take place. That indication is helpful but does not obviate the need for an injunction to signify the will of this Court to all parties concerned, if not the world at large. Because Mr. Fong is on the periphery of the present proceedings and has, thus far, been “willing to wound”, but “afraid to strike”. And, in these circumstances, the Court is not in a position to ask for, or receive, an undertaking from his counsel which would have any binding effect.

Conclusion

10. And so for these reasons I give expedited trial directions for trial of this short legal issue to take place on the 26th of August and also grant the injunction sought by the Plaintiff.
11. I should also add that the directions have specifically contemplated the fact that any of the former Board, (assuming the Plaintiff is right they are former Board members, if they are right they are still Board members), do have an opportunity to file evidence by the deadline set and to participate in the proceedings without any great formality. Any attempt by them to prevent this matter being resolved quickly, by getting involved late, will not receive much encouragement by this Court.
12. It is, it seems to me, in the interests of justice generally and the reputation of Bermuda and the Hong Kong Stock Exchange for a dispute about who controls a company to be resolved at the earliest possible opportunity.

Dated this 14th day of August, 2014 _____

IAN R.C. KAWALEY
CHIEF JUSTICE