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Striking Out Minority Oppression Proceedings in the context of a Buy-out Offer: *Leong Quee Ching Karen v Lim Soon Huat* [2022] SGHC 309

INTRODUCTION

In the recent case of ***Leong Quee Ching Karen v Lim Soon Huat*** **[2022] SGHC 309**, we successfully represented the claimant minority shareholder in resisting a striking out application brought by the defendant majority shareholders. Importantly, the High Court of Singapore clarified the relevant test that should be applied in considering whether to strike out a claim in minority oppression where the majority had made an offer to buy out the minority shareholder.

BRIEF FACTS

The claimant was the minority shareholder of a company known as Seng Lee Holdings Pte. Ltd. ("**SLH**"). SLH was part of a group of companies that were owned by, and operated for the benefit of, various members of the claimant's family.

The claimant commenced minority oppression proceedings under s 216 of the Companies Act 1967 (2020 Red Ed) on the basis that the defendant majority shareholders had disregarded her legitimate expectations and interests as minority shareholder. One of the primary reliefs sought by the claimant was for a special audit to be conducted in respect of SLH's accounts and affairs.

The 1st defendant (i.e. one of the directors and the majority shareholders of SLH) made three offers to purchase the claimant's shares in SLH. Each of these offers contained slightly different terms, but all refrained from allowing the claimant to conduct a special audit. After the third offer was made (which was not accepted by the claimant), the majority shareholders (the "**Striking Out Defendants**") then applied to strike out the suit on the basis *inter alia* that the 1st defendant had made an offer to buy out the claimant's shares and it was an abuse of process for the claimant to continue the suit in the face of these offers. At first instance, the Assistant Registrar dismissed the application and the Striking Out Defendants appealed to the General Division of the High Court against his decision.

THE HIGH COURT'S DECISION

After hearing parties, learned Judicial Commissioner Goh Yihan ("**JC Goh**") affirmed the Assistant Registrar's decision, and dismissed the appeals. In reaching his decision, JC Goh found that the buy-out offers did not address the primary relief sought by the claimant (which was for a special audit), and it was not appropriate for the Court to actively assist the parties to negotiate an acceptable offer.

Central to JC Goh's decision was the two-stage framework that was laid down in *Kroll, Daniel v Cyberdyne Tech Exchange Pte Ltd and others* [2022] SGHC 231 ("**Kroll**"), which was pertinent to whether a claim in minority oppression should be struck out in the face of a buy-out offer. The two stages are as follows:

(a) **Stage 1**: Is the offer presented a "reasonable offer", taking into the account the guidelines set out in *O'Neill v Philips*?

(b) **Stage 2**: If the offer was a reasonable one, was the plaintiff justified in rejecting the buy-out offer and choosing to seek relief by bringing a claim for minority oppression?

After discussing the framework laid down in Kroll, JC Goh clarified that the "plain and obvious" standard continued to apply in striking out applications arising from rejected buy-out offers, and that the judge in Kroll had not intended to depart from this standard. This meant that a Court would be entitled to strike out minority oppression proceedings in the context of a buy-out offer provided that the reliefs being sought had been addressed by the buy-out offer, or were otherwise wholly and clearly unarguable. In determining whether the reliefs being sought were wholly and clearly unarguable, the Court should have regard to whether it was impossible for the claimant to obtain the relief sought, and thus it would be plain and obvious to strike out the claim.

On the facts, it was clear that the offers did not give the claimant the relief of a special audit. Further, assuming that the facts pleaded by the claimant were true, it was not plain and obvious that the claimant would fail in obtaining relief in the form of a special audit at the end of trial.

JC Goh also demurred to recognise a "Stage 3" of the Kroll framework, which purported to have the Court take a proactive role in assisting the parties to negotiate an acceptable offer. JC Goh reasoned that, while the Rules of Court (2021 Rev Ed) ("**ROC 2021**") facilitated the Court taking a more active hand in managing cases, "Stage 3" did not add to the purpose of the Kroll framework which was to guide a Court in deciding whether a claimant's rejection of a reasonable buy-out offer amounts to an abuse of process. It was also unclear how Stage 3 could be applied in practice; and there was no legal basis for the addition of Stage 3 into the Kroll framework.

CONCLUSION

The High Court's decision is useful as it clarifies that the "plain and obvious" test remains applicable even in the context of the Kroll framework. Further, it sheds some light on the Court's active case management powers and the extent to which it can impact negotiations between parties under the ROC 2021 regime. It would appear that even as we move into the ROC 2021 regime, party autonomy is still paramount, at least where negotiations in the context of buy-out offers to minority shareholders are concerned.

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