REGIONAL UPDATE
SINGAPORE

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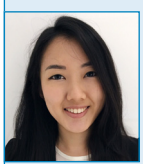
SHAREHOLDERS REMEDIES: STATUTORY DERIVATIVE ACTIONS ARE UNAVAILABLE WHEN THE COMPANY IS IN LIQUIDATION



In *Petroships Investment Pte Ltd v Wealthplus Pte Ltd and others and another matter* [2016] SGCA 17 ("***Petroships Investment***"), the Singapore Court of Appeal (the "**SGCA**") held that a statutory derivative action under s 216A of the Companies Act (Cap 50) (the "**Act**") is unavailable to shareholders once the company enters liquidation. This update will briefly provide the factual matrix and the court's reasoning for this landmark decision.

Background facts

The minority shareholder, Petroships Investment Pte Ltd (the "**Shareholder**"), held 10% in Wealthplus Pte Ltd (the "**Company**"). On 19 June 2012, the Shareholder served notice on the Company's directors under s 216A(3)(a) of the Act. The notice stated that the Shareholder intended to apply for leave to bring a statutory derivative action in the Company's name against the Company's directors if they fail to provide explanations of certain transactions.

The Company's directors did not act on the Shareholder's notice. In August 2012, the Shareholder subsequently filed an application to seek the court's leave to commence a derivative action against the Company's directors, majority shareholders and their ultimate holding company (the "**Application**").

The Company was subsequently placed in members' voluntary liquidation through a special resolution passed by the requisite majority of its shareholders a week after the Application.

Decision of the SGCA

The SGCA examined s 216A of the Act, and held that the text suggests that the legislative intent was for the provision to apply in a situation where the directors of a company are the ones managing it. This interpretation of the statutory provision was found to be further supported by the legislative history of s 216A of the Act and foreign case law concerning the rationale of statutory derivative actions in other countries.

The SGCA further found no indication that the Legislature intended for s 216A of the Act to apply when a company is in the midst of liquidation.

When a company is being liquidated, the liquidator essentially takes over the management duties from the directors. Consequentially, it was held that s 216A of the Act does not apply when a company is in liquidation, notwithstanding the fact that the liquidation was voluntary and, as was the case here, entered into by way of a special resolution passed by the requisite majority of shareholders.

Commentary

In light of the decision in *Petroships Investment*, shareholders, and minority shareholders in particular, should note that they might lose their chance to bring a statutory derivative action against errant directors in the company's name if the company is subsequently wound up, even when the winding up is voluntary.

That said, shareholders of a company in liquidation should note that they are not necessarily left without recourse. For instance, aggrieved shareholders could potentially bring an action against the liquidator.

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