

## BERMUDA SUPREME COURT

### ***Oung Shih Hua James -v- Paladin Limited*** **[2014] SC (Bda) 62 COM (14 August 2014)**

COMPANY LAW - DECLARATORY RELIEF -  
INTERIM INJUNCTION - REMOVAL OF DIRECTORS  
- SERIOUS ISSUE TO BE TRIED - BALANCE OF  
CONVENIENCE

The Plaintiff in this case is seeking a declaration that a lawfully convened special general meeting ("SGM") of the Defendant company was held on 1 August 2014 and that various resolutions were validly passed thereat; most significantly, resolutions that removed or purportedly removed certain directors and appointed new directors. For the purposes of this hearing, the Plaintiff sought *interim* injunctive relief (to restrain the Defendant Board members the Plaintiff contends were validly removed, from purporting to act on behalf of the Company).

In applying the test for an injunction, the Judge first considered whether there was a serious issue to be tried. It was explained to the Court by the plaintiff that before any business could be conducted at the SGM, the Chairman had 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. In this respect, the Judge noted that according to the byelaws, there was no open-ended unfettered discretion in the Chairman of a general meeting to postpone or adjourn a meeting and the power to adjourn can only be exercised at the direction of the shareholders. The Judge also noted this proposition to be consistent with general notions of English-based company law supported in argument by reference to *National Dwellings Society -v- Sykes* [1894] 3 Ch. 159. The Judge therefore held there was a serious issue to be tried, namely whether the SGM was in fact validly continued, and whether those persons who are purporting to still be Board members are not.

The Judge went on to hold that the balance of convenience was in favour of granting injunctive relief. An overwhelming factor was that the 'rival board', had accepted, in a notification through the Hong Kong Stock Exchange, that there should effectively be a standstill until matters can be clarified. The Judge therefore held the status quo, which is an uncertain Board composition, should be preserved until a trial can take place as soon as possible.

The Judge noted that it was clearly in the interests of justice, generally, and the reputation of Bermuda and the Stock Exchange of Hong Kong for a dispute about who controls a company to be resolved at the earliest possible opportunity. The Judge granted the interim injunction sought and gave directions for an expedited trial.

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