



## Article

### BVI Commercial Court Hands Down Seminal Judgment in Unfair Prejudice Claim

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**On 23 November 2021, the BVI Commercial Court handed down judgment in *Soemarli Lie v (1) Ng Min Hong and (2) Success Overseas Finance Limited* (the “Company”) following a four-week trial which took place in October 2020. Conyers acted for the successful claimant, Mr Lie, whose unfair prejudice allegations against his fellow shareholder Mr Ng were confirmed by the Court in full.**

In particular, the Honourable Mr Justice Wallbank held that there was a “quasi-partnership” relationship in existence between Mr Lie and Mr Ng such that both were expected to have access to the Company’s records and that Mr Lie’s right to such access was wrongfully denied by Mr Ng. The Court held further that the non-payment of millions of dollars in dividends from an Indonesia subsidiary to the Company, which caused the claimant “obvious economic harm”, was also an act of unfair prejudice. So too was Mr Ng’s disposition of more than 50% of the assets of the Company to a company owned by himself and his brother in 2017. The Court held that this was an “egregious and unlawful” appropriation of the claimant’s economic interest in the Company. It was held further that a 2018 rights issue of the Indonesian subsidiary (which served to drastically dilute the claimant’s economic interest in that subsidiary) was a “crude and deliberate act of share dilution” and was also unfairly prejudicial to Mr Lie. Lastly, the Court held that a final disposition of all the Company’s remaining shares in the Indonesian subsidiary in 2019 also amounted to unlawful appropriation and was in breach of section 175 of the BVI Business Companies Act (which provides that a disposition of over 50% of a company’s assets ought to be referred to the company’s members for approval).

Importantly, the Court strongly rejected the defendant’s argument that any breach of section 175 was only technical in nature given that Mr Ng, as majority shareholder, would have authorized the transactions anyway. The Court held that such an argument ignores the purpose and intent behind section 175, which operates as an important check to ensure that minority shareholders have an opportunity to object and, if necessary, apply to the Court for interim relief to injunct conduct which might be oppressive, unfairly prejudicial or unfairly discriminatory against the minority’s interest. Significantly, the Court held that where the requirements of section 175 have been disregarded or ignored, this may be an indicator of more fundamental oppressive or unfairly prejudicial conduct.

In response to the claimant’s potent allegations of unfair prejudice (all of which were made out), the defendant raised a raft of unmeritorious allegations of misconduct against the claimant including fraud and negligence in respect of the claimant’s previous role as director of the Indonesian subsidiary. Many of these allegations were dismissed as hopeless. Ultimately, the Court held that the misconduct allegations were irrelevant to the claimant’s unfair prejudice claim and did not operate to prevent Mr Lie from seeking relief for Mr Ng’s unfairly prejudicial and oppressive conduct. In this respect, the Court’s judgment operates as a firm reminder that unrelated and ill-defined allegations of misconduct against a claimant to unfair prejudice proceedings will not operate as a bar to relief in circumstances where those allegations bear no immediate or necessary relation to the unfair prejudice claim. The Court also deprecated the use of alleged police investigations overseas, indicating that it was “neither swayed nor impressed with such moves”.

*Mr Richard Evans and Dr Alecia Johns of Conyers acted for the claimant throughout the proceedings and at the trial, led by Mr Matthew Hardwick QC*

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