

## Corporate Wrongs v Oppression: Where Is The Line Drawn?

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The breakdown of trust between shareholders often marks the beginning of a corporate battle. In these bitter fallouts, aggrieved shareholders frequently seek recourse under Section 346 of the Companies Act 2016 (CA 2016), which provides relief against conduct that is oppressive, unfairly discriminatory or prejudicial.

Yet a critical question arises: when does corporate wrongdoing or mismanagement cross the threshold into shareholder oppression?

Recently, the High Court in *Sandeep Singh Grewal v Tan Eng Joo & Ors* [2025] MLJU shed light on this boundary and clarified when corporate conduct may warrant judicial intervention under Section 346.

### Background Facts

The dispute arose out of a shareholder breakdown in Paysolution Technologies Sdn Bhd (Company), a property investment company incorporated in 2007 and equally owned by the Plaintiff and the 1st Defendant (D1). In 2017, the parties agreed to divide management responsibilities with D1 assuming the day-to-day control of the Company while the Plaintiff took charge of other joint ventures.

On 16.3.2023, the Plaintiff commenced a suit under Section 346 alleging that D1 had engaged in conduct that was oppressive, unfairly discriminatory, and prejudicial to his interests as a shareholder. The crux of the Plaintiff's claim revolved around five written resolutions unilaterally passed by D1 between October and November 2022 (Impugned Resolutions):

- (a) A Members' Written Resolution dated 13.10.2022 for the appointment of the 2nd Defendant (D2) as an additional director of the Company;

- (b) A Directors' Written Resolution dated 17.10.2022 effecting changes to the Company secretary and the registered office address;
- (c) A Members' Written Resolution dated 4.11.2022 approving a transaction pursuant to section 223 of the CA 2016;
- (d) A Directors' Written Resolution dated 4.11.2022 appointing Messrs Jasbeer, Nur & Lee as the Company's solicitors; and
- (e) A Directors' Written Resolution dated 4.11.2022 approving the disposal of certain Company assets.

The Plaintiff contended that D1 had improperly exercised a casting vote to pass the Impugned Resolutions despite the Company's Articles of Association limiting such votes at general meetings in the event of an equality of votes. It is alleged that these acts effectively neutralised the Plaintiff's voting power and rights as a shareholder, rendering his position in the Company meaningless. As such, the Plaintiff sought a buyout of his shares or the winding up of the Company to resolve the conflict.

### Decision

The High Court observed that the exercise of a casting vote is conditional upon the fulfilment of three cumulative prerequisites under the Company's Articles of Association:

- (a) a properly convened general meeting;
- (b) an equality of votes arising at such meeting; and
- (c) the chairman exercise a casting vote to break the deadlock.

The court held that D1's purported exercise of a casting vote in written resolutions, absent any general meeting or equality of votes, was procedurally flawed. It constituted a clear departure from proper corporate governance and directly prejudiced the Plaintiff's position as an equal shareholder. As such, the court concluded that D1's purported exercise of a casting vote in passing the Impugned Resolutions was invalid.

### Corporate Wrongs Or Oppression?

In addressing the Defendants' contention that the Plaintiff's grievances, if proven true, amount to corporate wrongs rather than shareholder oppression, the court found that the impugned conduct went beyond mere corporate wrongs amenable to a derivative action. The High Court referred to the English High Court decision in *Re Charnley Davies Ltd (No 2)* [1990] BCLC 760 which sets out the distinction between a derivative action and an oppression remedy:

*“The key consideration is not the particular acts complained of, but rather the nature of the complaint and the remedy necessary to address it. Where the complaint centres on the unlawfulness of conduct requiring restitution to the company, it is properly pursued as a derivative action. However, where the complaint, as here, concerns the manner in which company affairs are conducted in disregard of a member’s interests, with the aggrieved party seeking to exit the company, it is properly characterised as oppression.”*

Applying this principle, the High Court found that since the Plaintiff’s complaint concerned the conduct of company affairs in disregard of his rights as an equal shareholder, coupled with his intention to exit the company, the claim falls squarely within the ambit of oppression under Section 346.

The court further emphasised that even a single instance of unfair dilution or neutralisation of shareholding rights may constitute oppression if it reveals “a strong propensity or tendency to blatantly disregard or prejudice the interest of the said shareholder”. In this case, such disregard was manifested through the systematic passing of written resolutions which effectively stripped the Plaintiff of his 50% control and participation in management.

The High Court proceeded to recognise that an oppression arises where there is “a visible departure from the standards of fair dealing and a violation of conditions of fair play”. Accordingly, the court held that the Plaintiff had successfully established his claim of oppression under Section 346 and ordered a buyout of the Plaintiff’s shares by D1.

### Commentary

In a nutshell, the High Court’s decision in *Sandeep Singh Grewal* provides much-needed clarity on the distinction between corporate wrongdoing and shareholder oppression under Section 346. In closely held companies, where shareholders hold equal stakes and shared expectation as in this case, any abuse of corporate mechanisms, such as written resolutions or casting votes, must be scrutinised for fairness, not merely legality.

The court’s finding that D1’s unilateral passing of resolutions and improper reliance on a casting vote amounted to oppression reflects a principled stance that corporate tools cannot be wielded to marginalise or sideline a shareholder. As such, this decision serves as a cautionary tale for directors and shareholders that corporate governance mechanisms must be exercised in good faith and with due regard to interests of all shareholders, for otherwise they risk attracting judicial intervention under Section 346.

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