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The Role Of The Companies Act 2016 In Preventing False Or Misleading Statements

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The Companies Act 2016 (CA 2016) plays a crucial role in ensuring that no false or misleading statements are made or lodged with the Registrar. This legislation imposes legal obligations on companies and their officers to provide accurate and reliable information to the Registrar of Companies.

This alert will discuss the recent Court of Appeal ruling in *Lina Yap Ai Lin (f) v Giant Rewards Sdn Bhd & Anor* [2023] 1 MLJ 113.

Brief Facts

Lina Yap Ai Lin (Appellant), who was a shareholder and director of Giant Rewards Sdn Bhd (1st Respondent) since 2017, discovered through the Companies Commission of Malaysia (CCM)'s records that she had allegedly resigned as a director in May 2018. She also learnt that she had transferred her 25,000 shares to an individual (3rd Respondent) in June 2018. The Appellant argued that she had no knowledge or recollection of consenting to such resignation and transfer of shares.

As no evidence of the documents or instruments alleged executed by the Appellant relating to her resignation and the transfer of shares (Documents) could be found in the public records of the CCM, the Appellant requested for the Documents from the 1st Respondent, who refused to provide the same.

The Appellant then filed an Originating Summons against the 1st Respondent, the current directors of the 1st Respondent, being the 2nd and 3rd Respondent and the company secretary (4th Respondent) under Section 351 of the CA 2016 to seek for the Documents as without access to the

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Documents, the Appellant could not verify the authenticity of her alleged resignation and transfer of shares.

The issues to be considered are whether the Appellant who has interests in the Documents was entitled to the Documents and whether Section 351 of the CA 2016 was applicable.

Section 351 Of The CA 2016

Section 351(1) provides that where a person has engaged, is engaging or intends to engage in conduct that constituted, constitutes or would constitute, amongst others, a contravention of the CA 2016, the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

The High Court's Ruling

The High Court dismissed the Appellant's claim for lack of merit based on the following reasons:

- (i) The Appellant ought to have exhaust all avenues before filing this suit. The High Court was of the view that the Appellant should have applied to CCM for the Documents.
- (ii) The Appellant was merely seeking for information that was known only to her. It was absurd to claim that she cannot remember or recall the matter and such position taken by the Appellant was uncertain and unclear. In the High Court's opinion, if she did not resign as a director or sell her shares, she could simply deny it outright.
- (iii) There was no evidence to prove contravention (which was a prerequisite) of the CA 2016 and thus, Section 351 of the CA 2016 cannot be invoked. The High Court highlighted that the Appellant only alleged in her

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affidavit that there may be some fraudulent involvement but no certainty to show that there was any contravention.

Being aggrieved by the High Court's decision, the Appellant appealed to the Court of Appeal.

The Appeal

The Court of Appeal allowed the appeal and set aside the High Court's decision on the premise that Section 351 of the CA 2016 provides wide discretion and power to the Court to consider whether there is any contravention be it in the past, present or future. The Court commented that:

"19] We are of the considered opinion that there has been a contravention of the CA as alleged by the Appellant where the act of the Respondents falls within "has engaged" or "is engaging" in conduct; or in the words of the Appellant's counsel, past or present contravention. In the factual matrix of this appeal, the Appellant had sought the Documents and/or Instruments where she had no knowledge or recollection whether she had consented to her resignation or the transfer of her 25,000 shares. The Appellant has deposed that it is beyond her knowledge and/or not within her recollection that she had consented to and/or submitted any resignation as director and/or consented to the transfer of the 25,000 shares at or around the material time between May to June 2018.

[20] This therefore has raised a serious question as to whether the documents pertaining to her resignation as director and transfer of shares, which have been submitted to the CCM, are indeed true."

To substantiate its ruling, the Court proceeded to emphasise Sections 591 and 593 of the CA 2016 which provide that it is an offence to make or authorise the making of a statement that a person knows is false or misleading (Section 591) and

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to lodge false and misleading statements to the Registrar (Section 593).

Based on this, the Respondents were required to furnish true and accurate statements with regards to the affairs of the 1st Respondent, failing which it constituted a contravention within the meaning of Section 351 of the CA 2016. In this regard, the Court held that it was pertinent for the Respondents to furnish the Documents to verify the genuineness. Furthermore, the Appellant was a person whose interests have been affected by the refusal of the Respondents to provide the Documents.

In arriving at its decision, the Court referred to its earlier ruling in *Wong Kien Ching v. Seng Kim Huat & Anor* [2019] 7 CLJ 356, where it was held that:

“[20] As was pointed out earlier, the respondents' application is pursuant to s. 368A(1)(a) and (4). Section 368A(1)(a) deals with a situation where a person is alleged either to have engaged or intends to engage in conduct that constituted, constitutes or would constitute a contravention of this Act. In such a situation, the court is moved to grant an injunction requiring that person to do a particular act or thing.

[21] What is important is that s. 368A(1) may only be invoked by the Registrar or by a person whose interests is either affected or would be affected by such conduct. It is therefore imperative that the applicants who are the respondents in this appeal, state how the conduct of the respondent to the application, that is, the appellant, affect their interests. Where and when that element has been established, the court is then in the position to impose such terms as are appropriate when granting the relevant injunction.”

Section 368A Companies Act 1965 is *pari materia* with Section 351 of the CA 2016.

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Accordingly, the Court found that there was a contravention of Sections 591 and 593 of the CA 2016 as alleged by the Appellant and Section 351 of the CA 2016 can thus be invoked given that the Appellant was a person whose interests have been affected by the refusal of the Respondents to provide the Documents.

Additionally, the Court also pointed an error on a finding of fact by the High Court in relation to the filing or lodging of the Documents with the CCM. A perusal of the documents referred to by the High Court showed that the Documents, which include the original letter of resignation as a director as well as all the original instruments executed by the Appellant to transfer her 25,000 shares to the 3rd Respondent were not lodged with the CCM. As such, there was no other avenue for the Appellant to obtain the Documents other than to seek from the Respondents.

Conclusion

It was concluded that there exists sufficient justification for the exercise of discretion by the Court to grant an injunction under Section 351 of the CA 2016 in this case, considering the significant impact on the Appellant's interests resulting from the deprivation of her shares and directorship.

This decision is reassuring as it acknowledges that the CA 2016 acts as a safeguard against the submission of false or misleading statements to the Registrar, promoting trust, accountability, and the proper functioning of the corporate sector.