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INTRODUCTION

The contribution of His Royal Highness Sultan Azlan Shah in the field of company law has not been extensive. The reason for this was the paucity of corporate litigation during His Royal Highness' tenure as a judge.

In certain of the cases the judicial observations and exposition of the law have significant implications for the future development of the law.[1] The main areas which had been the subject of His Royal Highness' judgments were:

[1]The decisions are excerpted below with accompanying notes highlighting its significance.

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Directors

(i) The authority and powers of a director to borrow money for the purposes of the company: *Sin Chai v Pahang Lin Siong Motor Co Ltd*[2]; (ii) The criminal liability of directors under sections 134 and 135 of the Companies Act, 1965: *Raja Nong Chik* v PP[3]; (iii) The position of directors in respect of holding interest in a rival company and the duty of disclosure: *Shanghai Hall Ltd* v *Chong Mun Foo & Ors*[4]; (iv) The proper election of directors at the Annual General Meeting of a company and the validity of the appointment in relation to section 128 of the Companies Act, 1965: *Solaippan & Ors* v *Lim Yoke Fan & Ors*[5].

Shares

(i) The transmission of shares from the deceased owner to his personal representative and the rectification of the share register: *In re LY Swee & Co Ltd*[6]; (ii) The rectification of the share register under section 162 of the Companies Act, 1965: *In re Len Chee Omnibus Co Ltd*[7]; (iii) Whether a company can take unilateral action in the rectification of the share register where there are serious issues in dispute: *Central Securities (Holdings) Bhd* v *Haron bin Mohd Zaid*[8].

The remaining two decisions included are on the winding-up of a company under the Companies Ordinance (*In re Fair Insurance Co Ltd*[9]) and on the creation of charges under section 80 of the Companies Ordinance and the relevant Land Code: *Zeno Ltd* v *Prefabricated Construction Co (Malaya) Ltd & Anor.*[10]

Sultan Azlan Shah's judicial approach in corporate cases display clarity of logic, a firm grasp of the essentials and an illimitable understanding of the interelationship of principles of law and norms of corporate practice. Two examples which demonstrate this are the cases of *Raja Nong Chik* v *PP*[11] and *Central Securities (Holdings) Bhd* v *Haron bin Mohd Zaid.*[12]

In *Raja Nong Chik* v *PP*[13] the opening remarks of the judgment are characteristic of a judge who holds the highest esteem of the purposes of the Law and its interelationship with morality:

> The commercial morality expected of company directors is too well-known to be reiterated. Directors are expected to observe a high standard of conduct in connection with dealings with their own shares ... Recognition of this requirement is given statutory recognition by section 135 of the Companies Act.

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[2](1966) 4 MC 65.
[3][1971] 1 MLJ 190.
[4][1967] 2 MLJ 254.
[5][1967] 2 MLJ 7.
[6][1968] 2 MLJ 104.
[7][1969] 2 MLJ 202.
[8][1979] 2 MLJ 114.
[9][1969] 2 MLJ 114.
[10][1967] 2 MLJ 104.
[11][1971] 1 MLJ 190.
[12][1979] 2 MLJ 244.
[13][1971] 1 MLJ 190.

The perspective taken in the above pronouncement is salubrious for its sensitivity of commercial morality. In the field of corporate law this sensitivity cannot be overstated and when judicially expressed has always been well-received by juristic opinion.[14]

His Royal Highness Sultan Azlan Shah did not encounter any difficulties when considering the legal issues in a complex corporate dispute. For example in *Central Securities (Holdings) Bhd* v *Haron bin Mohamed Zaid*[15] the variegated issues of civil procedure, rescission of a contract of sale of shares, the application of equitable and restitutionary doctrines together with statutory interpretation were unravelled in a masterful fashion which demonstrated judicial acumen not only in the realm of abstract law but also an understanding of the complex realities of corporate organisation.

The ability of a commercial law judge in the handling of issues of law and fact is of paramount importance in the fair adjudication of commercial disputes. Sultan Azlan Shah's ability as a judge in this perspective cannot be gainsaid. His Royal Highness's "premature" retirement from the highest judicial office in our land is indeed a signal loss to the healthy development of a corpus of judicial decisions in the sphere of corporate law and practice.

DECISIONS AND COMMENTS

DIRECTORS
(a) Disclosure of rival interest

Shanghai Hall Ltd
v
Chong Mun Foo & Ors

[1967] 1 MLJ 254 High Court, Kuala Lumpur

Cases referred to:-
(1) *Wenlock* v *Moloney* [1965] 1 WLR 1238 at 1243.
(2) *London and Mashonaland Exploration Co Ltd* v *New Mashonaland Exploration Co Ltd* [1891] WN 165.

RAJA AZLAN SHAH J: This is an application by the defendants to strike out the statement of claim under O 25r4. The principle to be applied is well established. If authority be needed for what may be considered as

[14]Compare Laskin J of the Supreme Court of Canada in *Canadian Aero Services Ltd* v *O'Malley* (1973) 40 DLR 3d 371. See Beck (1975) 53 Can Bar Rev. 771; Prentice 37 MLR 468.

axiomatic, I need only refer to the recent case of *Wenlock* v *Moloney*[1] where Danckwerts LJ said:

> Under the rule (i.e. O 25r4) it had to appear on the face of the plaintiff's pleading that the action could not succeed or was objectionable for some other reason. No evidence could be filed ... But, as the procedure was of a summary nature, the party was not to be deprived of his right to have his case tried by a proper trial unless the matter was clear.

The circumstances giving rise to the application are as follows. The plaintiffs are an incorporated company carrying on the business of a restaurant and bar in Kuala Lumpur. In September 1965, the three defendants, who were then the directors of the plaintiffs (the first defendant was also the managing director), promoted a rival company called Lu Kok Restaurant Ltd carrying on similar business on the mezzanine floor immediately below the plaintiffs. The plaintiffs now allege that the defendants had not disclosed the nature of their interests in the rival company and they accordingly contend that the defendants were by their conduct fraudulent and constituted a breach of a director's duty towards the plaintiffs.

The only question to be determined here is whether a director of a company is prohibited from becoming a director of a rival company. The case of *London and Mashonaland Exploration Co Ltd* v *New Mashonaland Exploration Co Ltd*[2] is in point. There it was held that in the absence of a prohibition appearing in the regulations of the company, a director is at liberty to become a director of a rival company. The paramount consideration in such a case as this is to consider whether the articles of association, which govern the arrangement of members *inter se,* contain any such prohibition. Article 94, which is the dominating provision for present purposes, is quite explicit and hardly requires discussion. Under that article, a director can hold office or place of profit under the company (of which he is a director) or under any other company in which the company is a shareholder. Secondly, a director can contract with the company as a vendor or a purchaser or otherwise and such contract or arrangement is not void. He is not liable to account in those circumstances. But the article stipulates that when such contract or arrangement is first considered at the directors' meeting, he must disclose the nature of his interest; in any other case at the first meeting of directors after the interest was acquired. If a director has already an interest in a contract or arrangement with the company he must make a disclosure at the first meeting of directors. In all those circumstances he has no right to vote for the simple reason that he is an interested party, but that prohibition may be suspended or released by a general meeting.

In my view the present facts as appearing in the statement of claim are not caught by the article (see paras 3,4 and 5). The defendants have not entered into a business contract or arrangement with the plaintiffs. Nor have they any interest in any contract or arrangement between the plaintiffs and the Lu Kok Restaurant.

It now remains to deal with the cause of action contained in

paragraph 7 of the claim. It reads:

> On or about July 1965 the first defendant in the capacity of managing director of the plaintiff deliberately induced the staff of the plaintiff including the cooks, waitresses and waiters to terminate their contracts of service with the plaintiff. As a result of the first defendant's inducement about 25 employees of the plaintiff resigned from the service. The defendants offered to re-employ those resigned at a higher scale of salary with the object to cause further loss and damages to the plaintiff.

It was said on behalf of defendant No1 that the pleading does not disclose any cause of action for, as it stands, the 25 employees of the plaintiffs "resigned from service". From that, counsel wants me to infer that there was a lawful termination of service, it being settled law that if the termination of service is in itself lawful, no liability could be imputed to defendant No 1. However, it is not within my province at this stage to enquire into that question. That has to be gone into by the trial judge after hearing evidence and drawing proper inferences from them. To my mind, paragraph 7 *supra* is unhappily worded. It is bad pleading. Nonetheless it discloses some cause of action, that is, procuring or inducing a breach of contract or interfering with contractual obligations. This is not a case of a servant leaving the plaintiffs' service but an exodus of twenty-five servants. There may be something in it. That is for the trial judge to decide. I therefore give leave to amend the said paragraph. It was submitted by counsel for defendant No 1 that to allow that would be a substantial departure from the original cause of action as pleaded and therefore the rules of pleading would not permit such amendment. I do not agree with that proposition. In my view, there is no substantial departure from the original cause of action envisaged in paragraph 7.

In the circumstances defendant No 3's application is allowed with costs.

With regard to the application of defendants Nos 1 and 2, I allow their application in the same way as that of defendant No 3. In respect of that application concerning paragraph 7 of the claim, I hold that there is some cause of action disclosed. Here I will order no costs, and costs will be costs in the cause.

Order accordingly.

Morris Edgar & TK Tang for the Plaintiffs.
Zain Azahari Zainal Abidin for the Defendants.

Notes

(i) See casenote YK Loke, 'Disclosure of a Director's Interest in a Rival Company' (1967) 9 Mal LR 343.

(ii) With the proliferation of interlocking directorships in the Malaysian corporate scene, the judicial approval given by the adoption of the decision in *London Mashonaland* v *New Mashonaland* [1891] WN 165 in the present case is of practical