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Appealability of Court's Directions to Liquidator

Under s 237(3) of the Companies Act 1965 (or s 487(3) Companies Act 2016), a liquidator faced with an issue in the administration of the winding up may apply to court for directions in that regard.

In *Equiticorp*, the liquidators of City Centre Sdn Bhd (**CCSB**) were faced with a dispute as to who is the rightful contributory of CCSB for the purpose of distribution of surplus funds.

The liquidators applied for directions to determine whether UOB 2006 Nominees (Tempatan) Sdn Bhd (**UOB**), the sole registered shareholder of CCSB, is the rightful contributory of CCSB for that purpose.

The application was opposed by United Securities Sdn Bhd (In Liquidation) (**USSB**) and Equiticorp Holdings Ltd (In Statutory Management) (**Equiticorp**), which both asserted that the surplus funds should be paid to the liquidator of USSB, being the former registered shareholder of CCSB which had charged its shares held in CCSB to UOB as security for a loan.

On 12.2.2018, the High Court directed that the surplus funds may be paid to UOB. Both USSB and Equiticorp appealed.

On appeal, UOB raised a preliminary issue on the appealability. Following the Federal Court case of *Ooi Woon Chee & Anor v Dato See Teow Chuan & Ors*,^[1] it has always been the position that any direction made pursuant to s 237(3) is non-appealable as a direction is in the nature of advice and is neither a judgment nor an order.^[2]

However, the preliminary issue was dismissed, and the appeals were ultimately allowed.

The Court of Appeal found that the proposition in *Ooi* cannot be applied generally. The direction sought by the liquidators in this instance is different from *Ooi*. Here, the direction has a binding effect and it affects the substantive rights of the parties. This goes beyond the scope of the directions that can be given under s 237(3). Hence, the directions can be appealed against.

UOB subsequently applied for leave to appeal to the Federal Court. One of the leave questions framed was the appealability of a direction

made pursuant to s 237(3). On 18.10.2019, UOB's leave application was dismissed.

Conclusion

Following *Equitcorp*, it is no longer always the case that a direction made pursuant to s 237(3) [or s 487(3)] is non-appealable. In another recent appeal, *Kemacahaya Development Sdn Bhd v Syarikat Bekalan Air*,^[3] the Court of Appeal took the same approach.

It would now seem that where a direction given ultimately has a binding effect, it will be appealable.

The liquidators of CCSB in *Equitcorp* were represented by partner, Hoi Jack S'ng, and associate, Andrea Chew Mei Yng, of [Lee Hishammuddin Allen & Gledhill](#).

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[1] [2012] 2 MLJ 713; [2012] 2 CLJ 501

[2] Courts of Judicature Act 1964, s 67

[3] [2019] 6 MLJ 364