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Getting the Other Side to Disclose in Shareholders' Dispute

A common problem in a shareholders' dispute is the ability of the plaintiff to access company records that are in the control of the opposing shareholders. A plaintiff can, in appropriate cases, seek discovery, general and specific, of such documents from the opposing shareholders.

In *Wang Po v Wang Hun & Ors*, the plaintiff and his brothers, the first and second defendants, were directors and shareholders of a family company, Fong Soong Metal Works Sdn Bhd (**the Company**).

The Company's businesses were, by agreement, split due to familial disagreement. The plaintiff continued the construction metal works business under Fong Soong Metal Construction Sdn Bhd (**FSMC**). His brothers continued the machinery metal works business under Fong Soong Engineering Sdn Bhd (**FSE**). The Wang Brothers, through FSMC and FSE, agreed to make monthly contributions to settle the debts and expenses of the Company.

The familial disagreement, however, continued after the split. The plaintiff alleged his brothers conducted the affairs of the Company in an oppressive manner against him as a shareholder, which included unexplained financial irregularities. The allegations were denied.

In December 2017, in addition to attempting to remove him as director, the plaintiff's brothers did not give him access to the office premises as well as access to documents, books and records of the Company. The plaintiff applied against the defendants for general and specific discovery of, among other things, FSMW's and FSE's documents concerning allegations of financial irregularities.

The High Court allowed, in addition to general discovery, the specific discovery under O 24 r 7 of the Rules of Court 2012. Lau Bee Lan J (as her Ladyship then was) accepted, "*the power of the Court under O 24 r 7(3)(c) extends to a document which may lead the party seeking discovery of it to a series of enquiry resulting in his obtaining information in respect to matters therein*" and is a codification of the principles in *Yekambaran s/o Marimuthu v Malayawata Steel Berhad*.

[1]

The defendants resisted the application on various grounds. One reason advanced was that the application was not necessary because it was “*illogical and putting undue burden on the Defendants to produce documents to which the Plaintiff has access*” as a director of the Company.

Lau Bee Lan J (as her Ladyship then was) rejected the argument because she found that “... *the state of the Company’s accounts, books and records changed after the action filed in December 2017*”. The learned judge, on this, referred to the defendant’s selective production of documents and the fact that the documents produced raised “*more questions than answers concerning the financial irregularities*”. The specific discovery was allowed because the plaintiff was neither a director nor a shareholder of FSE, which was under the control of his brothers.

Her Ladyship, in conclusion, held the general and specific discovery sought was in accord with the true purpose of seeking discovery, as held by the Irish Supreme Court in *Allied Irish Banks plc v Ernst & [2] Whinney*:

“The basic purpose and reason for the procedure of discovery... is to ensure as far as possible that the full facts concerning any matter in dispute before the court are capable of being presented to the court by the parties concerned, so that justice on full information, rather than on a limited or partial revelation of the facts arising in a particular action, may be done.”

The grounds of judgment can be found [here](#).

The plaintiff was represented by partner Andrew Chiew Ean Vooi and associate Nicola Tang Zhan Ying of [Lee Hishammuddin Allen & Gledhill](#).

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[\[1\]](#)

[1994] 2 CLJ 581

[\[2\]](#)

[1993] 1 IR 375