Singapore High Court Dismisses S$90m Fraud Claims in Class Action Brought by More Than 1,000 Investors Who Purchased Crude Oil Investments

The Singapore High Court has dismissed a class action brought on behalf of 1,102 investors across Asia, holding that the assignment of their rights to litigate to a S$1 shell company was contrary to public policy and void, with the result that the shell company had no standing to bring the action. The High Court also found that the marketing agent and security party that were sued in Singapore were not liable for losses in the crude oil investments, and instead other sales agents and individuals in Malaysia, Hong Kong and Macau had misled investors with promises of capital protection and/or were responsible for the investment losses: *POA Recovery Pte Ltd v Yau Kwok Seng & Ors* [2021] SGHC 41.

Our Comments

There are two foundational aspects in every litigation strategy – who can sue and who to sue. This significant judgment illustrates the importance of getting these two aspects right from the start, particularly in the context of collective litigation.

The first aspect is *locus standi*, or the legal right or capacity to bring a claim at law. This is a basic building block in the commencement of any litigation; without legal standing, the entire claim fails at the outset. In collective litigation with a large number of potential claimants, there are several recognised methods to bring a claim – these include a representative action, the consolidation of separate actions and proceeding with one action as a test case while staying the other actions. In the present case, the 1,102 claimants attempted a novel method of collective litigation by assigning their claims to a S$1 shell company incorporated for the sole purpose of suing the defendants, thereby shielding themselves from potential adverse costs orders. The High Court held that this was invalid and against public policy.

The second aspect is to identify the proper parties who are liable for the loss, and to bring the action in the correct jurisdiction(s) to hold these parties responsible. This oft neglected pre-litigation assessment is an essential prerequisite in any successful litigation. In this case, the High Court found that the defendants in Singapore did not make the alleged fraudulent misrepresentations; instead, it was sales agents in other jurisdictions such as Hong Kong and Malaysia who may have misled investors with over-promises of capital protection in the crude oil investments. The High Court also identified other foreign individuals who were responsible for the investors' losses. As a result of a third party action that the defendants brought against these individuals, the defendants were able to successfully prove their case on genuine investments and above-board marketing practices.

Our Melanie Ho, Alvin Lim, Gavin Neo and Jolyn Khoo acted for the defendants in successfully resisting the plaintiff's claims.

This update takes a look at the High Court's decision.

Background

The key facts relevant to the issues discussed in this update are summarised below.

The plaintiff, POA Recovery Pte Ltd ("**Plaintiff**"), is a special purpose vehicle and a S$1 shell company incorporated specifically to bring an action on behalf of 1,102 investors from multiple jurisdictions in Asia ("**Investors**"). The Plaintiff alleged that thousands of investors were misled by fraudulent misrepresentations and defrauded into investing more than C$175 million in crude oil produced in Canada.

The defendants were Capital Asia Group Pte Ltd ("**CAG Singapore**"), the Singapore marketing agent, Capital Asia Group Oil Management Pte Ltd, the holder of security in respect of the investments, and Mr Yau Kwok Seng ("**Mr Yau**"), a director and shareholder of these companies.

Under the investments, the Investors purchased crude oil from a Canadian company called Proven Oil Asia Ltd ("**POA**") and received 3% quarterly returns on their purchase price, as well as the full capital sum at the end of the investment term.

In 2015, global oil prices collapsed and POA was unable to pay the 3% returns and the capital sum.

The defendants successfully brought third party proceedings against 68 individuals, being sales agents in Malaysia, Hong Kong, Macau and Singapore who had marketed and sold the crude oil investments to the Investors, as well as parties who had financially mismanaged the crude oil investments in the aftermath of the 2015 oil crisis.

The High Court's Decision

The High Court dismissed the Plaintiff's claims.

As a preliminary legal issue, the High Court held that the Plaintiff's action must fail in law, because the agreements signed by the Investors to assign their rights to litigate to the Plaintiff ("**Assignment Agreements**") were void for being contrary to the doctrine of maintenance, i.e., the provision of assistance or encouragement to one of the parties to litigation by a person who has neither an interest in the litigation nor any other motive recognised by the law as justifying his interference.

The High Court accepted the defendants' characterisation of the Plaintiff as a shell company incorporated only for the purposes of commencing this action, and found that the Plaintiff therefore had no legitimate interest in the assignment.

The High Court further observed that:

- The structuring of the class action in this manner was contrary to public policy, as the defendants would have no one to look to for costs except the solitary shareholder of a S$1 shell company. The defendants would be "chasing shadows" across multiple jurisdictions to obtain payment for the bulk of their costs.

- The Investors must comply with the law if they wish to pursue their rights in court. This meant that they had to (a) sue individually, and agree to proceed with one suit with the others stayed (since

the issues and witnesses involved were common to all), (b) file a representative action, or (c) join the parties and consolidate their actions.

In the circumstances, the High Court found that the Assignment Agreements should be declared void, with the effect that the Plaintiff had no standing to bring the action.

In addition, the High Court found that this was not a case of fraud, but a failed investment. Among others, the High Court highlighted that:

- The investments were legitimate and not a Ponzi scheme, as alleged by the Plaintiff. The contracts signed by the Investors with POA were contracts for the sale and purchase of crude oil, and also expressly provided that POA could allocate the Investors' monies for development and purchase of oil and gas leases / assets. Even if the Investors' monies had been used to purchase oil and gas assets instead of crude oil, this was a legitimate means of raising money to fulfil POA's contractual obligations and was not evidence of fraud.
- While there was evidence of possible forgery involving the authorisation for the discharge of certain securities which were held for the Investors' benefit, this had nothing to do with the defendants.
- If the Investors had been misled by promises of capital protection, these promises were made by other sales agents in Malaysia and Hong Kong, and not by the defendants. These other sales agents had become evangelists of the crude oil investments, and CAG Singapore could not be held responsible for their actions. Instead, CAG Singapore had clearly and unambiguously informed them that they could not inform potential buyers that capital returns were guaranteed.
- After the global collapse in crude oil prices, Hong Kong / Macanese actors gained control of and mismanaged the Canadian entities holding the investment assets. These individuals engaged in questionable dealings, and may have secretly profited from their fiduciary positions at the expense of the Investors The Investors could have recovered more than 1% of their investment capital if not for the questionable dealings of these individuals.

In the circumstances, the High Court dismissed the Plaintiff's claim, and found in favour of the defendants' case against the third parties.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally deal with or any of the following Partners:

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