



Press Summary

14 November 2024

Tianrui (International) Holding Company Ltd (Appellant) v China Shanshui Cement Group Ltd (Respondent) (Cayman Islands)

[2024] UKPC 36

On appeal from the Court of Appeal of the Cayman Islands

Justices: Lord Hodge, Lord Briggs, Lord Sales, Lord Leggatt, and Lord Richards

Background to the Appeal

This appeal concerns protections for shareholders. When a company issues new shares, the proportional shareholding of an existing shareholder – who does not receive any of those new shares – is reduced. Their shareholding has been diluted.

The appeal revolves around the following question: if the directors of a company issue shares for the purpose of diluting the shareholding of a minority shareholder, can that shareholder personally bring a claim against the company?

Factual background:

The Respondent is a cement production company operating in China but registered in the Cayman Islands. The Appellant is one of four major shareholders in the Respondent, along with Asia Cement Corporation (ACC), China National Building Materials (CNBM) and China Investment Company Limited.

There has been a battle for control of the Respondent. The Appellant alleges that bonds and shares were issued and allotted to parties connected to ACC and CNBM for the improper purpose of diluting the Appellant's shareholding and taking control of the Respondent.

When the Appellant applied to the courts for a declaration to that effect, the Respondent tried to have that application (or 'writ') struck out. The Grand Court of the Cayman Islands ruled in favour of the Appellant, but the Court of Appeal of the Cayman Islands allowed the Respondent's appeal and the writ was struck out.

The Appellant appeals to the Judicial Committee of the Privy Council (the "**Board**"), seeking to have the writ reinstated.

Judgment

The Board allows the appeal. A shareholder has a right of action against a company where the board of directors has allotted shares for an improper purpose and this has negatively affected the shareholder. Accordingly, the writ against the Respondent should not have been struck out and should be reinstated. Lord Hodge and Lord Briggs give the judgment of the Board.

Reasons for the Judgment

There is a contract between a company and its shareholders (and among the shareholders themselves). The terms of that contract are detailed in the company's articles of association, but the articles (and so the terms of the contract) can be changed by a special resolution supported by a 75% majority of shareholders [31].

The courts have long recognised that a shareholder can enforce certain rights – like the right to vote at a general meeting – directly against the company by making a personal claim (rather than through a 'derivative action' on behalf of the company) [40].

Not all a shareholder's rights will be expressly set out in a company's articles. Company directors are fiduciaries and so have special duties. One of these is to exercise their powers only for a proper purpose. Sometimes, the directors of a company – acting as the company's agents – may do something that appears to be permitted, according to the literal meaning of the articles, but – because it has been done for an improper purpose – is not. In those circumstances, shareholders who are negatively affected will have a claim against the company [41].

The difficulty lies in identifying the precise basis for these claims, and working out whether that basis extends to enable a claim by a shareholder with respect to the allotment of shares [43]–[45].

The Court of Appeal of the Cayman Islands held that there was no such basis for the claim brought by the Appellant. That was an error. A shareholder diluted by an improper allotment can bring a personal claim against the company, though in some cases (but not here) the claim may be defeated by ratification of the allotment by a majority of shareholders (excluding the newly allotted shares) at a general meeting [66].

When a person becomes a shareholder, it acquires a bundle of rights [67]. The power to cause the company to issue and allot shares was conferred upon the directors of the Respondent by the company's articles. As explained above, that is a fiduciary power, and it must be exercised for a proper purpose [69].

It is a necessarily implied term [76] of the corporate contract between the company and its shareholders that when directors exercise the power to allot and issue new shares, they will only do so validly if they do so in accordance with their fiduciary duty, in good faith for the benefit of the company as a whole, and for the purpose for which that power was conferred. They will not have done so if their actions were deliberately aimed at allowing one group of shareholders to take power at the expense of another [70]–[71].

Even though the directors owe their duties to the company and not directly to the shareholder, their improper exercise of their powers (acting as agents for the company) breaches the corporate contract between the company and its shareholders. This is the basis for the claim [72]–[75].

The fact that a majority of shareholders could theoretically ratify an invalid allotment of shares does not make it valid: there would need to be an actual ratification, and any attempt to do so would be constrained by the rule against the oppression of a minority [80]–[81], [84].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: [Decided cases - Judicial Committee of the Privy Council \(JCPC\)](#)