

## BERMUDA SUPREME COURT

***In The Matter Of Full Apex Holdings Ltd.  
Annuity And Life Re Ltd, Et Al -v- Full  
Apex Holdings Ltd Et Al, 2011 Civil  
Jurisdiction No. 191 [original location: SC  
Vol. 76 p 184] (6 February 2012)***

COMPANIES - COMPANIES ACT S.111 - UNFAIR  
PREJUDICE - STRIKE OUT

This was an application to strike out an unfair prejudice petition in oppression proceedings brought by shareholders in respect of Full Apex, a company in the business of producing PET pre-forms and bottles which is listed on the Singapore Stock Exchange. The Petitioners allege that the conduct of the majority of the Company was unfairly prejudicial on the basis that: (1) there had been manipulation of the Company's accounts and a delisting proposal put forward on the basis of the accounts manipulation; (2) the requests for explanations and information had been ignored; (3) a transaction involving a reorganisation and the sale of certain assets was a transaction at an undervalue.

The Respondents sought to strike the petition out on the basis that: (a) the Petitioners lacked standing to bring the petition for two reasons under Section 163(a) as they were not "contributors", not having held their shares for more than six months – a requirement of bringing a winding up petition.

Second, the 3rd Petitioner had no shares in his name at the date of the petition. They also argued that the Petitioners cannot complain about affairs which occurred prior to their acquisition of shares in the Company; (b) the de-listing proposal had been blocked by the Shareholder at a special general meeting convened for the purpose; (c) no sustainable case of oppression was pleaded in connection the alleged undervalue transaction; (d) in connection with the failure to provide an explanation no sustainable case of oppression or unfair prejudice was pleaded.

On the first standing point, the Court held that the definition of contributory under S.163 was not applicable to Section 111 applying *Re a Company* [1986] BCLC 391. On the second, the Court held that the 3rd Petitioner had no standing. The Court held that the petition was not liable to be struck out on the basis of matters complained of pre dating the petitioners acquisition of shares registered in their own names applying *Lloyd -v- Casey and others* [2002] 1 BCLC 454. The allegations in connection with the delisting proposal and accounts manipulation were struck out primarily on the basis that the transaction was defeated and because they were highly speculative. In respect of the allegations in connection with the alleged transaction at an undervalue, the Court held that the allegations were insufficiently particularised but that applying the low threshold of sustainability that the court applies in such cases, the Court gave the Petitioners leave to amend the petition. The Court held that there is no express or implied duty on a company to its shareholders to provide answers to queries about the Company's affairs which are "satisfactory" as pleaded and strike out the claims made in that respect. The Court did not strike out the Respondents' claims of abuse of process regarding the acquisition of shares in the Company after the commencement of the proceedings.

Note: the same petitioner currently has proceedings *Annuity & Re Life Ltd -v- Kingboard Chemical Holdings Limited, Jamplan (BVI) Limited, Kingboard Laminates Holdings Limited, Excel First Investment Limited and Kingboard Copper Foil Holdings Limited, 2011 Civil Jurisdiction Commercial Court No. 255 [original location: SC Vol. 76 p. 154]* pending against a Hong Kong listed

company. The Respondents applied to strike out the petition in that case. The application failed but it is worth noting that the Court was unwilling to allow allegations of unfair prejudice in relation to a transaction where the shareholder had been able to block the transaction itself.

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