



27 June 2019

PRESS SUMMARY

East Asia Company Ltd (Respondent) v PT Satria Tirtatama Energindo (Appellant)
(Bermuda)
[2019] UKPC 30

On appeal from the Court of Appeal of Bermuda

JUSTICES: Lord Reed, Lord Carnwath, Lady Arden, Lord Kitchin, Lord Sales

BACKGROUND TO THE APPEAL

In these proceedings the appellant, PT Satria Tirtatama Energindo (“PT Satria”), seeks an order under section 67 of the Bermuda Companies Act 1981 (“the 1981 Act”) for the rectification of the register of members of Bali Energy Ltd (“BEL”) by striking out the name of the respondent, East Asia Co Ltd (“EACL”), as the holder of all of BEL’s issued shares and inserting in its place the name of PT Satria. EACL owned all of the shares of BEL, and that shareholding was its only asset. At the beginning of 2015, BEL’s two longest serving directors were Mr Joenoes and Mr Hata.

PT Satria relies upon (1) a document called “Heads of Agreement on the Sale and Purchase of Bali Energy Ltd” (“the HOA”) and upon (2) a share transfer form (“the Share Transfer”) for the transfer of the shares in BEL from EACL to PT Satria. The central issue in these proceedings is whether effect should be given to the HOA (and the share sale agreement it is said to contain) and the Share Transfer.

The Supreme Court of Bermuda found in favour of PT Satria. The Court of Appeal for Bermuda allowed EACL’s appeal. PT Satria now appeals to the Judicial Committee of the Privy Council. The issues to which the appeal gives rise are:

- i. whether Mr Joenoes had apparent or ostensible authority to enter into the HOA on behalf of EACL;
- ii. whether PT Satria was put on inquiry as to Mr Joenoes’ lack of authority to enter into the HOA on behalf of EACL;
- iii. whether the HOA and the Share Transfer were avoidable at the election of EACL;
- iv. whether the Court of Appeal was right to admit into evidence a resolution of the board of BEL; and whether BEL refused to register the Share Transfer and gave notice within the three-month period stipulated by the 1981 Act.

There are three other issues before the Board: (1) whether the Share Transfer was a proper instrument of transfer within the meaning of section 48(2) of the 1981 Act; (2) whether a lack of consent from the Bermuda Monetary Authority precluded registration by BEL of the Share Transfer; and (3) whether a failure by BEL to provide notice of its rejection of the Share Transfer within the three month statutory period would mean that PT Satria was entitled to registration as the owner of the shares in BEL. However, it is not necessary for the Board to address these further issues in light of its other findings.

JUDGMENT

The Judicial Committee of the Privy Council will humbly advise Her Majesty that the appeal should be dismissed. Lord Kitchin gives the advice of the Board.

REASONS FOR THE JUDGMENT

Did Mr Joenoes have ostensible authority to enter into the HOA?

The starting point is to consider whether EACL ever represented to PT Satria that Mr Joenoes or Mr Hata had authority to act on its behalf in connection with the sale of the shares in BEL. The Board agrees with the Court of Appeal that Mr Joenoes did not have ostensible authority [69]:

- i. PT Satria was well aware that only the board had authority to transact the business of the company and that Mr Joenoes and Mr Hata were ordinary directors [56].
- ii. EACL was agreeing to sell its only asset, by any measure a highly unusual transaction [57].
- iii. Mr Joenoes and Mr Hata carried on the day-to-day business of EACL and BEL. However, the action of entering into this HOA was fundamentally different. This was particularly so as the HOA was manifestly to the benefit of both of them [58].
- iv. In neither case were Mr Hata and Mr Joenoes acting entirely independently. There was no evidence that PT Satria had seen either of the memoranda of understanding before 27 February 2015 or relied upon them as showing that Mr Joenoes had authority [59].
- v. PT Satria was unable to point to any resolution or board minute suggesting that Mr Joenoes was properly authorised or to any declaration of interest by Mr Joenoes and Mr Hata as required by section 97 the 1981 Act and EACL's bye-laws [60].

PT Satria can derive no assistance from the indoor management rule either. By way of background, this is a rule that a person dealing with a company in good faith may assume that acts within its constitution and powers have been properly and duly performed. But this could not, without more, allow PT Satria to assume that the power of delegation had been exercised and, in the circumstances of this case, there was nothing more to be found [65].

PT Satria's case also fails because it did not establish that it relied on any such representation [67].

Was PT Satria put on inquiry as to Mr Joenoes' lack of actual authority?

In light of the Board's conclusion above it is not strictly necessary to address this issue. Nevertheless, since argument was heard before the Board, the view of the Board is given [74]. Both the indoor management rule and the doctrine of ostensible authority protect those who are entitled to assume that the person with whom they are dealing has the authority they claim. However, this general principle cannot be invoked if he who would invoke it is put upon inquiry [92]. PT Satria could not rely upon the apparent authority of Mr Joenoes if it failed to make the inquiries that a reasonable person would have made in all the circumstances [93]. The Board finds in favour of EACL on this issue [95].

Was the HOA avoidable by EACL?

PT Satria also contends that, irrespective of the issue of authority, a few days later validly convened board meetings of EACL and BEL took place at which the HOA was ratified (by EACL) and the Share Transfer approved (by EACL and BEL), and that any deficiency in the meetings or what was done was a matter of internal management and so it is entitled to rely on the indoor management rule. The Board does not accept these contentions. Mr Joenoes and Mr Hata, as directors of EACL and BEL, owed each company a duty not to put themselves in a position where their personal interests might conflict with those of the company. If either of them did not disclose his interest, his vote could not count in the quorum [97]. Both had a personal interest in the HOA in that under its terms they would be paid within three months over US\$ 500,000 which they claimed was owed to them by BEL, and which otherwise they had little prospect of recovering. They therefore had a duty to disclose their interests in the HOA to EACL and to BEL as fiduciaries [98]. In respect of PT Satria's further contention, that it was entitled to rely upon the indoor management rule, there was no evidence before the court that PT Satria was informed that the HOA had been ratified and the Share Transfer approved before it was put on notice that AOL objected to both of them. In these circumstances there was no scope for the indoor management rule to operate [102-103].

Further, PT Satria was in any event put on inquiry as to their irregularity by reason of all the facts and matters to which the Board has already referred [104]. The Court of Appeal was therefore right to find that the HOA and the Share Transfer purportedly made pursuant to it were avoidable [105].

Did the BEL board refuse to register the share transfer within three months?

Section 50 of the 1981 Act provides that if a company refuses to register a transfer of any shares the company shall within three months of the date upon which the transfer was lodged with the company, send to the transferor and the transferee notice of the refusal [106]. The Board holds that the Court of Appeal was entitled to find that BEL, by board resolution, refused to register the Share Transfer and notified PT Satria of that refusal within the period of three months of the date upon which the transfer was lodged with it, and that no basis had been shown for interfering with the decision of the Court of Appeal to admit evidence of that resolution [109].

Overall conclusion

The Board will therefore humbly advise Her Majesty that the appeal should be dismissed [110]. The parties should make any written submissions on costs within 21 days of this judgment [111].

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: www.jcpc.uk/decided-cases/index.html.