

JERSEY / JUDGMENT

Representation of Galasys Plc

[2016] JRC 149A (30 August 2016)

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judgment

the commissioner: 1. This is a representation in respect of the Galasys litigation. I am going to give a brief ruling given the lateness of the hour but I am doing so in case Mr Teh and the company wish to apply to the High Court in England. 2. I am not going to go into the background in any detail, but essentially this is a dispute as to who is authorised to speak and give directions for the company. 3. It originates out of events at various board meetings starting in October 2015 when the third and fourth respondents were purportedly removed as directors and going on to various board meetings thereafter, the validity of which depends upon whether the third and fourth respondents were or were not validly removed. 4. The first to third respondents are interested in a substantial share-holder in the company which is referred to as WOI. Following the events I have just described, WOI planned to call an extraordinary general meeting of members to consider resolutions as to whether the third and fourth respondents had been validly removed and other resolutions concerning the constitution of the board. WOI had signed a 'Relationship Agreement' with the company which restricted WOI's right to vote on certain matters. That agreement was governed by English law and, as I recall without checking, conferred exclusive jurisdiction on the High Court. 5. Mr Teh and Mr Lai, two of the directors and also members of the nomination committee, caused the company to institute proceedings in England to restrain the holding of the EGM that I have just referred to on the grounds that the holding of such EGM would be a breach by WOI of the terms of the Relationship Agreement. The High Court granted an interim injunction restraining WOI and the respondents from requisitioning the relevant EGM and from taking certain other steps spelt out in the injunction. 6. In those proceedings the respondents questioned the authority of Mr Teh and Mr Lai, as members of the nomination committee or as directors to speak for the company and to authorise the company to institute the proceedings before the High Court. As the company is a Jersey company, I understand that the High Court felt that this issue should be decided by this Court and accordingly various undertakings were given that the company would institute proceedings in this jurisdiction to resolve the question of who were and were not the directors of the company amongst other matters. 7. It is important therefore to record that the proceedings in this jurisdiction are wholly ancillary to the English proceedings. They have arisen because the respondents raised the question of the authority of Mr Teh and Mr Lai to take action in the

company's name in the English litigation. 8. Various steps have been taken in the current litigation and it has increased in complexity and length and of course expense because the respondents have raised the topic as to whether, when Mr Teh and Mr Lai, and any other directors, took their action in October they were acting bona fide in their best interests of the company. 9. The trial has been fixed to last for three weeks to begin on 20 th September, in other words in some three weeks' time. Much effort has been devoted by the parties to preparation of witness statements, discovery and so forth. 10. Until very recently the board of the company was deadlocked, with Mr Teh and Mr Lai on one side as co-representors with the company, and giving instructions to MourantOzannes on behalf of the company, and the first and second respondents as the other two directors on the other side. What has just happened is that Mr Lai has resigned as a director, so that the deadlock has accordingly now been broken. The nomination committee is down to one member, namely Mr Teh and is no longer quorate and therefore unable to act or give instructions to MourantOzannes. Furthermore, there is now a majority in the board consisting of the first and second respondents with Mr Teh being the only other director assuming, for the moment, that the third and fourth respondents are not directors. 11. Since Mr Lai's resignation in early August the board of the company has resolved by a majority, comprising the first and second respondents, to pass resolutions authorising the first respondent to take all necessary steps to immediately discontinue the proceedings in England, Malaysia and Jersey and to confirm that Mr Teh is no longer authorised or has no authority to represent the company in any such legal proceedings. 12. The board has accordingly authorised the company to instruct Advocate Preston in place of MourantOzannes and Advocate Preston proposes to apply for the company to withdraw from the proceedings. The latest event is that certain shareholders other than WOI have requisitioned a meeting of members at which resolutions will be put to like effect as the resolutions which have been passed by the board. In other words that Mr Seah, the first respondent, be authorised to take all necessary steps to immediately discontinue the litigation in all three jurisdictions and that the lawyers currently instructed in those three jurisdictions by the company acting by Mr Teh, should be dis-instructed. The directors have acceded to that requisition as they are duty-bound to do under the articles and they have convened the meeting for 12 th September. 13. Advocate Cook has asked me today to make various orders. He submits that what has happened is contrary to an interim agreement reached between the parties concerning the management of the company pending resolution of the litigation in Jersey, and is also in breach of the High Court injunction. He says that is it all part of a plot by the respondents to avoid this litigation. He asked me to declare that the board resolutions referred to are invalid because the first and second respondents were not entitled to vote because of a clear conflict of interest and because it is a breach of the interim agreement and he asked me also to rule that Mr Teh is still entitled to give instructions on behalf of the company. 14. I do not consider I am able to make such rulings today. I need to hear argument on whether an interim agreement was in fact reached, - this is denied by the respondents - and whether the first and second respondents are in fact prohibited from voting. There is clearly a strong argument to that effect because they are at present the opposite parties to the litigation which the company is bringing both here and in England, but there are arguments the other way which Advocate Le Maistre has referred to. I do not think I can possibly fairly decide this issue at such short notice in the absence of proper

argument and evidence. 15. More to the point, it seems to me that if the members of the company, excluding WOI, vote to discontinue the proceedings here and in England and to authorise Mr Seah to take all necessary steps to do so, this is something which they are entitled to do provided it is not a breach of the English injunction. I emphasise that WOI may not vote as in my view to do so would be a clear breach of the injunction and possibly of the Relationship Agreement, although I cannot comment on that latter point. However it is for the representors to decide whether they wish to raise the matter as one of urgency with the High Court as to whether the holding of such an EGM would be a breach of the injunction or not. 16. However, if the company in general meeting votes, with no votes from WOI, to discontinue the proceedings and to revoke or remove any authority of Mr Teh to give instructions, it does not seem to me right to allow Mr Teh to continue to give instructions on behalf of the company. Ultimately the masters of the company are the majority of shareholders, they are the owners of the company. I would therefore view sympathetically an application on behalf of the company, presumably brought by Advocate Preston who has purportedly been instructed by the majority of directors, to discontinue the proceedings were such a resolution to be passed. However, I would need to consider very carefully the terms upon which the company should be permitted to withdraw, as the leave of the Court is required. In particular, I might well consider that, without prejudice to any future recourse, when the dust settles, the company should, for the time being, be ordered to pay everyone's costs. That is because I would not, at that stage, be in a position to rule on whether the actions by Mr Teh and Mr Lai were well-founded or not. 17. I accept that the whole issue of whether Mr Teh and the nomination committee have authority to act may in due course come up again if there is in future an argument about costs and if the company, for example, seeks to recover costs from any other party; but I cannot think it would be right to insist that the current litigation continues at full pelt if the majority of shareholders, other than WOI, wish to discontinue the litigation and the only reason for continuing it would be to determine the question of where costs should lie at this stage. It seems to me that logically one must decide whether the litigation should be discontinued as, on this hypothesis, the majority of shareholders wish, and then consider in due course where costs should lie as a matter of justice. However, to cater for the possibility that the company in general meeting decides not to discontinue the litigation, I am not willing to vacate the trial date at this stage. I accept that this means that costs may be incurred unnecessarily but everyone is virtually ready for trial other than, no doubt, the last minute preparations by counsel, and I do not consider it right to assume that the shareholders will vote to discontinue, notwithstanding the belief of Mr Seah in his affidavit, that they will. 18. Now I am happy to hear counsel shortly on the exact form of any orders but I am minded at the moment to make orders along the following lines:- (i) The trial date is maintained and I propose to make no order that MourantOzannes are not entitled to act at present. All parties must prepare so as to be ready for trial; (ii) Should, however, the EGM be held on 12 th September and should the members vote (without the vote of WOI) to discontinue, I would, as a matter of urgency, hear any application for leave to discontinue. I am provisionally minded to think that could be made on one of the days provisionally fixed at present for the trial to begin. I accept the parties would need to know beforehand whether the actual trial was vacated and I would be willing to do that remotely, so to speak, because I shall be away in the week before the

trial. I will discuss with counsel just now the practicalities of that; (iii) Should the members at the EGM vote not to discontinue then at present I am minded to think that the trial should continue.

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