

Yeo Gek Lang Susie (administratrix of the estate of Teo Lay Swee) and Others v Guan Soon
Development Pte Ltd
[2005] SGHC 211

Case Number : OS 895/2005

Decision Date : 11 November 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Tan Bar Tien (B T Tan and Co) for the plaintiff; Siraj Omar (Tan Kok Quan Partnership) for the defendant

Parties : Yeo Gek Lang Susie (administratrix of the estate of Teo Lay Swee); Yeo Gek Lang Susie; Teo Kok Woon; Teo Cheng Woon; Teo Soo Swan — Guan Soon Development Pte Ltd

Companies – Memorandum and articles of association – Articles of association amended – Minute of directors' meeting stipulating effective date of amendments – Stipulation not evident on face of amendments – When amendments to articles of association taking effect

11 November 2005

Judgment reserved.

Choo Han Teck J:

1 This is an application by the plaintiffs for an order compelling the defendant company to register them as shareholders in the defendant's register of shareholders. The defendant opposed the application except that of the first plaintiff on the ground that the other plaintiffs were not members of the company. They were children of the deceased, Teo Lay Swee, whose shares in the company had been transmitted to his estate, over which his widow, the first plaintiff, is the administratrix. The company accepted that since the first plaintiff is a member and held shares in the company in her own right, it will register her additional shares.

2 The reason the company rejected the applications of the other plaintiffs is that under Art 28 of the Company's Articles of Association there is a pre-emption right to existing members. Article 28 reads as follows:

A share may be transferred by a member or other person entitled to transfer to any member or any person approved by the Board of Directors, but save as aforesaid and save as provided by articles 31 hereof, no share shall be transferred to any person, who is not a member, so long as any member is willing to purchase the same at fair value.

3 The plaintiffs' counsel contended, however, that Art 28 had since been amended and does not apply. Some dates are significant. First, the deceased died on 10 February 2002. Articles 28, 29 and 31A were amended after his death and these articles as amended read as follows:

28. A share may be transferred by a member or other person entitled to transfer to any member or any person approved by the Board of Directors (which approval shall not be unreasonably withheld), but save as aforesaid and save as provided by Article 31 and Article 31A hereof, no share shall be transferred to any person, who is not a member, so long as any member is willing to purchase the same at fair value. The Directors shall refuse to register a transfer of any shares in the Company to any of the persons mentioned in Article 9A(2) hereof. Every

instrument of transfer shall be accompanied by a Statutory Declaration made by the Transferee stating his citizenship and identity card or passport particulars and declaring that he is purchasing the shares beneficially and in his own name and not otherwise. The Company may call upon such declarant to make such additional statements by Statutory Declaration as are necessary to satisfy itself of the qualification of the declaration to have himself registered as a member of the Company.

29. Except where the transfer is made pursuant to article 28 or 31 or 31A hereof, the person proposing to transfer any share (hereinafter called the proposing transferor) shall give notice in writing (hereinafter called the transfer notice) to the Company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the Company his agent for the sale of the share at the fair value to be fixed, or at the option of the purchaser, at the fair value to be fixed by two arbitrators, both of whom shall be members of the Company, one to be appointed by each of the parties in difference and their umpire. The transfer notice shall not be revocable except with the sanction of the Directors.

31A. The provisions of Articles 29 and 30 hereof relating to members' rights of pre-emption shall not apply in respect of any transfer of shares following the death of a member where the deceased's shares are transferred to:-

- (a) such person(s) who shall become entitled to a share in consequence of the death of the member in accordance with the applicable laws of intestacy; or
- (b) any or a combination of the following category of persons in accordance with the deceased member's last will and testament:-
 - (i) the deceased's spouse;
 - (ii) the deceased's sibling;
 - (iii) the deceased's child, adopted child or step-child;
 - (iv) the child, adopted child or step-child of any other member.

4 Ordinarily, any amendment to the Articles of Association takes effect, unless specifically stated otherwise, from the date the resolution of amendment is passed. In this case, counsel for the defendant alluded to a minute of the directors' meeting to the effect that the amendment was not intended to apply to deaths of members occurring before the amendments. However, the amendments themselves do not make that crucial point. On any reading of the Articles, they apply to the plaintiffs. The company cannot rely on the minutes of meetings in such circumstances because the Articles of Association is the document that any third party would look at to determine the rights of the members among themselves. And if it was indeed the intention of the Board that the amendment was to apply only to deaths of members occurring after the date of the amendment, then it would, and ought to, have so stipulated in the amendment itself. I therefore, allow prayer 1 of the plaintiffs' application. Costs are to be paid by the company to the plaintiffs, to be taxed if not agreed.

Copyright © Government of Singapore.