

## Galasys Plc v (1) Well Oriental Investments Ltd

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Sir Michael Birt, Jurats Liston, Blampied
<b>Judgment Date:</b>	20 January 2016
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<b>Court:</b>	Royal Court
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### Text

[2016] JRC 13

ROYAL COURT

(Samedi)

Before:

Sir Michael Birt, **Commissioner and** Jurats Liston **and** Blampied

IN THE MATTER OF THE REPRESENTATION OF GALASYS PLC

Galasys PLC  
Representors  
and  
(1) Well Oriental Investments Limited  
(2) Seah Kok Wah  
(3) Low Kok Thai  
(4) Chuah Teong Mingh  
(5) Hee Chee Keong

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(6) Chin See Seong  
Respondents

**Advocate B. J. Lincoln, for the Representors.**

**Advocate P. D. James for the Respondents.**

**No Authorities**

Companies — application to join Mr Teh and Mr Lai to the proceedings and to join WOI and Mr Low to the proceedings.

**THE COMMISSIONER**

- 1 There are two procedural matters before us this afternoon. The first one relates to whether Mr Teh and Mr Lai should be joined to these proceedings. They are both directors of Galasys PLC (“the company”) and indeed they are the directors who have instructed Mourants to bring this representation in the name of the company.
- 2 Both Advocate Lincoln and Advocate James agree that they ought to be joined just as the other directors have been joined. The question is in what capacity. Advocate Lincoln says they should be joined as co-representors with the company because they are the individuals who have in fact given instructions to present the representation in this form and it is in effect their case which is being put forward in the representation.
- 3 Advocate James says that would be wrong. The issue in this case is, who are the directors of this company and therefore who is authorised to act on behalf of the company. He says that joining them as co-representors will create a perception in the market that they are the directors authorised to speak for the company. The shares in this company are listed on the AIM market and therefore, he says, market perception is material; he says that in reality this is a battle between two groups of directors and therefore it would be wrong to give the impression at this stage that, so to speak, one group had the upper hand because it was speaking for the company. He says therefore that one of two courses should be followed; his preferred course is that the representation should continue to be brought by the company but should be amended so as to be in very much neutral form, simply referring to what has happened and asking the Court to sort it out. His clients as respondents would plead alleging one outcome; the other directors, Mr Teh and Mr Lai, should be joined as respondents and they would put in a pleading which would put forward their case; then you would have, rather as you do in trusts, a neutral company with competing parties joined as respondents. His alternative course was that the representation should be taken over by Mr Teh and Mr Lai with the company then becoming a party cited.

- 4 The difficulty with both the courses which Advocate James suggests is that they will entail a certain amount of re-pleading and could even involve new legal representatives for the company separate from Mr Teh and Mr Lai. Very properly, the parties have sought an early date to resolve this matter and no doubt we are going to be asked to make directions shortly, but there is a fairly tight timetable because it has been fixed for April and there will be a lot of evidence and so forth to gather before then.
- 5 We have come to the conclusion that the better and simpler course is to join Mr Teh and Mr Lai as co-representors because we think this has the least prospects of doing any damage to the timetable. However, we do note Advocate James' point. So what we will say in addition is that we expect any regulatory notice or press release issued by the company to make it absolutely clear that the fact that Mr Teh and Mr Lai are co-representors says nothing about who is entitled to act for the company. This is a matter which will be resolved by the Court in April and until then the fact that they happen to be co-representors is simply because that is what has happened so far; but we would look very unfavourably on a regulatory notice or press release issued by the company or by Mr Teh or Mr Lai which gave a different impression.
- 6 So our decision on the first application is that the representation should be amended to join Mr Teh and Mr Lai as co-representors.
- 7 The second issue before us is whether there should be joined to the proceedings a company called Well Oriental Investments Limited (known as WOI) and Mr Low who is apparently a shareholder in that company. WOI is a significant shareholder in Galasys. As we have just said the issue before this Court is the constitution of the board. What happened in the various board meetings in September, October and November of last year and as a result of all that who are the current directors?
- 8 Now on the face of it, it is not necessary for a shareholder in the company to be joined to resolve that issue. The various parties are the directors; the shareholders were not present at the meetings and they are not strictly necessary as party to the proceedings and none of the other shareholder companies have been joined. The only reason why it is said that WOI and Mr Low should be joined is that the company has instituted proceedings in England against WOI and Mr Low amongst others in connection with something called the relationship agreement, which is governed by English law and subject to the exclusive jurisdiction to the English courts. In those proceedings all the defendants including WOI and Mr Low have questioned whether the company can properly bring those proceedings because they question the authority of Mr Teh and Mr Lai to speak for and give instructions on behalf of the company.
- 9 The English court has in effect said that this is a matter which should be resolved by this Court because the company is incorporated in Jersey. What is absolutely critical therefore is that whatever this Court decides is binding on all the parties to the English proceedings. It would of course be completely pointless and wasteful of time and expense if, after this

Court has made a ruling, some party to the English proceedings, who was not a party here, sought to argue they were not bound by the Jersey decision and therefore sought to re-litigate the matter before the English court. Clearly the whole intention of the English court was that this aspect should be resolved by this Court. So, on the face of it therefore, there is a good reason as to why WOI and Mr Low need to be parties to these proceedings because they need to be bound by the outcome. Accordingly if the matter rested there we would convene them as parties.

- 10 However, the sole purpose, as we say, in their being joined and the sole necessity for them on the face of it to be joined, is so that they are bound. They have nothing themselves on the face of it to contribute to the proceedings because one is a shareholder and the other is a shareholder of a shareholder. Nor is there any suggestion in the papers that Mr Low or WOI can materially assist on the issues at stake in these proceedings. So as we say, the sole need for them to be parties to these proceedings is that they should be bound by the outcome. There is no need for them and apparently no purpose in their participating in the proceedings otherwise.
- 11 In those circumstances WOI and Mr Low have put forward an alternative method of achieving the key objective of being bound, namely the provision of an undertaking in the English proceedings that they will be bound by the outcome of the Jersey proceedings. In other words, if this Court were to decide that Mr Teh and Mr Lai were directors and therefore authorised to act for the company, WOI and Mr Low would not be able to argue to the contrary in the English proceedings and those proceedings would go ahead on the merits of the dispute over the relationship agreement.
- 12 In our judgment, given that that is the sole reason why WOI and Mr Low would otherwise need to be parties, we think that the simplest and most cost effective way of proceeding is to go ahead on the basis of the undertaking. We have been shown the undertaking; it appears on its face to be in satisfactory terms in that it is in very wide terms. So, in the circumstances, in our discretion we do not at this stage join WOI and Mr Low. However we do give liberty to apply. Suppose on closer analysis Advocate Lincoln decides that for some reason the undertaking does not work, then he is at liberty to come back and renew his application; but he will have to have some good reason for thinking that the undertaking does not achieve the purpose of ensuring that WOI and Mr Low are bound by any outcome of these proceedings.
- 13 So in summary, on the strength of the undertaking we do not join WOI and Mr Low but we join Mr Teh and Mr Lai as co-representors.
- 14 We give leave for Advocate Lincoln to amend the representation within one week so as to join in the two individuals.
- 15 As to the costs of today, I order costs in the cause. You, Advocate Lincoln, have been

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successful in the sense that you have got them in as representors, but you Advocate James have been successful in the sense that you have succeeded on your undertaking point. It does not seem to me there are clear winners or losers, so I shall say costs in the cause.