**Derivative Claim**

The purpose of this essay is to examine the remedies available to a company in the event of a breach of duty by directors. Thus, the statutory derivative action and the unfair prejudice remedy will be evaluated to see how easily accessible they are to function as a check on directors in the performance of their duties. It is vital to highlight that the common law derivative suit was in force at the time the financial crisis began. As a result, before analysing the statutory derivative action, the common law derivative action will be briefly examined to see if its availability was adequate to operate as a check on directors or, on the contrary, was a contributing factor to directors' negligence in their responsibilities.

The derivative claim is a true exception to the rule in Foss v. Harbottle that the proper claimant in an action in respect of a wrong to a company is the company (the rule also includes the majority rule principle: where a wrong can be made binding by a simple majority, no individual member can maintain an action in respect of it). Edwards vs. Halliwell The rule represents the firm's distinct identity and discourages multiple claims, frivolous claims, and minority shareholder harassment of management, but it may result in unfairness if the wrongdoers control the company. As a result of this final point, shareholders may pursue derivative claims on the company's behalf in restricted situations.

Despite the fact that the regulations successfully eliminated vexation claims, the Law Commission decided that they were very unsatisfactory for minority shareholders. In Prudence Assurance v. Newman Industries, for example, a shareholder had to demonstrate that the accused directors had real voting control of the firm. Nonetheless, it is rare for a member to look into the director. Furthermore, there was no definition of fraud; it was decided in Estmanco v GLC that fraud in this context involves not only common law fraud and illegality, but also fraud in the broad equitable meaning of an abuse or misuse of powers by the directors. A simple, negligent use of a director's authority does not constitute fraud (Pavlides v Jensen) unless it benefits those who control the corporation; in such a case, carelessness would suffice (Daniels v Daniels).

Derivative claims are a common law innovation, but they were made statutory in CA 2006 in response to requests by the Law Commission to simplify and modernise the law and increase its accessibility. The Company Law Review Steering Group agreed with the ideas.

Members must apply to the court for authorization to continue their claim (section 261(1)), which will be denied if the application and evidence submitted do not reveal a prima facie case (s. 261(2)). (2). In Iesini v. Westrip, the court concluded that rather than holding a mini-trial of the case, it should take a preliminary opinion on the basis of the claim. The court must also reject permission to proceed if it is convinced that a person working in line with CA 2006, s.172 (responsibility to promote the development of the firm) would not seek to pursue the claim: s. 263(2). (a). According to Gibbs, the prima facie step is "seemingly redundant," since weak cases pass it but subsequently fail at this point.

According to section 260(1) of the Civil Procedure Act of 2006, derivative claims are procedures instituted by a member of a company in respect of a cause of action vested in the company and seeking redress on behalf of the company. Section 260 (3) specifies the grounds for bringing a derivative claim, which states that such a claim may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving i. negligence, ii. default, iii. breach of duty, or iv. breach of trust by a director of the company. Under common law, an individual shareholder would have to establish fraud in order to pursue a case against a wrongdoer. However, in light of the law, all he has to establish today for a derivative claim is carelessness. So, all that needs to be shown is that a company's director behaved carelessly or broke their duties.

For example, a Coca-Cola director desires to join a mint soda joint venture. Because the director was preoccupied, he did not accept responsibility and did not inform the other directors. As a result, the mint drink was sold to Pepsi. Drink was a smashing success. As a result, the shareholders have decided to file a derivative action against the director. Under common law, the court may not have considered the derivative claim, but under legislation, the director behaved carelessly.

Significantly, there is no need to establish "fraud on the minority" or "wrongdoer control" under the statutory process, so a lawsuit may be filed even if the defendant director operated in good faith and did not profit personally (Pavlides v. Jensen). Section 260(3) additionally states that a derivative claim may be made against a third person who dishonestly aids a director's violation of fiduciary duty or one who knowingly gets property in breach of a fiduciary responsibility. Furthermore, it makes no difference whether the cause of action occurred before or after the person bringing or continuing the derivative claim became a member of the corporation (section 260(4)).

S.261 establishes a two-stage method for making a derivative claim. At the first step, the claimant must show prima facie, and the court evaluates solely the claimant's application and proof. At the second stage, approval will be rejected under s.263(2) if the claimant does not endeavour to prosecute the claim in accordance with s172 or if the misbehaviour has been allowed or confirmed by the company. According to Newey J in Kleanthous v Paphitis, there is no established standard of evidence regarding the strength of the claim under the discretionary procedure controlling the award of authorisation under s263(3). Rather, judicial discretion is purposefully limited by specifying a set of six non-exclusive characteristics, and so, when paired with the overall strength of the case, we have a broad range of relevant considerations. It should be emphasised that the opinions of disinterested members are given special weight under Section 263(4).

The scope is now greater since you previously required judicial approval to continue with the claims. It's more or less the same thing in the permission context, but more precise now. Now, whether or not the minority shareholders get compensated is up to the courts. However, the court's pattern indicates that they are hesitant to grant authorization. Derivatives seem to be the last option and do not appear to be a beneficial approach.

A successful derivative lawsuit under CA 2006 results in relief for the corporation. As a result, it only helps a shareholder claimant indirectly (while also benefitting all other shareholders), which may discourage action. A member who brings a derivative claim on behalf of the corporation may be responsible for fees. This may prevent lawsuits, but courts have always been ready to compel the firm to compensate claimants when the action was justified and filed in good faith (Wallersteiner v Moir (No. 2)).

By broadening the cause of action and clarifying the method and reasons for rejection, the statutory derivative claim has enhanced the law for minority shareholders. Nonetheless, since it is designed to resemble common law, it maintains many of its flaws even when a shareholder discovers enough information to make a claim (section 261(3) allows the court to compel the production of evidence), the procedural barriers are high, and the remedy is rigid.