

ECCA Declines to Hear Appeal Against Ex Parte Orders Prior to Return Date

Last week, the Eastern Caribbean Court of Appeal (ECCA) handed down its judgment on an attempted appeal by a BVI company, Greater Sail Limited ("Greater Sail"), against orders made *ex parte* by the Commercial Court, prior to the return date hearing.

In refusing to hear the appeal, the Court found that it would be *"improper to permit [the appellant] to appeal to this Court"* prior to an *inter partes* hearing before the judge below.

Background

This judgment is the latest in this long-running litigation between Greater Sail and Nam Tai Property Inc, Nam Tai Group Ltd and Nam Tai Investment (Shenzhen) Co Ltd (each "NTP", "NTG" and "NTI", and together the "Nam Tai Parties").

On 4 October 2021, the Court of Appeal, in related proceedings, ordered that a special meeting of NTP's shareholders be convened on 30 November 2021. The meeting was duly held and resolutions were passed removing four directors from office and appointing a number of new directors in their place.

Following the meeting, the new board attempted to take control of NTP's group of companies, including NTI and other subsidiaries in the People's Republic of China. The Nam Tai Parties alleged that, since that time, Greater Sail and its affiliates had taken steps to stymie the transfer of control of NTP and its subsidiaries to the new board and management.

Immediately following the court-ordered meeting, Greater Sail sent letters to market regulators in the PRC requesting that they refuse any changes regarding the management and legal representative of NTP. As a result, the new officers and managers of NTP were unable to take control of the assets and affairs of much of NTP's group of companies including office premises, bank accounts and corporate seals.

On 26 January 2022, the Nam Tai Parties sought urgent interim orders that Greater Sail allow the new board to take control of the group and its assets. The hearing was adjourned until 31 January 2022, at which time the judge ultimately granted the interim mandatory and prohibitory orders sought.

The Judgment

The judgment helpfully clarifies the principle that an appellant who seeks to challenge the grant of an *ex parte* interim injunction must first give the judge below an opportunity to review the position at an *inter partes* hearing, so as to reach a more informed decision after considering full evidence and submissions. The Court found that to do otherwise could seriously undermine the due process for dealing with interim applications and open the floodgates to leapfrogging of *inter partes* hearings. It held that Greater Sail's attempted appeal in this instance was an abuse of process.

In any event, on the facts of this case, the Court found that, as Greater Sail had already complied with the mandatory aspects of the *ex parte* orders, the appeal would have been largely academic and "*would serve no practical purpose*". Nevertheless, the Court determined that, were the judge below to uphold the orders at a scheduled *inter partes* hearing, Greater Sail would, at that point, be permitted to avail itself of its right of appeal.

Comment

Helpfully, in reaching its decision, the Court of Appeal approved and applied the English learning in *Hunter & Partners Limited v Wellings & Partners*, where the English Court of Appeal confirmed that a defendant to an *ex parte* injunction should first seek to move an *inter partes* application to discharge it, and not proceed directly down an appellate route.

This judgment serves as a stark reminder that the normal first instance procedure for challenging *ex parte* injunctions should always be adhered to, and that a failure to do so might constitute an abuse of process.

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