



Summary of Judgment

IN THE MATTER OF PACIFIC DAIRIES LIMITED

[2019] VSC 647

26 September 2019

Two proceedings were commenced in relation to a company called Pacific Dairies Limited (**the Company**), which was created in order to undertake various investments in the dairy industry. Until 17 May 2016, the Company was listed, and traded, on the Australian Securities Exchange. The trial was heard by Justice Sifris from 16 to 18 September 2019.

In the first proceeding, the Company sought to set aside a request made on 19 March 2019 by members of the Company for the directors to hold a general meeting of the Company. The Company argued that the meeting was not required and it had been called for an improper purpose. Justice Sifris observed that Courts should be hesitant to interfere with a minority shareholder's right to requisition a meeting unless it is called for some purpose ulterior to the passing of the resolutions contained in the requisition. His Honour did not ultimately need to deal with the issue or make the declarations sought, as there is a pending Annual General Meeting which is to take place in November 2019. At that meeting, the members would have the opportunity to decide the composition of the board of directors.

In the second proceeding, a minority shareholder of the Company, William Clarke (**Clarke**) alleged that its affairs had been conducted in a manner contrary to the interests of the members as a whole or oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members. Specifically, Clarke contended that the Company had:

- (a) since at least 2015 achieved none of its goals and had regularly announced various initiatives, but none ever came even close to fruition;
- (b) paid (by way of the issue of shares and options) extremely high directors' fees in circumstances where its financial position was rapidly deteriorating and made selective share issues to directors and others without offering such issues to the shareholders at large; and
- (c) refused to call a meeting pursuant to a request made on 19 May 2019.

Despite some concerns with the management and financial state of the Company, Justice Sifris disagreed and found that neither individually or collectively, the conduct amounted to oppression. His Honour stated that inadequate and poor stewardship, management and decisions by directors and any consequent dissatisfaction by shareholders does not of itself necessarily give rise to oppressive conduct.

The issue of shares and options as payment for directors' fees and repayment for loans was not oppressive. The Company did not have cash resources available for payment and the price assigned to the securities was reasonable. It was preferable for the Company to issue equity to the directors rather than continue to accrue debt in circumstances where it was attempting to raise funds. Similarly, the failure to call a meeting pursuant to the 19 March 2019 request did not constitute oppression as a meeting called for the same purpose of determining the composition of the board of directors had taken place a short time earlier on 1 February 2019. In summary, Justice Sifris found that the conduct complained of could not be characterised as oppressive conduct. Both proceedings were dismissed.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.