



IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 115 OF 2019 (RPJ)

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)

AND

IN THE MATTER OF EHI CAR SERVICES LIMITED

IN OPEN COURT

APPEARANCES:

Ms. Caroline Moran and Ms Allegra Crawford of Maples and
Calder (Cayman) LLP, on behalf of the Company.

Mr Robert Levy QC, and Mr Rupert Bell and Mr Patrick
McConvey of Walkers, on behalf of the Walkers Dissenters.

BEFORE: THE HON. RAJ PARKER

HEARD: 7 June 2021

Draft Judgment: 15 June 2021
Circulated

Judgment: 22 June 2021
Delivered

HEADNOTE

*Companies Act (2021 Revision)-section 238 fair value proceedings-management meetings-
Overriding Objective-directions.*

Introduction

1. This Judgment follows a hearing for further directions in this matter.



2. This is an appraisal action under section 238 of the Companies Act (2021 Revision) by which three remaining groups of dissenting shareholders ("the Dissenters") seek the determination by the court of the fair value of their shares in Ehi Car Services Ltd (the "company").
3. The action was commenced by the company by way of petition presented to the Court on 24 June 2019. There was a contested directions hearing in January 2020 and a Judgment following that hearing dated 24 February 2020. This resulted in a directions order dated 18th February 2020 (the "Directions Order"), which included an agreed timetable of dates for each of the procedural steps up to the trial of this matter.
4. The timetable was initially delayed by six months due to the amount of time required to be taken to complete an enormous amount of discovery by the company, which was not completed until 18 December 2020. The data room apparently hosts tens of thousands of documents discovered by the company¹.
5. The Directions Order, as is usual in section 238 cases, made detailed provisions for discovery, the filing of factual and expert evidence, the convening of management meetings and a process for making information requests by the experts.
6. On 8 January 2021, the company filed its factual evidence in the form of five affirmations which ran to some 226 pages.

Information requests

7. Having taken time to consider the huge volume of material uploaded to the data room, on 18 February 2021 and 1 March 2021 respectively the Dissenters' expert² sent his second and third information requests. These information requests proved problematic for the company and extensive correspondence was exchanged in order to progress and resolve the issues raised.
8. In the event, the Dissenters' expert reformulated the second and third information requests which were sent to the company on 27 April and 6 May 2021. The company has now provided responses to these requests shortly before this hearing and so to some extent the complaints made by the company about the process is "*water under the bridge*". They do not require the Court to resolve the competing submissions as to whether the information requests were improper or inappropriate to begin with.

¹ The Court was informed 34000 were uploaded on 18 December 2020, making a total of 91,000.

² Professor Mark Zmijewski.



Management meeting

9. On 26 February 2021, the Dissenters' expert submitted a request to the company for it to convene a management meeting. The company has not done so and further extensive correspondence was then exchanged concerning the management meeting. One of the company's responses was that it was not reasonable and proportionate that it should be expected to respond to two lengthy information requests and to prepare for a management meeting almost simultaneously, with the direct question posed to the Dissenters' expert as to whether the Dissenters or their attorneys had influenced the timing. That reveals a degree of mistrust and frustration that has unfortunately arisen between the parties.

Dissenters' case

10. Mr Levy QC, who appeared for the Walkers Dissenters, submitted that it was plain and obvious from both the written and oral submissions made at the hearing in January 2020 that the company did not wish to participate in a management meeting and is now making unreasonable demands upon the Dissenters' expert and attempting to put up roadblocks to avoid having a management meeting at all. He decried the approach the company had taken in correspondence through its attorneys.
11. He invites the Court to revisit the deadlines for the convening of the management meeting, the exchange of experts reports and provide further directions to take the matter to trial by reference to a schedule appended to his written submissions dated 3 June 2021.

Company's case

12. Ms Moran appears for the company. She submits that expert reports were due to be exchanged on 7 May 2021, a deadline that had been in place since November 2020, and a further 13 week extension until "*at least*" 5 August 2021 is unreasonable because the company has now provided all the information requested by the Dissenters' expert.
13. No further information request is necessary and should not be permitted. The requested management meeting is not necessary. Tellingly, she submits, there is no evidence at all from the Dissenters' expert explaining what information he says is missing that prevents completion of his expert report, nor as to why he believes a management meeting is necessary.
14. Indeed she goes so far as to say that the Dissenters' expert apparently does not know what questions he needs to ask at such a meeting. The reality she says is that the



Dissenters do not want to exchange expert reports because they have found nothing in the company's discovery that could lead to a valuation that exceeds the merger consideration and as such the request for an extension is purely strategic so that the Dissenters can continue to put pressure on the company through increased litigation costs. Exchanging expert reports will crystallise the issues between the parties and will either prompt a settlement, or move the proceedings forward in accordance with the Overriding Objective.

15. She therefore asked for an order that the experts should exchange reports within seven days from the hearing and any extension of time should be refused.
16. As to the information requests, she submits that the company has not been obstructive and an extension should not be granted because the Dissenters expert has "*squandered*" the time given to him by asking inappropriate and unreasonable questions. He is now out of time. If he has any further pertinent questions to ask, this is a problem of his own making and there is no justification in extending the deadline in the absence of any evidence supporting it from him.
17. Moreover, it is quite clear from the information requested so far that in many cases the Dissenters' expert has asked questions "*for the sake of it*" which he does not need answers to. In many cases he already had the information. It is also clear that the information requested has in some cases been timed to create maximum pressure for the company. Ms Moran also referred to examples where the Dissenters' expert had asked questions directed at verifying the completeness of the company's disclosure.
18. She relied on *In the Matter of E-House (China) Holdings Limited*³ for the proposition that whilst the experts do have a central role to play in section 238 proceedings, the autonomy accorded to them must not be abused. It was a balancing exercise. The application for a further final information request is simply another attempt by the Dissenters to cause the company to incur costs and increase the litigation burden.
19. As to a management meeting, she submits that the company asked the Dissenters' expert for a list of questions that he wished to discuss at the meeting to determine whether or not such a meeting was appropriate in the light of the questions raised in the third information request. It was also, more practically, so that the company could identify who should attend given that the Dissenters' expert simply requested a meeting with "*management*".

³ [2017 (2) CILR] and unreported, 3 November 2017, Mangatal J at § 29, referencing Martin JA's reasons at § 3 of *In the Matter of Qihoo 360 Technology Co. Ltd.* [2017 (2) CILR 585], refusing leave to appeal from a decision of the Grand Court.



20. She submits that the Dissenters have refused to engage practically in convening the management meeting and they are now out of time to do so. No extension should be granted to permit a management meeting to take place.

Decision

21. There is no reason in principle to dispense with management meetings in this case, notwithstanding the company's clear frustration with the process and understandable desire to bring it to a close. The Dissenters' expert (and of course the company's expert) should be allowed to attend a meeting with the company's management. It is a tried and tested procedural step for achieving a fair outcome in these section 238 cases.
22. I reject Ms Moran's submissions in relation to pulling down the guillotine on management meetings and information requests and to order the exchange of expert reports, when the process has not yet been completed.
23. I accept her point that there has been a considerable degree of cooperation by the company in addressing what one might call the "*information imbalance*" between the parties. That is necessary for the company's petition to be properly and fairly determined.
24. I also note that the Dissenters' expert has been in place for over a year and has had 90,000 documents made available to him to review as well as answers to his reformulated information requests. I have noted, but express no view on, Ms Moran's numerous criticisms of his approach in this regard (which are each refuted by Mr Levy QC).
25. Notwithstanding the difficulties which have arisen in this case, this Court in section 238 cases has confirmed that the role of experts in the valuation process is central to a fair determination of the sole issue at stake, namely the fair value of dissenters' shares⁴. As such, the experts who are engaged to assist the Court enjoy a degree of autonomy, subject to reasonable safeguards. As professional practitioners, the Court relies upon them to assess what information is or is not relevant for their purposes and what procedure might assist them in obtaining and interrogating information in the most economic and efficient way⁵. They can of course be controlled by the Court should it be necessary to correct any abuse of this responsibility and with regard to their overriding duty to the Court.

⁴ *In the Matter of eHi Car Services Limited* (unreported 24 February 2020 Parker J), at § 29-49.

⁵ *Ibid* § 56 and Martin JA at § 3 in *Qihoo and Jones J in In the Matter of Integra Group* [2016] CILR 192 at § 11.



26. The practice of convening management meetings, at which the experts continue to play a central role, is an integral part of the information exchange process and has also been confirmed time and again by this Court. Indeed the Chief Justice referred to management meetings as crucial⁶.
27. The proper course, if there is an impasse between the parties as to resolving any particular question of sufficient importance, is to apply to the Court for further directions. That is what a party who has difficulty complying with Court Orders should do.
28. Unfortunately the parties in this case have engaged in lengthy, acrimonious and unproductive correspondence which is not in accordance with the Overriding Objective, and have let compliance with the provisions of the Directions Order slip. I accept Ms Moran's submission that there has to be a level of "*practicality and reasonableness*" implicit in compliance with Court Orders. That is why the Court relies on the attorneys to make reasonable and sensible arrangements between themselves so as to comply.
29. Assuming, as the Court does, working professional relationships between the relevant attorneys, the Overriding Objective would often more easily be met by oral communication, whether in person or on the telephone/screen. The fact that the litigation is hard fought and no doubt can feel attritional, is not an excuse for ignoring Court Orders or the Overriding Objective, which is there to ensure that cases are conducted in a just, expeditious and economical way.
30. The company should comply with paragraph 22 of the Directions Order (as varied by the Consent Orders of 20 August 2020 and 20 November 2020) by convening a management meeting at the first convenient date within 28 days from the date of the revised Order following this Judgment. The Dissenters' expert should identify the matters he wishes to cover in sufficient time and not less than 14 days before the management meeting so that the company can arrange for the relevant persons to attend.
31. The company has provided answers to the Dissenters' expert's second and third information requests shortly before the hearing. Paragraph 21 of the Directions Order remains that a final information request from the experts may be submitted within 7 days of the management meeting.

⁶ *In the Matter of JA Solar Holdings Co., Ltd.* (unreported, 18 July 2019, Smellie CJ).



32. The dates for compliance with the other procedural aspects of the Directions Order should be rescheduled in accordance with the schedule appended to Mr Levy QC's written submissions dated 3 June 2021.

THE HON. RAJ PARKER
JUDGE OF THE GRAND COURT