



A summary of the Federal Court’s decision in *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)].

Retrospective sanction from the Official Receiver/Liquidator of a wound-up Appellant/Applicant in Court by itself cannot sufficiently clothe the Appellant and/or their solicitors with locus standi to proceed with the Appeal/proceeding in question without leave nunc pro tunc obtained from the Court

The Respondent was wound up before the disposal of the High Court proceedings.²

The liquidator gave sanction to the Respondent’s contributory and solicitors to proceed with the High Court suit.³

BACKGROUND FACTS

The Respondent, a private limited company, initiated a suit against the Appellants in the High Court and the Appellants counterclaimed against the Respondent.¹

The High Court dismissed both the Respondent’s claim and the Appellants’ counterclaim.⁴

On 22/12/17, acting on the instructions of the Respondent’s contributory, the Respondent’s solicitors filed a Notice of

¹ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 1

² *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 2

³ *Ibid.*

⁴ *Ibid.*



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Appeal against the High Court’s decision.⁵

The Appellants subsequently filed a motion in the Court of Appeal to strike out the Respondent’s appeal.⁸

On the same date, the Respondent’s solicitors also applied for the liquidator’s sanction to file the Notice of Appeal and to continue with the appeal.⁶

COURT OF APPEAL’S DECISION

The liquidator granted its sanction on 2/2/18 and stated that the sanction would take effect retrospectively from 21/12/17.⁷

The Court of Appeal was of the view that the steps taken and the sanction secured by the plaintiff were proper and valid.⁹

Accordingly, the Court of Appeal dismissed the Appellant’s motion.¹⁰

⁵ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 3

⁶ Ibid.

⁷ Ibid.

⁸ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 4

⁹ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 6

¹⁰ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 4



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Inter alia, the Court of Appeal held that:¹¹

- i. The liquidator had the necessary authority to consider and grant a sanction which is effective on a date other than the date it was made;
- ii. Section 483 and or 486 of the Companies Act 2016 are more directory in nature as opposed to the mandatory terms of the Courts of Judicature Act 1964 and the Rules of the Court of Appeal 1994;
- iii. There is no reason why the liquidator, may not grant retrospective sanction;
- iv. There is no reason why the Court of Appeal should question the liquidator's decision since the liquidator saw it fit, after it has been appropriately satisfied and has imposed conditions, to grant the sanction sought retrospectively;
- v. There were no issues of prejudice and miscarriage of justice because of the applicant's own conduct, failure and dereliction in compliance with the law; and
- vi. Had there been an application for retrospective leave or leave nunc pro tunc sought by the plaintiff,

¹¹ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 6



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the Court of Appeal would have granted it unhesitatingly.

question without leave *nunc pro tunc* obtained from the Court?

FEDERAL COURT'S DECISION

The Appellants obtained leave to appeal to the Federal Court on the following questions:¹²

- ii. If the answer to Question 1 is NO, whether the application for leave *nunc pro tunc* to the Court must be made by way of a formal application pursuant to section 486(2) of the Companies Act 2016?

- i. Whether retrospective sanction from the Official Receiver/Liquidator of a wound-up Appellant/Applicant in Court by itself can sufficiently clothe the Appellant and/or their solicitors with *locus standi* to proceed with the Appeal/proceeding in

The Federal Court answered the first question in the negative and declined to answer the second question.¹³

¹² Ibid.

¹³ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 5



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On the facts of the case, the Court of Appeal did not grant any leave *nunc pro tunc* to the Respondent¹⁴ as the Respondent did not file an application for the same.¹⁵

notice of appeal filed by the plaintiff is bad in law and of no legal effect.”¹⁶

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After examining the relevant authorities, the Federal Court concluded the following:

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“The liquidator did not have the statutory power to grant retrospective sanction in the absence of any express enabling provision in the enactment. Consequently, the

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¹⁴ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 32

¹⁵ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 30

¹⁶ *Lai King Lung & Anor v Merais Sdn Bhd* [Federal Court Civil Appeal No. 02(i)-4-01/2019 (B)], at paragraph 35