

Shareholder Oppression. Big words, big consequences.

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2020 meant radical, instinctive business decisions. But moves which were 100% necessary at the height of the pandemic may seem questionable some 12 months later, against a backdrop of economic growth and relative normality. A common way that a shareholder will ventilate frustration with the management of the company is through an oppression claim. But what is it, how can it arise and how can you avoid it?

What is shareholder oppression?

Oppression is where the board or other shareholders of a company act in a way which is unfairly prejudicial to a particular (usually minority) shareholder or against the interests of the shareholders as a whole.

It can be used by shareholders of any company. But we often see it pop up in smaller companies; often those which are partly owner-managed or have a 50/50 shareholding split.

How does it arise?

Usually from dissatisfaction. Dissatisfaction with the way the business is being run or with the direction the board (or a shareholder) is trying to take the business - and often wanting to sell their shareholding. Some examples of conduct which can be oppressive include:

- a majority shareholder acting to the detriment of another shareholder;
- a majority shareholder diverting business to another company in which they have an interest;
- shares being issued to dilute certain shareholders' interests;
- paying a majority shareholder (or associate) excessive remuneration;
- excluding a director representing a minority shareholder from board meetings;
- conducting the company's affairs in a 'pointlessly wasteful' way; and
- disregarding the purpose of the company and redirecting its resources into different commercial areas.

Ultimately the court will need to consider whether the conduct is objectively unfair.

What can happen?

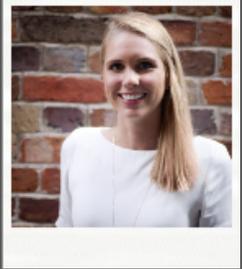
If an oppression claim goes to court, the court can basically do whatever it thinks fit to remedy the conduct. That might involve winding up the company, amending the company's constitution, restraining particular acts and requiring the payment of money.

How to avoid ending up in court?

Shareholder oppression actions are very useful and can be a great way to protect your interests. But avoiding court is often the better outcome for the company and the hip pocket.

Setting your company up at the outset with a shareholders' agreement will provide clear non-litigious pathways for resolving disputes. They also create a clear process for a shareholder to exit a business on fair terms, avoiding the need to dissolve the company in order to resolve a dispute.

Questions? Give us a call.



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