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Minority shareholder winds up company

Fleming Muntz Solicitors

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Summary

Winding up a solvent company normally needs a 75% majority of shareholders. Why did the full Federal Court allow a shareholder with only 25% of issued shares to achieve the same thing?

What were the facts?

The 25% minority shareholder claimed that it was denied financial and other information and generally excluded from participating in the company's affairs.

It argued that this was oppressive, prejudicial or discriminatory under the *Corporations Act* and that winding up was the best solution.

What was the decision?

The trial judge accepted the minority shareholder's arguments and ordered that the company be wound up.

The full Federal Court looked particularly at whether a *solvent* company should be wound up as a result. Ultimately, it decided that winding up was justified because the majority shareholders' conduct was so 'commercially unfair'.

What is significant?

We usually assume that holding 51% of voting shares gives complete control of a company. This case shows that a majority shareholder cannot just look after itself, but must act in a way that benefits the company as a whole.

It also shows that, in rare cases, solvency alone will not prevent a court from winding up a company.

How can Fleming Muntz help?

The decision demonstrates the risk to majority shareholders that abuse their position, but also the cost and effort that the minority shareholder had to go to before getting relief.

We do not know how the winding up proceeded, but it would be unusual if the parties were happy with the dividend they received from the liquidator.

A shareholders agreement could have avoided the whole saga. Fleming Muntz has particular experience negotiating and drafting share and unitholder agreements for clients, accountants and other lawyers.

For more information, please contact:

Ian Byles
B Sc LLB (hons) LLM
Notary Public
Accredited Specialist Business Law
Telephone: (02) 6021 2222
Email: Ian.Byles@flemingmuntz.com.au

Solicitors for New South Wales and Victoria

568 Kiewa Street
Albury New South Wales
Australia

PO Box 910
Albury NSW 2640

enquiries@flemingmuntz.com.au
www.flemingmuntz.com.au

Facsimile (02) 6041 1804
Telephone (02) 6021 2222