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The declaration of trusts: beneficial ownership and choice of law

The case of *Gorgeous Beauty Ltd v Liu* illustrates that when a company is declaring a trust over its assets, transparency is vital. It is important to ensure its shareholders have full knowledge of the trust and who is to benefit under it. A declaration of trust made without shareholder knowledge and consent is likely to be invalid.

The facts

Gorgeous Beauty Ltd was a Seychelles international business company that was affiliated to a Taiwanese family-owned company. Gorgeous Beauty Ltd was owned by 5 other Seychelles companies and the ownership structure was intended to reflect the beneficial ownership of the Taiwanese company.

- Gorgeous Beauty Ltd owned 99% of the shares in an LLP.
- Another family member owned the other 1% of shares in the LLP.
- The sister of the other family member was the sole director of Gorgeous Beauty Ltd, however the majority of shares in Gorgeous Beauty Ltd and the Taiwanese company were owned by another branch of the family.

The LLP purchased a property worth $8.6m in Taiwan. The sister of the family member signed a declaration of trust on behalf of the company stating that Gorgeous Beauty Ltd held its interest in the LLP on the other family member's behalf. Following a family dispute, the sister was removed as Gorgeous Beauty Ltd's director. According to forms received at Companies House, Gorgeous Beauty Ltd was removed as a member of the LLP and the sister was appointed as a member.

Firstly Gorgeous Beauty Ltd argued that the property had been purchased to benefit the Taiwanese company and held through the corporate structure involving Gorgeous Beauty Ltd and the LLP to benefit from tax advantages. It was never intended to actually benefit another family member individually. Gorgeous Beauty Ltd claimed the declaration of trust had been signed without the knowledge of the majority of shareholders.

Secondly, Gorgeous Beauty Ltd said if the declaration had been made with the knowledge of the shareholders, Gorgeous Beauty Ltd was still entitled to relief as the declaration would be invalid under Seychelles law.

The consequences

The court felt that the majority of evidence supported Gorgeous Beauty Ltd's case that the property had been purchased for the benefit of the Taiwanese company, and not for another family member's personal benefit. Therefore, as the declaration of trust had been made without the consent of the majority of Gorgeous Beauty Ltd's shareholders. Gorgeous Beauty Ltd would be entitled to relief. The documents that were filed to effect the changes to the LLP would be deleted from the Register of Companies.

The lesson

Although the precise facts of this case are unlikely to be of direct relevance to many businesses, particularly for family owned companies it is not unusual to acquire assets in an incorporated entity which are for the benefit of persons other than that entity.

There are various legal ramifications of doing so and such a course of action should not be taken lightly. For example, in a matrimonial context the use of companies to hold what are allegedly family properties has been under intense scrutiny since the Prest judgment.

This case focuses on one particular aspect, namely that it is important that there is internal transparency between all relevant parties. Failure to adhere to legal requirements in this area can lead to the collapse of the entire arrangement and related (unintended) consequences.

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