

MCMILLAN'S PRECEDENT-SETTING SHAREHOLDERS REMEDY CASE SELECTED AS A 2022-2023 TOP 10 JUDGMENT BY LEXPERT

Posted on November 23, 2023

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Lexpert has selected, as one of the [Top 10 Business Decisions of 2022-2023](#), *1115830 B.C. Ltd. v. Treasure Bay HK Limited, 2022 BCCA 380*. McMillan acted as counsel for the successful plaintiff in this precedent-setting shareholders remedy case in the British Columbia Court of Appeal. This recognition speaks to our ability to lead businesses through complex disputes and our commitment to reach the best outcome for our clients, who trust us with their matters.

Our litigators have extensive experience in domestic, cross-border, and international litigation, arbitration and mediation. When the stakes are at the highest, we work tenaciously to pursue our clients' commercial interests before all levels of courts, regulators, commissions, administrative tribunals and arbitral panels. McMillan lawyers' expertise with virtually any type of business dispute helps our clients stay ahead.

About The Case

McMillan's team comprising of Robert Wisner, Daniel Shouldice, Jeneya Clark and Stephen Wortley, acted as counsel to **Treasure Bay HK Limited**, which was seeking to recover approximately \$25 million owed by two British Columbia companies to a Hong Kong company, GM International Holding Limited, in which it was a minority shareholder. Treasure Bay HK Limited alleged that the Hong Kong lender was de facto controlled by the principal of the BC debtors who was preventing it from asserting its rights. Therefore, it was free to start a "common law derivative action" to recover the debt owed to the lender.

The McMillan team of lawyers successfully defeated an application by the defendants to strike the claim on the basis that leave of the court was required to commence or continue a common law derivative action. The British Columbia Court of Appeal dismissed the defendants' appeal, finding that no such leave was required and that it was up to the legislature to change the law to impose a leave requirement. The Supreme Court of Canada then denied the defendants' application for leave to appeal.

According to Robert Wisner, Partner, International Arbitration & Cross-Border Litigation, "the case is an

instance where a minority shareholder of a foreign company can pursue a common law derivative action against a wrongdoer and his related companies. Although corporate statutes across Canada allow statutory derivative actions with leave of a court, the common law derivative action remains an important remedy for minority shareholders of some foreign companies and for limited partners in a limited partnership. The decision finally settled the long-disputed question in British Columbia of whether a party requires leave to commence or continue a common law derivative action.”

About McMillan

[McMillan](#) is a national business law firm that knows real-time solutions drive corporate success and recognizes businesses need a partner who is responsive, astute and invested in their success. McMillan offers the sector expertise and practical business advice today’s leaders need to stay ahead.

With offices in Vancouver, Calgary, Toronto, Ottawa, Montréal and Hong Kong, McMillan provides exceptional industry insights in transportation, technology and technology transactions, infrastructure and construction, and natural resources and energy. Whether it’s a cross-border transaction, a complicated private equity deal, complex real estate financing, or a bet-the-company lawsuit or regulatory dispute, McMillan has the expertise leaders need to grow and succeed in Canada.