Lumbini Pte Ltd v Toh Peng Noi and Others (Tan Soo Kiat and Others, Third Parties) [2002] SGHC 85

Case Number : Suit 600010/2001

Decision Date : 24 April 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Chua Boon Thien, Cheung Phei Chiet and Raymond Tan (David Siow Chua & Tan) for the plaintiffs; Rebecca Chew and Cindy Ng (Rajah & Tann) for the 1st, 2nd and 4th defendants; Lionel Tay and Paul Ng (Khattar Wong & Partners) for the 3rd defendant; Wong Tze Roy (JP & Wong) for both third parties

Parties : Lumbini Pte Ltd — Toh Peng Noi; Lau Ngan Song alias Seck Wan Chin; Lau Kim Koon; Bodhigaya Book Shop Pte Ltd — Tan Soo Kiat; Mary Wang Lee Jyu; SK-SK Tan & Co

Judgment

GROUNDS OF DECISION

INTRODUCTION

1. The Plaintiff Lumbini Pte Ltd ('Lumbini') is a company which used to be the sole registered proprietor of a business known as Bodhigaya Book Shop ('BBS'). The business registration of BBS was terminated on 21 November 1995 to facilitate incorporation of the Fourth Defendant Bodhigaya Book Shop Pte Ltd ('BBSPL').

2. On 21 September 1996, the First Defendant, Ms Toh Peng Noi, who was at all material times a manager of BBS, withdrew two sums of $11,668.74 and $11,967.47 amounting to $23,636.21 ('the Deposits') from a fixed deposit account which BBS had with Lee Wah Bank Limited. The Deposits were withdrawn in cash and deposited into a bank account of BBSPL.

3. Lumbini's first claim is for payment of the Deposits. This claim is directed at Ms Toh and the other three Defendants as well.

4. The second claim of Lumbini is for all other monies, assets and properties of BBS which have been transferred to BBSPL. This claim is directed at BBSPL and at the First to Third Defendants as well.

5. The third claim of Lumbini was for the accounting books and records of BBS to be delivered up by Ms Toh and Mr Lau. However this claim was withdrawn by Lumbini's counsel Mr Chua Boon Thien during Closing Replies.

6. Many causes of action were pleaded such as, money had and received, breach of duty or breach of fiduciary duty, conversion, constructive trust and/or conspiracy to injure Lumbini.

7. BBSPL has brought Third Party proceedings against one Tan Soo Kiat ('Mr SK Tan') and a firm controlled or managed by Mr SK Tan, i.e SK-SK Tan & Co ('SK Tan & Co'), for an indemnity or contribution towards such sum as BBSPL may be liable to Lumbini. The basis of this Third Party claim is:

(a) Mr SK Tan was at all material times a director and company secretary of Lumbini and responsible for the administration, management and operation of Lumbini with the assistance of one Ms Wang Lee Jyu ('Mary Wang'). Mr SK Tan had breached his duty to Lumbini.

(b) SK Tan & Co provided corporate secretarial services as well as business management and consultancy services at all material times to BBS and then to BBSPL (until 30 September 1996) and had incorporated BBSPL. SK Tan & Co handled the incorporation of BBSPL for the purpose of taking over BBS's assets as a going concern. SK Tan & Co had breached its duty to BBSPL.

8. Furthermore, Mr Lau also brought Third Party proceedings against Mr SK Tan and Mary Wang for an indemnity or contribution towards such sum as Mr Lau may be liable to Lumbini for. The basis of this Third Party claim is breach of duty on the part of Mr SK Tan who was one of the directors and also company secretary of Lumbini and breach of duty on the part of Mary Wang as one of the directors of Lumbini.

9. The initial action filed on 4 January 2000 as MC Suit No 600147 claimed only the Deposits. Subsequently it was amended to include the various claims I have mentioned. The action was transferred to the District Court and subsequently to the High Court.

10. In my Judgment, 'AEIC' means affidavit of evidence-in-chief and 'NE' means notes of evidence.

ISSUES AND RESPECTIVE POSITIONS

11. The crux of the case is whether there was an agreement by Lumbini to transfer its business, including its assets and liabilities, to BBSPL and the terms thereof.

12. Lumbini's position is that there was no such agreement as cash payment had to be made in respect of the transfer and this had not yet been agreed even though BBSPL was incorporated to take over the business of BBS as a going concern and its incorporation was effective on 21 November 1995.

13. Lumbini's main witness was Mr SK Tan who said that the incorporation of BBSPL was merely a step towards the transfer. He claimed he was unaware, until February 1997 that BBSPL was operating the business of BBS after BBSPL's incorporation.

14. The Defendants' position is that there was an agreement for Lumbini to transfer BBS's business to BBSPL and 20% of the equity in BBSPL would be taken by Lumbini. The Defendants also say that Lumbini subsequently decided not to take the 20% stake. Furthermore, Mr SK Tan expressly agreed to give the business of BBSPL for free. The Defendants also take the position that Mr SK Tan subsequently agreed to transfer the business for a $1 nominal consideration.

15. Much reliance was placed by the Defendants on various documentary evidence, for example,

(a) A letter dated 23 March 1995 from Master Yuanqing which incorporates the minutes of a meeting of 22 March 1995

(b) A letter dated 28 March 1995 from one Master Guangchao

(c) The Memorandum & Articles of BBSPL and documents signed by Mr SK Tan or Mary Wang in relation to the incorporation of BBSPL and the termination of BBS

(d) A memorandum dated 5 February 1996 from Mr SK Tan

(e) Resolutions drafted by Mr SK Tan in respect of the $1 nominal consideration

(f) Correspondence from Mr Lau in 1996.

THE FACTS AND ALLEGATIONS

16. It is necessary to go into some detail of the background facts and allegations which has led to this action.

Lumbini and its officers and advisors

17. On or about 8 August 1988, Lumbini became the registered sole proprietor of BBS. The business of BBS was to sell Buddhist publications and articles. Lumbini also had other businesses which I shall elaborate on later.

18. At all material times, the directors of Lumbini were:

(a) Mr SK Tan

(b) Mary Wang

(c) Mr Lau (the Third Defendant).

Mary Wang

19. Mary Wang was a director in name only and it is clear from her evidence that she would comply with the instructions of Mr SK Tan without question. Accordingly it is not material whether she was the personal secretary of Mr SK Tan in SK Tan & Co as alleged by the Defendants.

Mr SK Tan

20. The Defendants say that Mr SK Tan was calling the shots in Lumbini and much time was spent to establish or to deny this allegation. Having considered the documentary and oral evidence, I am of the view that it is obvious that Mr SK Tan was not calling the shots at Lumbini. True, as between Mr Lau and he, he took a more active role in Lumbini, as well as in BBS, and as between Master Yuanqing and him, Master Yuanqing was not a director of Lumbini. However, I find that he was much guided by both Master Yuanqing and/or Master Guangchao and Buddhist believers like one Yeo Kwang Seng, Billy Yang (brother of Yeo Kwang Seng) and Sudatta Eng. The fact that he had proposed dividends to be paid in his letter dated 23 August 1996 must not be taken out of context. This letter was written after material events in 1995 had occurred which I shall elaborate on later.

21. On the other hand, I also do not think that Mr SK Tan was as uninvolved in the affairs of Lumbini or BBS as he wanted me to believe. For example,

(a) There were minutes of directors' meetings of Lumbini which recorded him as raising queries,

although he said it was not really he who had raised them and his name was mentioned because he was a director. I do not accept this explanation.

(b) Ms Toh had given evidence, which I accept, about how he would from time to time ask questions or make suggestions about Lumbini/BBS when she dropped by at his office.

(c) There is also a letter from BBS signed by Ms Toh to another company dated 2 October 1991 referring to Mr SK Tan as 'our honorary business adviser', a description which he did not object to then.

Mr Lau

22. Mr Lau (the Third Defendant) is the brother of Master Yuanqing (the Second Defendant). He has a degree in accounting and had worked in the audit firm of Chong Phua Chow & Partners. Thereafter he worked in the Port of Singapore Authority and, after that, he worked in United Overseas Bank Limited. His position in the bank at the time of the trial was First Vice President of Special Loans Division and he was handling delinquent loans.

23. He first assisted BBS when Master Yuanqing sought his help in July or August 1988 as the then manager one Tan Siew Siang apparently had difficulty in reconciling BBS's daily cash flow. Subsequently Master Guangchao formulated a computer system to keep track of the daily cash flow and stocks for BBS. He also sought advice from Mr Lau on an ad hoc basis regarding accounting aspects of the system.

24. It was Master Guangchao who invited Mr Lau to attend a meeting of Lumbini on 14 November 1988. It was at this meeting that Mr Lau was introduced to Mr SK Tan and Mary Wang. Mr SK Tan then nominated Mr Lau to sit on the Executive Committee of Lumbini. According to the minutes, Mr Lau and two others i.e Yeo Kheng Guan and D H Hong were to sit on this Committee.

25. At another meeting on 12 December 1988, Mr Lau declined to be on the Executive Committee as he was holding a full time job. Mr SK Tan then invited him to join the board of directors of Lumbini and, after persuasion by Master Guangchao and Sudatta Eng, Mr Lau agreed. Mr SK Tan said he had no knowledge as to whether the Executive Committee had met or whether it was functioning (NE 43). It seems to me that the idea of the Executive Committee did not take off. There is no further mention about it in the subsequent minutes of meetings of Lumbini.

26. Mr Lau said his role was mainly to give ad hoc advice on accounting matters and to assist Ms Toh on the preparation of financial statements from accounting records. He also answered questions from the external auditors of Lumbini. In cross-examination, he added that he posted figures from the accounting records into the ledger. I accept that his main role was to assist with the accounts and he was not involved in the operations or financing aspect of BBS's business.

Ms Toh

27. As I have said, Ms Toh was at all material times the manager of BBS. She was also the sole signatory of BBS's fixed deposit account with Lee Wah Bank Limited.

Two Religious Advisors

28. Lumbini was guided in its affairs by two religious advisors. I have already mentioned Master Yuanqing (the Second Defendant). The other was Soh Chee Kong @ Seck Guang Chao ('Master Guangchao') whose name I have mentioned in para 15(b) above. There were many variations of the English translation of the names of the two religious advisors but I shall use the names Master Yuanqing and Master Guangchao only.

29. Master Yuanqing and Ms Toh, the manager, were the ones who were managing the business of BBS at all material times. As an advisor, Master Yuanqing was also in a position to influence the directors. Although he sought to confine his role to managing the business of BBS and to giving advice only when it was sought, I find that his role was not so confined and he did take an active role in advising on matters regarding the future of BBS and Lumbini.

Contribution of $100,000

30. Mr SK Tan got to know Master Yuanqing when he went through a programme in 1987 at Bright Hill Temple in Singapore. The programme was a two-week course for Buddhist believers to learn Buddhist teachings and precepts and to experience living as a Buddhist monk. Master Yuanqing was one of Mr SK Tan's religious teachers. It was at the same programme that Mr SK Tan got to know Master Guangchao also.

31. After the programme, Master Yuanqing continued to guide Mr SK Tan on the precepts of Buddhism.

32. Mr SK Tan's evidence was that as their relationship developed, Master Yuanqing informed Mr SK Tan in about early 1988 of his plan to assist Buddhist believers to be financially independent and self-reliant by setting up Buddhist enterprises. Master Yuanqing asked Mr SK Tan whether he was prepared to make a financial contribution to which he agreed to contribute an equivalent sum of every dollar raised.

33. In about the first quarter of 1988, Master Yuanqing introduced one Yeo Kwang Seng to Mr SK Tan and said that Mr Yeo had agreed to contribute $50,000. Mr SK Tan then agreed to contribute $50,000.

34. There were then various meetings with Master Yuanqing, Mr SK Tan, other Buddhist believers such as Yeo Kwang Seng, Billy Yang and Sudatta Eng. Apparently Mr Lau also attended the meetings although he was not formally introduced to Mr SK Tan until November 1988.

35. According to Mr SK Tan, the various persons had the following understanding:

(a) the contribution of $50,000 each from Mr Yeo and him would be used to set up a company and various businesses. Although Mr Yeo and he would leave the management of the companies and the businesses to the Buddhist believers, Mr Yeo and he would have the right to liquidate the companies and/or businesses and the proceeds would be divided into two parts; one part each for Mr Yeo and him to donate to a charity of their respective choices, if there was any problem or dispute,

(b) a 'parent' company would be set up to control the various businesses which would promote the Buddhist faith, such as the retail of Buddhist publications and articles, providing the services of funeral undertakers, conducting computer training and support and the business of floral arrangement, and

(c) these businesses would be managed by Buddhist believers and when they became established and/or independent, they would be 'separated' or independent from the 'parent' company i.e privatised. However the 'parent' company would retain some interest or shareholding in the new company and the remaining shares in the new company would be distributed among the employees of the business and volunteers who have helped in its business. Further, the new company would also be required to return the financial support (if any) which the business took from the 'parent' company.

36. With this understanding, Mr SK Tan said he was instructed by Master Yuanqing to register and incorporate various businesses and companies between June to December 1988 as follows:

(a) BBS on or about 6 June 1988. Mary Wang was its first proprietor. Thereafter when Lumbini was incorporated, it took over as the sole proprietor of BBS. As I have mentioned, the business of BBS was to sell Buddhist publications and articles.

(b) Lumbini on or about 15 July 1988. Lumbini was to be the parent company for the various businesses.

(c) Sarnath Publication ('Sarnath') on or about 16 August 1988. Sarnath was to sell and distribute audio tapes and compact discs of recordings of sutras and lectures given by prominent monks.

(d) Nalanda Professional Trading Centre ('Nalanda') on or about 17 October 1988. Nalanda was to provide and conduct computer training and support.

(e) For You Professional Services Information Centre, which was subsequently renamed and known as For You Information ('FYI'), on or about 16 December 1988. The main business of FYI was to publish monthly publications or newsletters to provide information to the Buddhist community.

37. After Lumbini was incorporated on or about 15 July 1988, Mr Yeo and Mr SK Tan made their financial contributions and each of them owned one share in Lumbini. These shares were held in the names of one Koh Chiou Eng (the wife of Mr SK Tan) and Mary Wang respectively.

38. The $50,000 from Mr SK Tan was recorded as a loan by him to Lumbini. The $50,000 from Yeo Kwang Seng was recorded as a loan from Mary Wang to Lumbini. Yeo Kwang Seng said that he was a civil servant at the material time and civil servants were not supposed to be doing business. Hence, Mary Wang's name was used (NE 17). However, no explanation was given as to why one of the shares in Lumbini had to be held in trust for Mr SK Tan.

39. Mr SK Tan and Yeo Kwang Seng said that the $100,000 from them were intended to be donations. However Mr SK Tan added that they were actually conditional loans, subject to the alleged understanding stated in para 35(a) above. Master Yuanqing and Mr Lau said that they were outright donations. Master Yuanqing said that the monies were recorded as loans in Lumbini's accounts because of tax reasons on the advice of Mr SK Tan.

Corporatisation of FYI

40. According to Mr SK Tan, in about July 1994, Sudatta Eng had told him about Master Guangchao's intention to set up another company to take over the business of FYI so that those who

had helped out in FYI's business could have a stake in the new company.

41. A company Saddha Pte Ltd ('Saddha') was used for this purpose. 20% of the shares in Saddha was held by Lumbini and the balance held by those who had helped in the business of FYI. Mr SK Tan said he had thought that the decision to corporatise FYI had been discussed with Master Yuanqing. As it turned out, Master Yuanquing was unaware.

Sakyamuni Trading Pte Ltd

42. In about the first quarter of 1995, Master Yuanqing asked Mr SK Tan to incorporate another company to purchase premises for the business of BBS. This was done and the company's name was Sakyamuni Trading Pte Ltd ('Sakyamuni').

Corporatisation of BBS

43. On 22 March 1995, there was a meeting in Mr SK Tan's office between Master Yuanqing, Master Guangchao and various Buddhist believers.

44. According to Mr SK Tan, he did not attend the meeting. This was disputed by the First to Third Defendants who took the position that he did attend the meeting.

45. It is not material to me whether Mr SK Tan did attend that meeting because even if he did, he did not participate in that meeting as is evident from the minutes of the meeting. Even Master Yuanqing admitted that Mr SK Tan did not say anything at the meeting (NE 139).

46. Pursuant to that meeting, Master Yuanqing sent a letter dated 23 March 1995. It was addressed to all the three directors of Lumbini, i.e Mr SK Tan, Mr Lau and Mary Wang. In that letter, Master Yuanqing stressed that the withdrawal of FYI from the group was without notice to him. He alleged that this subjected Lumbini's structure, tenet and objectives to a crisis. He said that the other businesses may also be acquired and cease to be part of Lumbini.

47. The English translation of the minutes of the meeting, which was included as part of the letter stated, inter alia:

	Speaker
1. For You (1) accounted for the withdrawal of For you (2) For You should not have been acquired and withdrawn from Lumbini without notice to Shi Yuanqing, advisor of the company. 2. Lumbini Pte Ltd:	 Master Guangchao Master Yuanqing

(1) disappointed with Lumbini Pte Ltd for not supporting Buddhism.	Master Guangchao/ Huang Guojian
(2) Lumbini Pte Ltd is a shell company and is not financially able to support Buddhism.	Master Yuanqing/Mr. Lau
3. Bodhigaya:	
(1) Bodhigaya shall not request For You to relocate because of its business expansion. Bodhigaya should explore other areas.	Master Guangchao
(2) As the two shareholders of Lumbini are not involved in the management of Lumbini and the three directors authorised the two advisory masters to handle businesses of their respective companies, the decision making of Bodhigaya by one master shall be free from any intervention of the other master, otherwise the decision cannot be implemented.	Master Yuanqing
4. …	
5. …	
6. Conclusion:	
(1) Lumbini has not carried out any business related to Buddhism and there is hence no value or significance in its existence.	Master Guangchao/ Huang Guojian
(2) Lumbini is a shell company and is dormant.	Master Yuanqing
The two masters, being fully responsible for the other companies under authorisation of the three directors, are exposed to excessive legal responsibilities.	
….	
….	Master Guangchao/ Huang Guojian /Yang
(3) Due to differences in opinions,	

all the companies of Lumbini shall gain independence. The decisions lies with the three directors.	Guangming

48. The letter ended with the following proposals:

'VIII. Proposals:

1. If the other companies of Lumbini intend to seek independence, their controlling power shall be vested in:

(1) the current person in charge of respective companies; or

(2) the person who has achieved good results in managing such companies.

2. The method is similar to that of For You. Lumbini shall have 20% shareholding, and the person in charge or the person who has achieved good results in managing such company shall hold the remaining 80%.'

[Emphasis added.]

49. Subsequent to this letter, Master Guangchao sent a letter dated 28 March 1995. It was addressed to six people i.e Master Yuanqing, Mr SK Tan, Mr Lau, Billy Yang, Mary Wang and Yeo Kwang Seng. The English translation reads:

'I agree with the proposal by Master Yuanqing to let Bodhigaya Book Shop be independent and to vest its controlling power in the current person-in-charge of Bodhigaya Book Shop or the person who has achieved good results in managing Bodhigaya Book Shop.

With regards to the distribution of equity interest, Lumbini Private Limited may hold 20% of its shares, and the remaining 80% shall, upon due contemplation, be distributed among the promoter, the person-in-charge, and the person who has contributed to or has achieved good results in managing the Company. The date of independence is to be decided by Master Yuanqing and S.K. Tan.

I propose that, whether or not Lumbini Private Limited is to be dissolved shall be discussed and decided by its legal representatives Wang Lee Jyu and Koh Chiou Eng, its directors, and its advisors Master Guangchao and Yuanqing.
[Emphasis added.]

50. Master Yuanqing tried to deny that in the meeting of 22 March 1995 and in his letter dated 23 March 1995 he had proposed that BBS be privatised and that he was only suggesting that if other businesses wanted to seek independence, Lumbini was to have a 20% share in the new company (NE 138 and 139). He also alleged that when he subsequently made such a proposal, it was not because FYI had become privatised (NE 138).

51. I would first point out that the parties had used the word 'privatised' to mean the incorporation of a new company to take over a business of Lumbini and Lumbini would not have a majority stake in the new company. I will continue to use that expression to mean the same thing although in fact all the businesses of Lumbini had all along been held privately.

52. Secondly, I do not accept Master Yuanqing's evidence as stated in para 50 above. He was very unhappy that FYI had been privatised without his knowledge and he made his unhappiness known at the 22 March 1995 meeting and in his letter dated 23 March 1995. In view of this development, he wanted BBS to be privatised and he was to hold the majority stake in the new company. Although he did not want to say this explicitly in his letter, this was clear to all the others.

53. I also find that although Master Guangchao's letter dated 28 March 1995 did not specifically refer to Master Yuanqing's letter dated 23 March 1995, it was in response thereto because:

(a) it refers to Master Yuanqing's proposal, and

(b) the reference to the deserving party who would hold 80% is in the same terms as set out in Master Yuanqing's letter i.e the promoter, the person-in-charge, and the person who has contributed to or has achieved good results in managing the company.

54. Mr SK Tan said that as he did not attend the 22 March 1995 meeting, he learned about the proposal that BBS be independent from Mr Lau, Mr Yeo and Billy Yang in April 1995. He alleged that he told them that to carry this proposal through, a company had to be incorporated first and a cut-off date be set for the valuation of BBS's assets. This was to determine the price to be paid to Lumbini for BBS's assets. Mr SK Tan alleged that he also told Mr Lau to speak to Master Yuanqing about this because BBS had used most of Lumbini's funds and, at the very least, the $100,000 put in by Mr Yeo and he should be paid to Lumbini.

55. Mr SK Tan had also initially denied receiving the letter of Master Yuanqing in his AEIC but I find that he admitted otherwise during cross-examination (NE 47). I find that he did receive Master Yuanqing's letter dated 23 March 1995.

56. As for Master Guangchao's letter dated 28 March 1995, Mr SK Tan made a foolish attempt during cross-examination to doubt its authenticity when he said he was not sure about the signature thereon. He also said that the letter was not given to him at the time even though he was one of the addressees (NE 78).

57. I do not accept Mr SK Tan's evidence casting doubt on the authenticity of Master Guangchao's letter. It is part of the Agreed Bundle. Also, Master Guangchao was not a witness and hence did not dispute its authenticity. I also do not accept his evidence that that letter was not sent to him at the material time. If that were so, he would have said so in his AEIC bearing in mind its materiality. I therefore find that he did receive this letter in or about March 1995.

58. Accordingly, whether Mr SK Tan attended the 22 March 1995 meeting or not, he knew about the privatisation of BBS from the two letters dated 23 and 28 March 1995. He did not object to the terms stated in Master Guangchao's letter because he was agreeable with the terms.

59. I also find that Mr SK Tan did not mention to Mr Lau a cut-off date to value the assets of BBS for the price to be paid to Lumbini or that $100,000 should be paid. The question of making payment based on a valuation of the assets of BBS is not mentioned in any of the documents in 1995 or 1996 except in one internal memo from Mr SK Tan to his staff Jamilah dated 17 November 1995 which I shall deal with later. As for the $100,000, it was not mentioned to any of the Defendants until April 1996 as I shall elaborate on later.

60. As for Yeo Kwang Seng, he said in para 16 of his AEIC that while there was in principle agreement, at the 22 March 1995 meeting, to Master Yuanqing's proposal to privatise BBS, there were

outstanding issues to be resolved. He did not elaborate in his AEIC as to what these outstanding issues were. In cross-examination, he said they involved administration, procedures and financial matters and BBS had to pay back capital to Lumbini (NE 23).

61. He also said in his AEIC that he had not seen the minutes of the meeting included in Master Yuanqing's letter dated 23 March 1995 until Mr SK Tan showed the minutes to him in January 2001. He went on to say that the minutes did not record accurately what had transpired at the meeting. However beyond a general statement that some of the issues stated in the minutes were not in fact discussed, he did not elaborate in his AEIC or in cross-examination as to what these issues were.

62. I am of the view that it is likely that Yeo Kwang Seng had seen or was aware about Master Yuanqing's letter dated 23 March 1995 even though he was not one of the addressees. Master Guangchao was also not one of the addressees but he was aware about it and indeed had responded to it.

63. What is more important is that Master Guangchao's response dated 28 March 1995 was addressed to six people including Mr SK Tan and Yeo Kwang Seng. Yeo Kwang Seng did not deny receiving this letter. I find that he too had received it. However, both his AEIC and Mr SK Tan's AEIC made no mention about it. In my view, they were hoping to avoid drawing attention to this letter. Furthermore, either Yeo Kwang Seng had agreed with Master Guangchao, before Master Guangchao's letter was sent, that Lumbini would take a 20% stake (only) in the new company or he was agreeable after receiving Master Guangchao's letter. Hence, there was no objection from him at that time.

64. In para 25.2 of Lumbini's Closing Reply, it is argued that it was clear from Master Guangchao's letter that there were other outstanding issues to be resolved. I do not agree.

65. As regards BBS, Master Guangchao had agreed that it was to be independent and Lumbini would take a 20% stake (only) in the new company. As I have mentioned, it was clear to all concerned that the 80% stake would go to Master Yuanqing. The date of incorporation of the new company was to be decided by Master Yuanqing and Mr SK Tan and this was in fact subsequently done.

66. There was only one outstanding issue and not 'issues' from his letter. This issue related to the dissolution of Lumbini which is separate from the privatisation of BBS.

67. The second argument from para 25.2 of Lumbini's Closing Reply is that while no cash consideration is mentioned in Master Guangchao's letter, there is equally no mention that no cash consideration was required. In my view, such an argument is overly simplistic and ignores the background leading to his letter. It is clear to me that at that time, the privatisation of BBS was treated by all concerned to be on the same basis as the privatisation of FYI, even though BBS had a larger and more profitable business than FYI.

68. The third argument from para 25.2 of Lumbini's Closing Reply is that it is pertinent that Master Guangchao had subsequently agreed at a meeting of 31 March 1996 that $100,000 be paid to Lumbini. In my view, this did not necessarily mean that that was his intention in March 1995. I will elaborate on the meeting of 31 March 1996 when I come to it later.

69. Mr SK Tan also alleged that in May 1995, he had explained to Ms Toh and Master Yuanqing, when they attended in his office, that a company had to be incorporated first and a cut-off date set for 'closing of BBS's assets'. He also told Master Yuanqing to prepare a list of those who had helped in the business of BBS and who would be given shares in the new company.

70. I am of the view that even if Mr SK Tan did say that there should be a cut-off date for 'closing of BBS's assets' that did not mean that a cash payment of a significant sum was to be paid to Lumbini. As for the alleged list of those who had helped in the business of BBS for the purpose of giving them shares in the new company, I find that Mr SK Tan did not mention such a list. It was not mentioned in the letter from Master Yuanqing dated 23 March 1995 nor in the letter from Master Guangchao dated 28 March 1995. There was no reason for Mr SK Tan to suggest such a list. Furthermore, Mr SK Tan's own internal notes and the subsequent correspondence and minutes in 1996 after the incorporation of BBSPL do not refer to such a list.

71. I find that, as at March 1995, there was an agreement that a new company would take over the business of BBS. Lumbini would take a 20% stake in it and 80% would go to Master Yuanqing (even though his name was not specifically mentioned), as he was the one who had been in charge of BBS.

72. Ms Toh and Master Yuanqing in turn alleged that in about September 1995, Mr SK Tan had told them that BBS would be given to them free as they were the ones who had contributed the most to BBS's business.

73. I am of the view that there was no such express agreement on Mr SK Tan's part. If there was, it would have been mentioned in the subsequent correspondence from Master Yuanqing, Ms Toh or Mr Lau or their solicitors before action was commenced.

74. On 9 September 1995, Mr SK Tan wrote down some notes. His notes read:

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090995

BODHIGAYA

30.9.95 -	1 JAN SEP. A/C update
30.9.95 -	Bookshop Bank Signatory to be Updated.
01.10.95 -	BODHIGAYA BOOKSHOP PTE LTD
16 - 18TH SEPT -	INCORPORATION
31.12.95 -	CLOSE BUSINESS NAME
Lumbini -	20%
Sakyamon -	80%
NEW -	2 shares #? '

75. Mr Chua submitted that the first entry in this note for 30 September 1995 illustrated that the accounts were to be updated and this was for the purpose of valuing a price to be paid to Lumbini for BBS. However, the entry was equivocal. Furthermore, Mr SK Tan's evidence did not touch upon this entry.

76. On the other hand, I note that the penultimate entry in this note referred to Lumbini taking a 20% stake in the new company and Sakyamon (meaning Sakyamuni) taking a 80% stake. This appeared consistent with the March 1995 agreement but I have to say that there was very little evidence on this note. Also, although Mr SK Tan alleged that this note was addressed to his assistant

Jamilah, she did not give any evidence.

77. The next handwritten note of Mr SK Tan was dated 12 September 1995. However, as Mr SK Tan gave no evidence whatsoever on this note and it is unclear to me what it means, I cannot give any weight to it.

78. On 19 September 1995, a Form 14 for the application for approval and reservation of name for a company was filed. The proposed name was Bodhigaya Book Shop Pte Ltd. Paragraph 11 of Form 14 stated that the intended company will take over the business of BBS. The Form was signed by Mr SK Tan and filed by SK Tan & Co. In para 12 of the Form, Mr SK Tan declared that he had the consent (to be produced) of the proprietor/ partners of the business for its takeover by the intended company.

79. The papers for the incorporation of BBSPL were prepared by SK Tan & Co. Master Yuanqing and Ms Toh signed as subscribers to the Memorandum of BBSPL on 16 October 1995. Clause 3(a)(i) which is the first provision on the objects of BBSPL states that it is to acquire and take over as a going concern the undertaking and all or any of the assets of BBS.

80. Mr Lau said that when he read the Memorandum subsequently, he took the reference to taking over BBS 'as a going concern' to mean that the business of BBS would be taken over for free. That may be Mr Lau's view but the provision was silent as to whether cash consideration should be paid. In my view it cannot, by itself, lead to the inference that the business of BBS would be taken over for free.

81. On 1 November 1995, the Registry of Companies & Businesses ('ROCB') replied to the Form 14 application to say that the application was approved subject to termination of the business firm and filing of a Form D. Form D was signed by Mr SK Tan on 16 November 1995. He described his position as director of Lumbini. Form D stated, 'The above business [i.e BBS] has ceased to be in operation with effect from 951121' i.e 21 November 1995.

82. On 17 November 1995, i.e prior to the date of incorporation of BBSPL, Mr SK Tan wrote another note. This note was specifically addressed to Jamilah. It stated:

> 'Once Bodhigaya Bookshop Pte Ltd is set up, we must call a Lumbini meeting to sell, transfer all business under Bodhigaya Bookshop to Pte Ltd.
>
> Also have to get a closing a/c for Bookshop before transfer, to establish amount to be paid by Pte Ltd to Lumbini.
>
> Maybe we should draft a letter to Lau - Director of Lumbini, Ms Toh.
> I will inform Billy Yang and his brother. '

83. In para 32(c) of his AEIC, Mr SK Tan highlighted the first two paras of this note but not the third. Furthermore he did not elaborate on it in his AEIC beyond highlighting the first two paras. On the other hand, the cross-examination on this note was also brief (NE 64 to 66). It focussed on the absence of any mention of a list of persons to be given shares and the note demonstrating that it was Mr SK Tan who was giving instructions. The latter was with a view to establishing that he was the one calling the shots. The cross-examination did not focus on what the substance of the note might reflect.

84. At the end of the day, the brief evidence from Mr SK Tan regarding this note did not assist me

to establish various facts. For example:

(a) whether the note reflected a conversation between Yeo Kwang Seng and him or Master Yuanqing and him or it reflected his own thoughts,

(b) why there was no mention in this note of the 80/20 shareholding mentioned in the March 1995 agreement and reiterated in his note dated 9 September 1995 i.e about two months earlier,

(c) whether he was anticipating that the amount to be established and to be 'paid' to Lumbini was actually to be paid in cash or in exchange for the 20% stake,

(d) if in cash, whether this reflected a departure from what had been agreed and the 20% stake for Lumbini was to be given up or the cash payment was to be in addition to the 20% stake,

(e) whether, at the time this note was written, Mr SK Tan had overlooked the March 1995 agreement or it was his view that there was no agreement in March 1995,

(f) why he did not follow up to draft a letter to Mr Lau or Ms Toh about establishing the amount to be paid to Lumbini.

85. All I am able to ascertain is that the contents of this note was not disclosed to any of the Defendants at the material time. Furthermore, Jamilah did not give evidence for Lumbini for which I draw an adverse inference.

86. By a letter dated 20 November 1995 on Lumbini's letterhead to ROCB, Mary Wang stated:

'PROPOSED COMPANY
- BODHIGAYA BOOKSHOP PTE LTD

We have no objection to the proposed incorporation of "BODHIGAYA BOOKSHOP PTE LTD".

The proposed company will acquire and take over all or any of the assets of BODHIGAYA BOOK SHOP.'

She signed the letter as director of Lumbini. The date of BBSPL's incorporation was 21 November 1995. The shareholders were Ms Toh and Master Yuanqing holding one share each. They were also the two directors. Mr SK Tan was its company secretary.

After the incorporation of BBSPL

87. In para 33 of his AEIC, Mr SK Tan said that after the incorporation of BBSPL, he contacted, among others, Mr Lau and Yeo Kwang Seng separately for their proposal on the cut-off date for the valuation of BBS's assets and the closing of BBS's accounts. Mr Lau told him that June 1996 may be more appropriate. Yeo Kwang Seng was more interested in the value of the net assets of BBS and Mr SK Tan told him to check this from the audited accounts of Lumbini.

88. It is strange, to say the least, that if Mr SK Tan was contemplating a cash payment and if he had mentioned this to Mr Lau and Yeo Kwang Seng, he did not mention this to Master Yuanqing who was the initiator and main beneficiary of the privatisation of BBS. I am of the view that he did not mention to Mr Lau any valuation of BBS's assets for the purpose of a cash payment. Had he done so, Mr Lau, who is Master Yuanqing's brother, would have informed Master Yuanqing who would have

disagreed.

89. I also do not accept that Mr Lau had said that June 1996 was more appropriate for the valuation of BBS's assets or even in respect of the closing of BBS's accounts. As the minutes of a meeting on 31 March 1996 and correspondence after the incorporation of BBSPL show, Mr Lau had not mentioned June 1996 as the appropriate cut-off date for closing of accounts. On the contrary, he preferred 31 December 1995 as the cut-off date.

90. It is not disputed that after the incorporation of BBSPL, BBSPL in fact operated the business which was BBS's. However, perhaps for its own accounting purposes, it treated the start of its business as from 1 January 1996. As for BBS's accounting records, Ms Toh said she closed the books of BBS on 31 December 1995 while she opened another set for BBSPL from 1 January 1996. Mr Chua sought to gain some mileage from the fact that the accounting records of BBS do not show a disposal of its assets to BBSPL. On the other hand, there was no further accounting entries made in BBS's records from 1 January 1996. Mr Chua also submitted that the balance sheet of BBSPL was not accurate because its accounts reflected the transfer to be effective on 1 January 1996 when in fact it was on 21 November 1995. He submitted that this was illegal because s 201(3) of the Companies Act requires a company's balance sheet to give a true and fair view of the state of its affairs. In my view, s 201(3) is not relevant to the issue before me.

91. What BBSPL did was simply to operate from the same shop that BBS had been operating from. There was therefore no need to physically transfer the stocks in the shop. However the name for the accounts for telephone and telefax lines was changed to BBSPL's name. The signboard for the shop was also changed to the name of BBSPL. This was done in February or March 1996.

92. Ms Toh said that after the incorporation of BBSPL, she was instructed by both Mr SK Tan and Master Yuanqing to settle the debts of BBS and to transfer its assets to BBSPL. Her evidence was corroborated by Master Yuanqing. However, this part of their case was not put to Mr SK Tan when he was cross-examined. I doubt if Mr SK Tan had specifically given her such instructions which probably came from Master Yuanqing only. Furthermore, even before the incorporation of BBSPL, Mr SK Tan was not supervising her, as such, although he had asked questions and gave advice as and when she dropped by his office and when there were meetings.

5 February 1996 memorandum

93. On 5 February 1996, Mr SK Tan sent a memorandum addressed to five people i.e Master Yuanqing, Master Guangchao, Billy Yang, Yeo Kwang Seng and Mr Lau. It said:

> 'SUBJECT: DISPOSAL OF BODHIGAYA BOOKSHOP BY LUMBINI PTE LTD
>
> Dear Sir
>
> This is to inform that M/s Lumbini Pte Ltd had ceased to be a proprietor of Bodhigaya Book Shop with effect from 1st January, 1996.
>
> I would appreciate very much if you can advise things or action to be done or taken on the transaction.
>
> Looking forward to hear from you. '

94. Mr SK Tan said that in his mind, the termination of the business registration of BBS was to facilitate the incorporation of BBSPL. However the assets still belonged to Lumbini who was the sole proprietor of BBS. In his mind, there must be proper supporting documents to properly acquire title to BBS's assets and the termination of the business registration of BBS would not automatically transfer its assets. According to Mr SK Tan, he was unaware, until February 1997, that BBSPL was in fact operating the business of BBS immediately after BBSPL's incorporation.

95. It was Mr SK Tan's evidence that his memorandum was not to confirm that Lumbini had ceased to own the assets of BBS but the business name of BBS. It was his position that the request for advice on things or action to be done was to ask about the price for the transfer of the business and the documents to be executed.

31 March 1996 meeting

96. Subsequently, Mr SK Tan called a meeting on 31 March 1996 between Master Guangchao, Yeo Kwang Seng, Sudatta Eng, one Tan Boon Seng and himself. He did not include Ms Toh, Master Yuanqing or Mr Lau in the meeting. In cross-examination, he said that this was because he felt that there was a conflict of interest on their part.

97. The minutes of the 31 March 1996 meeting, prepared by Mr SK Tan himself stated:

> 'BACKGROUND
>
> Mr. S.K. Tan informed the meeting that the meeting was held to sort out the complications that arose or might be arising due to the conversion of the "Bodhigaya Bookshop" into a Private Limited Company.
>
> First, when he (Mr. S.K. Tan) informed Mr. K.S. Yeo of the privatisation of the Bookshop, he advise Mr. K.S. Yeo:-
>
> - To check with Mr. Lau Kim Koon who is in charged of the accounts of the Bookshop, and also a Director of Lumbini Pte Ltd.
>
> - To consider the extraordinary contribution made by Ven. Yen Ching and Miss Toh.
>
> - To give a rebate of at least 40% - 50% of the total asset in the event of a buy-out.
>
> - Not to forget the understanding we (Mr. K.S. Yeo and Mr. S.K. Tan) on the distribution/donation of the balance fund in Lumbini Pte Ltd, i.e any fund in Lumbini Pte Ltd for donation, subject to the two advisers' approval, each can only use 50% of the total fund.
>
> Mr. S.K. Tan was pretty upset when he was questioned by Ven. Yen Ching [i.e Master Yuanqing] that Mr. S.K. Tan proposed a three-party sharing and certain portion was to be donated to project related to Cambodian unfortunates. Mr. S.K. Tan knows nothing on this point.
>
> ….
>
> Before September 1995, Mr. S.K. Tan had checked with Ven. Yen Ching whether the Bookshop was profitable. On the positive side, it would be better to do the takeover as at 1 January 1995 rather than 31 December 1995. However, Mr. S.K. Tan was told that Mr. Lau Kim Koon preferred

the changes be effective end of 1995 - 31 December 1995.

So far, apart from the businessname being terminated on 21 November 1995 and the new establishment being incorporated on 21 November 1995, there was no agreement, no transaction, whatsoever being done to its assets and liabilities. However, presumably all transactions after 31 December 1995 should be under the new establishment without title.

….

The meeting responded by noting that the set-up of Lumbini Pte Ltd was to promote Buddhism and to assist Buddhists in their enterprises, and any fund in Lumbini Pte Ltd should be dealt with on the same basis.

Mr. S.K. Tan was unable to confirm who owns the new Company or the shareholders and their shareholdings

. At this juncture, a circular letter issued by the new set-up was tabled at the meeting. It was noted that:-

"this is a change of name only ……."

Business wise, it might be so, but legally it was a separate entity altogether and proper agreement must be executed to give legal rights to the new Company.

The meeting agreed that whatever done or to be done should be in writing and arrived at the following conclusions:-

- The S$100,000.00 loan should be repaid to Lumbini Pte Ltd. Terms of repayment could be worked out.

- Of the total assets - approx. S$200,000.00 subject to 1995 December audited accounts, the same be capitalised wherein 20% should be give to Lumbini Pte Ltd - similar to For You Information. (Lumbini Pte Ltd would not wish to appoint representative directors to the Board of the new Company).

….

….

….

Without any commitment and responsibility

, Mr.S.K. Tan agreed to draft the minutes for approval before releasing to Ven. Yen Ching and Miss Toh and other interested and related parties.'
[Emphasis added.]

98. Although the minutes stated that Mr SK Tan was unable to confirm who the shareholders and their shareholdings in BBSPL were, it was SK Tan & Co who had prepared the incorporation papers for BBSPL. In para 36(b) of his AEIC, Mr SK Tan explained that he was unable to confirm who the shareholders were because Master Yuanqing had not given him a list of Buddhist believers who had been helping out in the business of BBS and who would be given shares in BBSPL. I have stated above that I do not accept that he had sought such a list from Master Yuanqing. In my view, Mr SK Tan had

wanted to give the impression that he knew less than what he actually knew because he knew trouble was brewing and he did not want to be blamed.

Mr Lau's letter dated 15 May 1996

99. A copy of the minutes of the 31 March 1996 meeting was sent to each of the three Defendants with separate cover letters each dated 30 April 1996. It drew a response from Mr Lau. His letter dated 15 May 1996 to Lumbini and for the attention of Mr SK Tan said:

> 'Dear sirs,
>
> **SUBJECT: CORPORATISATION OF BODHIGAYA BOOKSHOP**
>
> I refer to your letter dated 30 April 1996 on the above subject.
>
> The conversion of "Bodhigaya Bookshop" from a sole-proprietor into a private limited company has no complication. Matters appear complex because parties who have not been involved in the affairs of the "Bookshop" at all for at least the last five years suddenly decided to intervene. When For You Information was taken out of Lumbini Pte Ltd in 1994 by the same group of people, I as a director and Ven. Seck Wan Chin [meaning Master Yuanqing] as advisor, were not informed at all. I would suggest that they now should concentrate on running For You well. I wish them all the best.
>
> I communicated with K.S. Yeo twice. Once was at a meeting at Mr Billy Young's office with you in about early April 1995. The other conversation was K.S. Yeo telephoned me one late night in March 1996. In these communication, K.S. Yeo did not mention about the accounts. Even if he has asked me for the 1995's accounts, they were not finalised yet in March 1996. As for the past accounts, they are being kept at the office. Personally, I do not keep any of the accounts.
>
> In the telephone conversation, K.S. Yeo enquired why "Bodhigaya Bookshop's" assets were not distributed into three parts. I informed him that I was not aware that there was such an arrangement. I explained to him that the privatisation of the "Bookshop" will be on a going concern basis which follows the same principle as that of For You Information when it broke away from Lumbini. On the same basis, Lumbini would take 20% equity participation in the private limited company. I told him he could also check with you on this arrangement (as the night was getting late then).
>
> The privatisation was originally scheduled on 30 September 95. It was delayed till 31 Dec 95 because the new company was only incorporated on 21 November 1995. It does make sense to have the accounts audited and finalised as at 31 December 95 for the takeover to be effective.
>
> As far as I am aware the $100,000 was recorded as loan from the directors of Lumbini Pte Ltd to Lumbini itself. They had verbally indicated that the loan would be treated as donation to company for the good cause of Buddhism. On this basis, I agreed to volunteer as a director of the company for same good cause when invited.
>
> For the sake of Buddhism, all parties should allow "Bodhigaya Bookshop" be continued to run on a going concern basis under the constitution of a private limited company. Let the people who have the experience and have contributed to the success of the Bookshop in the past, continue to (*sic*) carried on the business despite the change of constitution.

May I take this opportunity to put forward the further proposal of Ven. Seck Wan Chin:

(a) Since Nalanda is dormant and has been abandoned, and the "Bodhigaya Bookshop" has been overseeing the administrative functions, suggest that the firm be (*sic*) brought over for a consideration of $1 by "Bodhigaya Bookshop Pte Ltd".

(b) Sarnath Publication being also a dormant company be purchased by "Bodhigaya Bookshop Pte Ltd" for a consideration of $1.

(c) Dormant Manjusri Ltd being a public company should not be transferred to Lumbini Pte Ltd. It should remain an independent company.

This is an open reply. Please circulate it to the parties concerned. I hope I have clarified matters.

Sg. Lau Kim Koon
Director '
[Emphasis added.]

In cross-examination, Mr Lau said that as far as he was concerned, the conversion was 'already a done deal' (NE 203).

100. In Mr SK Tan's AEIC at paras 38 to 40, he said he conveyed the proposal to Master Guangchao, Yeo Kwang Seng and Billy Yang who were not agreeable to it. He claimed that he told Master Yuanqing and Mr Lau separately of the rejection of their proposal and they could consider making a proposal to buy the business of BBS based on a discount and an interest-free instalment scheme, if the sum to be paid was still too large. However, Master Yuanqing told him to keep out of the matter and BBSPL should not have to pay for BBS's assets just as Saddha had not paid for FYI's assets.

101. Mr SK Tan's AEIC did not elaborate as to which proposal he was referring to.

102. As the proposed purchase of Nalanda and Sarnath at $1 each is a non-issue, because no one has alleged that there was a concluded agreement to transfer or sell either of them, I take it that he was referring to BBS. However, Mr Lau was not making any proposal regarding BBS. Mr Lau was simply refuting the $100,000 which Yeo Kwang Seng and/or Master Guangchao and/or certain Buddhist believers ('the Dissenting Group') wanted for BBS. On the other hand, Mr SK Tan did not respond in writing to Mr Lau's letter to refute what Mr Lau was saying. I am of the view that this was because he knew that Mr Lau was right in that the $100,000 was a donation and not a loan or a conditional loan as Mr SK Tan had alleged and the agreement was that Lumbini would take a 20% stake in the new company. I am also of the view that Mr SK Tan did not revert orally to Master Yuanqing or Mr Lau. In cross-examination, he admitted that he did not do anything to clarify the position with Mr Lau after he received the letter (NE 104 and 105).

Resolutions for $1 nominal consideration

103. Subsequently, Mr SK Tan was instructed by Master Yuanqing to prepare directors' resolutions for BBSPL and Lumbini for BBSPL to purchase and take over the assets and liabilities of BBS for $1. The resolutions were forwarded with a cover letter dated 8 July 1996 from SK Tan & Co addressed to BBSPL and Lumbini and for the attention of Master Yuanqing and Mr Lau. The cover letter ended with this para:

'In addition, our Mr S K Tan (Tan Soo Kiat) wish to place on record that he has nothing to do with the transactions, ([*sic*] there is take-over-disposal of all the assets of the business, Bodhigaya Book Shop). He also does not wish to see any consequential liabilities to him or Lumbini Pte Ltd.'

104. Mr SK Tan said he prepared the resolutions because of the instruction of Master Yuanqing which he was obliged to comply with as SK Tan & Co were providing corporate secretarial services.

105. On 9 July 1996, Mr SK Tan sent a letter addressed to various persons as follows:

'TO: VEN. SECK GUANG CHAO [Master Guangchao]
VEN. SECK WAN CHIN [Master Yuanqing]
MR LAU KIM KOON
MS TOH PENG NOI
MR SUDATTA ENG
MR YEO KWANG SENG
MR BILLY YANG
MR KUAH BOON SENG
OTHERS

RE: TAKEOVER OF FOR YOU INFORMATION
TAKEOVER OF BODHIGAYA BOOK SHOP

With reference to the above subject, I regret that time and again my name was being referred without my knowledge or consent.

I wish to state that whatever my choice of action - in writing - is my decision base on my judgment of each case, in relation to its origin when the matter was resolved.

I have not and will not benefit from any of the two transactions, whether directly or indirectly. I also do not think the two transactions are similar and should be treated similarly.

Whoever think that the two are the same, can do so at their own will but do not compare my decision and do not comment, unless he is prepared to take legal consequences.

I reserve the right to take up any action deem fit and proper against any one who mention my name, my decision and or my action without my prior approval or consent.

Meanwhile, read what I write not hear-say what I said.

Thank you for your attention.

TAN SOO KIAT
(S K TAN) '
[Emphasis added.]

106. Mr SK Tan said in cross-examination he had sent this letter because some people had been told that he had agreed to the $1 consideration and about documents which he had signed (NE 81).

107. In para 22 of his AEIC, he had also suggested that Saddha's taking over of FYI was different

from that of BBSPL's taking over of BBS because FYI had not used any funds from Lumbini. As it turned out, the minutes of a board meeting of Lumbini dated 13 March 1989 stated that $2,000 would be transferred to FYI as working capital (NE 59 and 60). This suggested that FYI did receive some financial assistance from Lumbini. In any event, while it is true that BBS used most of the $100,000, that was not a point raised in March 1995 to distinguish between the two take-overs.

108. By a letter dated 8 August 1996, SK Tan & Co wrote to BBSPL and Lumbini again for the attention of Master Yuanqing and Mr Lau. The letter pointed out that the directors' resolution for Lumbini which had been prepared had still not been signed by Mr Lau. It also advised that tax and related matters between 'the old set up and the subsequent disposal' had to be sorted out and delay would affect the audit of Lumbini, the holding of its Annual General Meeting and the filing of Annual Returns which might result in summonses being issued to the directors of Lumbini.

109. On 19 August 1996, another reminder was sent, although this time it was addressed to BBSPL only. The penultimate paragraph stated that, 'We, SK Tan and or SK-SK Tan & Co disclaim all liabilities and responsibilities on the above takeover and disposal and all matters related thereto.'

110. Master Yuanqing did not dispute that the resolutions were prepared at his request. He said he had suggested the figure of $1 because he did not want people to gossip if the business of BBS was given to BBSPL for free. However, I note that this reason was not stated in his subsequent letter dated 20 August 1996 when he mentioned the $1 consideration. Besides, the $1 would not avoid any gossip if the gossip was truly his concern. I am of the view that Master Yuanqing's explanation was not truthful. The real reason for the $1 figure was to avoid any argument about the absence of consideration.

111. I would add that in the meantime, Mr Lau had sent five letters to Lumbini at the office or P O Box address of SK Tan & Co requesting a directors' meeting of Lumbini to discuss the delay in the finalisation of the audited accounts of Lumbini and also his own concern about summonses being issued to the directors of Lumbini. His letters stretched from 13 August 1996 to 11 September 1996. Mr Lau had also tried to contact Mr SK Tan on the telephone.

112. Mr Lau was unsuccessful in contacting Mr SK Tan or drawing a positive response from him. While not responding to Mr Lau, Mr SK Tan instead wrote to the auditors of Lumbini on 23 August 1996 to authorise them (a) to hold back the audit, (b) to propose a dividend and (c) to state that the disposal of BBS was also subject to proper advice.

113. This letter from Mr SK Tan came to Mr Lau's attention and on 23 August 1996, Mr Lau wrote the third of his five letters. In that letter, Mr Lau said that he failed to understand why Mr SK Tan was raising the issue of the disposal of BBS. He said Mr SK Tan ought to know that the disposal 'which was completed some eight months ago is a non issue'.

Events on and after 21 September 1996

114. On 21 September 1996, the Deposits were withdrawn by Ms Toh from BBS's account with Lee Wah Bank Limited. I will elaborate on this below.

115. On 12 November 1996, CS Tan & Co acting for Lumbini sent a letter of demand to Mr Lau, Master Yuanqing and Ms Toh. The letter stated that:

(a) BBSPL was incorporated on 21 November 1995 for the purpose of taking over the business of

BBS as a going concern and at a certain price,

(b) no steps had been taken so far to transfer the assets of BBS to BBSPL,

(c) the accounting records of BBS were in their possession and demanded the return thereof within 7 days.

116. By a letter dated 14 November 1996, CS Tan & Co wrote to Master Yuanqing to offer the stocks and assets of the shop for sale at $100,000.

117. On the same day, i.e 14 November 1996, Mary Wang and Koh Chiou Eng signed a letter to the directors of Lumbini to request that an Extraordinary General Meeting be held immediately to consider and approve a resolution to remove Mr Lau as a director of Lumbini. According to Mr SK Tan, the reason for this was because Mr Lau had refused to return accounting records of Lumbini. However, I find that Mr SK Tan's explanation was not truthful. The request to remove Mr Lau was made even before the grace period of seven days given by CS Tan & Co on 12 November 1996 had expired.

118. On 26 November 1996, Rajah & Tann acting for Mr Lau, replied to CS Tan & Co to dispute that Lumbini remained the owner of the assets of BBS and to assert an agreement for the transfer of the assets of BBS to BBSPL for $1.

The Deposits

119. As I have mentioned, Ms Toh withdrew the Deposits on 21 September 1996. It is not disputed that Ms Toh had been advised by Mr Lau to do so. It was the position of the Defendants that Mr Lau did so to finalise the accounts of BBSPL.

120. Master Yuanqing had said in para 40 of his AEIC that the deposits were not transferred to BBSPL earlier because Mr SK Tan had informed him that since BBSPL did not require any additional funds and interest was still accruing, there was no need to close the deposits and transfer them to BBSPL then. This allegation was 'corroborated' by para 13 of Ms Toh's AEIC but there was a difference. She said that Mr SK Tan had spoken to both Master Yuanqing and her. In any event, there was no elaboration as to whether the Deposits had matured only in September 1996 or had been renewed from time to time until September 1996. If the former, it would have helped to establish the allegation of Ms Toh and Master Yuanqing.

121. The allegation about what Mr SK Tan had allegedly said about the Deposits was not put to Mr SK Tan during cross-examination. On the other hand, neither did Mr Chua challenge Master Yuanqing or Ms Toh on this. It was left to Mr Wong Tze Roy, who was acting for the Third Parties, to make a very limited challenge when he cross-examined Master Yuanqing (NE 162) but no challenge of Ms Toh.

122. I am of the view that Ms Toh and Master Yuanqing have not established the allegation about what Mr SK Tan had allegedly said in respect of the Deposits.

123. Three years later, on 30 September 1999, Lumbini sent a letter of demand to Ms Toh stating that they had received official confirmation from the bank about the withdrawals of three deposits of which two were claimed by Lumbini.

124. Interestingly enough, the letter did not say that this was the first time that Lumbini had learned about the withdrawals. In para 54 of Mr SK Tan's AEIC, he asserted that he had to write to

the bank directly as he did not have the accounting records and bank statements of BBS and Lumbini.

125. As it turned out, the accounting records and bank statements of BBS and Lumbini were probably in the office and storeroom at Blk 1 Rochor Road #03-520 Rochor Centre, which is a different address from the shop which is at 149 Rochor Road #03-06 Fu Lou Shou Complex. Mr SK Tan had caused the locks to the office and storeroom to be changed in February 1997. Furthermore, bearing in mind his allegation that he had learned in February 1997 that BBSPL was operating BBS's business, he did not explain why it took him more than two years from February 1997 to seek information from the bank about 1996 deposits even assuming that such information was not in the office and storeroom.

126. In his AEIC at paras 53 and 54, he implied that he was waiting for the outcome of a police investigation as he had made a report to the police who only reverted in February 1998 that they would not take any further action on the matter. However he did not say that he post-phoned seeking any information from the bank until the outcome of the police investigation. Even if it were true that he was waiting for the outcome, there was still no explanation as to why it took him more than one year from February 1998 to seek information from the bank.

127. I find that Mr SK Tan was reluctant to pursue any inquiry or claim until around September 1999 and that this was because he knew that BBS's business had been transferred to the new company for a 20% stake in it.

128. It was submitted for Lumbini that by September 1996, Mr Lau knew that there were issues arising about the transfer of BBS's business to BBSPL and he had shut his eyes to this when he told Ms Toh to transfer the Deposits. Accordingly, he was in breach of his duty to Lumbini. I am of the view that whether Mr Lau was in breach of his duty to Lumbini depends on my finding as to whether there was an agreement to transfer BBS's business and the terms thereof.

Mr SK Tan's knowledge in February 1997

129. As I have mentioned, Mr SK Tan had alleged that he was unaware that BBSPL had been operating the BBS business after BBSPL's incorporation.

130. In his AEIC, he said that it was in February 1997 that he learned of this because it was then that Ms Toh had received a note from the external auditors of Lumbini regarding a stock-take and she had referred the external auditors to him. In cross-examination, he added another reason i.e that Yeo Kwang Seng had told him then that the name of the shop had been changed (NE 86) even though it had been changed about a year earlier.

131. Mr SK Tan stressed that the assets of BBS could not be taken over simply by the incorporation of BBSPL. There should have been proper supporting documents like a formal agreement and the appropriate resolution passed. However he admitted that he did not mention these requirements to the Defendants.

132. He said he had assumed that upon termination of the business registration, BBS's assets had gone back to Lumbini. Yet he also said he was not sure until February 1997 whether BBSPL was doing business and he did not know who was operating the shop from 21 November 1995 to February 1997. Neither did he attempt to find out. He then said that he had assumed that BBS's business had been continued under Lumbini after 21 November 1995 and that Ms Toh and Mr Lau had been operating the business at the shop for Lumbini. The reference to Mr Lau operating the business was probably an inadvertent error and Mr SK Tan probably meant to refer to Master Yuanqing.

133. Mr Chua sought to support Mr SK Tan's belief by showing that there was some confusion as to when Ms Toh eased to be an employee of Lumbini. It is true that she herself said that after 1995, she was still helping out with Nalanda and Lumbini. However, the point is that there was no evidence to show that she was being paid the same salary by Lumbini for managing the bookshop business after 1995. Mr Chua sought to overcome this by pointing out that the bank account of BBS was still not closed then but it was not the evidence of Mr SK Tan that he had thought that Lumbini was paying Ms Toh through this account.

134. Mr SK Tan said that when he learned in February 1997 that BBSPL was operating the business, he instructed Mary Wang to change the lock to the main door to the office and storeroom in an attempt to regain possession of the stocks. Interestingly enough, he did not make any attempt to regain possession of the shop. His reason was that he did not know who the landlord of the shop was.

135. I do not accept Mr SK Tan's evidence that he did not realise that BBSPL was carrying on the business of BBS until February 1997. He was aware of:

(a) Master Yuanqing's unhappiness regarding FYI and Saddha,

(b) what transpired at the meeting of 22 March 1995,

(c) Master Guangchao's response dated 28 March 1995.

136. Following from this, SK Tan & Co had prepared various papers for the incorporation of BBSPL with a view to taking over the business of BBS and the termination of BBS's registration immediately upon incorporation.

137. Secondly, the business of BBSPL was being carried out openly at the shop at 149 Rochor Road #03-06 Fu Lu Shou Complex with a new signboard. It is improbable that Yeo Kwang Seng, Master Guangchao and their supporters also failed to notice this until February 1997. Indeed, no one else said that he was unaware until February 1997 that BBSPL had been carrying on the business at the same shop since its incorporation.

138. Thirdly, in Mr Lau's letter dated 23 August 1996, he had stated that Mr SK Tan ought to know that the disposal of BBS was completed some eight months ago and was a non issue. Yet there was no response or denial or expression of surprise by Mr SK Tan to this. By the date of this letter, Mr SK Tan must have known that BBSPL was operating BBS's business, if he had not known earlier.

139. Fourthly, when Mr SK Tan give instructions to Mary Wang to change the lock to the main door of the office and storeroom in February 1997, no such instruction was given in respect of the shop. I do not accept his evidence that this was because be did not know who the landlord was as there is no evidence of his attempts to obtain this information. Neither did he thereafter inform the Defendants of his alleged discovery or ask them to stop operating the business or return the assets of BBS. I find that the real reason why he had asked Mary Wang to change the lock to the main door of the office and storeroom in February 1997 was because a dispute had arisen over BBS and he had aligned himself against the Defendants by then. The reason for changing the lock was that Mr Lau had not returned the accounting records of BBS to Lumbini for which Mr Lau was removed as a director of Lumbini.

140. I will now say something more about the claim for the accounting records even though it is withdrawn, as it touches upon credibility. As I have mentioned, Mr Lau was removed as a director of Lumbini for his alleged failure to return such records even though the request to remove him was

made before the deadline given to him to return the records had expired. Worse still, it transpired during the trial that there were, at least, some accounting records in the office and storeroom, which premises had been seized by Mr SK Tan through the change of the main lock. He admitted that he did not check whether any of the accounting records were there. Furthermore, after the main lock to the office and storeroom was changed, the records were stored in plastic bags and removed to a warehouse but Mr SK Tan claimed that he had not checked the plastic bags as there were 'many other boxes as well' (NE 94). It was only at the stage of Closing Replies that Mr Chua sensibly withdrew this claim but the damage to the credibility of Mr SK Tan and Lumbini had been done.

MY CONCLUSION

141. Master Yuanqing denied that the plan to set up Lumbini and various businesses was his. He said it was Yeo Kwang Seng's. However, it is not material to me whose plan it was. The fact is that Lumbini was incorporated after BBS was registered and thereafter various businesses were registered with Lumbini as the proprietor thereof. This was done after discussions with the two Buddhist monks and various Buddhist believers.

142. As for Mr SK Tan's allegation that the original understanding was that Mr Yeo and he had the right to liquidate any company or business set up and divide the assets into two for donation to charities if there was any dispute, I am aware that Master Yuanqing admitted this understanding when he agreed with para 9(a) and (b) of Mr SK Tan's AEIC (NE 153). On the other hand, if this allegation were true, it would have been mentioned at the meeting of 22 March 1995 or Master Guangchao's letter of 28 March 1995. It was only mentioned after the incorporation of BBSPL in a meeting of 31 March 1996 which none of the first three Defendants attended. In any event, even if this allegation were true, Mr SK Tan and Yeo Kwang Seng are not the plaintiffs in the action before me and this alleged original understanding is not one of the causes of action before me. Also, Mr SK Tan and Yeo Kwang Seng had never sought to liquidate BBS as such.

143. As for Mr SK Tan's allegation that part of the original understanding was also that a new company which took over a business would also be required to return whatever financial support it received from the parent company, Master Yuanqing did disagree with this allegation. I doubt that this allegation is true for the same reasons I have mentioned in para 142 above. In any event, this alleged original understanding is also not one of the causes of action before me.

144. In addition, there was no evidence that BBS was still owing money to Lumbini. Mr Chua tried to overcome this by arguing that Lumbini could not possibly owe BBS any monies since all the assets of BBS belonged to Lumbini. However, the evidence showed that there was some accounting between Lumbini and BBS. Indeed, according to figures which were relied on by the external auditors for the audit of Lumbini for year-end 31 December 1995, Lumbini was owing money to BBS (NE 4).

145. The root of the problem was that the business of FYI had been hived off to a separate company i.e Saddha of which, it will be recalled, Lumbini held 20%. This was done without the knowledge and consent of Master Yuanqing who became aggrieved when he learned about it. That is why the minutes of the meeting of 22 March 1995 reflect this unhappiness and a rift between the two Buddhist monks. The minutes also reflected the view of Master Guangchao, Huang Guojian (Sudatta Eng) and Yang Guangming (Billy Yang) that the other businesses should be independent and the decision would lie with the three directors of Lumbini.

146. Master Yuanqing also proposed, not in the meeting of 22 March 1995, but in his letter dated 23 March 1995, that the shareholding of any new company taking over any existing business be split

20/80 between Lumbini and the person in charge of the business or who had achieved good results for the business. In the context of BBS, this meant himself.

147. As I have mentioned, Master Guangchao did respond to this proposal by his letter dated 28 March 1995 and agree to it. There was no objection from anyone else. Up to that time, there was no question of payment of any money by the new company and Lumbini was only to take a 20% equity in it. In that response, Master Guangchao had also said that the date of independence of BBS would be decided by Master Yuanqing and Mr SK Tan.

148. All the documents up to and pertaining to the date of incorporation of BBSPL, except one, are consistent with the position that no cash payment would be required from the new company or Master Yuanqing.

149. The only exception is the internal note of Mr SK Tan dated 17 November 1995 to Jamilah. In the light of the points I have mentioned in para 84 above, I do not give it much weight. In any event, as an internal note, it cannot change what had already been agreed in March 1995.

150. Mr SK Tan's memorandum dated 5 February 1996 reinforces my view. This memorandum must be considered in its entirety and the second paragraph should not be considered in isolation. In my view, Mr SK Tan was telling the addressees that he had carried out the March 1995 agreement and he wanted to know what else remained to be done. If he was really asking to be told about the price to be paid to Lumbini, he would have stated this specifically. In addition, if this memorandum was merely to inform the addressees that the business registration of BBS had been terminated, he would have used the date of 21 November 1995 instead of 1 January 1996.

151. As regards Mr SK Tan's point that there cannot be a transfer of a business simply by incorporating another company to take over the business and that there must be proper documentation, Mr SK Tan accepted that he had not mentioned to the Defendants the need for proper documentation. It was submitted for Lumbini that Mr Lau, as a senior bank officer with an accounting degree and a former auditor, should have realised that BBS's assets which were worth more than $200,000 (based on the 1995 accounts) could not have been given away free without a formal agreement or requisite resolutions and without checking with Mr SK Tan.

152. I am of the view that BBS's assets were not given for free. Lumbini was to receive a 20% stake in the new company. Secondly, it must be borne in mind that Mr Lau's full-time job was with the bank. He had only agreed to help out with the accounts by being a director in Lumbini, before he was removed. Given that Mr SK Tan was actively helping to incorporate BBSPL and de-register BBS, there was no reason for Mr Lau to suspect that something was amiss then or to ask Mr SK Tan any question. It was also not illogical for him to assume that the transfer was a done deal.

153. As SK Tan & Co were providing corporate secretarial services, they should have looked into the question of a formal agreement and/or drafted the appropriate resolution. In any event, even in the case of FYI, no formal agreement was produced in evidence for the transfer of its business to Saddha. Also no resolution of Lumbini approving that transfer was produced. Although Mr Chua drew my attention to a Lumbini resolution to invest 20% in Saddha, there was no mention in that resolution about the transfer of the FYI business to Saddha. Yet it is common ground that FYI's business has been transferred to Saddha.

154. In my view, the absence of formal documents may reflect poorly on SK Tan & Co but it does not indicate the absence of a binding agreement.

155. I am also of the view that some time after the memorandum dated 5 February 1996, the Dissenting Group must have had second thoughts about BBSPL taking over the business of BBS without any cash payment.

156. The Dissenting Group must have thought that it was not right for Master Yuanqing to get the plum of the various businesses when it was Yeo Kwang Seng and Mr SK Tan who had donated $100,000 and much of this sum had been used by BBS. They probably did not realise that Lumbini had been receiving financial support from BBS and as at 31 December 1995, Lumbini was owing money to BBS and not the other way around (see para 144 above).

157. That was why Yeo Kwang Seng telephoned Mr Lau one late night in March 1996 to ask why BBS's assets were not distributed three ways. The incident is mentioned in the third and fourth paragraphs of Mr Lau's letter dated 15 May 1996.

158. I do not accept Yeo Kwang Seng's evidence in paras 20 to 22 of his AEIC that he did speak to Master Yuanqing in or about January 1996 about dividing the assets of BBS three ways and then discussed it with Mr SK Tan. I find that the three way split was raised by Mr Yeo in March 1996, and not January 1996, and was raised with Mr Lau as a question to ask why BBS's assets were not distributed three ways. It may have been raised with Master Yuanqing later or he learned about it later from Mr Lau and Master Yuanqing then took issue with Mr SK Tan about it, as reflected in the minutes of the 31 March 1996 meeting. Interestingly enough, the minutes also stated that Mr SK Tan knew nothing about a three way split when he was questioned about it by Master Yuanqing. I find that Mr SK Tan knew nothing about it until questioned by Master Yuanqing because the three way split was not part of the March 1995 agreement.

159. It was also Yeo Kwang Seng's evidence in paras 22 and 23 of his AEIC that in or about February 1996, Mr SK Tan had suggested that he look for third party buyers or ask Ms Toh if she was interested in buying the assets at $100,000. As he was not successful in looking for such buyers, he then spoke to Ms Toh in about March 1996 about buying BBS who declined. In cross-examination, he added that Mr SK Tan then suggested that they should advertise in the papers for buyers (NE 30). On the other hand, Ms Toh denied that Yeo Kwang Seng approached her to buy BBS (NE 175).

160. I am of the view that Yeo Kwang Seng's evidence on this point is not true. Prior to his alleged approach to Ms Toh, his alleged position was that the net assets of BBS had to be ascertained and not that $100,000 should be paid. If he had wanted $100,000 instead, he would have approached Master Yuanqing instead of Ms Toh who was not one of the principal players. Secondly, there was no evidence to substantiate his allegation that he had tried to find other buyers and no evidence to substantiate his allegation about the advice to advertise in the papers.

161. Like Mr SK Tan, he must have known that it had been agreed that Master Yuanqing would take over BBS through a corporate vehicle. In 1995, there was no question of trying to sell it to a third party.

162. The meeting of 31 March 1996 was called by Mr SK Tan because he knew trouble was brewing from the Dissenting Group. He excluded the First to Third Defendants from the meeting because he wanted to hear the views of the Dissenting Group first.

163. At that meeting, the Dissenting Group must have expressed their unhappiness to him and he must have felt that he was getting the blame as he had incorporated BBSPL to take over BBS. That is why he attempted to assure them that although BBSPL had been incorporated on 21 November 1995, there was no formal agreement about BBS's assets and liabilities (see the minutes of 31 March 1996

cited in para 97 above).

164. It was at this meeting that the Dissenting Group said that the $100,000 'loan' should be re-paid to Lumbini. Although it is not expressly stated in the minutes as to who should pay the $100,000, it is clear to me that the intention then was for BBSPL to pay it since it had taken over BBS and it was not disputed that BBS had used most of the $100,000.

165. The Dissenting Group also still wanted Lumbini to hold 20% of the equity in BBSPL but this was a non-issue as Master Yuanqing was agreeable to it. However, this stake was not actively pursued by Lumbini at the time of incorporation of BBSPL or even after the 31 March 1996 meeting and Mr SK Tan did not elaborate why this was so. Although Master Yuanqing said in his AEIC that Mr SK Tan had told him that Lumbini did not want to invest in 20% of the new company, his evidence on the timing of this conversation was not entirely consistent (see paras 36 and 44 of his AEIC). Besides, it was not put to Mr SK Tan that he had specifically said that Lumbini did not want the 20% stake and I am of the view that Mr SK Tan did not specifically say this.

166. I note that in the minutes of the 31 March 1996 meeting, it was reiterated that Lumbini should be given 20% of the new company 'similar to For You Information'. This shows that the Dissenting Group were still approaching the privatisation of BBS on the basis that it should be carried out on the same terms as FYI i.e a 20% stake in BBSPL for Lumbini. The only difference was that they now wanted $100,000 to be paid as well. Even at this stage, there was still no requirement for BBSPL to make a payment based on the valuation of the assets of BBS. Indeed, had there been such a requirement, it would have meant that Lumbini was getting the 20% stake for free.

167. When Mr SK Tan sent the minutes of this meeting to each of the first three Defendants, Mr Lau responded on 15 May 1996 to state that there was no complication. Lumbini was to take only a 20% equity stake in BBSPL and the $100,000 was a donation. As Mr Lau said in cross-examination, to him the matter was already 'a done deal' (NE 203). There was no written reply to Mr Lau's letter. Neither did Mr SK Tan call Mr Lau to clarify the position (NE 104 and 105).

168. It is common ground that subsequently, Master Yuanqing informed Mr SK Tan to prepare directors' resolutions for the disposal of the assets and liabilities to BBSPL for $1 and on 8 July 1996, SK Tan & Co forwarded these resolutions with a cover letter.

169. Although para 10(f) of the Amended Defence asserts that the transfer at $1 'was agreed by all concerned (i.e Tan Soo Kiat, Mary Wang and Koh Chiou Eng)', I find that this was not the case. The Defendants were trying to rely on the preparation of the resolutions by Mr SK Tan and the absence of any objection by him thereto as being tantamount to an agreement by him to the $1 consideration. In their further and better particulars, they were relying on implied agreement from Mary Wang and Koh Chiou Eng. However, they must fail on the point about the alleged agreement of $1 consideration because Master Yuanqing himself accepted that there was no such agreement and the $1 consideration was only his proposal (NE 149). Mr Lau also accepted that there was no agreement on the $1 consideration (NE 204).

170. I also find that Mr Lau did not sign the resolution for Lumbini to dispose of BBS's assets and liabilities for $1 and Master Yuanqing did not sign the resolution for BBSPL to take over the assets and liabilities for $1, because each of them knew that this $1 consideration had not been agreed to by the Dissenting Group.

171. I accept Mr SK Tan's evidence that he had prepared the resolution because Master Yuanqing had asked him to do so in his capacity as manager of SK Tan & Co. I also find that he did not raise

any objection, in his capacity as director of Lumbini, because he was hoping that the matter could be resolved with the Dissenting Group on the basis of a $1 nominal consideration. That is also why he continued to inquire about the signing of the resolutions.

172. I note that in his reminder dated 8 August 1996, he mentioned that tax and other related matters between the old set up and the subsequent disposal be sorted out (see para 108 above). In my view, this illustrated his true thoughts in that he knew that the assets and liabilities of BBS had been disposed to BBSPL. If the disposal was pending agreement on the purchase consideration, which agreement was still not forthcoming, it would have been pre-mature to talk about tax and other related matters arising from the disposal.

173. In this reminder, he had asserted that delay in sorting out such matters would affect the audit of Lumbini, the holding of its AGM and the filing of annual returns which might result in summonses being issued to directors of Lumbini. Yet he did not respond to Mr Lau's telephone calls or five letters on the same point. I find that he did not respond because he knew that had a meeting been convened, Mr Lau would have insisted that the accounts of Lumbini be prepared on the basis that BBS's business had been disposed of.

174. The truth of the matter was that Mr SK Tan found himself caught between the Dissenting Group and the Defendants. He himself alluded to this in para 50 of his AEIC. That is why he started to disclaim responsibility, see the minutes of 31 March 1996 meeting and his letters dated 8 July 1996 and 19 August 1996 (referred to in paras 97, 103 and 109 above).

175. I note also that Master Guangchao did not give evidence. The reason given was that he was not in Singapore. I am of the view that that is not a valid reason. He is a material witness. He attended the meeting of 22 March 1995. He responded to Master Yuanqing's letter dated 23 March 1995 by his own letter dated 28 March 1995. He attended the 31 March 1996 meeting. I draw an adverse inference against Lumbini for his absence.

SUMMARY

176. Although many aspects of the evidence for the Defendants were unsatisfactory, many aspects of the evidence for Lumbini were also unsatisfactory. In addition, the documentary evidence favours the Defendants and Lumbini had failed to call Master Guangchao and Ms Jamilah as witnesses.

177. The Defendants have not pleaded estoppel. Had they done so, it would have been another ground for my finding in favour of the Defendants.

178. In the circumstances, I find that in March 1995, Master Guangchao, Yeo Kwang Seng, and the rest of the Dissenting Group, and Mr SK Tan had agreed that a new company be incorporated to take over the business of BBS in exchange for a 20% equity stake in the new company with 80% to Master Yuanqing or whoever he cared to share the 80% with.

179. Accordingly, it was not just Mr SK Tan who had agreed. Therefore, Lumbini's allegation that any agreement by Mr SK Tan was under the undue influence of Master Yuanqing must also fail.

180. The agreement was carried out with the assistance of SK Tan & Co and BBSPL was incorporated to take over and did take over the business of BBS from 21 November 1995 except that, probably for accounting purposes, BBSPL was treated as taking over from 1 January 1996. However, in 1996, after Mr SK Tan's memorandum dated 5 February 1996, the Dissenting Group changed their

minds and wanted $100,000 to be paid. When Master Yuanqing did not agree to this and Mr Lau sent his responses to refute any suggestion that $100,000 should be paid, Mr Lau was removed as a director of Lumbini allegedly for failing to return accounting records of Lumbini. In the meantime, the Deposits had been physically taken over by BBSPL on 21 September 1996.

181. Contrary to Mr SK Tan's denial (in NE 97 and 102), this action arises because of the $100,000. Although Mr SK Tan and Mary Wang became the remaining directors of Lumbini, this action is driven by the Dissenting Group. However, as Lumbini has no cause of action against the Defendants for the $100,000, it has instead sought damages or an account of all its assets wrongfully transferred to BBSPL and profits arising therefrom, although the prayer for an accounting was also dropped by its Counsel in Closing Replies before me.

182. I dismiss Lumbini's claims against all the Defendants and the claims against the Third Parties. I will hear the parties on costs.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER

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