Tang Kin Fei and others *v* Chang Benety and others
[2010] SGHC 286

Case Number : Originating Summons No 590 of 2010

Decision Date : 29 September 2010

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Thio Shen Yi, SC and Karen Teo (TSMP Law Corporation) for all the plaintiffs; George Lim, SC and Foo Say Tun (Wee, Tay & Lim LLP) for all the defendants.

Parties : Tang Kin Fei and others — Chang Benety and others

Companies – Meeting

29 September 2010

Woo Bih Li J:

Introduction

1 The plaintiffs and defendants were at all material times directors of PPL Shipyard Pte Ltd ("PPLS") except for Anthony Sabastian Aurol ("Aurol") who was purportedly removed as a director on 8 June 2010. The shareholders of PPLS were Sembcorp Marine Ltd ("SCM") on the one hand and PPL Holdings Pte Ltd ("PPLH") and E-Interface Holdings Ltd ("E-Interface") on the other hand. E-Interface is a wholly-owned subsidiary of PPLH. The plaintiffs were nominated as directors of PPLS by SCM and the defendants were nominated as directors of PPLS by PPLH.

2 As a result of a dispute between the shareholders concerning the beneficial ownership of some shares in PPLS, various board resolutions were proposed at various board meetings convened by or at the instance of one or more of the SCM nominated directors. The PPLH nominated directors however declined to attend these board meetings. Under Art 98 of PPLS'articles of association, at least one PPLH nominated director must be present to constitute a quorum for a board meeting. Consequently, there was no quorum at these board meetings. Notwithstanding the absence of a quorum, the SCM nominated directors proceeded to pass resolutions at these board meetings. They then filed the present application for a declaration to validate the resolutions under s 392 of the Companies Act (Cap 50, 2006 Rev Ed). The primary reliefs sought under the application, as amended, were as follows:

> 1. A declaration that the resolution at the board meeting held on 11 May 2010 appointing WongPartnership to advise and act for [PPLS] is valid.
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> 2. Further or in the alternative, a declaration that the resolution at the board meeting held on 3 June 2010 confirming the appointment of WongPartnership to advise and act for [PPLS] is valid.
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> 3. A declaration that the resolutions at the board meeting held on 3 June 2010 that [PPLS] instruct WongPartnership to:
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> > (a) investigate the allegations made by [SCM] in a letter dated 10 May 2010 and addressed to the board of directors of [PPLS] ("Allegations");

(b) advise [PPLS] how it should respond to the Allegations;

(c) provide general advice on any issue relating to the dispute between its shareholders; and

(d) provide general advice on any issue relating to the continued operations of [PPLS] –

are valid.

4. A declaration that the resolution at the board meeting held on 14 June 2010 appointing WongPartnership to enter an appearance on behalf of [PPLS] and accept service on behalf of [PPLS] of any documents served in the action in Suit No 351 of 2010/H ("the Suit") in the High Court of the Republic of Singapore is valid.

5. A declaration that the resolutions at the board meeting held on 21 June 2010 are valid, namely:

(a) That WongPartnership's appointment be expanded such that they may:

i. do all such things arising from or related to the Suit to protect the interests of [PPLS]; and

ii. provide advice to [PPLS] on how it should respond to the allegations made against it in the Suit.

(b) That, as an interim measure and pending contrary suggestions from WongPartnership, the Chairman of [PPLS] or any other person nominated by the Chairman of [PPLS] is hereby authorised by [PPLS] to provide instructions to and receive advice from WongPartnership on the Suit. Douglas Tan may comment on or add to the instructions provided to WongPartnership. However, where the instructions of Douglas Tan conflict with those of the Chairman of [PPLS] or the Chairman of [PPLS'] nominee, the instructions of the Chairman of [PPLS] or the Chairman of [PPLS'] nominee will prevail.

3 The application was resisted by the PPLH nominated directors who were the defendants. After hearing arguments, I made no order on prayer 1. I granted an order in terms of prayers 2, 3(c) and (d), 4 and 5. I dismissed prayers 3(a) and (b). I also ordered the defendants to pay costs of $5,000 to the plaintiffs.

4 The defendants have appealed against my decision to grant an order in terms of prayers 2, 3(c) and (d), 4 and 5 and to order costs to be paid by them.

Background

5 PPLH is a wholly-owned subsidiary of Baker Technology Ltd ("Baker Tech").

6 On 16 April 2010, Yangzijiang Shipbuilding (Holdings) Ltd ("Yangzijiang") issued a binding letter of offer to Baker Tech to acquire the entire issued and paid-up share capital of PPLH. In its disclosure to the market on 17 April 2010, Yangzijiang stated that the purchase consideration was arrived at by taking into account, *inter alia*, a certain net book value of PPLS for the financial year 2009. The offer was accepted by Baker Tech.

7 Following the acceptance of the offer by Baker Tech, SCM sent a letter of complaint to the board of PPLS. The complaint alleged that two of the defendants, Aurol and Benety Chang ("Chang") had breached their duty to PPLS by disclosing confidential information of PPLS to Yangzijiang, *ie*, the book value of PPLS for the financial year 2009. Aurol and Chang had access to this information from at least 31 March 2010 when all directors of PPLS were given a copy of the draft audited accounts. Such information was not supposed to be made public until PPLS' annual returns were filed with the Accounting and Corporate Regulatory Authority ("ACRA") on 19 April 2010.

8 According to Tang Kin Fei ("Tang"), the chairman of the board of directors of PPLS, the SCM complaint made serious allegations against Aurol and Chang. Yangzijiang was a potential competitor of PPLS. He thought it was in the best interest of PPLS to deal with the allegations immediately and had a discussion with the other plaintiffs thereon. Thereafter, one of them, Don Lee Fook Kang, sent an email to all directors of PPLS on 10 May 2010 to convene a board meeting at 11.00am the next day at SCM's office to appoint a law firm to advise PPLS on the SCM complaint.

9 At 11.00am of 11 May 2010, Tang arrived for the board meeting. He was handed letters from Wee, Tay & Lim acting for the defendants and from Straits Law Practice acting for PPLH. The Wee, Tay & Lim letter objected to the meeting as inadequate notice was given and a list of possible lawyers had not been circulated before the board meeting. The Straits Law Practice letter stated that Aurol had not committed any breach of confidentiality and even if there was, it was *de minimis*. It also stated that PPLS should not expend time, effort and money on the matter. The plaintiffs waited for about 30 minutes and then proceeded with the meeting in the absence of the defendants. They resolved that WongPartnership be appointed to advise and act for PPLS in respect of the SCM complaint. This is the subject of prayer 1 of the amended application.

10 Subsequently, WongPartnership themselves suggested to Wee, Tay & Lim that another board meeting be convened to discuss and decide on the matter about the appointment of a law firm to advise PPLS.

11 Another board meeting was then convened on 3 June 2010. However, by a letter dated 31 May 2010, the defendants requested for confirmation that the 3rd June 2010 meeting would be conducted in accordance with a shareholders' agreement dated 9 April 2001 between SCM and PPLH. In particular, the defendants wanted confirmation that the PPLH nominated directors would have three votes and the SCM nominated directors would have three votes (only). This was the initial position when the shareholders' agreement was entered into because at that time, only three directors were to be appointed by each side. However, as a result of certain developments, the number of SCM nominated directors in PPLS had in fact increased from three to six before 31 May 2010. At the time of the increase, there was no agreement as to whether the six SCM nominated directors would be able to out-vote the three PPLH nominated directors or not. Apparently, subsequent decisions continued to be made unanimously.

12 The plaintiffs' solicitors then replied on 1 June 2010 to say that under Art 98 of PPLS' articles of association, the SCM nominated directors were not confined to only three votes. The defendants then wrote on 2 June 2010 to state that they would not attend the 3 June 2010 meeting although the plaintiffs say they did not receive this letter until after that meeting was held. At the 3 June 2010 meeting, the plaintiffs confirmed the appointment of WongPartnership as solicitors of PPLS and resolved that they be instructed to investigate the allegations made in the SCM complaint, advise PPLS how to respond to the allegations, provide general advice relating to a suit (*ie*, Suit 351 of 2010) between PPLS' shareholders and provide general advice relating to the continued operations of PPLS. These are the subject of prayers 2 and 3 of the amended application.

13 Thereafter, the plaintiffs wrote to Aurol on 8 June 2010 requiring him to vacate his office as a director of PPLS pursuant to Art 90(g) of the articles of association. The plaintiffs were of the view that as he had admitted in a letter dated 12 May 2010 to disclosing PPLS' 2009 financial accounts to Yangzijiang on 13 April 2010 before the accounts were filed on 19 April 2010, he had breached his duty of confidentiality.

14 In the meantime, Suit 351 of 2010 was commenced on 15 May 2010 by SCM against PPLH and E-Interface. The suit arose as a result of the sale by Baker Tech of its shares in PPLH to Yangzijiang. In it, SCM alleged that the sale of Baker Tech's shares in PPLH was a breach, *inter alia*, of an implied term that neither party would, without offering its shares (in PPLS) to the other, act in any manner which would cause the other to end up being a "partner" with a party owned or controlled by someone else other than the principals of the parties to the shareholders' agreement. SCM claimed various reliefs including a right to acquire the remaining shares held by PPLH and E-Interface in PPLS based on a certain formula. In turn, PPLH and E-Interface made a counterclaim against SCM as well as PPLs for various reliefs which I need not elaborate on.

15 Notwithstanding the resolutions passed at the 3 June 2010 meeting, the plaintiffs thought it better to hold another directors' meeting to expressly appoint WongPartnership to represent PPLS in the suit. A board meeting was therefore called by Tan Cheng Tat on 10 June 2010 for 14 June 2010 for this purpose. Thereafter, Wee, Tay & Lim proposed a circular board resolution which would limit WongPartnership's authority in respect of the suit but the plaintiffs preferred wider authority to be given in such a resolution.

16 However, there was no agreement and the board meeting of 14 June 2010 proceeded again in the absence of the remaining PPLH nominated directors and Aurol. At that meeting, it was resolved that WongPartnership was appointed to enter an appearance on behalf of PPLS in the suit and to accept all documents served in the suit on behalf of PPLS. This is the subject of prayer 4 of the amended application. All other issues relating to WongPartnership's mandate were deferred to another board meeting to be held on 21 June 2010.

17 After 14 June 2010, the plaintiffs caused an agenda to be issued for the meeting on 21 June 2010. The agenda included an item to give wide authority to WongPartnership in relation to the suit to protect PPLS' interests and an item on the authorisation of the chairman or any other person nominated by the chairman to give instructions to WongPartnership in the suit and to receive advice from them.

18 On 18 June 2010, Straits Law Practice (acting for PPLH) sent a telefax to the solicitors for the plaintiffs stating that they had no issue with WongPartnership advising and representing PPLS in the suit. They suggested that instructions to WongPartnership should be on the basis of unanimous instructions but were unable to propose a resolution in the absence of unanimity.

19 As a way forward, the plaintiffs then suggested that Douglas Tan, a PPLH nominated director who did not sit on the board of PPLH, be allowed to comment or add to the instructions given by the chairman or his nominee as an interim measure pending any contrary suggestion from WongPartnership. However, this suggestion was not accepted.

20 Accordingly, the board meeting of 21 June 2010 proceeded again without the attendance of the remaining directors nominated by PPLH or Aurol. The resolutions set out in prayer 5 of the amended application were passed at this meeting.

The court's decision

21 The primary position of the defendants was that the court had no power to validate the resolutions as sought by the amended application.

22 Section 392 of the Companies Act states:

> **392**. —(1) In this section, unless the contrary intention appears a reference to a procedural irregularity includes a reference to —
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> (*a*) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and
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> (*b*) a defect, irregularity or deficiency of notice or time.
>
> (2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.
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> (3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.
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> (4) Subject to the following provisions of this section and without limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:
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> (*a*) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a corporation is not invalid by reason of any contravention of, or failure to comply with, a provision of this Act or a provision of any of the constituent documents of a corporation;
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> (*b*) an order directing the rectification of any register kept by the Registrar under this Act;
>
> (*c*) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (*a*);
>
> (*d*) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a corporation (including an order extending a period where the period concerned expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding,
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> and may make such consequential or ancillary orders as the Court thinks fit.
>
> (5) An order may be made under subsection (4) (*a*) or (*b*) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

(6) The Court shall not make an order under this section unless it is satisfied —

(*a*) in the case of an order referred to in subsection (4)(*a*) —

(i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

(iii) that it is in the public interest that the order be made;

(*b*) in the case of an order referred to in subsection (4)(*c*), that the person subject to the civil liability concerned acted honestly; and

(*c*) in every case, that no substantial injustice has been or is likely to be caused to any person.

23 Mr George Lim SC, counsel for the defendants, relied on *Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143 ("*Thio Keng Poon*"). In that case, Art 88(c) of the articles of association of a company provided that the office of director would *ipso facto* be vacated if the director had been requested to vacate office by all the other directors and they pass a resolution that he has been so requested. There, the other directors passed a resolution to remove one of the directors from office even though there was no prior request to him to resign. The Court of Appeal held that the irregularity was a substantive one and could not be cured under s 392(2) of the Companies Act.

24 Mr Lim submitted that the absence of a quorum in the board meetings of PPLS was likewise a substantive irregularity and could not be cured under s 392(2).

25 In my view, the short answer to that contention was that the absence of a quorum in a board meeting is specifically provided under s 392(1) to be a procedural irregularity. *Thio Keng Poon* was not a case involving the absence of a quorum at a board meeting.

26 Mr Lim also relied on a few other cases.

27 In *Re Goodwealth Trading Pte Ltd* [1991] 2 MLJ 314 ("*Goodwealth*"), the articles of association of the company provided for two directors to attend to constitute a quorum for a board meeting. As a result of disputes, one director declined to attend various board meetings. Subsequently, the non-attending director filed a petition to wind up the company on the just and equitable ground. The other director purported to appoint solicitors at a board meeting, which the petitioner did not attend, to oppose the petition. At the hearing of the petition, a preliminary objection was taken that the appointment of the solicitors was not valid. Yong Pung How CJ referred to the conduct of the petitioner in not attending board meetings as a defensive tactic and said at p 317:

... No doubt without intending to do so, Mr Ng Kai Ming for the company and Mr Patrick Wee for Chua lent some force to Miss Chia' s contention with an almost identical argument; this was that the absence of a quorum at the invalid board meeting on 25 October 1989, at which PK Wong & Advani were appointed, was a mere procedural irregularity which was cured by s 392(2) of the Companies Act which provides:

> A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

Apart from the section, no authority was cited to me in support of this contention. In my opinion, on a proper construction, s 392(2) is limited in scope. An irregularity is not cured if ***`the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court'. Thus, the provision is clearly applicable to save the proceedings at a meeting where the lack of a quorum is of little or no consequence, and no shareholder's interests are prejudiced by any decision taken at the meeting. But the provision equally cannot be applicable in a case such as this, in which it will result in disputed decisions being taken by one of only two shareholder groups in a company to the exclusion and possible disadvantage of the remaining shareholder. In my judgment, therefore, the board meeting on 25 October 1989 and the proceedings of the meeting were invalid. Having come to this view, I ruled that the appointment of PK Wong & Advani was also invalid. The firm of solicitors had not been appointed by the company and therefore had no locus standi in the proceedings. ..*** .

[emphasis in original]

28 In *Sum Hong Kum v Li Pin Furniture Industries Pte Ltd* [1996] 1 SLR(R) 529 ("*Sum Hong Kum*"), Art 51 of the articles of association of a company provided for a quorum of three members for annual general meetings. The plaintiff who was a director and shareholder, attended an annual general meeting ("AGM") but left when an attendance sheet was presented to him for his signature which he refused to sign. In his absence, a resolution was passed that he had retired in accordance with the articles of association.

29 Following the AGM, there was a (second) board meeting at which it was resolved, in the absence of the plaintiff, that his remuneration should cease and his privilege in respect of a car would be withdrawn.

30 Warren Khoo J concluded that the plaintiff's initial presence at the AGM was not sufficient to constitute a quorum and he had to be present when the resolution was to be passed. He said at [13]:

> ... Article 51 is in the nature of a deadlock provision which one often finds in articles of small companies which are essentially quasi-partnerships where it is intended that all shareholders have a say in the affairs of the company and each shall have a sort of veto. A shareholder who does not wish to have any business transacted can simply abstain from attending a meeting. This was the defensive strategy, as Yong Pung How J (as he then was) called it, which was adopted by one of the shareholders in *Re Goodwealth Trading Pte Ltd* [1990] 2 SLR(R) 691. There is nothing wrong about it. It is what the parties by contract have agreed. The result of such a deadlock is the winding up of the company. There is nothing wrong with that, too, for the same reason.

31 Khoo J also interpreted the relevant article on board meetings, *ie*, Art 87, to mean that the plaintiff had to be present to constitute a proper quorum for a board meeting.

32 Accordingly, Khoo J concluded that there was no valid quorum for the AGM and for the subsequent board meeting. He declined to validate the resolutions passed at these meetings. He said at [35]:

Applying the propositions to the facts of the case, I still come to the view that the procedural irregularity in this case, *ie* in proceeding with the general meeting and the second directors' meeting in the absence of the plaintiff constituted a procedural irregularity as defined in s 392(1) and that this procedural irregularity resulted in substantial injustice to the plaintiff. The irregularity deprived him of his right under the deadlock provisions of the articles to prevent any decision from being taken by the company without his agreement. This defect is a substantial defect which cannot be cured by s 392. On the other hand, the plaintiff can come to the court to ask the court to declare invalid the meetings mentioned above which took place without his participation.

33 In *Golden Harvest Films Distribution (Pte) Ltd v Golden Village Multiplex Pte Ltd* [2007] 1 SLR(R) 940, the Court of Appeal affirmed at [52] the principle that there had to be a nexus between an irregularity and the alleged substantial injustice that had accrued. Citing the case of *Poliwka v Heven Holdings Pty Ltd* (1992) 7 ASCR 85 which endorsed and elaborated on *Re Pembury Pty Ltd* (1991) 9 ACLC 937, the Court of Appeal noted that "it is the procedural irregularity that must have caused the injustice, not the resolutions themselves."

34 Relying on the above three cases, Mr Lim submitted that the very fact that the defendants were deprived of the defensive tactic that they were entitled to adopt meant that the court did not have any power under s 392(2) to validate resolutions or that there would necessarily be substantial injustice which would never be cured under s 392(2), unless the resolutions were passed inadvertently without knowledge of a lack of quorum.

35 Mr Thio Shen Yi SC, counsel for the plaintiffs referred to *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121 ("*Oriental Insurance*") for observations by the Court of Appeal on the meaning of "substantial injustice" in the context of s 392(6)(*c*) Companies Act. There, the Court of Appeal reiterated, at [106], that the determination of substantial injustice under s 392 involved a "holistic weighing and balancing of the various interests of all the relevant parties". That observation is helpful for the purpose of considering "substantial injustice" in the context of s 392(2) although *Oriental Insurance* did not involve a provision on a quorum which might result in a deadlock.

36 I did not agree with Mr Lim's submission (in [34] above). First, the principle that the procedural irregularity must have caused the injustice and not the resolutions themselves did not mean that the substance of the resolutions was to be totally disregarded. The absence of a quorum was, by statute, only a procedural irregularity. What the principle means is that both the procedural irregularity and the substance of the resolutions must be considered as part of the holistic approach mentioned in *Oriental Insurance*, and not only the substance of the resolutions themselves.

37 On the other hand, [35] of Khoo J's judgment in *Sum Hong Kum* did appear to support Mr Lim's contention. Khoo J appeared to have been influenced by Yong CJ's judgment in *Goodwealth* but while it is true that Yong CJ did refer to a defensive tactic adopted by those who wanted to create a deadlock, it is important to bear in mind that Yong CJ did not suggest that the absence of a quorum in such a situation would necessarily preclude a court from validating resolutions passed at meetings without such a quorum. Indeed, Yong CJ went on to consider whether there was substantial injustice and on the facts he found there was. It seemed to me that Khoo J had extended what Yong CJ had said.

38 Aside from comparing the terms of s 392(2) with s 392(3) which refers to accidental conduct, it seemed to me that if Mr Lim was right, the efficacy of s 392(2) would be substantially reduced. Mr Lim's submission would mean that s 392(2) would apply only if the party proceeding with a meeting

did so inadvertently, *ie*, without realising that there was no quorum. As it turned out, in *Thio Keng Poon*, the Court of Appeal had already said at [58] that s 392(2) is not confined to cases where the non-compliance was due to inadvertence. With respect, I agree with that conclusion.

39 I was of the view that the starting point should be that where there is a provision which allows one party to engage in the defensive tactic mentioned above, he is, *prima facie*, entitled to do so. Where there is a deadlock in the sense that no quorum can be formed for a board meeting, I was of the view that to allow one party to push ahead with his agenda in the absence of the other party was *prima facie* an injustice which was substantial because he was denying the other party the right to stop the proposing party from proceeding with his agenda, a right which the parties had agreed to beforehand.

40 It would then be for the proposing party to persuade the court why the resolutions should nevertheless be validated or not invalidated bearing in mind the holistic approach mentioned in *Oriental Insurance*.

41 Prayer 1 was in respect of a resolution passed at a board meeting which was convened at very short notice, a point which the plaintiffs acknowledged. In any event, its substance was covered by the resolution in prayer 2. Accordingly, I declined to make any order on prayer 1.

42 The resolutions in prayers 2, 3(c) and (d), 4 and 5(a) were all neutral and in the interest of PPLS as PPLS had to be represented in the suit. Indeed, the defendants themselves appeared to be in agreement in principle with those resolutions. As for prayer 5(b), it was practical to identify someone from whom WongPartnership could receive instructions. The interim measure (mentioned in prayer 5(b)) also provided for the other side, represented by Douglas Tan, to comment or add to instructions from the nominated person. That provision would help to balance the scales. Furthermore, if WongPartnership were to act in a manner which suggested a lack of independence, it would be open to the SCM nominated directors or PPLH to bring that to the attention of the court. In my view, the small risk of WongPartnership acting in such a manner was preferable to a situation where there was uncertainty as to who could give instructions to them or where a deadlock in instructions could easily arise.

43 Therefore, I validated prayers 2, 3(c) and (d), 4 and 5.

44 I considered the resolution under prayer 3(b) to be connected with that under prayer 3(a) which was not neutral. The PPLH nominated directors knew that if they attended the relevant board meeting, the SCM nominated directors were likely to purport to out-vote them and hence the PPLH nominated directors adopted the defensive tactic of not turning up for the meeting. In so doing, they knew there would be no quorum but that was the effect of the relevant article of association.

45 Much was made by SCM and the plaintiffs about the disclosure of PPLS' 2009 financial accounts to Yangzijiang on 13 April 2010. It was suggested that Yangzijiang was a potential competitor and having PPLS' confidential information leaked to Yangzijiang would clearly be detrimental to PPLS in any circumstance. Yet, there was no elaboration on the likely damage to PPLS. Furthermore, as mentioned above, Yangzijiang would in any event have been able to obtain that information a few days later after PPLS' annual returns were filed with ACRA on 19 April 2010. There was no evidence to suggest that the disclosure to Yangzijiang a few days earlier was in fact damaging to PPLS. The resolutions under prayers 3(a) and (b) appeared one-sided because they assumed that the proposed investigation was truly in the interest of PPLS and not for a collateral purpose of trying to find fault with certain persons at the instigation of a shareholder who was unhappy with Yangzijiang's intended purchase. The true motive for the investigation had itself not yet been established.

46 In any event, it was for the plaintiffs to persuade me that I should validate prayers 3(a) and (b). I was not persuaded that I ought to do so in the circumstances. In dismissing those prayers, I had intended to invalidate the resolutions thereunder.

47 As the defendants failed in their primary contention as advanced by Mr Lim (see [24] and [34] above), I ordered them to pay costs of $5,000 to the plaintiffs.

48 For completeness, I would add that the omission by the plaintiffs to adjourn some of the board meetings in question in the absence of a quorum, as was required by PPLS' articles, did not affect my conclusion on the power of the court to act under s 392(2) or whether there was or might be substantial injustice. The disputes in the amended application arose from the absence of a quorum and the plaintiffs accepted that there was no quorum.