**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2016] SGHC 177**

Suit No 796 of 2014
Summonses Nos 1638 and 2109 of 2016

Between

(1) Lim Seng Wah
(2) Heah Eng Lim

… *Plaintiffs*

And

(1) Han Meng Siew
(2) Wang Lai Suan
(3) Ensure Engineering Pte Ltd

… *Defendants*

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# JUDGMENT

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[Companies] — [Oppression] — [Minority shareholders]

[Contract] — [Breach]

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# Lim Seng Wah and another
# v
# Han Meng Siew and others

**[2016] SGHC 177**

High Court — Suit No 796 of 2014 and Summonses Nos 1638 and 2109 of 2016
Chua Lee Ming JC
21–23 December 2015; 5–8 January 2016; 12 April 2016

9 September 2016 Judgment reserved.

**Chua Lee Ming JC:**

## Introduction

1 The first and second plaintiffs, Mr Lim Seng Wah ("Lim") and Mr Heah Eng Lim ("Heah"), commenced this action in July 2014 against the first and second defendants, Mr Han Meng Siew ("Han") and Mr Wang Lai Suan ("Wang"), for oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act") and for breach of a shareholders' agreement. Lim, Heah, Han, Wang and Mr John Koh Kay Hock ("John Koh") were the shareholders in the third defendant, Ensure Engineering Pte Ltd ("the Company") when this action started. As the Company is a nominal defendant, I will use the term "defendants" in this judgment to refer to Han and Wang only.

2 Lim and Heah tried to exit the Company by offering their shares to the other shareholders in 2013. Han, Wang and John Koh did not take up the

offers. Lim and Heah then sold their shares in the Company to a third party, Mr Kwok Hong Wai ("Kwok"), in February 2014. However, Han and Wang, who were the directors of the Company, did not approve the transfers by Lim and Heah to Kwok. Unable to exit the Company and unhappy with the defendants' conduct, Lim and Heah commenced this action in July 2014.

3 The case took an unexpected turn after the witnesses had given their evidence but before closing submissions. On 19 January 2016, Han and Wang entered into a Shares Sale and Purchase Deed[1] ("the 2016 Deed") with Kwok. Pursuant to this Deed, Han and Wang

(a) undertook to transfer the shares that Lim and Heah had sold to Kwok, by 24 January 2016; and

(b) agreed to buy the same shares from Kwok for $19.5m, subject to Kwok successfully persuading Lim and Heah to file a notice of discontinuance of the present action with each party bearing his/its own costs, by 2 February 2016.

4 Pursuant to the 2016 Deed, the transfers of shares by Lim and Heah to Kwok were registered on 22 January 2016.[2] Thereafter, Lim and Heah ceased to be shareholders in the Company, and Kwok became a shareholder in the Company. However, the purchase of Kwok's shares by Han and Wang did not take place because Kwok failed to persuade Lim and Heah to file a notice of discontinuance of the present action.

5 On 6 April 2016, Kwok filed Summons No 1638 of 2016 and applied to be joined as a plaintiff in this action. Kwok sought to rely on the same claims made by Lim and Heah as well as the evidence already adduced in court.

6 I heard Kwok's application together with the closing submissions for the present action on 12 April 2016. Han and Wang opposed Kwok's application. I reserved judgment.

7 In the meantime, on 3 May 2016, the remaining shareholder in the Company, John Koh, decided to join the fray. He filed Summons No 2109 of 2016 in which he applied to be joined as a party to this action. I heard the application on 16 June 2016 and dismissed the application for the reasons set out later in this judgment.

8 Two preliminary issues need to be dealt with first:

(a) whether Lim and Heah have the requisite standing to continue with their oppression claim under s 216 of the Act ("the s 216 Claim") since they are no longer shareholders in the Company; and

(b) whether Kwok should be joined as a plaintiff in this action.

**Whether Lim and Heah have standing to continue the s 216 Claim**

9 Only a member or holder of debentures of a company is entitled to seek relief under s 216 of the Act: *Kitnasamy s/o Marudapan v Nagatheran s/o Manogar and another* [2000] 1 SLR(R) 542 ("*Kitnasamy*") at [25]. However, in appropriate circumstances, the respondents to a claim under s 216 may be estopped from asserting that the applicant is not a member: *Kitnasamy* at [26]. In the present case, it is clear that when this action was commenced, Lim and Heah had the necessary standing to bring the s 216 Claim as they were shareholders of the Company then. However, they ceased to be shareholders of the Company when the transfer of their shares to Kwok was registered on 22 January 2016.

10 Lim and Heah submitted that they continue to have the requisite standing to maintain the s 216 Claim and referred me to *United Rural Enterprises Pty Ltd v Lopmand Pty Ltd and others* (2003) 47 ACSR 514 ("*Lopmand*"). In that case, United Rural Enterprises Pty Ltd ("URE") and Lopmand Pty Ltd ("Lopmand") were shareholders of a company called Painten Holdings Pty Ltd ("Painten Holdings"). Lopmand had given a charge over its shares in Painten Holdings as security for a loan given by URE. Lopmand brought an oppression claim against URE. The court held that there was oppression by URE, but before the hearing on remedies, URE registered its equitable charge over Lopmand's shares and became their owner. By the time the hearing on remedies was held, Lopmand was therefore no longer a shareholder. However, URE conceded that s 234 of the Corporations Act 2001 (Cth) was satisfied because Lopmand was a member of Painten Holdings at the time of filing the action and that any relevance of its having ceased to be a member subsequently lies at the level of discretion, not jurisdiction (at [25]).

11 Lim and Heah also referred me to *Kitnasamy*. In that case, the court found that although the appellant was not a registered shareholder, he had the *locus standi* to petition under s 216 as he had agreed to become a shareholder and was not registered as one due to the default of those responsible for the company's administration, including the respondents. The court held that the respondents were estopped from asserting that the appellant had no *locus standi*.

12 *Lopmand* is not authority for the proposition that a shareholder who has ceased to be one still has the *locus standi* to maintain an oppression action. The point was conceded by the respondent in that case. As for *Kitnasamy*, the facts were very different. The applicant was for all intents and purposes a shareholder except that the company had not registered him as one. On the

facts, the respondents were estopped from challenging the applicant's *locus standi*. In the present case, Lim and Heah had clearly ceased to be shareholders and it has not been alleged that any estoppel arises in this case.

13 I agree with the statement in R Hollington QC, *Hollington on Shareholders' Rights* (Sweet & Maxwell, 7th Ed, 2013) ("*Hollington*") at para 9-15 that "where a registered shareholder has freely disposed of his shares … he will no longer have *locus standi* once he has ceased to be registered as a member". As a matter of principle, this must be correct. After all, it is trite that the matters complained of under s 216 must affect the applicant *qua* shareholder and that the court's powers under s 216(2) are to be exercised "with a view to bringing to an end or remedying the matters complained of". With one exception, it is difficult to see how a plaintiff would still be entitled to a remedy under s 216 if he has ceased to be a shareholder. In such circumstances, it seems to me quite pointless to allow the plaintiff to carry on with the action. The one exception is where the events which caused the plaintiff to cease to be a shareholder are also the subject matter of the complaint under s 216.

14 In my opinion, Lim and Heah lost their *locus standi* to continue with the s 216 Claim when they ceased to be registered as shareholders in the Company.

**Whether Kwok should be joined as a plaintiff**

15 Kwok applied to be joined as a plaintiff under either

(a) O 15 r 6(2)(*b*)(i) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court") on the ground that his "presence before the

Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon"; or

(b) O 15 r 6(2)(*b*)(ii) of the Rules of Court on the ground that "there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine" as between Kwok and the other parties to the matter.

16 Kwok sought to pursue the s 216 Claim either alone or jointly with Lim and Heah, relying on the same evidence that has already been adduced. It is therefore clear that the requirements of O 15 r 6(2)*(b)*(i) would be satisfied provided that Kwok is entitled to pursue the s 216 Claim.

17 Section 216(1) of the Act provides as follows:

> **Personal remedies in cases of oppression or injustice**
>
> **216.—** (1) Any member or holder of a debenture of a company, or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground –
>
> (*a*) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
>
> (*b*) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

18 It is common ground that under s 216 only a member or a holder of a debenture of a company is entitled to seek relief (see [9] above). Kwok's first hurdle is that he was not a member of the Company when this action was commenced. However, Kwok's joinder as a plaintiff takes effect from the date that the amended writ is served on him and does not operate retrospectively so as to take effect at the commencement of the proceedings: *Singapore Civil Procedure 2016* vol 1 (Foo Chee Hock JC gen ed) (Sweet & Maxwell, 2016) ("*Singapore Civil Procedure*") at para 20/8/3. In my view, Kwok only needs to be a member or holder of a debenture of the Company as of the date that his joinder takes effect. This requirement is satisfied in this case.

19 Kwok's next hurdle is that the conduct complained about in the s 216 Claim took place before he became a shareholder. Kwok referred me to *Re Spargos Mining NL* (1990) 3 ACSR 1 ("*Spargos*") and submitted that an applicant under s 216 can rely on conduct that took place before he became a shareholder. In *Spargos*, the applicant's complaints in the oppression action included conduct that took place before he became a shareholder. The Supreme Court of Western Australia held that it was not necessary that the applicant be himself aggrieved by the conduct complained of. However, the decision in *Spargos* was based on the language in s 320 of the Australian Companies Code which referred to "… affairs of the company … being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in an manner that is contrary to the interests of the members as a whole" (at 3). Murray J was of the view that "if the legislature had intended that only an aggrieved member should be able to apply to the court under s 320, it would have said so" (at 6). It was for this reason that his Honour concluded that "the unfairness required to be established … need not be to the particular member who is the applicant" (at 6).

20 The language in s 216 of the Act is different (see [17] above). Section 216(1) provides four alternative limbs – oppression, disregard of interests, unfair discrimination and prejudicial conduct. The first, third and fourth limbs are expressly qualified by the words "including himself" thus making it clear that for these three limbs at least, the applicant must be an aggrieved party. As for the second limb – disregard of interests – the language in s 216(1)(*a*) appears not to require the applicant's interest to be affected. However, it is settled law that the four limbs in s 216(1) are not to be read disjunctively. The common thread underlying the entire section is that of unfairness. The common test is that of "a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect": *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [70] and [77]. This is a "composite test of commercial unfairness": Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 2nd Ed, 2007), at p 228. In my view, this must mean that an applicant under s 216 has to show that he is an aggrieved shareholder, *ie*, that the conduct complained of is commercially unfair *to him*.

21 To the extent that the decision in *Spargos* was based on the specific language in the provision before the court, it is therefore distinguishable. However, this does not spell the end of Kwok's application to be joined as a plaintiff.

22 In *Lloyd v Casey and others* [2002] 1 BCLC 454, the court held that an applicant under s 459 of the Companies Act 1985 (c 6) (UK) could rely on conduct which took place before he became a registered shareholder. The court noted that the words used in s 459 were "the company's affairs are being *or have been* conducted in a manner which is unfairly prejudicial" (at [50]).

That decision was followed in New Zealand in *Tyrion Holdings Ltd v Claydon* [2015] NZAR 698.

23 Section 216(1)*(b)* of the Act refers to acts that have been done and resolutions that have been passed. In my view, Kwok can rely on acts that were done before he became a member of the Company. Section 216 merely requires Kwok to (a) be a member of the company when he applies for relief and (b) show that the defendants' misconduct is commercially unfair to him. In this case, once joined as a plaintiff, Kwok would be a member who is claiming relief under s 216. The remaining question then is whether the defendants' misconduct (including their past misconduct) is commercially unfair to Kwok. The issue of commercial unfairness will be discussed later (see [160] below).

24 The defendants' main objection to Kwok's joinder was that Kwok's joinder operates retrospectively from the commencement of the action and that Kwok was not a shareholder of the Company then. However, as seen earlier (at [18]), this is incorrect; Kwok's joinder takes effect from the date the amended writ is served on him.

25 Lim and Heah also made a separate submission that the defendants should not have registered the transfer to Kwok since the settlement negotiations had broken down in that Kwok failed to persuade Lim and Heah to discontinue this action (see [4] above). It was not clear where Lim and Heah were headed with this submission as they did not seek to set aside the transfer to Kwok. Lim and Heah did not press this point. In any event, it is clear that under the 2016 Deed, the registration of the transfer to Kwok was not dependent upon Kwok successfully persuading Lim and Heah to discontinue this action.

26 For the above reasons, I grant Kwok's application to be joined as a plaintiff in this action. In this judgment, I will use the term "plaintiffs" to refer to Lim, Heah and Kwok.

**Reasons for dismissal of John Koh's application**

27 John Koh's application to be joined as a party was made pursuant to O 15 r 6(2)*(b)*(ii) of the Rules of Court. It was not clear from his application or his supporting affidavit whether he sought to be joined as a plaintiff or as a defendant. It was only during the hearing before me that his counsel confirmed that John Koh sought to join the action as a plaintiff. John Koh submitted that if I ordered the defendants to buy out the Lim and Heah, or Kwok, then I should make a similar order for the defendants to buy out his shares too.

28 John Koh submitted that he should be joined as a party because all shareholders of a company should be included as parties in an action under s 216. In support of this proposition, John Koh referred me to *Re a Company (No 007281 of 1986)* [1987] BCLC 593 ("the *3i* case") and *Re BSB Holdings Ltd* [1993] BCLC 246 ("*Re BSB*").

29 In the *3i* case, the petitioner in an oppression action joined 3i as a respondent. 3i was a shareholder in the company whose affairs were alleged to be conducted in an unfairly prejudicial manner. However, there were no allegations or claims for relief made against 3i. 3i applied to have the petition against it struck out. The application was dismissed. Vinelott J referred to a practice of the Companies Court to require all shareholders of a company whose interests have been affected by the alleged misconduct or who would be affected by the court's order in an oppression action to be made respondents to the action even if no allegations of misconduct or claims for relief are made against them. In his view, a buy out order would affect other shareholders

because it would override any pre-emption provisions in the company's articles and alter the balance of voting rights (at 598–599).

30 In *Re BSB*, Vinelott J referred to his earlier decision in the *3i* case and reiterated the views he had expressed in that case (at 253).

31 In my view, the proposition advanced by John Koh goes too far. I do not accept that, as a general principle, all shareholders of the company must be joined as parties in an action under s 216. In this respect, I would respectfully depart from the view expressed in the *3i* case and *Re BSB*. Whether any shareholder should be joined as a party must depend on the facts. In particular, I do not see any reason to join a shareholder as a party in an action under s 216 against his will if there is no relief claimed against him: see, also, *Hollington* at para 9-43.

32 That said, John Koh still could come within O 15 r 6(2)*(b)*(ii) of the Rules of Court. After all, he was seeking to join the action as a plaintiff and be bought out as well. There was therefore an issue connected with a relief claimed in this action. However, whether he should be joined as a party was subject to the overriding consideration that his joinder must be "just and convenient": *Chan Kern Miang v Kea Resources Pte Ltd* [1998] 2 SLR(R) 85 at [22].

33 Both the plaintiffs and the defendants objected to John Koh's application, primarily for two reasons. First, joining John Koh as a plaintiff would be prejudicial to the plaintiffs and defendants as the trial would have to be re-opened. John Koh's joinder would result in amendments to pleadings, discovery and further evidence including cross-examination of John Koh. The question of how John Koh's interests as a shareholder had been prejudiced had

to be tried. Second, John Koh's application was made very late in the day although he had known about this action all along. John Koh had even attended the trial and listened to the evidence in court.

34 I agreed with the plaintiffs and defendants. John Koh's case was very different from that of Kwok. Kwok had merely stepped into the shoes of Lim and Heah after he was registered as a shareholder on 18 February 2016.[3] There were no new facts or evidence required in his case. In contrast, joining John Koh would require the trial to be re-opened and this would be prejudicial to the plaintiffs and defendants. In addition, John Koh offered no explanation whatsoever as to why he sat on his hands until after closing submissions had been made. John Koh's application seemed opportunistic. In my view, it was neither just nor convenient to join John Koh as a party at this very late state. Accordingly, I dismissed his application.

35 I now turn to deal with the facts and allegations in this case.

**The undisputed background facts**

36 The Company is in the business of providing infrastructure engineering services including steam boiler rental services, boiler repair and maintenance, chemical and oil flushing.

37 In 1988, Lim, Heah, Han, and one Ang Cheng Yaf ("Ang"), all of whom were colleagues, decided to go into business together. They resigned from their respective employments and became shareholders in the Company. The Company was then owned by one Mr Tan Nam Yong ("Bernard") and his wife. Lim, Heah, Han and Ang each held 15% of the shares in the Company. Bernard and his wife each held 20%.

38 By mutual agreement, Bernard's wife subsequently transferred her shares to Lim, Heah, Han and Ang in equal proportions. Consequently, Lim, Heah, Han, Ang and Bernard each held 20% of the shares in the Company.

39 In 1991, John Koh became a shareholder in the Company. Thereafter, each of Lim, Heah, Han, Ang and John Koh held 18% in the Company whilst Bernard held 10%. John Koh's shareholding in the Company was held by Heah (9%) and Han (9%) on trust for him.

40 Lim, Heah, Han, Ang and Bernard were directors of the Company. The Company's business was managed primarily by Lim, Heah, Han and Ang, all of whom were executive directors. Lim managed the Marine Department, Heah managed the Chemical Department, Han managed the Commercial Department and Ang managed the Industrial Department. Lim, Heah, Han and Ang drew the same salary. Bernard ceased to be involved in the Company's affairs by late 1998 or early 1999.

41 Disputes arose in 1998. In May 1998, Han informed the board of directors of the Company ("the Board") of his intention "not to [be] involve[d] [in] the key decision making process of the daily operation of the [C]ompany".[4] This was followed by his resignation from the Company in August 1998.[5] The dispute was resolved when Ang, Lim and Heah agreed to let Han lead the management of the Company. On 1 November 1999, Han was appointed as Managing Director of the Company.[6]

42 The peace was short-lived. On 13 May 2000, Han wrote to the Board to "offer [his] resignation".[7] Two days later, on 15 May 2000, Han wrote to the Board and pointed out that his offer to resign had raised the question who will lead the company and that many, if not all, of the Board members did not

have any answer.[8] In the same letter, Han also proposed to buy out Lim, Heah and Ang for $1,764,445.80. Lim, Heah and Ang did not agree with the price offered.

43 On 31 May 2000, Heah resigned from his employment with the Company. On 1 November 2000, Wang joined the Company as general manager.[9]

44 Ang was demoted from general manager to departmental manager. On 31 January 2001, Ang tendered his resignation with effect from 28 February 2001.[10] Bernard resigned as managing director with effect from 1 April 2001.[11] Wang was appointed as a director on 1 April 2001, together with one Mr R V Rajoo ("Rajoo").[12]

45 On 10 March 2001, Han wrote to the shareholders setting out certain proposals. This led to a shareholders' agreement being drawn up. The agreement, dated 16 May 2001, was signed by Bernard, Lim, Heah, Han and the Company ("the 2001 Agreement").[13] Ang did not sign the 2001 Agreement. John Koh was not a party to the 2001 Agreement; his shares were still being held by Han and Heah on trust for him.[14]

46 The relevant clauses in the 2001 Agreement were as follows:[15]

(a) Clause 3.2 gave Han the right to appoint a majority of the Board at any time and to remove any director so appointed.

(b) Clause 3.3 required every appointment or removal of a director by Han to be in writing and signed by him.

(c) Clause 3.4 required Lim, Ang and Heah to resign as directors of the Company.

(d) Clause 3.7 provided that 25% of the Company's net profits (as defined in clause 9) shall be distributed to the executive directors as follows: Han (20%) and Han's appointees (5%). These shall be in addition to their respective remuneration packages.

(e) Clause 3.9 stated that the chairman of the Board shall be Han or his appointee and that the chairman shall have a casting vote at any meeting of the Board.

(f) Clause 9 required the shareholders to "procure … that the Company declares" 75% of the net profits to be distributed as dividends and 25% to be distributed to Han and his appointees pursuant to clause 3.

(g) Clause 9 further defined net profits to mean profits of the Company "after appropriation of prudent and proper reserves including allowance for future working capital, provision for tax, interest payments and repayments of amounts borrowed" ("Net Profits").

47 As a result of the 2001 Agreement, Han acquired control over the Company despite the fact that he held only 18% of the shares in the Company. The 2001 Agreement also settled how Net Profits were to be computed and distributed.

48 As required under the 2001 Agreement, Lim and Heah resigned from the Board on 13 September 2001.[16] Bernard resigned from the Board on 29

November 2001.[17] Sometime in 2002, Rajoo resigned from the Board, leaving Han and Wang as the only directors of the Company.

49 On 1 May 2003, Heah re-joined the Company as a project manager.

50 In October 2003, Ang commenced Suit No 998 of 2003 against Han for oppression.

51 On 29 March 2004, Heah again resigned from his employment with the Company. In 2004, Wang became a shareholder of the Company, holding 5.55% of the shares in the Company.

52 The 30th Annual General Meeting ("AGM") for financial year 2003 ("FY2003") was held in July 2004. At that AGM, Ang, Bernard and Heah's nominee, one Clement Cheong ("Cheong"), were appointed as directors of the Company. Han and Wang were not reappointed as directors.

53 Ang, Bernard and Cheong attempted to inspect the Company's books and records in August 2004 but Han denied them access.

54 Han and Wang passed a directors' resolution on 11 August 2004 to remove Ang, Bernard and Cheong as directors with immediate effect.[18] By letter dated the same day, Han instructed the Company's secretary to remove Ang, Bernard and Cheong from the Board with immediate effect. Han and Wang were reinstated as directors, in place of Ang, Bernard and Cheong, with effect from 12 August 2004.[19]

55 On 20 August 2004, the High Court dismissed Ang's claim in Suit No 998 of 2003 with costs and ordered Ang to offer his shares in the Company to Han and/or his nominees at $3.20 per share (total amount $793,440).[20] On 12

October 2004, Ang's shares were transferred to Han, John Koh, Wang and another employee of the Company, one Poh Sok Hwa ("Poh").[21] With these transfers, the shareholding in the Company became as follows:

| | |
|---|---|
| Lim | 18% |
| Heah | 18% |
| Han | 32% |
| John Koh | 14% |
| Bernard | 10% |
| Wang | 5% |
| Poh | 3% |

56 John Koh, Wang and Poh signed a Deed of Accession in October 2004 agreeing to be bound by the 2001 Agreement.[22]

57 In April 2005, Bernard's shares were acquired by the Company pursuant to a settlement of debts owed by Bernard's company to the Company.[23] Following the cancellation of Bernard's shares, the shareholding in the Company became as follows:

| | |
|---|---|
| Lim | 20% |
| Heah | 20% |
| Han | 35.56% |
| John Koh | 15.6% |
| Wang | 5.56% |
| Poh | 3.33% |

58 In 2011, the Company sold its property at 11 Tuas Link 1, Singapore 638588 ("the Tuas Property") for $5.6m[24] resulting in a capital gain of $4,034,745.[25]

59 By the time this action was commenced, Poh had ceased to be a shareholder. As at the date this action was commenced, the shareholding in the Company was as follows:

| | |
|---|---|
| Lim | 20% |
| Heah | 20% |
| Han | 27.44% |
| John Koh | 27% |
| Wang | 5.55% |

John Koh was appointed as a director of the Company on 14 January 2016.[26] The other two directors are Han and Wang.

**The claims and counterclaims**

60 Lim and Heah claim that

(a) Han has repudiated the 2001 Agreement ("the Contract Claim"); and/or

(b) Han and Wang have conducted the affairs of the Company and/or exercised their powers as directors and/or shareholders in a manner oppressive to Lim and Heah and/or in disregard of and/or prejudicial to the interests of Lim and Heah as members of the Company (*ie*, the s 216 Claim).

61 The Contract Claim alleges that Han breached the 2001 Agreement by causing the Company to pay himself and Wang excessive directors' fees for FY2001 to FY2013 whereas the plaintiffs were paid little or no dividends for those financial years. The plaintiffs claim that Han's breaches amounted to a repudiation of the 2001 Agreement.

62 The s 216 Claim is premised on the following allegations:

(a) Between 2002 and 2014 (*ie*, from FY2001 to FY2013), in breach of the 2001 Agreement, Han and Wang caused the Company to grossly overpay themselves $7,600,027 in directors fees while only declaring $1,675,500 in dividends.

(b) Between 2007 and 2015, Han and Wang wrongfully caused the Company to pay a total of $2,778,328.27 to Singapore Vision Farm ("SVF"), a company wholly owned and controlled by them.

(c) In or around 2012, Han and Wang wrongfully caused the Company to (i) pay $229,249.57 for materials used to refurbish the Ang Mo Kio Methodist Church ("the AMK Church"), where Han is a senior member, and (ii) to fabricate a stainless steel cross for the church.

(d) Between 2009 and 2013, Han and Wang wrongfully directed the Company's manpower and resources to carry out other works for the AMK Church, the Yishun Evangelical Church and SVF.

(e) In 2004 and 2014, Han and Wang unfairly prevented Lim and Heah from exercising their rights as shareholders, by disregarding Heah's votes at the 30th AGM in 2004 and disallowing Lim and Heah from voting on resolutions at the 40th AGM in 2014. Han and Wang further refused to allow Lim and Heah to appoint directors.

63 In their counterclaim, Han and Wang sought a rectification of clauses 3.7 and 9 of the 2001 Agreement.

**The counterclaim for rectification of the 2001 Agreement**

64 The computation of directors' fees and dividends under the 2001 Agreement are key issues in this action. I shall deal with the counterclaim first since it affects how directors' fees and dividends should be computed under the 2001 Agreement.

65 In their defence and counterclaim, Han and Wang averred that clauses 3.7 and 9 of the 2001 Agreement do not reflect the common intention of the parties and should be rectified in the following manner:

> 3.7 In recognition of their contribution to the Company, the Executive Directors shall be entitled~~, in respect of each complete financial year of service rendered, 25% of the Company annual net profit (as defined in clause 9 below)~~ <u>of the Company's annual Trading Gross Profit after provision for tax ("the net profit")</u> for that financial year as follows:
>
> | | | | |
> |---|---|---|---|
> | (i) | Han | : | 20% |
> | (ii) | Han's appointees | : | 5% to be divided in such proportion as shall be decided by Han |
>
> This shall be in addition to their respective remuneration packages.
>
> …
>
> 9 DIVIDEND POLICY
>
> The Shareholders shall procure that for each financial year the Company declares:
>
> (a) of those profits of the Company available for distribution after appropriation of prudent and proper reserves including allowance for future working capital, provision for tax, interest payments and repayments of amounts borrowed ~~("the net profit") – 75% thereof~~ <u>and the 25% of the net profit for Han and his appointees pursuant to Clause 3.7</u> by way of dividend
>
> (b) 20% of the net profit to be given to Han and 5% of the net profit to be divided amongst such directors appointed by Han pursuant to clause 3.

> In deciding whether in respect of any financial year the Company has profits available for distribution, the Parties shall procure that the auditors shall certify whether such profits are available or not and the amount thereof (if any). In giving such certificate the Auditors shall act as experts and not as arbitrators and their determination shall be binding on the Parties.

In this judgment, I shall refer to the above version of clauses 3.7 and 9 (*ie*, with the rectifications sought by Han and Wang) as "the Alleged Clause 3.7" and "the Alleged Clause 9".

66 It is common ground that the payments made under clause 3.7 of the 2001 Agreement to Han and his appointees are referred to as "directors' fees".

67 Under the original clauses 3.7 and 9, 25% of the Net Profits would be paid as directors' fees and 75% as dividends. As seen earlier (at [46(g)] above), Net Profits meant profits of the Company less working capital, tax, interest and loan repayments.

68 Under the Alleged Clauses 3.7 and 9, directors' fees would be 25% of profits after tax whereas dividends would be paid from profits less working capital, tax, interest, loan repayments and directors' fees. In short, the Alleged Clauses 3.7 and 9 would increase the amount payable to Han and his appointees as directors' fees, whilst reducing the amount payable to the shareholders (including the plaintiffs) as dividends.

69 To succeed in the counterclaim for rectification, Han and Wang must prove that the parties were in complete agreement on the terms of the contract and that these terms were erroneously written down wrongly in the contract: *Frederick E Rose (London) Ld v William H Pim Jnr & Co Ld* [1953] 2 QB 450 at 461. The parties' intention is to be ascertained objectively. A complete

antecedent concluded contract is not required but an outward expression of accord is required: *Cold Storage Holdings plc and others v Overseas Assurance Corp Ltd and another* [1988] 1 SLR(R) 255 at [31]–[36], applying *Joscelyne v Nissen and Another* [1970] 2 QB 86.

***Was there a different common intention?***

70 The defendants pleaded in their defence and counterclaim that clauses 3.7 and 9 of the 2001 Agreement did not reflect the common intention of the parties due to an oversight. According to the defendants, the common intention was as follows:[27]

(a) the management team was entitled to directors' fees computed as 25% of profits after tax; and

(b) the shareholders were entitled to dividends as recommended by the directors from profits after deducting tax, directors' fees and provision for running capital.

I shall refer to the above as "the Alleged Formula".

71 In my judgment, the defendants have failed to prove the above. The evidence shows that the common intention alleged by the defendants is a fabrication.

*Whether there was a common intention to continue the practice adopted before the 2001 Agreement*

72 Han and Wang alleged that the common intention was that the 2001 Agreement would continue the practice during the period from 1988 until the 2001 Agreement ("the Pre-Agreement Period"), and that during the Pre-

Agreement Period, directors' fees were computed using the Alleged Formula.[28] This claim proved to be a complete fabrication.

73 First, the Alleged Formula was never applied during the Pre-Agreement period. Han and Wang did not instruct their expert witness, Mr Abuthahir Abdul Gafoor, executive director of Stone Forest Corporate Advisory Pte Ltd ("the Defendants' Expert") to analyse the directors' fees paid during the Pre-Agreement Period. However, the plaintiffs' expert witness, Mr Owen Malcolm Hawkes ("the Plaintiffs' Expert"), Executive Director of KPMG Services Pte Ltd, carried out such an analysis.

74 The Plaintiffs' Expert's analysis showed that during the Pre-Agreement Period,

(a) the directors' fees for each financial year ("FY") ranged from -445% to 967% of profits *before* tax;[29]

(b) with the exception of FY1994 and FY1995 (for which no directors' fees were paid), the directors' fees for each FY exceeded 25% of the profits *before* tax; and

(c) for FY1988, the directors' fees were paid although the Company made a loss and for several financial years, the directors' fees exceeded 100% of the profits *before* tax.

75 It is indisputable that directors' fees were not computed using the Alleged Formula (or any formula, for that matter) during the Pre-Agreement Period. Han's testimony in this respect could not have been further from the truth. Faced with the Plaintiffs' Expert's analysis, Han had no choice but to

admit under cross-examination that there was no agreement to use the Alleged Formula during the Pre-Agreement Period.[30]

76 Second, the nature of the directors' fees changed after the 2001 Agreement. It is common ground that during the Pre-Agreement Period no dividends were declared. The directors' fees served as distribution of dividends. This approach worked during the Pre-Agreement Period as all the shareholders were directors. However, after the 2001 Agreement, not all shareholders were directors. The 2001 Agreement provided for dividends (payable to all shareholders) separate from directors' fees (payable only to Han and his appointees). The directors' fees no longer served as dividends. Since Lim and Heah were required to resign as directors under the 2001 Agreement, it would not have made any sense for them to agree to continue computing directors' fees, after the 2001 Agreement, in the same way as it was computed during the Pre-Agreement Period. On the stand, Han could not offer any explanations why the same formula should continue to apply after the 2001 Agreement.[31]

77 Third, in their defence and counterclaim, Han and Wang averred that the common intention set out at [70] above existed at all times up to and including the execution of the 2001 Agreement.[32] However, this could not have been so because prior to the 2001 Agreement there was no split between directors' fees and dividends.

*Inconsistent versions of the alleged common intention*

78 The defendants have given inconsistent versions of the alleged common intention. First, as can be seen from [70(b)] above, Han and Wang asserted that the common intention *at all times* was that the shareholders would be "entitled [to] dividends *as recommended by the directors* from the

Trading Gross profit less provision for tax, less 25% director fees, less provision for running capital" (emphasis added).[33] However, this is different from the Alleged Clause 9 which does not subject the payment of dividends to the directors' discretion.

79 Second, during re-examination, Han gave yet another version of the alleged common intention. This time, Han claimed that his understanding was that:

(a) the executive directors (*ie*, Han and his appointees) would be paid directors' fees plus 25% of dividends; and

(b) the balance 75% of dividends would be paid to shareholders (including Han).[34]

This version was completely different from what Han and Wang had pleaded as the common intention (see [70] above). The common intention, as pleaded in the defence and counterclaim, does not include distributing 25% of dividends to Han and his appointees in addition to paying them directors' fees.

80 In my view, the fact that Han and Wang could not even maintain a consistent version of the alleged common intention only lends further support to the conclusion that the alleged common intention was a fabrication.

*No oversight on Han's part*

81 I also reject Han's claim that he did not correct clauses 3.7 and 9 due to an oversight. First, the 2001 Agreement was drafted by lawyers who took instructions from Han. Clauses 3.7 and 9 gave Han a 20% share of Net Profits (as defined in clause 9) on top of his remuneration and share of dividends. I

find it unbelievable that Han would have failed to notice that clauses 3.7 and 9 did not reflect the alleged common intention.

82 Second, during cross-examination, it was pointed out to Han that clause 3.7 (which dealt with directors' fees) expressly stated that the term "net profit" was "as defined in clause 9 below". Incredibly, Han first claimed that it did not occur to him that that meant he had to refer to clause 9.[35] Subsequently, he admitted that there was a need to look at clause 9, but claimed that he did not know the implication of clause 9.[36] On further questioning, Han took the position that clause 9 was about dividends, not directors' fees. When it was pointed out to him that clause 9(b) referred to distributions to Han and his appointees "pursuant to Clause 3", Han claimed he did not understand what those words meant.[37] Han even went so far as to say that he read clauses 3 and 9 but did not understand what they meant.[38] In my view, Han's shifting explanations defied belief. I have no doubt that Han understood what clauses 3.7 and 9 meant. The term "net profit" is clearly defined in clause 9(a) and the distribution of the Net Profits of the Company is clearly set out in clauses 3.7 and 9.

83 In my view, Han's claim that he did not correct clauses 3.7 and 9 due to an oversight was another fabrication by him. Rather, Han did not correct clauses 3.7 and 9 because they accurately reflected the common intention of the parties.

*Defendants' reliance on the March 2001 letter and meeting*

84 Han and Wang also relied on a letter dated 10 March 2001 from Han to the other directors of the Company ("the March 2001 letter")[39] and the meeting of the shareholders/directors of the Company on 23 March 2001 ("the

March 2001 meeting") as evidence of the alleged common intention. Lim did not attend the March 2001 meeting.

85 In the March 2001 letter, Han proposed that:

(a) the Board comprise only members in the "Top Management Team";

(b) a Shareholders Committee be formed to represent the interests of the owners of the Company;

(c) as not all the directors would be shareholders, "25% of after Tax profit" be paid as directors' fees; and

(d) the Board suggest the dividend to be paid.

86 Han recorded the minutes of the March 2001 meeting which alleged that all directors agreed to accept the proposals in the March 2001 letter in full.[40]

87 However, the fact remains that the 2001 Agreement was drafted by lawyers based on Han's instructions. As stated earlier, in my view, Han understood the contents of the 2001 Agreement and he did not correct clauses 3.7 and 9 because they were correct. I note that the 2001 Agreement also differed from the March 2001 letter in that the 2001 Agreement (a) does not restrict directors to members of the "Top Management Team" and instead gives Han the power to appoint a majority of the Board; (b) does not provide for any Shareholders' Committee; and (c) contains a specific formula for the computation of dividends instead of leaving it to the Board's discretion. Clearly, the mere fact that the March 2001 letter was different from the 2001 Agreement did not mean that the latter was wrong.

88 In my view, the evidence against Han and Wang on this issue far outweighs that offered by the March 2001 letter and the alleged minutes of the March 2001 meeting. Neither the March 2001 letter or the March 2001 meeting changes my conclusion that, for the reasons already set out above, the claim for rectification of the 2001 Agreement fails.

***Conclusion on the counterclaim***

89 The counterclaim for rectification of clauses 3.7 and 9 of the 2001 Agreement is dismissed with costs.

**The Contract claim: whether Han and Wang repudiated the 2001 Agreement**

90 As discussed above, it cannot be disputed that the Company did not pay directors' fees and dividends in accordance with clauses 3.7 and 9 of the 2001 Agreement and that there had been overpayment of directors' fees and underpayment of dividends. However, both the Plaintiffs' Expert and the Defendants' Expert disagreed as to the extent of overpayment of directors' fees and underpayment of dividends:

| | | **Plaintiffs' Expert** | | **Defendants' Expert** | |
|---|---|---|---|---|---|
| | **As paid/ declared ($)** | **Under 2001 Agreement ($)** | **Difference ($)** | **Under 2001 Agreement ($)** | **Difference ($)** |
| Directors' Fees | 7,600,027[41] | 3,760,299[42] | 3,839,728 | 1,571,763[43] | 6,028,264 |
| Dividends | 1,675,500[44] | 11,280,897[45] | (9,605,397) | 4,715,290[46] | (3,039,790) |

91 There is no doubt that Han has breached clauses 3.7 and 9 of the 2001 Agreement and that, by either expert's computation, there has been substantial

overpayment of directors' fees and underpayment of dividends. Lim and Heah submitted that they are entitled to treat themselves as discharged from the 2001 Agreement because (a) Han has repudiated the 2001 Agreement; and (b) they have accepted the repudiatory breach by commencing this action. Lim and Heah therefore asked for a declaration that they be discharged from the 2001 Agreement.

92 I decline to make the declaration sought. A declaratory order should not be made if there is no real controversy for the court to resolve: *Singapore Civil Procedure* at para 15/16/2. The declaratory order is the only relief claimed by Lim and Heah in their Contract Claim. Since Lim and Heah have ceased to be shareholders of the Company, they have no further contest or dispute with Han over the 2001 Agreement. The declaration sought by Lim and Heah would serve no purpose.

93 I would add that Kwok has nothing to do with the Contract Claim; he is not a party to the 2001 Agreement.

94 The above disposes of the Contract Claim without the need to resolve the differences between the two experts. However, I next deal with the differences between the two experts as it is necessary to do so for purposes of the remedy to be granted in this case.

***The experts' computations***

95 The two experts' computations differed because the Plaintiffs' Expert:

(a) added depreciation charges back to the Company's profits before computing directors' fees;

(b) added finance costs back to the Company's profits before computing directors' fees;

(c) adjusted the provisions for tax to account for changes in the directors' fees; and

(d) assumed that the amount of reserves actually retained by the Company constituted prudent and proper reserves but had to recalculate the amount of reserves because the profit before tax figures had changed due to (a) and (b) above.

*Whether depreciation charges for capitalised assets should be added back*

96 The Company's provisions included provisions of substantial amounts for capital expenditure such as properties and equipment. Both experts agreed that double-counting could arise if the provisions included depreciation of these capital items since depreciation is an on-going expense of capital items being used up. However, both experts were unable to determine if any such double-counting did in fact arise because the necessary information was not available.[47]

97 The Plaintiffs' Expert decided to *assume* that all of the depreciation was for capital items and could properly be added back to profits. However, in the absence of the relevant details of the depreciation amounts, I agree with the Defendants' Expert that the more reasonable approach is to not add back the depreciation amount.

*Whether finance costs should be added back*

98 The Company's audited financial statements showed that it paid finance costs such as hire purchase interest and interest on loans.[48] The

Plaintiffs' Expert reasoned that this showed that there were capital items that were financed. Double-counting would then arise where the finance costs have been provided for in the reserves for one year and treated as an expense in the following year.

99 The Defendants' Expert argued that there was no double counting as there was no evidence that finance costs had been provided for as part of the reserves. The finance costs reflected in the audited financial statements were simply the actual expenses incurred. The Plaintiffs' Expert admitted that he had made the *assumption* that finance costs would have been included in the provision for reserves because clause 9 of the 2001 Agreement included interest payments as part of prudent and proper reserves.[49]

100 In my view, the plaintiffs have not discharged their burden of proving that there was double-counting of finance costs. As such, these costs should not be added back to the profits.

*Whether taxation should be adjusted to account for changes in directors' fees*

101 The directors' fees were treated as expenses and were therefore deducted from the Company's profits before tax. The directors' fees that should have been paid pursuant to the 2001 Agreement were lower than what was actually paid. The lower directors' fees meant that the taxable profits would be higher and the provisions for tax would need to be adjusted accordingly.

102 The Plaintiffs' Expert made the necessary adjustments to the provisions for tax. The Defendants' Expert did not do so. The Plaintiffs' Expert agreed that the formula was recursive and explained that he repeated

the same steps several times in recalculating the tax amount.[50] The defendants did not challenge his explanation.

***Prudent and proper reserves***

103 The Plaintiffs' Expert was prepared to accept that the reserves actually retained by the Company constituted "prudent and proper reserves".[51] However, he had to recalculate the amount of reserves because the profit before tax figures had changed after he added back depreciation and finance costs to the gross profits.[52] As I have rejected the adding back of depreciation and finance costs, there is no need to recalculate the amount of reserves.

***Conclusion regarding the Experts' computations***

104 In my view, the Defendants' Expert's computation is to be preferred. There is no evidence to support the Plaintiffs' Expert's assumptions regarding depreciation and finance costs. Based on the Defendants' Expert's computation, the defendants have overpaid themselves $6,028,264 in directors' fees and underpaid dividends to the shareholders by $3,039,790 for the period from FY2001 to FY2013 (see [90] above).

105 I should add that in their closing submissions, the plaintiffs submitted that since the total amount of dividends paid for the period from FY2001 to FY2013 was $1,675,500, the directors' fees for the same period should have been $558,500 since the ratio of directors' fees to dividends should have been 25:75.[53] I disagree. The directors' fees should be computed (as the experts have done) using the formula in the 2001 Agreement.

**The s 216 Claim**

106 As stated at [62] above, the s 216 Claim is based on the following:

(a) Overpayment of directors' fees and underpayment of dividends during the period from FY2001 to FY2013.

(b) Payments to SVF.

(c) Payment for materials used to refurbish the AMK Church and construction of a cross for the AMK Church.

(d) Wrongful use of the Company's manpower and resources.

(e) The defendants' conduct at the AGMs in 2004 and 2014.

***Overpayment of directors' fees and underpayment of dividends***

107 As stated in [90] and [91], Han and Wang breached clauses 3.7 and 9 of the 2001 Agreement and overpaid directors' fees to themselves and underpaid dividends to Lim and Heah. The ratio of directors' fees to dividends paid for the period from FY2001 to FY2013 was 82:18. In contrast, under the 2001 Agreement, the ratio of directors' fees to dividends should have been 25:75. According to the Defendants' Expert, the total amount of directors' fees that should have been paid under the 2001 Agreement for FY2001 to FY2013 was $1,571,763; instead, the defendants paid themselves $7,600,027, *ie*, an overpayment of $6,028,264 (see [90] above).

108 Based on the Company's audited accounts, the details of directors' fees and dividends paid from FY2001 to FY2013 were as follows:[54]

| FY | Directors' fees ($) | Dividends ($) |
|---|---|---|
| 2001 | 550,000 | 75,500 |
| 2002 | 654,000 | Nil |
| 2003 | 842,546 | Nil |

| | | |
|---|---|---|
| 2004 | 379,854 | Nil |
| 2005 | 100,791 | 100,000 |
| 2006 | Nil | Nil |
| 2007 | Nil | Nil |
| 2008 | 270,887 | 100,000 |
| 2009 | 321,658 | 200,000 |
| 2010 | 604,232 | 200,000 |
| 2011 | 508,622 | 500,000 |
| 2012 | 2,042,479 | 500,000 |
| 2013 | 1,324,958[55] | Nil |
| **TOTAL** | **7,600,027** | **1,675,500** |

109 The defendants' case is that they computed directors' fees based on 25% of profits after tax.[56] Clearly, in itself, this was already a breach of the 2001 Agreement under which directors' fees were computed as of 25% of Net Profits. However, to make matters worse, the evidence showed that Han and Wang in fact paid themselves even higher amounts of directors' fees by:

(a) computing directors' fees based on 25% of gross profits *before* tax for several of the financial years;

(b) adding back depreciation to gross profits before computing directors' fees for FY2009 to FY2012 and adding back depreciation *and* the FY2012 dividends to gross profits before computing directors' fees for FY2013; and

(c) paying themselves 25% of the capital gains on the sale of the Tuas Property, as directors' fees.

110 The evidence also showed that the underpayment of dividends was made worse by the defendants failing to pay dividends for FY2002, FY2003, FY2004 and FY2013 despite having made provisions for them.

*Computing directors' fees as 25% of gross profits before tax*

111 It is not disputed that in several of the years during the period from FY2001 to FY2013, the defendants calculated directors' fees based on profits *before* tax instead of profits after tax. This resulted in directors' fees that exceeded even the amounts payable according to the defendants' Alleged Formula.

112 Han explained under cross-examination that this was to avoid being taxed twice. I agree with the plaintiffs that this explanation does not make sense. Whether the directors' fees are computed based on profits before or after tax, these fees remain as expenses which will be deducted from the taxable profits. The only difference is that if computed based on profits before tax, the amount of directors' fees will be a larger amount and therefore the taxable profits will be correspondingly lower. However, in my judgment, Han computed directors' fees based on profits before tax in order to increase the amount of directors' fees to be paid. The increase in directors' fees clearly far exceeded the tax savings to the Company.

*Adding back depreciation for FY2009 to FY2013 and adding back dividends for FY2013*

113 Computations by the Company's accounts staff for FY2009 to FY2013 showed that depreciation was added back to gross profits before computing

the directors' fees.[57] In addition, the computation for FY2013 showed that the FY2012 dividends were also added back to gross profits before computing the directors' fees[58]. All these further increased the amount of directors' fees for these financial years.

*Computing directors' fees on capital gains*

114 The directors' fees paid for FY2012 included $1,008,686 being 25% of the capital gains made on the sale of the Tuas Property (see [58] above).[59] The total amount of directors' fees for FY2012 was $2,042,479.[60] In contrast, only $500,000 was declared as dividends for FY2012. According to the Defendants' Expert, the amount of dividends that should have been declared for FY2012 under the 2001 Agreement was $1,636,593.[61] It would appear that little, if any, of the capital gains was distributed as dividends by the defendants.

*Not paying dividends despite having made provisions for them*

115 Han's case was that he prepared trading account worksheets ("TAWs") each year. According to Han, these TAWs set out the computations for directors' fees and dividends.

116 According to Han's TAWs, provisions were made for dividends for FY2002, FY2003 and FY2004.[62] However, no dividends were declared for these three years. Han explained that this was because in late 2000, the Company had extended a loan of $384,000 to Bernard's company and that he informed the other directors that directors' fees would thus have to stop for the next three years to safeguard the Company's cash flow.[63] I agree with the plaintiffs that this explanation should be rejected. From FY2002 to FY2004, a

total amount of $1,876,400 was paid as directors' fees: see [108] above. Evidently, the Company had no cash flow issues.

117 Han further claimed that the dividends for FY2002 to FY2004 were ear-marked and paid out after 2004.[64] However, the evidence does not show that the dividends purportedly ear-marked for FY2002 to FY2004 were paid after FY2004. A total amount of $500,000 had been provided for during these three years[65] but the dividends declared for FY2005 was just $100,000 and no dividends were declared in FY2006 and FY2007: see [108] above.

118 For FY2013, the computations by the Company's accounts staff showed a provision of $200,000 as dividends.[66] Han admitted that he told his accounts staff to provide this figure.[67] Yet, no dividends were declared for FY2013 despite the provision having been made and despite the fact that the Company's retained earnings in the FY2013 accounts were more than $15m.[68]

119 When asked why he did not declare dividends at the AGM for FY2013, Han's explanation was that no one raised the question of dividends. However, in my judgment, the truth was that the defendants had no interest in declaring dividends because they were already paying themselves the lion's share of profits in the form of directors' fees. When asked why he did not raise the question of dividends himself, Han's very telling answer was "I already got director fee".[69]

***Payments to SVF***

120 Lim and Heah alleged that between 2007 and 2015, Han and Wang wrongfully caused the Company to pay a total of $2,778,328.27 to Singapore Vision Farm ("SVF"), a company wholly owned and controlled by them. The amount of $2,778,328.27 comprised

(a) $1,746,000 paid under various purchase orders issued from 2011 to 2013;

(b) $972,000 being monthly rentals of $9,000 paid between 2007 and 2015; and

(c) $60,328.27 paid to SVF as a result of stock balancing purchase orders.

*Payment of $1,746,000 to SVF*

121 It is not disputed that $1,746,000 was paid to SVF from 2009 to 2013. Han's explanation was as follows:

(a) The payments were made pursuant to a revenue sharing arrangement between the Company and SVF.

(b) From 2005 to 2012, the Company was barred from employing foreign workers directly because it had contravened the Employment of Foreign Manpower Act (Cap 91A, 1997 Rev Ed).[70]

(c) The Company had been allocated a certain "man-year entitlement" which allowed the Company to employ work permit holders for its projects. As an employer, the Company could allocate its "man-year entitlement" to other contractors involved in the project.

(d) The Company therefore entered into a revenue sharing arrangement with SVF under which it transferred its "man-year entitlement" to SVF so that SVF could hire the foreign workers with the relevant skills and sub-contract these workers back to the Company.

122 Essentially, the Company was just using SVF's name to hire the foreign workers. SVF did nothing except to lend its name. Everything was handled by the Company, including recruitment and training. The Company even paid the workers directly. It is doubtful whether the Company was in fact complying with the ban on it but that is not an issue before me. Han asserted in his affidavit of evidence-in-chief ("AEIC") that SVF was "involved in engineering works" from 2006 to 2013[71] but that was clearly not true. The Company issued purchase orders to SVF for "design, fabrication, assembly and supply" of skid pump sets and for "provision of manpower, material and equipment".[72] However, all the work was done by the Company.

123 In return for lending its name, SVF earned 40% of *revenue* generated from the equipment purportedly fabricated by SVF. It is pertinent to note that SVF's 40% share was of revenue not profits. The Company bore all the expenses. As Han admitted during his oral testimony, the entire sum of $1,746,000 was "pure profit" for SVF.[73] In truth, it was pure profit for Han and Wang as the owners of SVF.

124 Han and Wang claimed that the arrangement with SVF was necessary and cheaper than engaging third party sub-contractors. Whether that is true or not is irrelevant. Han and Wang were directors of the Company and were making a secret profit from the arrangement with SVF. It is established law that directors of a company may not make use of their position to make a profit at the expense of the company as they owe a fiduciary duty to act in the interests of the company: *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others and other appeals* [2013] 1 SLR 374 at [41]. That Han and Wang were in a situation of actual conflict could not have been clearer. Han and Wang owned SVF. Han was director of SVF from 2004 to 2008. Wang remains a director of SVF. As Han admitted, he was the decision-maker for

both the Company and SVF. Han and Wang did not inform Lim and Heah of the arrangement with SVF or obtain their consent.

125 In an attempt to justify the arrangement with SVF, Han referred to a similar arrangement with another entity called Verchem Asia Pacific Pte Ltd ("Verchem") in which Verchem was paid 45% of the profits made. I do not see how that helps the defendants. Han and Wang were also in a conflict of interest position with respect to Verchem. Han held 35% of the shares in Verchem; Wang held 15% and the remaining 50% was held by John Koh.[74] In any event, the arrangement with Verchem was different in two respects. First, Verchem's 45% share was of *gross profit* not revenue. Second, Verchem was being paid a share of profits for projects it referred to the Company; unlike SVF, Verchem was not being paid merely for letting the Company use its name to hire foreign workers.[75]

*Payment of $972,000 to SVF*

126 In the course of discovery, the Plaintiffs' Expert uncovered evidence that the Company had been paying monthly rental of $9,000 to SVF.[76] In his oral testimony SVF's manager, Mr Christopher Chan Wing Kheong ("Christopher Chan"), confirmed that the Company had paid rental to SVF at $9000 per month for nine years from January 2007 to December 2015.[77] The total rental paid was therefore $972,000.

127 Again, the defendants, as directors of the Company, were making a secret profit from this arrangement with SVF. It is not disputed that the plaintiffs were not informed about, and had not consented to, this arrangement.

128 The Company used SVF's premises on an ad-hoc basis for company functions and for weekend stays by senior management. The plaintiffs

acknowledged that the Company had derived some benefit from the use of SVF's premises but submitted the Company had overpaid SVF and that 50% of the amount paid (*ie*, $486,000) would be a fair rental figure.

*Payment of $60,328.27 to SVF*

129 Ms Ng Mei Kheng ("Anna Ng") was in charge of the Company's accounts from 2009 to 2013. In 2009, she discovered excess stock in the warehouse which were not recorded in the Company's accounting system. She then generated purchase orders amounting to $60,328.27 for the excess stock so that she could balance the inventory in the accounting system. According to her, she issued the purchase orders in SVF's name as she knew that Han and Wang owned SVF. The Company's accounts staff subsequently paid the amount to SVF by mistake. Anna Ng claimed that she did not notice the mistake. Also, she did not inform Han or Wang about this matter until recently.[78]

130 There is nothing to show that the payment to SVF was anything more than a mistake. Nevertheless, the fact remains that the amount of $60,328.27 was wrongfully paid to SVF.

***Payment for the AMK Church and construction of a cross***

131 Lim and Heah alleged that in 2012, Han and Wang wrongfully caused the Company to:

(a) pay $229,249.57 for materials used to refurbish the Ang Mo Kio Methodist Church ("the AMK Church"); and

(b) fabricate a stainless steel cross for the church.

Han was a senior member of the church at the material time.

*Payment of $229,249.57 for materials used to refurbish the AMK Church*

132 The Plaintiffs' Expert's investigations showed that the Company had paid a total amount of $229,249.57 for items purchased for the AMK Church. Han explained that the materials were used to refurbish the church.[79] However, it was SVF which invoiced the AMK Church for these items in December 2012 and January 2013. SVF received payment of the $229,249.57 from the AMK Church on 20 February 2013.[80]

133 Han explained that he wanted to use SVF to facilitate payment for the items on behalf of the AMK Church first and that he had instructed his staff not to involve the Company.[81] In his oral testimony, Wang said that the intention was to use SVF and added that the accounts staff might have used the Company to make the payments instead.[82]

134 Anna Ng testified that she handled the accounts for the Company as well as for SVF.[83] She also testified that as she was leaving the Company, she instructed her officer, one Irene, to handle the reimbursement of $229,249.57 by SVF to the Company.[84] Anna did not know whether the reimbursement was made. The Plaintiffs' Expert did not find any evidence of the reimbursement having been made to the Company. The defendants did not offer any evidence to show that the reimbursement has been made to the Company.

135 I find that the evidence is insufficient to prove that Han and Wang tried to siphon the amount of $$229,249.57 out of the Company. It is more likely that it was the accounts staff who used the Company to make the payments. As Anna Ng testified, she treated the Company and SVF as one common entity.[85] The evidence also does not prove that Han and Wang were

responsible for the omission by SVF to reimburse the Company the said sum. However, Anna Ng's evidence does suggest that Han and Wang themselves did not draw clear lines between the Company and SVF; otherwise, she would not have been so lax in the way that she treated the accounts of the Company and those of SVF.

*Fabrication of stainless steel cross for the AMK Church*

136 The Plaintiffs' Expert found, among the Company's list of jobs, a job (No. J017825) with the description "Fabrication of SS Cross".[86] However, there was no record of any invoice having been raised against this job.[87]

137 The Company's former purchasing clerk gave evidence that Han instructed him to purchase a sizeable quantity of metal which was used to construct a cross for the AMK Church. Another former employee, a pipe fitter, gave evidence that Han instructed him to fabricate a 5–6m-tall cross for the AMK Church.[88] Neither one was involved in transporting the cross to the church or in the installation of the cross at the church. When shown a photo of the cross at the AMK Church, the pipe fitter explained that the cross looked similar to the one he fabricated but that the shine was different. The cross at the AMK Church was dull unlike the one he had fabricated using stainless steel. He had no explanation why the cross at the AMK Church had a different shine. The cross at the AMK Church does not appear to be made of stainless steel.

138 The plaintiffs alleged that a supporting schedule for an invoice from SVF to the AMK Church included 6m stainless steel bars[89] and suggested that this must have been for the stainless steel cross.

139 Han denied instructing his workers at the Company to fabricate a stainless steel cross. Without any other evidence, I can only conclude that the plaintiffs have not proved their allegations.

***Wrongful use of the Company's manpower and resources***

140 It is not disputed that the Company bought a van in January 2015 and rented it out to SVF for $500 a month.[90] This is another instance of the defendants using the Company's resources for their personal benefit as the owners of SVF.

141 Han admitted that he had provided labour to the AMK Church to erect air-conditioned tents. However, he explained that one of the church members decided to contribute a tent and air-conditioning units for a conference held by the church and had agreed to give them to the Company after the conference if Han provided the labour to set up the tentage.[91] I find that there was good reason for Han to provide the labour to erect the tents.

142 Lim and Heah also alleged that between 2009 and 2013, Han and Wang wrongfully directed the Company's manpower and resources to carry out other works for the AMK Church, the Yishun Evangelical Church ("the Yishun Church") and SVF. Han was a trustee of the Yishun Church.

143 Former employees of the Company testified that Han asked them to carry out tasks at the AMK Church, SVF and the Yishun Church. I have no reason to disbelieve their testimony.[92]

***The AGMs in 2004 and 2014***

144 Lim and Heah alleged that in 2004 and 2014, Han and Wang unfairly prevented them from exercising their rights as shareholders, by

(a) disregarding Heah's votes at the 30th AGM in 2004;

(b) disallowing Lim and Heah from voting on resolutions at the 40th AGM in 2014; and

(c) refusing to allow Lim and Heah to appoint directors at the 40th AGM in 2014.

*Disregarding Heah's votes at the 30th AGM in 2004*

145 At the 30th AGM (FY2003) held on 31 July 2004, Ang, Bernard and Heah appointed proxies to represent them at the AGM. Lim (who held 18% of the shareholding) did not attend the AGM because he did not wish to openly oppose Han since he was still employed by the Company.[93]

146 The proxies (representing 46% of the shareholding)[94] demanded a poll and voted against re-electing Han and Wang as directors, and instead appointed Heah's proxy, Ang and Bernard as directors. Han and John Koh (representing 36% of the shareholding)[95] were outvoted. The proxies also voted against the resolutions to pay $842,546 as directors' fees and $331,629 as directors' remuneration.[96]

147 Han did not vote. The proxies agreed to let Han cast his vote at the end of the meeting. At the end of the meeting, after the proxies had left, Han and John Koh made the startling decision that they could re-vote on the resolutions. Han took the view that the resolutions had not been passed yet and decided that he could ignore the votes already cast by the proxies earlier. The resolutions were unsurprisingly carried this time.

148 Under cross-examination, Han's only explanation for not counting the votes already cast by the proxies was that it was John Koh's proposal and he agreed to it.

149 Instead of exercising his power under the 2001 Agreement to appoint a majority of the Board, Han instructed the Company's secretary to remove Ang, Bernard and Cheong from the Board with immediate effect and reinstated Wang and himself as directors (see [54] above). Han claimed to have the authority to do so under clause 3.3 of the 2001 Agreement.[97] In fact, clause 3.3 did not entitle Han to remove Ang, Bernard and Cheong as directors; it merely required appointments and removals by Han pursuant to clause 3.2 to be made in writing and signed by him. Han also paid himself the directors' fee and remuneration that the proxies had voted against.

*Refusing to let Lim and Heah vote on directors' fees and remuneration at the 40th AGM in 2014*

150 Lim and Heah appointed proxies to represent them at the 40th AGM (FY2013) held on 23 June 2014. Directors' fees were an item on the agenda. Heah's proxy questioned why the proposed directors' fees exceeded 25% of the Company's profits. Han refused to provide any explanation. Han also insisted that the proxies had no right to vote on the proposal because the directors' fees were permitted under the 2001 Agreement. However, instead of explaining how the proposed directors' fees were in accordance with the 2001 Agreement, Han simply took the position that he was correct.[98] Lim and Heah were fully entitled to challenge Han's computation of the directors' fees and to vote against the same since the fees was not in accordance with the agreed formula.

151 The proposal to pay Han and Wang $542,029 as remuneration was also an item on the agenda. It is not disputed that Han decided Wang's and his own remuneration. During the AGM, Han stated his view that there was nothing wrong with deciding his own remuneration and that "self-employed bosses" could decide their own remuneration.[99] Han also refused to have a vote on his remuneration and even gave the extraordinary excuse that such a vote would breach the Ministry of Manpower's regulations.[100]

152 Both Han and Wang were employed by the Company. As the managing director, Han could decide Wang's salary. However, Han was clearly in a position of conflict when he decided his own salary. Han chose to ignore the conflict of interest in refusing to let the shareholders vote on it.

*Refusing to allow Lim and Heah to appoint directors at 40th AGM*

153 Item 4 on the agenda for the 40th AGM was "To elect directors". However, Han refused to allow any nominations by the proxies and claimed that under the 2001 Agreement only he could appoint and remove directors. Han stubbornly maintained his position even after it was pointed out to him that clause 3.2 of the 2001 Agreement only entitled him to appoint a majority of the board and to remove directors *appointed by him*.[101]

***Conclusion on s 216 Claim***

154 Lim and Heah have proven most of their allegations. In my judgment, Han and Wang have conducted the affairs of the Company in a manner that is clearly oppressive and in blatant disregard of the interests of Lim and Heah. The acts which Han and Wang have caused the Company to take also clearly unfairly discriminate against and are unfairly prejudicial to Lim and Heah.

155 Although he held only 18% of the shares in the Company, Han managed to secure control over the Company in 2001. Han believed in 2000 that the other shareholders needed him to run the Company and would not be prepared to let him leave the Company. This belief turned out to be correct. After offering to resign, Han wrote to the Board two days later on 15 May 2000 and pointed out that the Board had no alternative person who could lead the Company. This led to the 2001 Agreement, under which Lim and Heah agreed to resign as directors and Han was given control of the Company and a very generous share of the profits as directors' fees. In return, the agreement among the shareholders was that 75% of the Company's Net Profits each year would be distributed as dividends.

156 However, having obtained control over the Company, Han proceeded to ignore the terms of the 2001 Agreement save when it suited him. He paid himself more directors' fees than permitted under the 2001 Agreement. Indeed, over the years, his computations of directors' fees became more and more favourable to himself. Dividends paid to the shareholders were way below what had been agreed. In some years, no dividends were declared despite provisions having been made for them. As Han admitted, there was no need for him to raise the question of dividends as he had his directors' fees. Han brushed aside objections from Lim and/or Heah by asserting his own interpretations of the 2001 Agreement. Wang stood firmly in Han's camp. Lim and Heah were unable to take Han on.

157 Han even ignored the votes cast in 2004 by Ang, Bernard and Heah through their proxies. Han's conduct in respect of the voting at the 30th AGM in 2003 was atrocious. His refusal to let the proxies appointed by Lim and Heah vote at the 40th AGM in 2014 was inexcusable.

158 In addition, Han's attitude towards any question of conflict of interest was cavalier, to say the least. Han and Wang had no qualms about making secret profits using SVF, a company which they owned. Han also decided his own remuneration in the Company. Han summed up his own attitude best when he said that as the "boss" of the Company there was nothing wrong with him deciding his own remuneration. Evidently, there was no place in his mind for the interests of Lim and Heah.

159 This case bears all the hallmarks of a classic case of oppression. There is no question in my mind that the defendants' conduct violated all reasonable expectations of commercial fairness. In my view, the defendants' conduct was plainly reprehensible.

160 The next question is whether the defendants' misconduct can be said to be commercially unfair to Kwok despite the fact that the conduct complained off took place before Kwok became a shareholder of the Company. In my view, the answer must be in the affirmative. The overpayment of directors' fees and the payments to SVF have significantly reduced the funds available to the Company. This is commercially unfair to Kwok.

161 I should also refer to the defendants' submission that the plaintiffs are not entitled to any remedy under s 216 because the plaintiffs, together with John Koh, have majority control of the Company. Relying on *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 ("*Sim City*"), the defendants argued that the plaintiffs, together with John Koh, could exercise their majority rights as shareholders. I reject the defendants' submissions. The touchstone of control is not whether the plaintiffs are minority shareholders of the Company but whether they lack the power to stop the oppressive acts: *Sim*

*City* at [48]. In this case, Lim and Heah could not control the Board; the 2001 Agreement gave Han the right to appoint a majority of the Board. In addition, when Ang, Bernard and Heah tried to exercise their shareholders' votes in 2004, Han simply ignored their votes. In 2014, Lim and Heah tried to exercise their votes as shareholders but Han refused to let them vote. Finally and in any event, there was no evidence that John Koh was prepared to vote with the plaintiffs to remove Han and Wang from the Board. In fact, at the 30th AGM (FY2003) held in 2004, after the proxies appointed by Ang, Bernard and Heah had voted and left the meeting, John Koh was the one who proposed re-voting after which he voted alongside Han and Wang.[102] Also, it does not appear that John Koh supported the proxies appointed by Lim and Heah at the 40th AGM (FY2013) held in 2014.

**Limitation**

162 The remedies sought by the plaintiffs include orders that (a) the defendants refund to the Company all directors' fees and remuneration paid to them in respect of FY2001 to FY2013 and (b) the defendants be liable in damages or make restitution of or account for the monies paid by the Company to SVF. Han and Wang submitted that s 6(1)(*d*) of the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act") applied to any claim against them for the return of monies to the Company. Section 6(1) of the Limitation Act states as follows:

> **Limitation of actions of contract and tort and certain other actions**
>
> **6**.—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (*a*) actions founded on a contract or on tort;
>
> (*b*) actions to enforce a recognizance;

> (*c*) actions to enforce an award;
>
> (d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture.

163 The plaintiffs relied on *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30 ("*Tan Yong San*") in which the High Court held that s 6 of the Limitation Act did not apply to a claim under s 216 since such a claim was statutory in nature and not founded on a contract, or tort, or any other limb under s 6 of the Limitation Act (at [95]). I respectfully agree with the decision in *Tan Yong San*.

164 Han and Wang tried to draw a distinction between the conduct alleged to be oppressive and any remedy under s 216 which involves the return of monies paid. It was submitted that the Limitation Act applies to the latter but not the former. I disagree with the submission. I agree with *Tan Yong San* that an claim under s 216 is statutory in nature and does not fall within any of the limbs in s 6 of the Limitation Act. The fact that the reliefs sought in such a claim include the recovery of monies does not make it an action "to recover any sum recoverable by virtue of any written law" within the meaning of s 6(1)*(d)* of the Limitation Act.

165 In any event, this issue is moot as, in my view, the appropriate remedy in this case is a buy out order (see [174] below).

**Laches and/or acquiescence**

166 The defendants submitted that Lim and Heah must be barred from pursuing the s 216 Claim either because of laches or acquiescence. The defendants referred me to *Tan Yong San*. In that case, the court decided that

(a) equitable defences including laches or inordinate delay are not an automatic bar to relief under s 216, which is statutory in nature; rather, any inequity would simply be a relevant factor in the court's overall assessment of whether there has been unfairness warranting relief under s 216(2) and what type of relief is just and equitable in the circumstances (at [106]);

(b) relief may be refused due to the minority shareholder's acquiescence in the affairs complained of (at [115]).

167 I respectfully agree with the decision in *Tan Yong San* that any inequity (including laches) is just a factor in the overall assessment of unfairness under s 216 and the relief which should be granted. Acquiescence should be treated the same way.

168 With respect to delay, the text of s 216(1)*(b)* contemplates past acts and conduct. The mere fact that the alleged unfairness occurred in the past should not defeat an application under s 216: Hans Tjio, Pearlie Koh & Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015) at para 11.046. Merely because a shareholder does not immediately initiate legal proceedings complaining about treatment unfairly dished out to him does not mean that he is always precluded from doing so subsequently: *Over & Over* at [103].

169 In the present case, the defendants argued that Lim and Heah did not protest against the directors' fees and dividends at the AGMs until the AGM for FY2013 and Lim attended most of the AGMs and approved the directors' fees and dividends.

170 I agree with the plaintiffs that the allegations of laches and acquiescence must be looked at in the context of the following:

(a) At the 28th AGM for FY2001 held in May 2002, Lim protested that the dividends and directors' fees were not in the ratio of 75:25. However, Han insisted that he had misinterpreted the 2001 Agreement. I accept Lim's evidence that he felt cowed by Han's hostility and insistence.

(b) Lim felt that there was no point protesting at the AGM for FY2002 held in 2003 because of what had happened the year before.

(c) At the 30th AGM for FY2003 held in 2004, Heah, Ang and Bernard, acting through their proxies, (i) appointed Ang, Bernard and Heah's proxy as directors; (ii) did not appoint Han and Wang as directors; and (iii) voted against the resolutions relating to directors' fees and remuneration. However, Han disregarded the proxies' votes and reinstated Wang and himself as directors.

(d) In 2003, Lim turned down Ang's request to join him in his action against Han due to his limited financial resources and the fact that he was still employed by the Company. Lim felt it was pointless to challenge Han.

(e) I accept the assertions by Lim and Heah that the dismissal of Ang's suit against Han in August 2004 made them feel helpless against Han. Lim and Heah are not as well educated as Han and both are of a gentler disposition compared to Han. They also had limited financial resources to challenge the defendants.

(f) At the 39th AGM (FY2012) held on 28 June 2013, $2,042,479 was declared as directors' fees. Only $500,000 was declared as dividends. Feeling helpless and disheartened, Lim offered his shares

for sale by way of letter dated the same day.[103] Heah followed suit shortly after.[104] However, their offers to sell their shares were not taken up by the other shareholders. Lim and Heah then sold their shares to Kwok in February 2014 but Han and Wang did not approve the transfers to Kwok then.

(g) At the 40th AGM (FY2013) held in 2014, Lim and Heah, through their proxies, challenged the proposed directors' fees and directors' remuneration and wanted to nominate directors. Han refused to let them vote on the proposed directors' fees and remuneration or to nominate directors.

171 In my view, the mere fact that the plaintiffs commenced this action only in 2014 does not in any way lessen the unfairness of the defendants' reprehensible conduct towards Lim and Heah. Neither can it be said that there was any acquiescence on the part of Lim or Heah.

**The appropriate relief**

172 The plaintiffs sought orders that:

(a) the defendants repay to the Company the overpayment of directors' fees received by them;

(b) the defendants be liable in damages for, make restitution of or account for the monies wrongfully paid by the Company to SVF.

173 In my view, (b) above represents claims by the plaintiffs seeking restitution of the amounts siphoned off by the defendants from the Company. These are corporate wrongs that could have been pursued by the plaintiffs by way of a derivative action under s 216A of the Act. As the Court of Appeal

observed in *Sim City* at [63], s 216 should not be used to vindicate corporate wrongs.

174 The relief to be ordered must be made with a view to bringing to an end or remedying the matters complained of: s 216(2). For the reason stated in [173] above, the orders sought by the plaintiffs would not address all the matters complained of. In my view, the more appropriate order to make in this case is that Han and Wang are to buy the shares held by Kwok in the Company. Directions can be given for the valuation to take into consideration the matters complained of.

175 In their statement of claim, the plaintiffs did not ask for an order that the defendants purchase their shares in the Company. However, the court hearing an s 216 application "has an unfettered discretion to make such order as it thinks appropriate" (*Low Peng Boon v Low Janie and others and other appeals* [1999] 1 SLR(R) 337 at [55]), and is not constrained by the parties' pleaded remedies. The issue of a buy out was raised during closing submissions and the parties made further submissions on this issue. The plaintiffs did not raise any objections to a buy out by the defendants.

176 I therefore order Han and Wang to purchase Kwok's shares in the Company at fair valuation. If parties are unable to agree on the valuer within 21 days, Kwok, and Han and Wang, are to submit details of their respective proposed valuers to me within seven days thereafter, and I will decide on the valuer to be appointed. The costs of the valuation are to be paid by Han, Wang and Kwok in equal proportions. The shares are to be valued as of the date of this judgment and the valuer is to proceed on the basis of the following assumptions:

(a) The total amount of directors' fees paid out for the period from FY2001 to FY2013 is $1,571,763 instead of $7,600,027.

(b) The amount of $1,746,000, paid to SVF pursuant to the revenue sharing arrangement, has been returned to the Company.

(c) An amount of $486,000, paid to SVF as rental, has been returned to the Company.

(d) The amount of $60,328.27, paid to SVF in respect of the purchase order for excess stock, has been returned to the Company.

(e) The amount of $229,249.57, paid for the materials used to refurbish the AMK Church, has been returned to the Company.

177 Lim and Heah are entitled to their costs in this action (including the counterclaim). Orders would have been made in their favour but for the fact that Han and Wang registered the transfers to Kwok after all the evidence had been taken. I therefore order Han and Wang to pay costs to Lim, Heah and Kwok fixed at $320,000 plus reasonable disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judicial Commissioner

Jimmy Yim, SC, Daniel Soo, Andrew Lee and Ben Chia (Drew & Napier LLC) for the plaintiffs;
Lim Seng Siew (OTP Law Corporation) for the defendants.

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[1] Han's 9th affidavit dated 11 April 2016, exhibit "HMS-1".
[2] Han's 9th affidavit dated 11 April 2016 at para 8.
[3] Kwok's 1st affidavit dated 6 April 2016 at p 31.
[4] AB 523 (PCB 27).
[5] AB 570 (PCB 28).
[6] AB 663 (PCB 42).
[7] AB 686 (PCB 43).
[8] AB 687 (PCB 44).
[9] AB 707–710 (PCB 54–57).
[10] AB 761.
[11] AB 778.
[12] AB 780.
[13] AB 804–819 (PCB 67–82).
[14] Recital (A) in the 2001 Agreement (AB 805/PCB 68).
[15] AB 808 and 814 (PCB 71 and 77).
[16] AB 838–839 (PCB 83–84).
[17] AB 840.
[18] AB 1239 (PCB 108).
[19] AB 1242 (PCB 111).
[20] AB 1247 (PCB 119)
[21] AB 1272
[22] John Koh's 1st affidavit dated 3 May 2016, exhibit "KKHJ-2"; AB 1270–1271.
[23] AB 1341 (PCB 120).
[24] AB 1869.
[25] Abuthahir Abdul Gafoor's AEIC, exhibit "AB-1" ("Defendants' Expert's report") at fn 3 on p 9.
[26] John Koh's 1st affidavit dated 3 May 2016 at p 7.
[27] Defence and Counterclaim (Amendment No 2) ("DCC") at para 43(a).
[28] Han's AEIC at paras 55–60.
[29] Owen Malcolm Hawkes's AEIC, exhibit "OMH-2" ("Plaintiff's Expert's report") at para 8.2.3 and p 73.
[30] NE4 (5 January 2016) at 79:25–81:5.
[31] NE4 (5 January 2016) at 71:14–72:10.
[32] DCC at para 43(a).
[33] DCC at para 43(a).
[34] NE5 (6 January 2016) at 47:1-25.
[35] NE3 (23 December 2015) at 181:20-25.
[36] NE3 (23 December 2015) at 182:1–8.
[37] NE3 (23 December 2015) at 188:17 – 189:20.
[38] NE3 (23 December 2015) at 189:17–20.
[39] AB 768–770 (PCB 62–64).
[40] AB 774 (PCB 65) at para 3.

41 Plaintiffs' Closing Submissions ("PCS") at para 203; The Defendants' Closing Submissions ("DCS") at para 75 state the figure as $7,600,026, *ie*, $1 less. The difference seems to be due to the amount used by the Defendants' Expert for FY2012 – he uses $2,042,478 at para 5.3.7 but $2,042,479 at para 5.3.9 and in Appendices 4–6.

42 Exhibit P21 ("Plaintiffs' Expert's amended report") at para 6.1.2.

43 Defendants' Expert's report at p 38.

44 PCS at para 276; The amount stated at DCS para 79 ($1,600,000) is a computation error and should read as $1,675,500.

45 Plaintiffs' Expert's amended report at para 6.1.2.

46 Defendants' Expert's report at p 38.

47 NE7 (8 January 2016) at 77:22–79:25.

48 *Eg*, AB 1111.

49 NE7 (8 January 2016) at 77:4–12 and 85:21–25.

50 NE7 (8 January 2016) at 71:16-72:7.

51 PCS at para 205; Plaintiffs' Expert's amended report at paras 4.8.13 and 6.3.4.

52 NE7 (8 January 2016) at 61:7-18.

53 PCS at para 558.

54 Defendants' Expert's report at paras 5.3.5, 5.3.7, 5.3.10, 5.4.5 and 5.4.8. The amount of directors' fees for FY2012 in para 5.3.7 should be $2,042,479 instead of $2,042,478 – see fn 42 above.

55 According to the Company's audited accounts, $1,353,760 was declared; however, based on the Company's records, only $1,324,958 was paid: see Defendants' Expert's report at para 5.3.10.

56 DCC at para 74.

57 AB 3559 (PCB 210); Exhibit P8 at pp 3 and 5.

58 AB 3559 (PCB 210).

59 Exhibit P-8 at p 3.

60 Defendants' Expert's report at para 5.3.9.

61 Defendants' Expert's report at Appendix 6.

62 AB 882, 3687, 1114 and 1203 (PCB 181–184).

63 Han's AEIC at para 47.

64 Han's AEIC at para 65.

65 AB 3687, 1114 and 1203 (PCB 182–184).

66 AB 3562 (PCB 212).

67 NE4 (5 January 2016) at 90:18–91:2.

68 AB 2716.

69 NE4 (5 January 2016) at 98:25–99:4.

70 Exhibit D-1.

71 Han's AEIC at para 79.

72 Masilamani Sundarraj Lenin Bruse's AEIC at para 13.

73 NE3 (23 December 2015) at 72:9–18.

74 NE3 (23 December 2016) at 11:17–21.

75 PCS at para 355.

76 Exhibit P-12.

77 NE6 (7 January 2016) at 118:14-119:5; 142:16-24.

78 Han's AEIC at para 76.

79 NE4 (5 January 2016) at 170:25–172:12.
80 Exhibit P-14 at para 8.3.1.
81 NE4 (5 January 2016) at 172:24–173:9
82 NE5 (6 January 2016) at 184:13–185:13 and 186:9–19.
83 NE6 (7 January 2016) at 65:9–11.
84 NE6 (7 January 2016) at 68:23–69:15.
85 NE6 (7 January 2016) at 65:15–23.
86 Exhibit P-14 at para 8.2.1.
87 Exhibit P-14 at para 8.2.4.
88 NE2 (22 December 2015) at 73:8–21.
89 Exhibit P-14 at p 10 , S/Nos 28, 31 and 32.
90 Christopher Chan Wing Kheon's AEIC at para 9; NE6 (7 January 2016) at p 144:8–17.
91 NE4 (5 January 2016) at 162:13–24.
92 PCS at para 400.
93 AB 1223 (PCB 105).
94 PCS at para 413.
95 PCS at para 414.
96 AB 1230–1237 (PCB 262–269).
97 AB 1240 (PCB 109).
98 AB 2838–2840 (PCB 398–400) and AB 2878–2880 (PCB 438–440).
99 See transcript of the 40th AGM (FY2013) on 23 June 2014 at AB 2888–2889 (PCB 448–449).
100 AB 2888–2890 (PCB 448–450).
101 AB 2933–2937 (PCB 493–497).
102 AB 1233–1235 (PCB 266–268).
103 AB 2595 (PCB 131).
104 AB 2612 (PCB 132).