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

**[2017] SGHC 192**

Suit No 304 of 2012

Between

Leong Chee Kin (a minority shareholder) on behalf of himself and as minority shareholder of Ideal Design Studio Pte Ltd

… *Plaintiff*

And

(1) Ideal Design Studio Pte Ltd
(2) Rosa Chew Fong Theng (Rosa Zou Fengting)
(3) Ong Choon Guan (Wang Junyuan)

… *Defendants*

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# GROUNDS OF DECISION

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[Contract] — [breach] — [claim for commission]

[Companies] — [oppression] — [minority shareholders] — [buyout]

[Companies] — [oppression] — [reflective loss principle]

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# Leong Chee Kin (on behalf of himself and as a minority shareholder of Ideal Design Studio Pte Ltd) v Ideal Design Studio Pte Ltd and others

**[2017] SGHC 192**

High Court — Suit No 304 of 2012
Vinodh Coomaraswamy J
13–16 September 2016; 19 January; 13 March 2017

25 August 2017

**Vinodh Coomaraswamy J:**

## Introduction

1 The plaintiff brings this action seeking relief for oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act"). The oppression is said to arise from the second and third defendants' conduct of the affairs of the first defendant, Ideal Design Studio Pte Ltd ("Ideal Design Studio"). Although named as a defendant, Ideal Design Studio is the subject of only a relatively small claim by the plaintiff. As far as the oppression claim is concerned, it is a nominal party. For convenience, therefore, I shall refer in this judgment to the second and third defendants, Ms Rosa Chew and Mr Ong Choon Guan, as "the defendants" and to the first defendant by name.

2 The plaintiff and the defendants collectively own all of the shares in Ideal Design Studio.[1] The defendants are now and were at all material times the directors of Ideal Design Studio. The plaintiff was a director of Ideal Design Studio until the defendants removed him from office in November 2008.[2]

3 The plaintiff's action comprises two distinct claims.[3] First, he claims a sum of about $13,000 in unpaid commission from Ideal Design Studio.[4] Second, he alleges that the defendants have oppressed him as a minority shareholder. To this end, he relies on three acts of oppression by the defendants:[5] (i) his removal as a director of Ideal Design Studio; (ii) his exclusion from Ideal Design Studio's management; and (iii) the diversion of Ideal Design Studio's business to five other similarly named companies for the defendants' sole benefit.[6]

4 After considering the evidence and the parties' submissions, I have dismissed the plaintiff's claim against Ideal Design Studio for commission.[7] I have further found that the plaintiff's removal as a director and his exclusion from management does not amount to oppression.[8] But I have accepted that the diversion of Ideal Design Studio's business for the defendants' sole benefit does amount to oppression within the meaning of s 216 of the Act. I have therefore ordered the defendants to purchase the plaintiff's shareholding in Ideal Design Studio, with his shares to be valued on the assumption that the defendants had

1 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 8.

2 Leong Chee Kin's affidavit of evidence-in-chief (22 March 2016) at paras 5–6.

3 Plaintiff's closing submissions (18 November 2016) at p 26.

4 Plaintiff's closing submissions (18 November 2016) at p 27.

5 Plaintiff's closing submissions (18 November 2016) at p 35; Certified transcript (19 January 2017) at pp 4–8.

6 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at paras 32–37.

7 Notes of evidence (13 March 2017) at p 5, lines 8–11.

8 Notes of evidence (13 March 2017) at p 4, lines 33–37.

not wrongfully and oppressively diverted Ideal Design Studio's business away from it.[9]

5 Both sides have appealed against my decision. The defendants appeal against my finding that their diversion of business was an oppressive act within the meaning of s 216 of the Act. They also appeal against my order that the defendants are to purchase the plaintiff's shares without discount.[10] The plaintiff has cross-appealed against my finding that his removal as a director of Ideal Design Studio did not amount to oppression. He also appeals against my decision dismissing his claim for commission.[11]

6 I now set out the detailed grounds of my decision.

## Background facts

7 Ideal Design Studio is in the business of providing interior design services.[12] The defendants incorporated Ideal Design Studio in 2007 together with a third shareholder. Each of the three shareholders held 5,000 shares. The third shareholder eventually sold her shares to the defendants,[13] with the result that they each held 7,500 shares in Ideal Design Studio.

### *Beginning of the parties' relationship*

8 In late 2007, the plaintiff had a meeting with the third defendant.[14] The upshot of the meeting was that the plaintiff accepted the third defendant's

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[9] Notes of evidence (13 March 2017) at pp 5–7.

[10] CA 70/2017.

[11] CA 72/2017.

[12] Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 4.

[13] Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 5.

invitation to come in as a shareholder and director of Ideal Design Studio.[15] It was agreed that the third defendant would sell 2,500 of his 7,500 shares, representing 16.67% of the company, to the plaintiff for $6,666.66.[16] The plaintiff completed the formalities and became a shareholder and a director of Ideal Design Studio in January 2008.[17]

***Understandings between the parties***

9 Around the time that the plaintiff became a shareholder of Ideal Design Studio, the parties reached an understanding in respect of two matters.[18]

10 The first matter is the source of the plaintiff's claim against Ideal Design Studio for commission. The parties agreed that the plaintiff would be paid 50% of the profit of every project that he brought to Ideal Design Studio and 10% for every project that he managed.[19] The parties are on common ground that such an agreement was reached, although they disagree as to whether "profit" means gross profit[20] or net profit.[21] But nothing turns on this distinction as the plaintiff did not maintain it at trial.[22] I shall thus use the general term "profit" for ease of

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14 Statement of claim (Amendment No 3) (14 September 2016) at paras 6 and 8; Defence (Amendment No 2) (12 January 2015) at para 4.

15 Statement of claim (Amendment No 3) (14 September 2016) at para 7; Defence (Amendment No 2) (12 January 2015) at para 5.

16 Statement of claim (Amendment No 3) (14 September 2016) at para 9; Defence (Amendment No 2) (12 January 2015) at para 7.

17 Statement of claim (Amendment No 3) (14 September 2016) at para 10.

18 Ong Choon Guan's affidavit of evidence-in-chief (23 February 2016) at paras 5 and 7; Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at paras 6 and 9.

19 Ong Choon Guan's affidavit of evidence-in-chief (23 February 2016) at para 7; Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 9.

20 Certified transcript (13 September 2016) at pp 59, lines 18–20 and 131, lines 7–12.

21 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 9.

22 Certified transcript (13 September 2016) at pp 59, lines 29–32 and 60, line 1.

reference.

11 The second matter is the source of the oppression claim. The defendants claim that the plaintiff was set a target of bringing in $200,000 in sales within six months and he reassured the third defendant that he would achieve the target, failing which he would resign as a director and sell his shares back to the third defendant at the purchase price.[23] The plaintiff disputes this claim and maintains that there was no mention of $200,000 in sales.[24]

12 The evidence, however, undermines the plaintiff's contention. A letter from his then solicitors plainly states that he was "told to try and reach a target of $200,000.00 in sales".[25] When confronted with this letter, the plaintiff had no choice but to concede that he was set that target.[26] In contrast to the plaintiff's inconsistent evidence, the defendants' evidence that the plaintiff reassured the third defendant that he would achieve that target was unshaken at trial.[27] I also note that during two meetings in 2008 (see [14] below), the third defendant confronted the plaintiff about his failure to achieve $200,000 in sales and asked the plaintiff to sell back the plaintiff's shares to him and resign as a director.[28] I therefore find on the balance of probabilities that the parties did reach such an understanding.

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23 Ong Choon Guan's affidavit of evidence-in-chief (23 February 2016) at para 5; Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 6.

24 Certified transcript (13 September 2016) at p 53, lines 2–16.

25 Agreed bundle of documents (Volume I) at p 88.

26 Certified transcript (13 September 2016) at p 58, lines 28–31.

27 Certified transcript (14 September 2016) at p 45, lines 10–22; Certified transcript (15 September 2016) at p 38, lines 15–19.

28 Certified transcript (13 September 2016) at p 88, lines 9–32 to p 89, lines 1–3.

***Deterioration of the parties' relationship***

13 According to the defendants, the plaintiff failed to bring in a single project during his time at Ideal Design Studio.[29] The plaintiff disputes this. He claims that he brought in and managed four projects. They were referred to at trial as the Jurong West project, the Upper Boon Keng project, the Tampines project, and the Sengkang project. These four projects form the basis of the plaintiff's claim for commission against Ideal Design Studio. The defendants' position is that the plaintiff brought in none of these projects and managed only two of them to completion.[30]

14 In October 2008, the third defendant called the plaintiff in on two occasions to ask him to explain why he had failed to meet his sales target of $200,000.[31] The plaintiff's evidence was that he was shocked to be called in in this way. He recalls being asked to resign as a director of Ideal Design Studio and to sell his shares back to the third defendant.[32] He refused to do so.[33]

***Removal of the plaintiff as a director***

15 After these two meetings, the defendants convened an extraordinary general meeting to be held in November 2008 for shareholders to resolve to remove the plaintiff as a director. The plaintiff attended the meeting.[34] The

29 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 11.

30 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 11.

31 Ong Choon Guan's affidavit of evidence-in-chief (23 February 2016) at paras 9–13; Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at paras 21–24; Certified transcript (13 September 2016) at p 88, lines 9–32 to p 89, lines 1–3.

32 Certified transcript (13 September 2016) at p 88, lines 9–32 to p 89, lines 1–3.

33 Ong Choon Guan's affidavit of evidence-in-chief (23 February 2016) at para 13; Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 24.

34 Certified transcript (13 September 2016) at p 89, lines 4–20.

resolution was duly passed. The plaintiff was thus removed as a director.[35] It is conceded that the plaintiff was validly removed, in compliance with the Act and with Ideal Design Studio's articles of association.[36]

***Incorporation of the five Ideal Design companies***

16 Thereafter, between January 2009 and November 2011, the defendants incorporated five companies. The defendants are the only directors and shareholders of these five companies.[37] The plaintiff was thereby excluded from any participation in the business of these companies. Each company, like Ideal Design Studio, has the words "Ideal Design" as the first two words of its name.[38]

17 The defendants did not inform the plaintiff that they had incorporated any of these five companies. In fact, it was not until the middle of 2011 that the plaintiff discovered that these companies even existed.[39] These five companies are Ideal Design Renovation Pte Ltd, Ideal Design Interior Pte Ltd, Ideal Design Creations Pte Ltd, Ideal Design Werkz Pte Ltd, and Ideal Design Home Pte Ltd.

18 According to the second defendant, she and the third defendant incorporated these five companies to expand the business. Under cross-examination, the second defendant gave another explanation: she said that these companies were incorporated so that none of the companies would exceed $1m

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35 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 26.

36 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 27; Certified transcript (19 January 2017) at p 22, lines 14–17.

37 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at paras 32–37.

38 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at paras 32–37.

39 Leong Chee Kin's affidavit of evidence-in-chief (22 March 2016) at para 7.

in annual revenue. According to her, this would mean that none of the companies would be required to register to pay goods and services tax ("GST"), thereby keeping business costs low and passing the savings on to the customers.[40] It is also her evidence that when the revenue of any one of these five companies got too close to $1m in any given year, the defendants would direct customers to one of the other five companies that had earned less revenue that year.[41] Evidence was also produced which showed that up to 2012, the revenue of each of these companies, including Ideal Design Studio, hovered around $1m.[42]

**Issues before the court**

19 There are two main issues which I have to decide:

(a) The first issue is whether Ideal Design Studio owes the plaintiff a sum of approximately $13,000 in commission for bringing in and managing the four projects (see [13] above).

(b) The second issue has two parts:

(i) whether the plaintiff had been oppressed within the meaning of s 216 of the Act; and if so,

(ii) what the appropriate relief should be.

**Issue one: commission for the four projects**

20 I begin by considering whether Ideal Design Studio owes the plaintiff any commission for the four projects.

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40 Certified transcript (14 September 2016) at p 101, lines 12–17.

41 Certified transcript (15 September 2016) at p 16, lines 14–29.

42 Leong Chee Kin's affidavit of evidence-in-chief (22 March 2016) at p 48.

21 As stated above at [10], the parties agreed that the plaintiff would be paid 50% of the profits for every project he brought in and 10% of the profits for every project that he managed. But while the plaintiff claims that he brought in and managed all four of the projects,[43] the defendants aver that he did not bring in any of the four projects and that he managed only two of the projects to completion.[44]

22 Accordingly, the only factual issue that I have to determine is whether the plaintiff did in fact bring in and manage the four projects. After assessing the evidence and the parties' submissions, I find that the plaintiff is not entitled to any of the commission that he claims is owed to him. Not only was his evidence at trial not credible, his claim for commission is not supported by the documentary evidence before me.

### *Discrepancies in the figures*

23 At the outset, I note that there are a number of discrepancies in the precise amount of commission which the plaintiff claims Ideal Design Studio owes him.[45] In his affidavit of evidence-in-chief and statement of claim, he claims a sum of $12,984.48.[46] At trial, counsel for the defendants, Mr Singh, calculated a sum of $11,683.57 as being due on the plaintiff's own best case, which the plaintiff accepted.[47] But when asked why the calculated figure fell below the sum indicated in his statement of claim, the plaintiff stated that the calculation did not take into account an additional 10% commission due to him

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43 Plaintiff's closing submissions (18 November 2016) at pp 28–34.

44 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 11.

45 Defendants' closing submissions (18 November 2016) at paras 19–21.

46 Leong Chee Kin's affidavit of evidence-in-chief (6 September 2016) at para 32(7); Statement of claim (Amendment No 3) (14 September 2016) at para 35(5).

47 Certified transcript (13 September 2016) at p 68, lines 21–32.

for managing the projects.[48] But even after the 10% was added, the sum amounted to only $12,854 by the plaintiff's own calculation.[49] Eventually, under re-examination, the plaintiff quantified his claim as $13,485.16,[50] only to correct the figure yet again in his closing reply submissions to $13,845.16.[51]

24 The plaintiff and his counsel, Mr Tayabali, explain that the discrepancies in the numbers are due to arithmetical or typographical errors.[52] While I accept that such errors may occur, these discrepancies do the plaintiff's credibility no favours. Certainly, it is inexplicable that the plaintiff cannot determine the precise sum that is owed to him, especially since he claims to have brought in and managed the projects.

25 In any event, it is evident from the documents placed before me that Ideal Design Studio does not owe the plaintiff any commission for any of the four projects. I now address his claims with respect to each project.

***Jurong West project***

26 The profit for the Jurong West project was $4,993.14.[53] The plaintiff accordingly contends that he is entitled to $2,496.57 for bringing in the project (being 50% of the profits) plus another $499.31 for managing the project (being 10% of the profits).[54] He concedes that he has been paid the $499.31, leaving

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48 Certified transcript (13 September 2016) at p 70, lines 2–9.

49 Certified transcript (13 September 2016) at p 71, line 30.

50 Certified transcript (13 September 2016) at p 147, lines 30–31.

51 Plaintiff's reply submissions (9 December 2016) at para 11.

52 Plaintiff's reply submissions (9 December 2016) at paras 10–12; Certified transcript (13 September 2016) at p 148, lines 1–7.

53 Defendants' bundle of documents at p 1.

54 Plaintiff's closing submissions (18 November 2016) at p 28.

only the sum of $2,496.57 owing to him.[55] The defendants argue that the plaintiff is entitled to only the $499.31 which he has already received because the project was brought in by another salesman, Mr Tony Kang, and not by the plaintiff.[56]

27 In support of the defendants' case, Mr Singh relies on a document indicating that the salesmen for this project were the plaintiff and Mr Kang.[57] Alongside this, Mr Singh points to a document which shows that, out of this project's profits, the plaintiff was paid $499.31 and Mr Kang was paid $2,496.57.[58] Taken together, these documents do indeed suggest that it was Mr Kang who brought in the project while the plaintiff did no more than manage it. Additionally, the plaintiff said under cross-examination that he did not, at the material time, question why Mr Kang was paid $2,496.57 for bringing in the project because he had already been paid $499.31 during the project.[59] In my view, this supports a finding that the plaintiff acquiesced in these payments for this project because he knew and acknowledged that he was entitled only to 10% of the profits from this project and had no entitlement to an additional 50% of the profits.

28 In a bid to salvage the plaintiff's case, Mr Tayabali points to a credit note and a variation order, both of which designate the plaintiff as a senior design consultant for this project.[60] According to him, these documents show

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55 Plaintiff's closing submissions (18 November 2016) at p 28.

56 Defence (Amendment No 2) (12 January 2015) at para 8(a).

57 Defendants' bundle of documents at p 1.

58 Defendants' bundle of documents at p 2.

59 Certified transcript (13 September 2016) at p 61, lines 22–31.

60 Plaintiff's closing submissions (18 November 2016) at pp 28–29; Bundle of affidavits of evidence-in-chief at pp 90–91.

that the plaintiff brought in the project. But it is difficult to see why. On their face, they suggest nothing about who brought the project in. They merely state that the plaintiff was a senior design consultant on the project, nothing more.

29 Mr Tayabali also argues that the defendants ought to have produced a document to show that Mr Kang was actually paid $2,496.57.[61] But that point was never in dispute. The plaintiff, in his oral evidence, appeared to accept that Mr Kang had actually been paid that sum.[62] In any case, even if the plaintiff did not accept that Mr Kang had been paid that amount, that is not to the point. The point is not whether Mr Kang was actually paid that sum but that Ideal Design Studio treated Mr Kang – and not the plaintiff – as being entitled to be paid that sum (see [27] above), and that the plaintiff acquiesced in it.

***Upper Boon Keng project***

30 The Upper Boon Keng project recorded a profit of $10,800.79.[63] The plaintiff claims that he is entitled to a total sum of $6,840.48 for this project, representing a combined commission of 60% of the profits.[64] The defendants aver in response that the salesman for the project was Mr Jeffrey Ng, and that the plaintiff is entitled to only $540 for managing the project.[65]

31 The documentary evidence once again militates against the plaintiff's claim for a 50% commission for bringing in the Upper Boon Keng project. The defendants produced a sales invoice showing that the 50% commission had been paid to Mr Ng and not to the plaintiff.[66] The invoice also indicates that the

61 Plaintiff's closing submissions (18 November 2016) at p 29.

62 Certified transcript (13 September 2016) at p 61, lines 22–24.

63 Defendants' bundle of documents at p 5.

64 Plaintiff's closing submissions (18 November 2016) at pp 29–30.

65 Defence (Amendment No 2) (12 January 2015) at para 8(b).

salesman for the project was Mr Ng.[67] The plaintiff is unable to explain this, except to say that the document was not generated by him.[68] Furthermore, the plaintiff is unable to explain why he did not protest when he saw that Mr Ng was named as the salesman for the Upper Boon Keng project.[69] One would expect a reasonable person – even more so a director of Ideal Design Studio – to at least inquire into the matter at the time if he genuinely thought that he was responsible for bringing in the project but saw that Ideal Design Studio proposed to pay another salesman the commission due for doing so. In my view, the only reasonable conclusion that can be drawn from the documents and the plaintiff's contemporaneous acquiescence is that he is not entitled to the sum of $6,840.48.

32 The plaintiff also directs my attention to a price quotation and a credit note for the Upper Boon Keng project.[70] But it is difficult to see how they support his case. If anything, they undermine his case even further. The price quotation clearly states that the plaintiff is the project *manager*,[71] and the credit note indicates only that Mr Ng is a design consultant.[72]

33 More crucially, a letter before action sent in January 2009 from the plaintiff's then solicitors demanded only $1,800 for this project.[73] That sum amounts to only 10% of the project's profits and is inconsistent with the plaintiff's present claim for an additional commission of 50% of the profits.

66 Defendants' bundle of documents at p 5; Certified transcript (13 September 2016) at p 64, lines 4–6.

67 Defendants' bundle of documents at p 4.

68 Certified transcript (13 September 2016) at p 62, lines 20–24.

69 Certified transcript (13 September 2016) at pp 62, lines 30–31 and 63, lines 1–3.

70 Plaintiff's closing submissions (18 November 2016) at p 29.

71 Agreed bundle of documents (Volume I) at p 48.

72 Agreed bundle of documents (Volume I) at p 49.

73 Agreed bundle of documents (Volume I) at p 84.

The plaintiff is unable to explain why he asserted an entitlement to only $1,800 for this project in 2009. He claims that he did so because he was working off his own calculation at that time.[74] But his then solicitors' letter clearly shows that the plaintiff knew enough about the figures to limit his claim to exactly 10% of the project's profits. And it defies reason that he mistakenly calculated 10% instead of 60%. In my judgment, if the plaintiff had genuinely believed that he was owed commission for bringing in and managing this project, he would have instructed his solicitors accordingly and they would have asserted a claim for 60% of the profits.

34 The plaintiff tries to explain away this incongruity by stating that he found out that he could claim an additional 50% of the profits only after his lawyers advised him that he could do so.[75] I reject the explanation. There is no evidence to suggest that the plaintiff was unaware of his right to claim 50% of the profit for every project he brought in. On the contrary, the evidence shows that the agreement with respect to the plaintiff's commission was reached around the time that he joined Ideal Design Studio (see [9]–[10] above) and was in terms which the plaintiff could well understand without any need for legal advice. I therefore reject the explanation which the plaintiff proffers for his then solicitors having claimed only 10% of the profits in their letter dated January 2009.

35 Accordingly, the plaintiff's claim for 60% of the profits from this project is untenable. I note that the defendants accept that $540 is due to the plaintiff for this project. They say that this represents 10% of the project's profits;[76] in

[74] Certified transcript (13 September 2016) at p 83, lines 23–31.

[75] Certified transcript (13 September 2016) at p 84, lines 12–16.

[76] Defence (Amendment No 2) (12 January 2015) at para 8(b).

fact, it represents only 5% of this project's profits. In any event, the case which the plaintiff put forward at trial was an entitlement to 60% of this project's profits. He put forward no alternative claim for 10% of the profits on the basis that he was responsible only for managing it. He has therefore failed in the only claim he has put forward. I therefore dismiss his claim in its entirety.

***Tampines project***

36 The Tampines project's profit was $7,202.27,[77] and the plaintiff claims a combined commission of 60% of this sum, which amounts to $4,321.36.[78] The defendants' evidence is that Mr Ng brought in the project, and that while the plaintiff managed it, he is not entitled to any commission because he left Ideal Design Studio before its completion.[79] The plaintiff does not dispute that he left Ideal Design Studio before the project was completed.[80] He also did not challenge the second defendant's evidence that this would be a valid reason for withholding the entire 10% commission for managing the project.[81]

37 Although the job sheet for this project names both the plaintiff and Mr Ng as the salespersons,[82] the defendants aver that the plaintiff did no more than manage the project.[83] But they offered no explanation why the plaintiff's name was listed as one of the salespersons. One may take this as suggesting that the

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77 Defendants' bundle of documents at p 6.

78 Plaintiff's closing submissions (18 November 2016) at p 32.

79 Defence (Amendment No 2) (12 January 2015) at para 8(c).

80 Certified transcript (13 September 2016) at p 65, lines 28–31.

81 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 11(c); Certified transcript (14 September 2016) at p 56, lines 23–32 to p 58, lines 1–23.

82 Defendants' bundle of documents at p 6; Certified transcript (13 September 2016) at p 64, lines 17–20.

83 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 11(c).

plaintiff was jointly responsible with Mr Ng for bringing in this project and, perhaps, that he ought to be paid a commission of 25% of the profit. But that is not the plaintiff's case. I note also that the job sheet records that Mr Ng was entitled to and has been paid for his role as a salesperson, albeit a sum which is less than 50% of the profit.[84] In contrast, nowhere does it state that any sum is owed or has been paid to the plaintiff, which is what one would expect if there was a split commission. Attempting to bolster his case, the plaintiff relies on a price quotation that designates him as the senior design consultant.[85] But he gives no explanation as to how this document, which does not indicate that he was the salesman for the project, assists his case that he is entitled to a sales commission.

38 Most importantly, like the Upper Boon Keng project, the plaintiff has no good explanation for why he demanded only $720 as commission for this project in his then solicitors' 2009 letter (see [33] above).[86] The plaintiff claims that he was relying on his own numbers, and therefore did not claim the full 60% that he now claims.[87] For the reasons I have set out above, this explanation holds no water and I reject it.

39 I therefore dismiss the plaintiff's claim for commission in relation to the Tampines project.

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84 Defendant's bundle of documents at p 6.

85 Agreed bundle of documents (Volume I) at p 44; Plaintiff's closing submissions (18 November 2016) at pp 31–32.

86 Agreed bundle of documents (Volume I) at p 84.

87 Certified transcript (13 September 2016) at p 75, line 31 to p 76, lines 1–4.

### *Sengkang project*

40 The plaintiff claims that the Sengkang project's profit is $311.26,[88] and that he is owed 60% of that figure as his commission for bringing in and managing the project. But the defendants aver the project was not profitable because its costs were approximately equal to the price quoted to the customer.[89] They also state that no commission is due to the plaintiff because he left Ideal Design Studio before the Sengkang project was completed.[90]

41 The principal difficulty with this head of the plaintiff's claim is that he cannot prove on the balance of probabilities that it was profitable at all. It is common ground that the contract amount for this project was $18,048.[91] But each side tendered a copy of the job sheet for this project which indicated a different amount for the project costs.[92] The plaintiff's copy puts the project costs at $17,736.74,[93] indicating a profit of $311.26. But the defendants' copy puts the cost at $18,144.35,[94] indicating a *loss*.[95] Neither side addressed this discrepancy. There is nothing on the face of the two copies of the job sheet to suggest that one version is more credible than the other. But it is ultimately the plaintiff who bears the burden of proof on every aspect of his claim. There is no

[88] Certified transcript (13 September 2016) at p 144, lines 1–32 to p 145, lines 1–10.

[89] Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 11(d).

[90] Defence (Amendment No 2) (12 January 2015) at para 8(d); Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 11(d).

[91] Defendants' bundle of documents at p 10; Leong Chee Kin's affidavit of evidence of chief (22 March 2016) at p 103; Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 11(d) and p 25; Certified transcript (13 September 2016) at p 146, lines 3–6.

[92] Certified transcript (13 September 2016) at p 142, lines 3–4.

[93] Leong Chee Kin's affidavit of evidence of chief (22 March 2016) at p 103; Certified transcript (13 September 2016) at p 141, line 26.

[94] Rosa Chew's affidavit of evidence of chief (23 February 2016) at p 25.

[95] Certified transcript (13 September 2016) at p 145, lines 1–4.

evidence which tilts the balance of probabilities in the plaintiff's favour. I therefore dismiss his claim for commission on the Sengkang project.

42 In the premises, I dismiss the plaintiff's claim for commission entirely.

**Issue two: minority oppression under s 216 of the Companies Act**

***Alleged acts of oppression***

43 I now come to the plaintiff's claim of oppression within the meaning of s 216 of the Act, for which he seeks a buyout of his shares in Ideal Design Studio. As I have mentioned, the plaintiff relies on three acts of oppression:[96]

> (a) First, the removal of the plaintiff as a director of Ideal Design Studio on 12 November 2008 (see [15] above).
>
> (b) Second, the consequent exclusion of the plaintiff from the management of Ideal Design Studio.
>
> (c) Third, the diversion of business from Ideal Design Studio to the five Ideal Design companies incorporated by the defendants between 6 January 2009 and 14 November 2011 (see [16]–[18] above).

44 I find that the diversion of business from Ideal Design Studio to the other Ideal Design companies was indeed oppressive within the meaning of s 216 of the Act. But removing the plaintiff as a director and excluding him from the management of Ideal Design Studio do not constitute oppression. There was no basis for any expectation on his part that he would remain a director or continue to participate in the company's management.

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96 Certified transcript (19 January 2017) at pp 4–8.

### *Law on minority oppression*

45 Section 216 of the Act empowers the court to grant relief in cases of minority oppression to protect minority shareholders from acts of commercial unfairness (see Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 2nd Ed, 2007) ("*Minority Shareholders*") at p 121). The section reads as follows:

> **Personal remedies in cases of oppression or injustice**
>
> **216**.—(1) Any member or holder of a debenture of a company… 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 purposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

*Test of commercial unfairness*

46 Parsing the provision suggests that there are four grounds of oppression under s 216 of the Act: (i) oppression, (ii) disregard of a member's interest, (iii) unfair discrimination, and (iv) prejudice. But *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 at [77] clarified that the limbs of s 216 are bound by the common thread of unfairness. Hence, a complainant does not need to identify which ground of oppression he is relying on. Instead, the touchstone for minority oppression is whether the conduct being complained of is commercially unfair (see *Over & Over* at [81]). Commercial unfairness arises

when there has been "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" (see *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227 at 229 as cited in *Over & Over* at [77]).

47 The law adopts a contextual approach in ascertaining commercial unfairness. The contextual approach means that the unfairness of a party's conduct is to be assessed objectively against the backdrop of the parties' relationship and from the perspective of a commercial relationship (see *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14 at 17–20 and *Minority Shareholders* at pp 137–140). Unfairness can thus be discerned either from a course of conduct or even from a single act (see *Over & Over* at [74]).

48 A distinction must also be drawn between unfairness and unlawfulness. A person may act within his legal rights and yet act in a manner which is commercially unfair. As the Court of Appeal observed in *Over & Over* at [78], the law on s 216 looks not only at a person's legal rights but also at the legitimate expectations of the company's members. The converse is also true. Unlawful conduct that is of a technical nature, *eg*, a trivial breach of a director's duties, is not necessarily commercially unfair (see *Lim Kok Wah and others v Lim Boh Yong and others and other matters* [2015] 5 SLR 307 at [100]). In the final analysis, whether an act is commercially unfair depends on the context in which the act took place. That includes, but goes beyond, the issue of whether the act is lawful or regular.

*Equitable considerations and legitimate expectations*

49 In every case in which oppression is alleged, the first step is to examine whether the court ought to superimpose equitable considerations that would

make a party's exercise of his strict legal rights commercially unfair under certain circumstances (see *Lim Kok Wah* at [102]). To answer this question, the court looks at various factors. These include the nature of the company and the shareholders' relationship. Equitable considerations may be superimposed in situations where, for example, the company was formed on the basis of personal relationships involving mutual trust and confidence (see *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 379E as cited in *Lim Kok Wah* at [105]).

50 In this connection, the law subjects certain companies that are formed or managed on the basis of mutual trust and confidence to greater scrutiny (see *Over & Over* at [83]). Such companies are known as quasi-partnerships. A quasi-partnership may now be said to be any company whose affairs are conducted with a degree of informality, *ie*, where the members do not transact on an arms-length basis, do not distil their informal agreements into formal contracts, and do not record their understandings in writing. The informal nature in which such companies conduct their internal affairs creates a greater risk that some members will be victims of exploitative conduct by the majority. The law is hence more willing to scrutinise the parties' past conduct and communications to determine if there are any informal agreements or understandings between the parties which form the context for considering whether specific conduct is or is not commercially unfair. As explained in *Over & Over* at [83], the minority in quasi-partnerships tend to "[operate] on the belief that the majority would take their interests into account and that any such problems would be readily and civilly ironed out". Therefore, in such cases, the court "will insist upon a high standard of corporate governance" (see *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 at [83]).

51 That is not to suggest that a minority oppression claim can succeed only where equitable considerations are superimposed or where the court finds that the company is a quasi-partnership. As observed in *Corporate Law* (Hans Tjio, Pearlie Koh, and Lee Pey Woan eds) (Academy Publishing, 2015) at para 11.059, s 216 of the Act is wide enough to encompass companies of different types. But a claim in minority oppression is often more difficult to establish where no equitable considerations are superimposed. This is because in the absence of equitable considerations, the unfairness of a party's conduct must be measured against legitimate expectations arising from the members' legal rights and the company's constitution (see *Lim Kok Wah* at [106]).

***Nature of Ideal Design Studio***

52 Having set out the law, I now consider whether equitable considerations should be superimposed on Ideal Design Studio.

53 In this regard, Mr Tayabali submits that Ideal Design Studio is a quasi-partnership because the plaintiff reposed trust and confidence in the defendants. To this end, he provides a number of instances which purportedly illustrate the great extent to which the plaintiff trusted them.[97] For example, Mr Tayabali argues that the plaintiff demonstrated full confidence in the defendants by approving a resolution that made the defendants the joint signatories of Ideal Design Studio's bank account.[98] As another example, Mr Tayabali relies on the fact that the plaintiff joined Ideal Design Studio even before he had officially resigned from his previous employment.[99]

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97 Plaintiff's closing submissions (18 November 2016) at pp 41–42.

98 Plaintiff's closing submissions (18 November 2016) at p 42; Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 15 and p 33.

99 Plaintiff's closing submissions (18 November 2016) at p 41.

54 But as Mr Singh points out, Mr Tayabali's argument misses the point.[100] The question is not whether the plaintiff trusted the defendants when he joined Ideal Design Studio. The question is whether there was *mutual* trust and confidence between the parties. And in this regard, it is apparent from the evidence that, even if the plaintiff trusted and had confidence in the defendants, this trust and confidence was not reciprocated.[101]

55 Moreover, the examples cited by Mr Tayabali do not support his argument that Ideal Design Studio is a quasi-partnership. Just because the plaintiff allowed the defendants to have joint control over the company's bank account does not necessarily suggest that there was mutual trust and confidence. It can just as easily be interpreted to mean that there was *no* mutual trust and confidence between the three of them. If there had indeed been mutual trust and confidence, the plaintiff would also have been granted control over the company's bank account. Similarly, the fact that the plaintiff joined Ideal Design Studio *before* resigning his previous employment can equally be taken to suggest that he did not have the confidence in the defendants to join the company without still being tethered to his previous place of employment.

56 Accordingly, I find that Ideal Design Studio is not a quasi-partnership on which equitable considerations can be superimposed. This of course does not preclude a finding that the defendants had oppressed the plaintiff as a minority shareholder. But the effect of this finding is that any legitimate expectations that the plaintiff might have had must emanate from his legal rights and Ideal Design Studio's constitution.

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[100] Defendants' reply submissions (9 December 2016) at paras 13–17.

[101] Defendants' closing submissions (18 November 2016) at paras 33–34; Certified transcript (13 September 2016) at p 51, lines 9–15.

***Removal as director and exclusion from management***

57 The first act of oppression alleged by the plaintiff is the removal of the plaintiff as a director of Ideal Design Studio. This act is closely connected with his contention that he was wrongly excluded from the management of the company. I shall therefore deal with these two acts together.

58 As Mr Tayabali concedes, the defendants removed the plaintiff as a director in compliance with Ideal Design Studio's articles of association and the Act.[102] In other words, the defendants acted well within their legal rights as shareholders in removing the plaintiff as a director. In the light of this, the only remaining way in which this act could constitute oppression under s 216 is if the plaintiff had a legitimate expectation that he would be included in the management of Ideal Design Studio.

59 I pause here to note that the use of the term "legitimate expectations" in this context is apt to mislead unless it is analysed closely. It does not mean a party's self-engendered expectation of inclusion in management. It certainly does not mean an expectation of inclusion in management which arises after the fact, when the parties are engaged in a dispute. Neither type of expectation is what is meant by a legitimate expectation of inclusion in management. What is needed is an agreement – using the term in its broadest sense – between the parties by way of words or conduct which gives rise to an expectation that the plaintiff will be included in management (see *O'Neill and another v Phillips and others* [1999] 2 All ER 961 at 969h). The plaintiff therefore needs to produce evidence of words or conduct between the parties which show an agreement in the broadest sense that he would be included in management and from which the defendants have departed unfairly.

102 Certified transcript (19 January 2017) at p 22, lines 9–17.

60 On the evidence, I am not satisfied on the balance of probabilities that there were any such words or conduct. First, there is nothing in the plaintiff's affidavit of evidence in chief to suggest that the defendants agreed to the plaintiff being included in the management of Ideal Design Studio by their words or conduct.[103] Second, the second defendant's evidence in cross-examination is that the plaintiff was brought in to be in charge of *sales* and not to play a role in management.[104] The third defendant's evidence was also clear that the plaintiff was not involved in management.[105] The defendants certainly did not agree that the plaintiff was to be included in management. Third, the only informal agreement which appears on the evidence militates against any expectation that the plaintiff would be included in management. It bears recalling that the plaintiff became a shareholder and a director in the company on the basis that he would generate $200,000 in sales within six months, failing which would cease voluntarily to be a shareholder and a director (see [11]–[12] above). This reinforces the second defendant's evidence that the plaintiff's agreed role in the company was to be a salesman and also perhaps to manage projects, but did not extend to managing the company.

61 Additionally, Mr Tayabali argues that a minority shareholder who renders services to a company and earns an income from doing so is oppressed for the purposes of s 216 of the Act when the opportunity to continue doing so is taken away from him by the majority.[106] In my view, this submission does not take the plaintiff's case very far. There is no evidence to suggest that the plaintiff had a legitimate expectation that he should have or be entitled to retain

[103] Certified transcript (13 September 2016) at p 51, lines 24–27.

[104] Certified transcript (14 September 2016) at p 62, lines 31–32.

[105] Certified transcript (16 September 2016) at p 5, line 19.

[106] Certified transcript (19 January 2017) at p 31, lines 31–32 to p 32, lines 1–9.

the opportunity to sell his labour to Ideal Design Studio. The mere fact that the plaintiff actually did earn an income from Ideal Design Studio by selling his labour to it does not, without more, make it oppressive for the majority subsequently to deprive him of that opportunity.

62 In this respect, Mr Tayabali's reliance on *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 is misconceived. In that case, a shareholder who owned half the shares in the company was excluded from management. This was contrary to a partly-oral and partly-written agreement that he and the other shareholder would share the management of the company (see *Tullio* at [3]). This was found at first instance to constitute oppression. This finding was not disturbed on appeal (see *Tullio* at [14]). *Tullio* therefore stands for the proposition that exclusion from management can be the basis for oppression where there is an agreement – again using that term in its broadest sense – to the contrary. In this case, there is no such agreement.

63 Accordingly, I find that removing the plaintiff as a director of Ideal Design Studio and excluding him from the management of Ideal Design Studio do not amount to oppression.

### *Diversion of business from Ideal Design Studio*

#### *Diversion of business as an oppressive act*

64 The third and final ground of oppression alleged by the plaintiff concerns the incorporation of the five Ideal Design companies and the defendants' conduct in deliberately diverting business from Ideal Design Studio to these five other companies.

65 I begin by noting the well-established principle that the directors of a company have a fiduciary duty to act in its best interests. It follows from this that shareholders have a legitimate expectation that those in control of the company will act *bona fide* in the best interests of the company. That is especially so when the majority shareholders are themselves the directors. These propositions were set out clearly by Hoffmann LJ (as he then was) in *Re Saul D Harrison.* In that case, he observed that, as a starting point, the legitimate expectations of shareholders must be analysed against the company's constitution and the fiduciary duties imposed by the law (see *Re Saul D Harrison* at 18):

> … Since keeping promises and honouring agreements is probably the most important element of commercial fairness, the starting point in any case under s 459 [equivalent to s 216 of the Act] will be to ask *whether the conduct of which the shareholder complains was in accordance with the articles of association.*
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> The answer to this question often turns on the fact that the powers which the shareholders have entrusted to the board are fiduciary powers, which must be exercised for the benefit of the company as a whole. If the board act for some ulterior purpose, they *step outside the terms of the bargain between the shareholders and the company.* … [T]he fact that the board are protected by the principle of majority rule does not necessarily prevent their conduct from being unfair within the meaning of s 459. …
>
> [emphasis added]

66 Whether there has been a breach of a director's fiduciary duties is thus a relevant, but not determinative, consideration in deciding whether there has been oppressive conduct. In this respect, those in control of a company must act with valid commercial reasons when pursuing a company's best interests. As held in *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064 at [29], the test is whether an honest and intelligent person in the position of the

directors could objectively and reasonably conclude that the impugned acts were in the interests of the company.

67 I turn now to focus specifically on conduct involving the diversion of business. It has been observed that such acts are "[p]erhaps the most singularly censurable form of oppressive conduct" (see *Minority Shareholders* at 181). The majority's conduct in diverting business away from a company in which a complainant has a minority shareholding, without adequate justification, constitutes unfair prejudice in English law (see, *eg*, *In re London School of Electronics Ltd* [1986] Ch 211). The same applies in Singapore, where it has been held that it can be oppressive conduct under s 216 of the Act for a majority shareholder to favour another company to the detriment of the company in which a minority has his shareholding (see, *eg*, *Lim Swee Khiang* at [85]).

68 In this case, the defendants argue that they incorporated the five Ideal Design companies and diverted business away from Ideal Design Studio for valid commercial reasons. First, they claim that they incorporated these companies to give their customers more choice in terms of designers and sales packages.[107] Second, they say that they wanted to keep their prices competitive by ensuring that they did not have to charge customers GST by keeping the annual revenue of each company under the $1m threshold for GST registration.[108]

69 I find that these are not the true reasons for which the defendants incorporated the five Ideal Design companies and diverted Ideal Design Studio's business to these five companies.

107 Certified transcript (14 September 2016) at p 99, lines 17–21.

108 Certified transcript (14 September 2016) at p 101, lines 12–18.

70 I begin with the claim that the defendants incorporated the five companies to give their customers more choice. The evidence does not support the claim. It is true that the result of incorporating the five companies was to put at the defendants' disposal six ostensibly separate legal entities to service their customers. But the defendants ran Ideal Design Studio and the five other companies essentially as a single business. A number of facts point to this conclusion. First, the companies shared a common pool of designers.[109] Second, an invoice for a project would bear the names of all six companies, regardless of which company actually undertook the project.[110] Third, the companies operated out of the same office and used the same phone number.[111] Fourth, customers would be directed to different companies depending on the status of each company's revenue at any given time. If a particular company's revenue was in danger of hitting the $1m mark, the defendants would simply direct the contract to another company (see [18] above). There is no evidence to support the second defendant's claim that the addition of the five Ideal Design companies gave the customers more choice in any meaningful way. Certainly, the second defendant admitted that customers would be concerned only about the salesperson and designer assigned to a renovation project, and not about the specific company that the defendants nominated to be the customer's counterparty.[112]

71 Furthermore, I am not persuaded that the defendants incorporated the five companies to avoid having to register for GST. The evidence shows that

[109] Certified transcript (14 September 2016) at p 112, lines 2–8; Certified transcript (16 September 2016) at p 33, lines 1–6.

[110] Agreed bundle of documents (Volume 3A) at pp 116–118; Certified transcript (14 September 2016) at p 114, lines 8–25.

[111] Certified transcript (16 September 2016) at p 32, lines 2–6.

[112] Certified transcript (14 September 2016) at p 113, lines 25–31.

this explanation was an afterthought. At trial, the second defendant initially offered the explanation that the five companies were incorporated to increase the range of designers available to customers. But this explanation was shown to be implausible during cross-examination.[113] There is no reason the defendants could not have offered customers a range of designers through Ideal Design Studio without incorporating five other companies. In this respect, the second defendant conceded that it was possible to have multiple designers working for a single company.[114]

72 It was only when the second defendant was pressed on the implausibility of her first explanation that she then claimed that the defendants' motivation was to avoid registering for GST.[115] This explanation is not mentioned in her affidavit of evidence in chief. Instead, her evidence in chief is simply that the defendants decided to incorporate another company to "expand the business". All of this suggests that GST registration was not the real reason the defendants incorporated the five companies and diverted Ideal Design Studio's business to them.

73 Moreover, even if the true reason behind the diversion of business was to keep costs low by avoiding the need to charge customers GST, honest and intelligent directors in the defendants' position could not reasonably have seen the diversion as being in the best interests of Ideal Design Studio. It bears emphasising the obvious: Ideal Design Studio is a legal entity distinct from the other five companies. The evidence before me does not suggest that Ideal Design Studio – as opposed to the defendants personally – derived any benefit

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113 Certified transcript (14 September 2016) at p 100, lines 21–23.

114 Certified transcript (14 September 2016) at p 111, lines 20–22.

115 Certified transcript (14 September 2016) at p 100, lines 13–32.

from the diversion of its business to the other companies. On the contrary, the evidence shows that the effect of defendants' scheme was deliberately to cap Ideal Design Studio's yearly revenue at $1m (see [18] above). In this connection, I note that the position might be different if all six companies had precisely the same shareholders or were part of a group of companies. But that is not the case. Even then, while controllers of a group of companies may consider the entire group's best interests in making decisions, they are not entitled to sacrifice the interests of one company in the group (see *Charterbridge Corporation Ltd v Lloyds Bank Ltd and another* [1970] Ch 62 at 74 as cited in *Intraco* at [28]). In this case, it is apparent that the only parties who derived a benefit from the diversion of business are the defendants personally, in their capacity as the sole shareholders of the five Ideal Design companies.

74 For the above reasons, I do not accept the defendants' evidence that they diverted business from Ideal Design Studio for valid commercial reasons. In this vein, the timing and circumstances under which the five companies were incorporated are noteworthy. The first of the companies, Ideal Design Renovation Pte Ltd was incorporated just over a month after the plaintiff had been removed as a director and just over two months after he had refused to sell back his shares.[116] The five companies were also incorporated secretly, in the sense that the defendants did not inform the plaintiff of their incorporation, and it was not until mid-2011 that the plaintiff found out that they existed.[117]

75 At this juncture, I pause to address the parties' understanding that the plaintiff would resign as a director and sell back his shares to the second

116 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 32; Certified transcript (16 September 2016) at p 7, lines 22–27.

117 Leong Chee Kin's affidavit of evidence-in-chief (22 March 2016) at para 7.

defendant if he failed to achieve $200,000 in sales within his first six months (see [11] above). While it may be true that the plaintiff refused to sell back his shares, this did not entitle the defendants to approximate the effect of his doing so by incorporating the five companies and diverting business from Ideal Design Studio to them.

76 The case of *Spectramed Pte Ltd v Lek Puay Puay and others and another suit* [2011] SGHC 43 is illuminating on this point. There, Lai Siu Chiu J found that the managing director had breached her duties as a director by diverting business to another company (at [128]). But she also found that the managing director, who was a minority shareholder, was a victim of oppressive conduct by the majority (at [131]–[132]). Lai J remarked that, even if the managing director had felt aggrieved by the oppressive acts, that did not excuse the breaches of her fiduciary duties to the company (at 128]). *Spectramed* therefore stands for the proposition that the law does not, and should not, condone a tit-for-tat approach to shareholder relations. If the defendants felt aggrieved by the plaintiff's refusal to sell back his shares and abide by their original understanding, they were entitled to remove him as a director and to exclude him from management, as I have found. Beyond that, they could have continued to engage him in negotiations to buy over his shares. They could not, however, in effect devalue his shareholding by diverting commercial opportunities, which should have been exploited by Ideal Design Studio for the benefit of all of its shareholders, to five companies in which they alone had an interest.

77 In sum, I find that the defendants' real reason for incorporating the five companies was to divert the revenue, and therefore also the profits, of what would otherwise have been Ideal Design Studio's business to entities in which the plaintiff had no shareholding and accordingly no legal entitlement to share

in the profits. The diversion was without any valid commercial reason. It was thus contrary to the best interests of Ideal Design Studio. The diversion was not only a breach of their fiduciary duties to Ideal Design Studio. It was grossly commercially unfair to the plaintiff as a minority shareholder of Ideal Design Studio. The defendants thereby defeated the plaintiff's legitimate expectation as a shareholder, and are thus guilty of oppressive conduct within the meaning of s 216 of the Act.

*A question of reflective loss*

78 Having found that the defendants' diversion of business is a wrong against both the plaintiff and Ideal Design Studio, a question that arises is whether the plaintiff is entitled to seek relief under s 216 of the Act which has the result of compensating him for the diminution in the value of his shares caused by a wrong done to the company. This question arises because the relief sought by the plaintiff is a buyout of his shares at a price which assumes that the diversion of business did not take place.

79 In this regard, Mr Singh's argument is that the plaintiff's action for minority oppression on the basis of diversion of business is an abuse of the oppression remedy under s 216 of the Act. Citing *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 and *Townsing Henry George v Jenton Overseas Investment Pte Ltd (in liquidation)* [2007] 2 SLR(R) 597, Mr Singh submits that the plaintiff is using s 216 to pursue a remedy for what is in essence a wrong to the company.[118] He argues that the direct consequence of the defendants' diversion of business was a loss of profits suffered by Ideal Design Studio. Any loss for which the plaintiff is compensated in a buyout for the diminution in the value of his shares by reason of this diversion is merely a loss

[118] Defendants' closing submissions (18 November 2016) at paras 78–90.

which is reflective of Ideal Design Studio's losses. Reflective loss of this nature is irrecoverable in an action brought by a shareholder. The plaintiff ought instead to have sought leave to commence a statutory derivative action against the defendants in the name of Ideal Design Studio under s 216A of the Act.[119]

80 I accept that part of the purchase price which the defendants will have to pay to the plaintiff for his shares will reflect a part of the loss of profits suffered by Ideal Design Studio as a result of the defendants' diversion of business. But I disagree with Mr Singh that the plaintiff's action under s 216 of the Act is, for that reason, an abuse of process. It is not always the case that a minority shareholder's action for a personal statutory remedy for oppression is an abuse of process simply because the very same conduct which has been found to be oppressive is simultaneously a wrong occasioned to the company.

81 I take as my starting point the Victorian case of *Foss v Harbottle* (1843) 2 Hare 461. The rule in that case is that only a company can sue for losses that it has suffered, because a company is a legal entity distinct from its shareholders (see *Ng Kek Wee* at [61]). This is the well known proper plaintiff rule. But there are exceptions to it. One of those is the statutory derivative action under s 216A of the Act. This provision enables a shareholder to seek leave to bring an action in the company's name for a wrong occasioned to the company.

82 The bar on recovering reflective loss is the other side of the proper plaintiff rule. It provides that a person may not initiate an action to recover a loss which he has suffered by virtue of a diminution in the value of his shares in a company which merely reflects the company's own loss and for which the company can be made whole if it were to pursue its rights against the party

119 Defendants' closing submissions (18 November 2016) at para 90.

responsible for that loss (see *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 at 35 and *Ng Kek Wee* at [61]).

83 Taken together, the proper plaintiff principle and the reflective loss principle establish a conceptual distinction between personal rights and corporate rights. A breach of a right vested in a shareholder ought to be vindicated at the suit of the shareholder, whereas a breach of a right vested in the company ought to be vindicated at the suit of the company. Accordingly, a shareholder's attempt to use s 216 of the Act to vindicate a right vested in the company – such as a company's rights against a director who has breached his fiduciary duties to the company – could be considered an abuse of process.

84 Further, as the Court of Appeal noted in *Ng Kek Wee* at [65], this difference between how corporate and personal rights ought to be vindicated is not just a matter of procedural propriety but also reflects a number of important policy considerations. When a minority shareholder seeks an oppression remedy against the majority to vindicate what is in truth a corporate right, he does so to the potential prejudice of other minority shareholders. Their interests will inevitably be affected by any personal remedy granted to the minority shareholder even if they were not parties to the oppression and indeed even if they might have been victims of the same oppression but have decided to respond to it differently. In the same vein, it is also patently desirable to prevent a multiplicity of actions or the risk of double recovery against the wrongdoer.

85 That being said, there are often overlaps between personal rights and corporate rights. It is not uncommon for acts which are alleged to be oppressive also to constitute a wrong to the company (see Pearlie Koh, "The Shareholder's Personal Claim: Allowing Recovery for Reflective Losses" (2011) 23 SAcLJ 863 ("*Shareholder's Personal Claim*") at para 52). For instance, in *Lim Swee*

*Khiang*, the Court of Appeal found that the majority shareholders who exercised control over the company's management had acted oppressively by failing to terminate a licence and to collect royalties owed to the company. The respondents' failure in this regard was found to have been a "dereliction of their duties as directors" (at [45]) and "was detrimental to the commercial interests of [the company] and therefore in disregard of the appellants' minority shareholding interests" (at [85]).

86 It is thus clear that an application under s 216 of the Act will not be an abuse of process just because the oppressive conduct also happens to constitute a wrong to the company. In this respect, the Court of Appeal decision of *Ng Kek Wee* is instructive. There, the complainant shareholder held approximately 54% of the shares in the company while the alleged wrongdoer held 15%. The wrongdoer was appointed the managing director of the company. He was found to have mismanaged the affairs of the company and to have wrongly enriched himself (see [38]–[45]). Nevertheless, the Court of Appeal held that the complainant was not entitled to bring an action under s 216 of the Act because it was within its power as the majority shareholder to take control of the company's management (see [55]–[59]). This was sufficient to dispose of the matter. But the Court of Appeal also opined that the complainant's action was essentially for a wrong to the company and should have been pursued by way of a statutory derivative action under s 216A of the Act (see [71]).

87 In reaching its conclusion in *Ng Kek Wee*, the Court of Appeal endorsed (at [68]) the decision of Millet J (as he then was) in *Re Charnley Davies Ltd (No 2)* [1990] BCLC 760. Millet J there articulated the importance of ascertaining the true nature of a complaint in determining whether an action is more

appropriately brought for minority oppression or by way of a derivative action (see 784):

> The very same facts may well found either a derivative action or a s 459 petition [equivalent to s 216 of the Act]. But that should not disguise the fact that the nature of the complaint and the appropriate relief is different in the two cases. Had the petitioners' true complaint been of the unlawfulness of the respondent's conduct, so that it would have been met by an order for restitution, then a derivative action would have been appropriate and a s 459 petition would not. *But that was not the true nature of the petitioners' complaint*. They did not rely on the unlawfulness of the respondent's conduct to found their cause of action; and they *would not have been content with an order that the respondent make restitution to the company*. They relied on the respondent's unlawful conduct as evidence of the manner in which he had conducted the company's affairs for his own benefit and in disregard of their interests as minority shareholders; and they *wanted to be bought out*. They wanted *relief from mismanagement, not a remedy for misconduct*.
>
> [emphasis added]

88 After considering the above passage, the Court of Appeal in *Ng Kek Wee* stated *obiter* at [69] that there are two considerations to be taken into account when determining whether an action has been properly brought under s 216 of the Act when the conduct complained of amounts to a breach of both personal and corporate rights. First, whether the unlawfulness of the wrongdoer's conduct is being relied on as evidence of how the alleged wrongdoer disregarded the complainant's interest as a minority shareholder. Second, whether the complaint is such that it cannot be adequately addressed by the remedy that the law has provided for that wrong.

89 It has also been suggested that the court should consider whether the policy concerns which underlie the principle barring recovery of reflective loss would be contravened by permitting a shareholder to pursue an action for personal loss (see *Shareholder's Personal Claim* generally). Thus, for example,

where there is no danger of double recovery or prejudice to other shareholders, a complainant should not be prevented from pursuing a personal claim under s 216 of the Act. This approach finds support in *Townsing Henry George*, where the Court of Appeal dealt with a claim in relation to a director's breach of his duties that resulted in losses to the company and a diminution in the value of the complainant's shares. There, the Court of Appeal suggested *obiter* at [85]–[86] that the complainant would not have contravened the reflective loss principle if it had adduced evidence or procured an undertaking from other interested parties to satisfy the court that there was no danger of double recovery.

90 To summarise, the following propositions are to be borne in mind on an application under s 216 of the Act where the principle barring recovery of reflective loss is raised:

(a) The same acts can be oppressive conduct within the meaning of s 216 of the Act and also a breach of duty owed to the company. It is not invariably the case that a shareholder should be barred from pursuing a remedy for the oppressive conduct by an application under s 216 just because the compensation to be awarded to him, if he succeeds, will reflect in whole or in part the loss suffered by the company by the breach of duty owed to the company.

(b) In ascertaining whether the shareholder is barred from seeking relief under s 216, the court must determine the true nature of the shareholder's complaint and the essence of the relief sought by the complainant.

(c) An application under s 216 will be appropriate where the unlawfulness of the wrongdoer's conduct is merely used as evidence of the wrongdoer's disregard of the complainant's interest as a shareholder and where the complaint cannot be adequately addressed by the remedy provided by law.

(d) Another important consideration is whether the policy concerns underlying the reflective loss principle would be contravened if the complainant is allowed to pursue a personal action under s 216. If there is no such danger, then any insistence on complying strictly with the reflective principle loses much of its force.

91 Applying these principles to this case, it is plain to me that the reflective loss principle is no bar either to the plaintiff's entitlement to relief under s 216 of the Act or to the specific type of relief which the plaintiff seeks. Although the defendants' diversion of Ideal Design Studio's business is a breach of the fiduciary duties which they owe to the company, such conduct also constitutes evidence of their complete disregard of the plaintiff's interest as a minority shareholder. Further, while the plaintiff could have brought a derivative action under s 216A, that would not have adequately addressed his ultimate complaint and his primary relief, which is to be allowed to withdraw his capital and exit Ideal Design Studio by having his shares bought out by the defendants.

92 In addition, there is no danger of causing prejudice to any other shareholder in Ideal Design Studio by ordering the defendants to buy the plaintiff's shares on the terms that he seeks. All three of Ideal Design Studio's shareholders are now before me. There are therefore no third party shareholders whose interests may be affected by valuing the plaintiff's shares at the value they would have but for the defendants' conduct in diverting Ideal Design Studio's business to the five companies. And as observed in *Shareholder's Personal Claim* at para 16, "the need to protect the interests of other

shareholders does not arise where… all the other shareholders are themselves defendants". Accordingly, I find that the reflective loss principle bars neither the plaintiff's entitlement to relief under s 216 nor the nature of the relief which the plaintiff seeks.

***The appropriate relief***

93 The final issue is the relief that that should be granted. In this regard, the plaintiff seeks a buyout of his shares in Ideal Design Studio. He also desires for his shares to be valued on the assumption that the defendants had not diverted the company's business.[120] Mr Singh agrees that the valuation of the plaintiff's shares should be on the basis that he owns 16.67% of not only Ideal Design Studio, but also of the other five Ideal Design companies.[121] But he suggests that the valuation should factor in a discount to reflect the fact that the plaintiff did not contribute to the capital of the other five companies.[122]

94 Section 216 of the Act confers on the court wide powers to provide relief with the goal of bringing an end or remedying the matters complained of (see *Lim Swee Khiang* at [91]). In this case, it is patent that the parties' relationship has broken down irretrievably such that they can no longer hold shares in the same company. The defendants no longer wish to have the plaintiff as a shareholder or a director of Ideal Design Studio. That is why they put pressure on him to sell his shares to them and why they removed him as a director when he refused (see [13]–[15] above). By the same token, the plaintiff no longer wishes to be a shareholder of Ideal Design Studio. That is why he has commenced these proceedings asking, amongst other things, for the defendants

120 Statement of claim (Amendment No 3) (14 September 2016) at para 35(7).

121 Certified transcript (19 January 2017) at p 89, lines 13–26.

122 Certified transcript (19 January 2017) at p 89, lines 27–31.

to be ordered to by his shares. Therefore, the most appropriate remedy is to have the defendants purchase the plaintiff's shareholding in Ideal Design Studio.

95 With regard to the question of how the plaintiff's shares should be valued, it bears emphasising that the court is not bound by strict accounting principles. Its role is to "determine a price that is fair and just in the particular circumstances of the case" (see *Yeo Hung Khiang v Dickson Investment (Singapore) Pte Ltd and others* [1999] 1 SLR(R) 773 at [72]). In this case, I am of the view that it would be fair and just to value the plaintiff's shares on the assumption that the business that was diverted to the five Ideal Design companies had gone to Ideal Design Studio instead. To do otherwise would allow the defendants to achieve the oppressive purpose for which they incorporated the five companies and diverted Ideal Design Studio's business to them. I also consider that the plaintiffs' shares ought to be valued as at 5 January 2009, which is the day before Ideal Design Renovation Pte Ltd was incorporated.[123] That is the date which I take to be the beginning of the defendants' oppressive course of conduct. The valuation will be conducted with full hindsight, *ie* taking into account the actual business that the other five companies have done up to the date of the valuation.

96 Accordingly, I order that the defendants are to purchase all of the plaintiff's shares in Ideal Design Studio. The purchase price of each share shall be valued by an independent valuer on the following basis:

> (a) The valuer shall ascertain the fair value of the shares as at 5 January 2009 taking into account all matters which have transpired since that date;

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123 Rosa Chew's affidavit of evidence-in-chief (23 February 2016) at para 32.

(b) The valuer shall value the shares on the basis that the first defendant is a going concern;

(c) The valuer shall not apply any discount to the purchase price to account for the fact that the shares represent a minority shareholding in Ideal Design Studio;

(d) The valuer shall have regard to any and all of the financial information and records of Ideal Design Studio from the time of its incorporation until the time the valuer completes the exercise contemplated by this judgment, as the valuer may deem necessary, relevant, or desirable for the purposes of ascertaining the purchase price or otherwise for carrying out the terms of this judgment;

(e) The valuer shall adjust the purchase price to reflect the value of the shares on the assumption that Ideal Design Studio had undertaken all of the business which was diverted away from it to any one or more of the following companies from the date on which each such company was incorporated until the date on which the valuer completes the exercise contemplated by this judgment:

(i) Ideal Design Renovation Pte Ltd;

(ii) Ideal Design Interior Pte Ltd;

(iii) Ideal Design Creations Pte Ltd;

(iv) Ideal Design Werkz Pte Ltd; and

(v) Ideal Design Home Pte Ltd.

(f) The valuer shall make the adjustments referred to at (e) above on the following bases:

(i) That all the revenue and goodwill of the five companies during the period defined in (e) above are to be attributed to the first defendant unless that revenue and/or goodwill arose from a contract which would have been physically impossible for Ideal Design Studio to fulfil during that period; and

(ii) That regard be given to any and all of the financial information and records of the five companies from their respective dates of incorporation until the time the valuer completes the exercise contemplated by this judgment, as the valuer may deem necessary, relevant or desirable for the purposes of ascertaining the purchase price or otherwise for carrying out the terms of this judgment.

**Conclusion**

97 In the premises, I dismiss the plaintiff's claim for commission against Ideal Design Studio. But I grant his application for relief under s 216 of the Act on the basis that the defendants' diversion of business away from Ideal Design Studio amounts to oppressive conduct.

98 I have heard the parties on costs. The plaintiff having succeeded in his action, costs will follow the event. The second and third defendants shall therefore pay to the plaintiff the costs of and incidental to this action. I have, on the parties' application, fixed such costs at $50,000 plus reasonable disbursements, such disbursements to be taxed if not agreed. Ideal Design Studio was for all intents and purposes a nominal defendant. I therefore make no order for costs either in favour of or against it.

Vinodh Coomaraswamy

Judge

Aziz Tayabali Samiwalla (Aziz Tayabali & Associates) for the plaintiff;
Ranjit Singh (Francis Khoo & Lim) for the defendants.