IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No 1099 of 2016

Between

Lin Choo Mee

… *Plaintiff*

And

Lim Sze Eng

… *Defendant*

GROUNDS OF DECISION

[Contract] — [Contractual terms]

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Lin Choo Mee
v
Lim Sze Eng

[2018] SGHC 07

High Court — Suit No 1099 of 2016
Kannan Ramesh J
17–18, 22 August; 29 September 2017

8 January 2018

Kannan Ramesh J:

1 This dispute concerned the interpretation of a settlement agreement dated 28 December 2015 ("the Settlement Agreement"). On 29 September 2017, I allowed the plaintiff's claim and delivered detailed oral grounds. The defendant has now appealed. These are the full grounds of my decision.

Facts

The parties

2 The plaintiff and the defendant are brothers. The latter is the majority shareholder of Tat Leong Investment Pte Ltd ("TLI"), which owns 50.35% of Tat Leong Development (Pte) Ltd ("TLD"), and Tat Leong Petroleum Co (Pte)

Ltd ("TLP"). The plaintiff is a minority shareholder in TLI, TLD and TLP ("the Tat Leong Companies").

Background to the dispute

Events leading up to the Settlement Agreement

3 On 13 November 2014, the plaintiff applied to the court by way of Companies Winding Up Nos 226, 227 and 228 of 2014 for an order that the Tat Leong Companies be wound up under s 254(1)(*i*) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act"), *ie*, on the basis that it was just and equitable to do so: see *Lin Choo Mee v Tat Leong Development (Pte) Ltd and Others and Other Matters* [2015] SGHC 99 ("the Judgment") at [26]. The plaintiff argued *inter alia* that the relationship of mutual trust and confidence between himself and the defendant had broken down; and that he had been wrongfully excluded from participating in the management of the Tat Leong Companies: see the Judgment at [26(a)]–[26(b)] and [72].

4 On 13 April 2015, Steven Chong J (as he then was) ("Chong J") found that a relationship of mutual trust and confidence was central to the existence of the Tat Leong Companies, *ie*, they were quasi-partnerships; and the relationship of trust and confidence as between the parties had disintegrated (the Judgment at [75] and [77]). Chong J also found that the plaintiff had been deliberately excluded from the management of TLD and TLI, in breach of an understanding that he was to have a management role in both companies (the Judgment at [81]). At the time of the Judgment, a court did not have the power to order a buy-out of shares, in lieu of winding up the company, on an application under s 254(1)(*i*) of the Companies Act. Chong J accordingly ordered that the Tat Leong Companies be wound up, although he deferred the winding-up orders for

30 days to allow the parties to reach an amicable settlement in line with the approach taken by the Court of Appeal in *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827. Chong J also ordered the defendant to pay costs fixed at $40,000 excluding disbursements to the plaintiff, with such costs and disbursements to be reflected solely against the value of the defendant's shares in the Tat Leong Companies ("the Costs Order").

5 The parties were unable to settle the dispute within 30 days. The defendant appealed against Chong J's decision in Civil Appeals Nos 101, 102 and 103 of 2015 ("the Appeals"). Pending the Appeals, the defendant applied for a stay of Chong J's orders. On 23 June 2015, Hoo Sheau Peng JC (as she then was) ("Hoo JC") granted a stay of Chong J's orders.

6 On 23 November 2015, at the hearing of the Appeals, the Court of Appeal suggested that the parties attend mediation to resolve their differences.

7 On 28 December 2015, the parties attended mediation and entered into the Settlement Agreement at the conclusion of the mediation.

The Settlement Agreement

8 The Settlement Agreement provided for the defendant to purchase the plaintiff's shares in the Tat Leong Companies for a sum of money to be determined under the terms of the Settlement Agreement ("the Consideration"). The following terms of the Settlement Agreement were material in this case.

9 Clause 3 of the Settlement Agreement provided as follows:

> 3. The consideration for [the plaintiff's] shareholding in the three companies shall be *the aggregate of the following*:

> (a) in relation to the shareholding in [TLD] and [TLI] the consideration shall be 23.44% of the net tangible asset value of [TLD]; and
>
> (b) in relation to the shareholding in [TLP], 14.81% of the net tangible asset value of [TLP].

[emphasis added]

10 Clauses 4 to 8 provided for the calculation of the net tangible asset value ("NTAV") of TLD and TLP. Notably, cl 5 provided as follows:

> The [NTAV] of [TLP] shall be [$279,990 - $511,320 + *the Sale Price of #03-11, Far East Plaza, 14 Scotts Road*].
>
> [emphasis added]

Clause 5 thus set out a formula for determining the NTAV of TLP which referred to the sale price of #03-11, Far East Plaza ("the Far East Plaza Unit"). The Settlement Agreement therefore envisioned that TLP's NTAV, and hence, in turn, the total sum of the Consideration under cl 3, would only be determined once the Far East Plaza Unit had been sold. The difficulties in the sale of this property are the principal source of this dispute.

11 Clause 9 provided for Colliers International Singapore ("Colliers") to be appointed as the agent for the sale of the Far East Plaza Unit.

12 Clause 10 addressed the implementation of the Settlement Agreement. Clauses 10(b) and 10(c), which are of central importance in this case, stated:

> 10. This agreement shall be implemented as follows:
>
> …
>
> (b) The agent for the sale of [the Far East Plaza Unit] will be appointed within 14 days of the date hereof. … *The sale of the said property is to be completed within six months hereof.*

> (c) The payment of the consideration to [the plaintiff] *shall be made*, whether by way of transfer of his shareholding or by capital reduction … *within 9 months hereof or within 1 month of the completion of sale of both 27 Jalan Rimau and [the Far East Plaza Unit], whichever is earlier.* …
>
> [emphasis added]

13 Under cl 11 of the Settlement Agreement, the plaintiff and his family were to move out of 27 Jalan Rimau, their home of 25 years, within one month after Colliers provided a valuation of 25 and 27 Jalan Rimau. 25 and 27 Jalan Rimau were family properties owned by TLD.

14 Clause 12 stated that "[the defendant] agrees and will procure that the [Tat Leong Companies] will not deal with their assets or take on any further liabilities *save as in the ordinary course of business* … [emphasis added]". It further provided that the defendant would procure his solicitors "to hold the net sale proceeds of [the Far East Plaza Unit and 27 Jalan Rimau] as stakeholders until [the plaintiff] is paid his consideration in full…".

15 Clause 13 provided that the parties would not have claims against each other "in relation to any matter arising from or connected to the subject matter of [the Appeals], *save for any costs orders already made* [emphasis added]".

16 Clause 14 provided that the parties would refer "any dispute arising from the implementation of [the Settlement Agreement]" to the mediator who had conduct of the mediation on 28 December 2015 ("the Mediator").

Events after the Settlement Agreement

17 Between January and March 2016, the Far East Plaza Unit was marketed for sale in the open market. However, no offers were made for the Far East Plaza Unit during this period.

18 On 30 March 2016, in accordance with cl 11 of the Settlement Agreement, the plaintiff and his family moved out of 27 Jalan Rimau.

19 The parties subsequently agreed to auction the Far East Plaza Unit in April and May 2016 at a reserve price of $2.2m. This reserve price was based on an indicative valuation of the Far East Plaza Unit at $2.1–$2.2m, which Colliers provided on 29 March 2016. Auctions were held on 20 April and 26 May 2016 but both were unsuccessful. No bid was made at the auctions for the Far East Plaza Unit at the opening price of $2.2m.

20 By a letter dated 5 July 2016, the plaintiff made several proposals to the defendant. It should be noted that by this time, the six-month period for the completion of the sale of the Far East Plaza Unit stipulated in cl 10(b) of the Settlement Agreement had expired on 28 June 2016. The plaintiff proposed that Colliers be discharged as the agent for the sale of the Far East Plaza Unit and another firm appointed to perform an independent valuation of the property; and, in the alternative, that the NTAV of TLP be assessed based on Colliers' indicative valuation of the Far East Plaza Unit.

21 By a letter dated 8 July 2016, the defendant's solicitors replied stating that the defendant did not agree to the plaintiff's proposals in his letter of 5 July 2016. The defendant counter-proposed that the parties auction the Far East Plaza Unit in July 2016 at the slightly reduced reserve price of $2.1m.

22 By a letter dated 12 July 2016, the plaintiff's solicitors wrote to the Mediator stating that a dispute between the parties had arisen from the implementation of the Settlement Agreement; and, requested that the dispute be referred to the Mediator pursuant to cl 14 of the Settlement Agreement (see [16] above). A mediation session was fixed for 9 September 2016. However, this was cancelled on 7 September 2016 because the Mediator fell ill.

23 By a letter dated 19 September 2016 from his solicitors, the plaintiff requested the defendant to pay him the sum of $1,104,072.05, in exchange for the plaintiff's shares in TLI. This figure was arrived at by applying the formula for calculating the NTAV of TLD set out in cll 4, 6, 7 and 8 of the Settlement Agreement, excluding one component of the formula (the value of two Chinese subsidiaries of TLD) that was disputed at the time. Notably, the plaintiff's request was made on the basis that the Consideration was severable into (1) the sum due under cl 3(a), for his shares in TLI and TLD and (2) the sum due under cl 3(b), for his shares in TLP (see [9] above).

24 By a letter from his solicitors dated 22 September 2016, the defendant replied to the plaintiff's letter dated 19 September 2016 stating that he did not agree to the plaintiff's proposal therein. The defendant asserted that the Settlement Agreement did not provide for part-payment of the Consideration; and that the plaintiff's failure to reply to his proposal in the 8 July 2016 letter, to auction the Far East Plaza Unit at the reserve price of $2.1m, had held up the sale process and delayed the conclusion of the Settlement Agreement.

25 By a letter dated 4 October 2016, the plaintiff's solicitors demanded that the defendant complete the transfer of the plaintiff's shares in TLD and TLI for the sum of $1,152,486.35. It was undisputed in this suit that this sum reflects

23.44% of TLD's NTAV as determined under the Settlement Agreement; and was to be paid for the plaintiff's shares in TLD and TLI under cl 3(a) of the Settlement Agreement (see [9] above), albeit the defendant's position was that the Settlement Agreement provided for payment of the Consideration as one lump sum and did not provide for part-payment of the same (see [39(a)] below). The letter also indicated that the plaintiff was agreeable to auctioning the Far East Plaza Unit at the reserve price of $2.1m, but only until 31 December 2016. If the property was not sold by then, the plaintiff proposed assessing the NTAV of TLP based on the reserve price of $2.1m.

26 By a letter from his solicitors dated 6 October 2016, the defendant maintained that he was not obliged to make part-payment of the Consideration. He also stated that he would make the necessary arrangements for the Far East Plaza Unit to be auctioned at the reserve price of $2.1m. He did not agree to the use of the reserve price to determine the NTAV of TLP in the event that the further auctions of the Far East Plaza Unit were unsuccessful.

27 On 17 October 2016, the plaintiff commenced this suit.

28 On 27 October 2016, 24 November 2016 and 15 December 2016, the Far East Plaza Unit was auctioned at the reserve price of $2.1m. Again, no bids were made at any of the auctions for the property at the opening price of $2.1m.

29 By a letter from his solicitors dated 10 January 2017, the plaintiff proposed lowering the reserve price for the Far East Plaza Unit at auction to $1.5m; and stated that he would be willing to consider a bid below $1.5m. The defendant rejected this proposal by a letter dated 11 January 2017 from his solicitors, proposing to retain the reserve price at $2.1m. The defendant

reaffirmed his proposal to retain the reserve price at $2.1m after a further letter from the plaintiff's solicitors regarding the reserve price.

30 On 19 January 2017, the Far East Plaza Unit was again auctioned at the reserve price of $2.1m; and yet again, no bid was made for the property.

31 On 20 January 2017, an offer was made for the Far East Plaza Unit at the price of $1.1m (after an earlier offer on the same day at the price of $1m). This appeared to be the only offer the property had received.

32 On 3 February 2017, Chong J heard an application by the plaintiff for partial summary judgment, *viz*, for an order that the defendant complete the disposal of the plaintiff's shares in TLD and TLI for the sum of $1,152,486.35 (see [25] above). Chong J dismissed the plaintiff's application.

33 By a letter dated 15 February 2017, the plaintiff's solicitors wrote to Colliers requesting, *inter alia*, a fresh indicative valuation of the Far East Plaza Unit and a recommendation on a reserve price for the sale of the property at auction.

34 By an email dated 16 February 2017, Colliers wrote to the defendant's solicitors stating that the indicative valuation of the Far East Plaza Unit was $2–$2.2m, and recommended a reserve price of $1.6m. The defendant's solicitors forwarded this email to the plaintiff's solicitors on 23 February 2017. In the interim, by a letter dated 17 February 2017, the plaintiff's solicitors wrote to the defendant's solicitors asserting that the defendant was "deliberately stalling the sale of the property" and stated that the plaintiff would inform Colliers to auction the Far East Plaza Unit at the reserve price of $1.1m. On the same day, the plaintiff purported to instruct Colliers by letter to auction the Far East Plaza

Unit at the reserve price of $1.1m. However, the defendant objected to this and the property was placed for auction at the reserve price of $2.1m on 22 February 2017. Again, there was no bid at the opening price of $2.1m.

35 On 27 April, 25 May, 21 June and 27 July 2017, the Far East Plaza Unit was again auctioned at the reserve price of $2.1m; and, once again, there was no opening bid for the property at any of these auctions at the opening price. In fact, no bids at all were received for the property.

The parties' cases

36 The parties agreed that the Settlement Agreement contained two implied terms: (1) a term that the parties should "take reasonable endeavours and/or do all that may be necessary to give effect to the spirit and intent of the Settlement Agreement and to implement the terms of the Settlement Agreement" ("the Reasonable Endeavours Term"); and (2) a term that "the sale price of the Far East Plaza Unit shall be reasonable" ("the Reasonable Price Term").

37 The plaintiff's case was as follows:

(a) First, the defendant breached cl 10(c) of the Settlement Agreement and the Reasonable Endeavours Term by failing to complete the disposal of the plaintiff's shares in TLD and TLI and to pay the sum of $1,152,486.35 to the plaintiff within nine months of the date of the Settlement Agreement, *ie*, 28 September 2015.

(b) Secondly, the defendant breached cll 5, 10(b) and 10(c) and the Reasonable Endeavours Term in failing to take reasonable steps to conclude the sale of the Far East Plaza Unit within six months from the date of the Settlement Agreement, *ie*, 28 June 2016, or thereafter.

(c) Thirdly, the defendant breached cl 12 of the Settlement Agreement by causing TLD to transfer $150,000 to Tat Leong Travel Pte Ltd ("TLT"). This transaction was outside of TLD's ordinary course of business.

(d) Fourthly, the defendant breached cl 13 of the Settlement Agreement by failing to satisfy the Costs Order.

38 The plaintiff averred that the defendant's breaches of the Settlement Agreement caused him loss. He sought orders that the defendant complete the disposal of (1) his shares in TLD and TLI, for the sum of $1,152,486.35 and (2) his shares in TLP, for such sum as the court determined; and, alternatively, for damages to be assessed. He also sought injunctions to restrain the defendant from dealing with or disposing of the assets of the Tat Leong Companies and/or taking on further liabilities of the said companies save in the ordinary course of business, pending completion of the disposal of the plaintiff's shares. Further, he sought the sum of $40,000 plus disbursements in respect of the Costs Order.

39 The defendant denied breaching the Settlement Agreement and averred the following in response to the plaintiff's allegations:

(a) First, he did not breach the Settlement Agreement by failing to complete the disposal of the plaintiff's shares in TLD and TLI specifically, because the Settlement Agreement did not provide for part-payment of the Consideration. He was not required to purchase the plaintiff's shares in TLD and TLI when the Far East Plaza Unit had not been sold.

(b) Secondly, he had taken all reasonable steps to conclude the sale of the Far East Plaza Unit.

(c) Thirdly, he funded the transfer of the $150,000 from TLD to TLT, *ie*, the money came from his personal funds; and the transfer was made to meet a requirement of the Singapore Tourism Board ("the STB") that TLT had to maintain a minimum paid-up capital of $100,000.

(d) Finally, cl 13 of the Settlement Agreement only preserved the plaintiff's right to payment for any costs orders made in the Appeals and there were no such costs orders. Clause 13 did not preserve the plaintiff's right to payment in respect of the Costs Order.

The issues

40 The following issues fell to be determined:

(a) First, did the Settlement Agreement provide for part-payment of the Consideration (such that the defendant was required to complete the disposal of the plaintiff's shares in TLD and TLI, even if the NTAV of TLP was undetermined because the Far East Plaza Unit had not been sold) ("Issue 1")?

(b) Secondly, did the defendant breach the Settlement Agreement by failing to (take reasonable steps to) sell the Far East Plaza Unit ("Issue 2")?

(c) Thirdly, did the defendant breach the Settlement Agreement by causing TLD to transfer $150,000 to TLT ("Issue 3")?

(d) Finally, did the defendant breach the Settlement Agreement by failing to pay the Costs Order ("Issue 4")?

I addressed Issues 1 to 4 in turn.

Issue 1: The severability of the Consideration

The parties' submissions

41 The plaintiff argued that the defendant's obligation under cl 10(c) of the Settlement Agreement to pay him the Consideration was a divisible or severable obligation. The obligation to pay for the TLD and TLI shares was independent of the obligation to pay for the TLP shares for the following reasons:

(a) First, cl 3 of the Settlement Agreement (see [9] above) contained two sub-provisions, cll 3(a) and 3(b), which dealt with the consideration for the plaintiff's shares in (1) TLD and TLI and (2) TLP separately.

(b) Secondly, cll 4, 6, 7 and 8 of the Settlement Agreement set out the formula for calculating the NTAV of TLD for the purposes of cl 3(a). The formula for determining the NTAV of TLP, which referred to the sale price of the Far East Plaza Unit, was set out separately in cl 5 of the Settlement Agreement (see [10] above).

Accordingly, the plaintiff submitted that the defendant breached cl 10(c) of the Settlement Agreement, by failing to fulfil his independent obligation to pay the plaintiff $1,152,486.35, in consideration of the shares in TLD and TLI, within nine months of the date of the Settlement Agreement, *ie*, by 28 September 2015.

42 The defendant denied that his obligation under cl 10(c) of the Settlement Agreement was divisible or severable. He claimed the Settlement Agreement provided for the Consideration to be paid in one lump sum.

My decision

43 I agreed with the defendant on this issue. In my judgment, cl 10(c) of the Settlement Agreement provided for the Consideration to be paid to the plaintiff in a single lump sum for the following reasons.

(a) First, on a plain and natural reading, the Settlement Agreement did not contemplate part payment of the Consideration. Clause 3 defined the Consideration as "the aggregate of" two sums relating to the shares in (1) TLD and TLI and (2) TLP respectively (see [9] above). Clause 10(c) then provided for the defendant to pay the Consideration without differentiating between the sum for the TLD and TLI shares and the sum for the TLP shares (see [12] above). On the contrary, cl 10(c) stated a single long-stop date of 9 months for payment of the Consideration. This strongly indicated that only one completion date involving the single payment to the plaintiff was contemplated.

(b) Secondly, cl 12 of the Settlement Agreement also indicated that the defendant's obligation to pay the Consideration was indivisible. It provided that the defendant would procure his solicitors "to hold the net sale proceeds of [the Far East Plaza Unit and 27 Jalan Rimau] as stakeholders until [the plaintiff] is paid his consideration in full …" (see [13] above). This indicated the parties only envisioned a single payment of the Consideration. Otherwise, there would have been no need for the

sale proceeds to be held by the defendant's solicitors instead of being paid immediately to the plaintiff as part of the Consideration.

44 In arriving at this reading of cl 10(c), I was fortified by the views that Chong J expressed in dismissing the plaintiff's application for partial summary judgment (see [32] above). Chong J observed that "the consideration contemplated [under cl 10(c)] is the total consideration for all 3 companies". The plaintiff submitted that these observations were made based on affidavit evidence, in the context for an application for summary judgment, and I was not bound by the same. However, while these observations were made in the context of a summary judgment application, that did not in any way diminish their significance as the issue at hand was the proper construction of the terms of the Settlement Agreement, a question essentially of law. I should add that I heard nothing in evidence that would displace the construction of cl 10(c) which Chong J endorsed. I should also add that I found it inconceivable that the parties would have intended a divisible payment of the Consideration when the purpose of the Settlement Agreement was to achieve a full and complete parting of ways. That would surely have been achieved by the transfer of all of the plaintiff's shares in the Tat Leong Companies in return for payment of the Consideration.

45 In summary, I did not accept that the Consideration was severable such that the defendant's obligation to pay for the plaintiff's shares in TLD and TLI was independent of his obligation to pay for the shares in TLP.

46 I then turned to the issue of the failure to sell the Far East Plaza Unit. This to me was the core issue.

Issue 2: The failure to sell the Far East Plaza Unit

The parties' submissions

47 The plaintiff's case here had two main prongs:

(a) First, the defendant breached his absolute obligation, under cll 10(b) and 10(c) of the Settlement Agreement, to sell the Far East Plaza Unit by 28 June 2016 or by 28 September 2016 at the latest.

(b) Secondly, the defendant breached the Reasonable Endeavours Term by insisting that the reserve price for the sale of the Far East Plaza Unit at auction be no less than $2.1m despite the fact that no offers were made for the property at that price at the numerous auctions of the property that were conducted.

48 The defendant made the following submissions:

(a) First, the defendant denied that he had an absolute duty to sell the Far East Plaza Unit within six months regardless of the sale price, on the basis that this would contradict the Reasonable Price Term (see [36] above). Since it was an implied term of the Settlement Agreement that the sale price had to be reasonable, the defendant was not obliged to sell the Far East Plaza Unit by 28 June 2016 at any price.

(b) Secondly, the defendant denied that he breached the Reasonable Endeavours Term. He argued that maintaining the reserve price for the sale of the Far East Plaza Unit at auction at $2.1m was reasonable. In this regard, the defendant relied on the following pieces of evidence:

(i) First, the two indicative valuations of the Far East Plaza Unit which Colliers provided in March 2016 and February 2017 respectively (see [19] and [34] above), wherein Colliers valued the property at between $2–$2.2m.

(ii) Secondly, a further valuation of the Far East Plaza Unit as at 2 May 2017 from CKS Property Consultants Pte Ltd ("the CKS Valuation") which the defendant obtained. According to the CKS Valuation, the market value of the Far East Plaza Unit was $2.2m while its forced sale value was $1.87m.

(iii) Finally, records of recent sales of Far East Plaza units.

My decision

49 I found that cl 10(b) imposed an absolute obligation on the defendant to complete the sale of the Far East Plaza Unit by 28 June 2016 for two reasons.

(a) First, cl 10(b) plainly and expressly stated that the sale of the Far East Plaza Unit "is to be completed within six months hereof" (see [12] above). On its face, the clause clearly stipulated that the sale was to be completed by 28 June 2016.

(b) Secondly, I found that the plain and natural reading of cl 10(b) fitted neatly into the arrangements under the Settlement Agreement:

(i) Clause 10(c) provided that the Consideration should be paid to the plaintiff "within 9 months hereof or within 1 month of the completion of sale of both 27 Jalan Rimau and [the Far East Plaza Unit], whichever is earlier" (see [12] above). Based on the clear language of the clause, I found that cl 10(c) imposed

an absolute obligation on the defendant to pay the Consideration to the plaintiff by no later than 28 September 2016; provided, of course, that if *both* the Far East Plaza Unit and 27 Jalan Rimau were sold before that, the Consideration would have become payable earlier, *ie*, one month after the completion of such sales. Notably, while cl 10(b) provided for the sale of the Far East Plaza Unit to be completed within six months, it would not necessarily have been the case that the Consideration would have to be paid to the plaintiff within one month thereafter under cl 10(c). That would only have been the case if *both* the Far East Plaza Unit and 27 Jalan Rimau were sold. The defendant was not obliged to sell 27 Jalan Rimau under the Settlement Agreement. If he chose not to do so, the nine months deadline in cl 10(c) would apply. There was thus no inconsistency between cll 10(b) and 10(c) on my interpretation of these provisions.

(ii) It was undisputed that the parties envisioned and intended (part of) the sale proceeds of the Far East Plaza Unit to be applied towards the payment of the Consideration, and this was also clear from cl 12 (see [13] and [43(b)] above).

In this light, it was sensible to interpret cl 10(b) as imposing a strict obligation on the defendant to sell the Far East Plaza Unit within six months. Given that the defendant was required to pay the Consideration to the plaintiff by 28 September 2016, and the parties intended that he would use the sale proceeds of the Far East Plaza to do so, it then made sense that the Far East Plaza Unit should be sold by 28 June 2016.

50 In my judgment, the Reasonable Price Term did not affect this analysis:

(a) First, I did not accept the defendant's submission that imposing an absolute obligation on him to sell the Far East Plaza Unit by 28 June 2016 would contradict the Reasonable Price Term (see [48(a)] above). In my judgment, a "reasonable price" would simply be the price the Far East Plaza Unit commanded in the market in the period allowed for the sale of the property in the Settlement Agreement, *ie*, 6 months. That was the bargain that was agreed as *per* cl 10(b) of the Settlement Agreement, *ie*, to complete the sale of the Far East Unit within 6 months. The reasonable price for a property is not an absolute number. It is a number that moves with the circumstances and situation of the property market at any given time. It seemed clear to me that the parties had contractually allowed for a period which they felt was fair to achieve a reasonable price for the Far East Plaza Unit so that their parting of ways would see a reasonably prompt conclusion. Hence, the 6-month period in cl 10(b) and the long-stop date of 9 months in cl 10(c). The defendant argued against this interpretation of a "reasonable price" by raising a hypothetical example, where only a $1 offer was made for the property in the six months period for sale. However, this hypothetical was farfetched and extreme and would surely not have been in the contemplation of the parties. Notably, an offer of $1.1m was made for the Far East Plaza Unit in January 2017 (see [31] above). The defendant's hypothetical thus did not persuade me that an alternative interpretation of a "reasonable price" was preferable.

(b) Secondly, in any event, it is trite that an implied term cannot contradict an express term of the contract: see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [98]. The plain and express meaning of cl 10(b) imposed a strict obligation on the defendant to sell the Far East Plaza Unit by 28 June 2016. If the Reasonable Price Term was inconsistent with this, then that would simply mean that the Reasonable Price Term could not be implied into the Settlement Agreement.

51 Moreover, it seemed clear from the evidence that the objective intention of the parties, in entering into the Settlement Agreement, was to reach closure on their disagreements, by disengaging from their relationships in the Tat Leong Companies within a specific time period defined in the Settlement Agreement. Surely, the parties could not have envisaged a situation of waiting in vain to achieve a price for the Far East Plaza Unit which the market was not prepared to pay, thereby leaving their differences unresolved. The defendant's submissions that he was not under an absolute obligation to sell the Far East Plaza Unit by a firm date ran counter to that objective. Indeed, it was in direct opposition to the language of cll 10(b) and (c).

52 In conclusion, cl 10(b) obliged the defendant to sell the Far East Plaza Unit by 28 June 2016 at the price it commanded in the market in the period allowed for the sale under the Settlement Agreement. He failed to do so. I found that the defendant thereby breached cl 10(b) of the Settlement Agreement.

53 In any event, even if the defendant was not under an absolute obligation to sell the Far East Plaza Unit by 28 June 2016, I found that he breached the

Reasonable Endeavours Term in refusing to agree to a lowering of the reserve price. The chronology of events was as follows:

(a) In April and May 2016, the Far East Plaza Unit was put up for auction twice at a reserve price of $2.2m. No bids were made for the property (see [19] above).

(b) In October, November and December 2016, the Far East Plaza Unit was auctioned at the marginally lower reserve price of $2.1m. No bids were made at any of these auctions for the property (see [28] above).

(c) In January 2017, the plaintiff proposed lowering the reserve price to $1.5m. The defendant rejected this proposal (see [29] above). The property was again auctioned at $2.1m; and yet again, no opening bids were made at the auction (see [30] above).

(d) Critically, on 16 February 2017, Colliers recommended lowering the reserve price to $1.6m (see [34] above). The defendant did not accept this recommendation and the property was again auctioned at $2.1m. No opening bid was made for the property once again.

(e) In April, May, June and July 2017, the Property was auctioned yet again at $2.1m and did not receive opening bids (see [35] above).

As noted earlier, the spirit and intent of the Settlement Agreement was for the parties to achieve closure within a defined time frame, with the plaintiff relinquishing his interests in the Tat Leong Companies in exchange for payment (see [51] above). As part of that process, it was incumbent on the defendant to sell the Far East Plaza Unit relatively swiftly. After the Far East Plaza Unit had received no bids, at multiple auctions, at the reserve price of $2.1m, the

defendant ought reasonably to have reduced the reserve price. That would have facilitated the sale of the property. At the very latest, he should have reduced the reserve price on or about 16 February 2017 when Colliers recommended a reserve price of $1.6m. However, the defendant refused to do so. In the light of the spirit and intent of the Settlement Agreement, this was plainly unreasonable conduct. The unfairness of this was apparent given that the plaintiff had fulfilled his obligation under cl 11 of the Settlement Agreement by moving out of 27 Jalan Rimau, his home of 25 years (see [18] above). Yet, the defendant refused to sell the Far East Plaza Unit for less than $2.1m and to pay any part of the Consideration to the plaintiff until the Far East Plaza Unit was sold (at that price).

54 I did not accept the defendant's arguments that it was reasonable for him to maintain the reserve price at $2.1m (see [48(b)] above):

(a) First, the defendant relied on Colliers' indicative valuations of the Far East Plaza Unit at between $2–$2.2m to argue that the $2.1m reserve price was reasonable. However, I noted that the indicative valuations were merely desktop valuations, *ie*, they were not performed after a physical inspection of the property. Moreover, their cogency was belied by the fact that no bids were made for the Far East Plaza Unit when it was put up for auction, on multiple occasions, at a reserve price of $2.1m. Indeed, even Colliers, who provided the initial indicative valuation, recognised this by suggesting that the reserve price be lowered to $1.6m. Yet, the defendant stubbornly stuck to his guns.

(b) Secondly, as for the CKS Valuation, the defendant did not call CKS as a witness. The cogency of the CKS Valuation was thus not tested at trial. There was hence no basis for me to rely on the CKS Valuation.

(c) Thirdly, in relation to the records of recent sales of units in Far East Plaza, the defendant himself contended that the price for each unit would depend on the location and size of the unit. I did not consider that the transactions provided strong basis for assessing whether the $2.1m reserve price was reasonable. Further, if the defendant intended to rely on recent sale transactions to argue that the $2.1m reserve price was reasonable, that must surely have been a matter for expert evidence, which the defendant did not adduce. In any event, the crucial point was that no bids were made when the Far East Plaza Unit was placed on auction on multiple occasions at $2.1m. In this regard, I noted that, despite a suggestion made by the plaintiff to replace Colliers with another marketing agent, the defendant refused (see [20]–[21] above). This suggested that the defendant was satisfied with the marketing efforts of Colliers. That in turn suggested that the price of $2.1m did not reflect the Far East Plaza Unit's market value since the property remained unsold at the asking price despite Colliers' efforts.

55 Finally, in respect of cl 10(c) of the Settlement Agreement, I found that this provision obliged the defendant to pay the Consideration to the plaintiff by 28 September 2016 (see [49(b)(i)] above). The defendant did not do so. I thus found that he thereby breached cl 10(c) of the Settlement Agreement.

56 I then turned to the issue of the transfer of the $150,000 to TLT.

Issue 3: The transfer of $150,000 to TLT

The parties' submissions

57 The plaintiff argued that the defendant breached cl 12 of the Settlement Agreement by procuring TLD to transfer $150,000 to TLT. According to the plaintiff, this transfer was not "in the ordinary course of business" because its purpose was to allow TLT to pay out large sums of money to the defendant and his wife in the form of directors' remuneration and bonuses.

58 The defendant submitted, however, that the aim of the transfer was to ensure that TLT satisfied the $100,000 minimum paid-up capital requirement imposed by the STB. Moreover, the transfer was not unprecedented as TLD had injected funds into TLT for the aforementioned purpose over the years.

My decision

59 I found on the balance of probabilities that the defendant did not breach cl 12 of the Settlement Agreement, for the following reasons:

(a) First, the defendant tendered photocopies of a cheque and a receipt evidencing that he had paid $150,000 to TLD. The cheque and receipt were dated 23 May 2016, and the transfer of $150,000 took place on 1 July 2016. This indicated that the sum transferred to TLT had derived from the defendant's own funds, as the defendant claimed (see [39(c)] above), and that he had not been stripping TLD of its assets.

(b) Secondly, the plaintiff noted that the defendant's wife drew a salary of $50,360 from TLT in 2016 although TLT only made a gross profit of $3,316 in 2016. But the evidence showed that the directors' remuneration and bonuses had fallen from $111,936 to $50,360 in line

with TLT's declining profits. I did not consider it unreasonable that the defendant's wife was drawing her salary despite TLT's declining profits as she rendered services to TLT such as bringing tour groups on trips.

(c) Thirdly, the defendant testified that he had returned his salaries from TLT for the years 2015 and 2016. This was reflected in TLT's management accounts in 2016. The defendant explained that the sum was reflected as a loan in TLT's accounts as he only started returning his salary from July 2016 (until July 2017). This again undercut the plaintiff's case that the defendant had been enriching himself at the plaintiff's expense by drawing remuneration from TLT.

60 I therefore found that the defendant did not breach cl 12 of the Settlement Agreement. I then turned to the issue of the Costs Order.

Issue 4: The scope of cl 13

61 As noted at [15] above, cl 13 of the Settlement Agreement provided that the parties would not have any claims against each other "in relation to any matter arising from or connected to the subject matter of [the Appeals], *save for any costs orders already made*" [emphasis added]. I shall refer to the italicised portion of cl 13 as "the Carve-Out".

The parties' submissions

62 The plaintiff submitted that the Carve-Out preserved his right to the costs of the winding-up applications. At the time of the Settlement Agreement, there were no other costs order apart from the Costs Order and accordingly the Carve-Out had to refer to the Costs Order.

63 The defendant submitted that the Carve-Out would only have referred to costs orders made in the Appeals. However, no such costs orders were made. Accordingly, no costs were payable to the plaintiff under cl 13.

My decision

64 I found that the Carve-Out referred to the Costs Order, for two reasons:

(a) First, the Costs Order plainly fell within the scope of the Carve-Out as it was "already made" by the time of the Settlement Agreement and was connected with the subject matter of the Appeals, which were the winding-up orders.

(b) Secondly, I did not accept that the Carve-Out could only refer to costs orders made in the Appeals. I should note that it was initially not very clear what the defendant's case on the Carve-Out was, because the defendant suggested in written closing submissions that the Carve-Out could have referred to cost orders made by Hoo JC, in dismissing the plaintiff's application to discharge Hoo JC's earlier orders for a stay of execution pending appeal (see [5] above). Nonetheless, counsel for the defendant, Ms Hui Choon Wai ("Ms Hui"), clarified during oral closing submissions that it was not her case that the Carve-Out referred to those costs. Her case was simply that cl 13 superseded the orders made in the winding-up applications, including the Costs Order. I did not accept this submission for two reasons:

(i) First, the defendant's interpretation of cl 13 would have rendered the clause otiose because no costs orders were made in the Appeals. The parties would have known this when they entered into the Settlement Agreement.

(ii) Secondly, cl 1(b) of the Settlement Agreement expressly provided that "each party shall bear their own costs of [the Appeals]". In other words, the parties expressly dealt with the costs of the Appeals under cl 1(b). This indicated that they did not intend to refer to the same under cl 13.

When I sought clarification from the defendant as to what costs the Carve-Out was intended to cover, he was unable to provide a cogent response. Instead, he suggested that the Costs Order only had to be paid if the Tat Leong Companies were liquidated and also stated that he had disagreed with the Costs Order and therefore appealed. The defendant did not give any explanation why the Carve-Out was included in cl 13. On the other hand, the plaintiff was clear and unequivocal that the Carve-Out was intended "[t]o cover my---the 40,000". His position, when assessed against the objective facts, seemed to be true.

65 As noted at [37(d)] above, the plaintiff's case was not merely that the Carve-Out referred to the Costs Order, but that the defendant breached cl 13 in failing to pay the Costs Order. After I delivered oral grounds on 29 September 2017, Mr Narayanan Sreenivasan, SC ("Mr Sreenivasan"), counsel for the plaintiff, drew my attention to the fact that the defendant did not plead in his defence that even if the Carve-Out referred to the Costs Order, he did not breach cl 13 because cl 13 did not create an independent obligation to pay the Costs Order. Ms Hui readily conceded this, adding that there was no defence that cl 13 did not impose an obligation to pay. She stated that the only defence was that the Carve-Out did not preserve the plaintiff's right to claim the Costs Order, *ie*, that it did not apply to the Costs Order. I therefore made the further finding that

the defendant had breached cl 13 of the Settlement Agreement in failing to pay the Costs Order.

The appropriate relief

66 I then turned to the issue of the appropriate relief. Given my finding that the Consideration was not severable (see [45] above), I decided that it was not appropriate to award the plaintiff the separate relief, in respect of the shares in TLD and TLI and those in TLP, which the plaintiff claimed (see [38] above).

67 The present trial was not bifurcated. Yet the plaintiff did not lead any evidence as to the price at which the Far East Plaza Unit would have been sold if the defendant did not breach cl 10(b) of the Settlement Agreement. However, during oral closing submissions, Ms Hui rightly indicated that she would not be taking any objection concerning the lack of bifurcation if I concluded that the defendant was liable and ordered that damages be assessed separately.

68 I therefore entered judgment for the plaintiff with damages to be assessed for the defendant's breach of cll 10(b) and 10(c) of the Settlement Agreement in failing to complete the sale of the Far East Plaza Unit by 28 June 2016 and to pay the Consideration to the plaintiff by 28 September 2016.

69 In view of my conclusion that the defendant did not breach cl 12, I was not inclined to grant the injunctions which the plaintiff sought (see [38] above).

70 In relation to the Costs Order, the plaintiff prayed for an order that the defendant pay the Costs Order. I was initially not inclined to make such an order because the Costs Order had already been made. It seemed that the plaintiff

could simply seek enforcement of the same. However, after I delivered my oral grounds, Mr Sreenivasan, apart from making the point noted at [65] above, also pointed out that the Costs Order did not in fact direct payment in the usual way. It directed that the Costs Order was to be debited against the defendant's shares in the Tat Leong Companies in their winding up (see [4] above). Hence, it was open to the plaintiff to enforce the Costs Order in the usual way.

71 As the Costs Order was for payment of the liquidated sum of $40,000 and disbursements to be agreed if not taxed, I did not think it was appropriate to enter judgment for a liquidated amount. I therefore varied my oral judgment to provide for interlocutory judgment for breach of cl 13 of the Settlement Agreement in failing to pay the sum provided for under the Costs Order.

72 Finally, on costs, while the defendant succeeded on some issues, the plaintiff succeeded on the main issue in this case, *ie*, whether the defendant breached his obligations under the Settlement Agreement by failing to sell the Far East Plaza Unit and pay the Consideration to the plaintiff. I therefore awarded 90% of the costs of the proceedings to the plaintiff on a standard basis.

Kannan Ramesh
Judge

Narayanan Sreenivasan SC and Tan Kai Ning Claire (Straits Law Practice LLC) for the plaintiff;

Hui Choon Wai and Ho Si Hui (Wee Swee Teow LLP) for the defendant.