IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 90

Suit No 238 of 2017

Between

Wei Fengpin

… *Plaintiff*

And

(1) Low Tuck Loong Raymond
(2) Sim Eng Chuan
(3) Lateral Solutions Pte Ltd

… *Defendants*

JUDGMENT

[Companies] — [Oppression] — [Minority shareholders] — [Whether conduct oppressive] — [Unclean hands] — [Whether oppression claim can be continued where company in liquidation]

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v
Low Tuck Loong Raymond and others

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15 April 2021 Judgment reserved.

Audrey Lim J:

Introduction

1 The plaintiff ("Wei"), first defendant ("Low") and second defendant ("Sim") are equal shareholders of the third defendant Lateral Solutions Pte Ltd ("Company"). At the material time, they were the only directors of the Company. At an extraordinary general meeting ("EGM") in September 2017, Low and Sim (collectively "the Defendants", where appropriate) passed a resolution to remove Wei as a director. On 15 March 2017, Wei commenced this action ("the Suit") against them under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"), claiming that they had acted in a manner that was unfair, oppressive or prejudicial to him. The Company is a nominal defendant. On 5 May 2020, the Defendants applied to wind up the Company on the basis that it

was insolvent and unable to pay its debts. Wei did not object to the application and a winding up order was granted on 12 June 2020 in HC/CWU 130/2020.

2 Apart from whether such acts under s 216 of the CA were made out, this case presents the issues of whether an application can be made or continued and whether reliefs can be granted under s 216 where the Company is in liquidation.

Background and related entities

3 Sim set up the Company as a sole proprietorship in 1996, before it was converted into a company in 2005 with him and Edwin Seah ("Seah") as its directors and shareholders. In 2006, the Company began supplying polymer parts ("Parts") to Apple Inc ("Apple"), sourcing the Parts from suppliers such as Sei Woo Polymer Technologies Pte Ltd ("SWP"). Low joined the Company in 2007 as a shadow director and subsequently became a director in 2012.[1]

4 Wei joined SWP in 1998, then managed by Low's father ("Low YK"). He became the general manager of two other entities which were wholly owned by Sei Woo (China) Polymer Technologies Pte Ltd ("SW China"), a related company of SWP.[2] In July 2003, Wei left to set up Tianjin Synergy Hanil Precision Polymer Technologies Co Ltd ("SH") to manufacture Parts. He also incorporated Synergy Hanil (S) Polymer Technologies Pte Ltd ("SHS") and was its director.[3]

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1 Sim's Affidavit of Evidence-in-Chief ("AEIC") at [9]–[12], [14], [16]; Low's AEIC at [28]; 28/9/20 Notes of Evidence ("NE") 9–11, 20–21.

2 First and Second Defendants' Bundle of Documents (Vol 1) ("1DB") 24B; Low's AEIC at [11]; Sim's AEIC at [27(c)]; Wei's AEIC at [9]–[10].

3 17/9/20 NE 19–20.

5 In 2009, Wei discussed with Low for SH to manufacture and supply Parts to the Company which the latter would sell on to Apple. The Company had no manufacturing facilities and Wei wanted to improve SH's capabilities and look for quality customers such as Apple. From 2010, SH started supplying Parts to the Company.[4]

6 The Defendants wanted to form a joint venture company with Wei, to control factories in China which could manufacture Parts. On 18 January 2011, Ausom Polymer (S) Pte Ltd ("Ausom"), an entity indirectly owned by Low, Sim and Seah, entered into a joint-venture agreement ("JVA") with SH and SHS to form SK Lateral Rubber & Plastic Technologies (Suzhou) Co. Ltd ("SKL"). SHS and Ausom held 51% and 49% respectively of SKL. Pursuant to a supplementary agreement to the JVA, from 2011, SKL began manufacturing Parts for and supplying them to the Company for its onward sale to Apple. SH and SKL continued to supply Parts to the Company until mid-2017.[5]

7 Meanwhile, in 2011, SWP's parent company, Sei Woo Technologies Pte Ltd ("SWTPL"), was acquired by the Company, and eventually its shares came to be held by the Company, Low YK and one Ng Kim Swee ("Ng"). Further, Wei was given control of 60% of the shares of SW China, previously a subsidiary of SWTPL.[6]

8 By end-2011, the Company was being supplied by SKL and SH. Around 2014, SK Lateral Permen Electronic (Suzhou) Co. Ltd ("SKLP"), a company

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4 Wei's AEIC at [19]–[20]; Sim's AEIC at [18]; 17/9/20 NE 20–23; 21/9/20 NE 46; 22/9/20 NE 42; 23/9/20 NE 10.

5 Agreed Bundle Vol 5 ("5AB") 1544, 1563, 1574; Wei's AEIC at [22]; Sim's AEIC at [19]–[20]; 17/9/20 NE 27–28; 22/9/20 NE 42.

6 Plaintiff's Opening Statement dated 10 September 2020 at Annex A; 1DB 24B; Low's AEIC at [21(c)]; Sim's AEIC at [27]–[28].

controlled by Wei and Ng, also began supplying Parts to the Company. Hence the Company's supply chain now included three companies which Wei had a substantial interest in, *ie*, SH, SKL and SKLP ("Wei-related Suppliers").[7]

9 In December 2014, Wei bought Seah's shares in the Company and was registered as a shareholder and director in January 2015.[8]

The claims and s 216 of the Companies Act

10 Wei claims that the Defendants had acted in a manner oppressive and unfair to him as they had: (a) denied him dividends; (b) improperly paid themselves directors' remuneration; (c) denied him Company information; (d) failed to call Annual General Meetings ("AGM(s)"), audit accounts and file annual returns; (e) diverted corporate opportunities from the Company; (f) caused the Company to enter into related-party transactions to its disadvantage; (g) removed him from the board of directors; and (h) failed to call board meetings and excluded him from management. Wei claims that the Defendants did all these to exclude him from the Company's affairs and deny him his share of past earnings and present and future profits.[9]

11 The Defendants claim that they were entitled to act as they had done, and that Wei was not entitled to the dividends or remuneration or information that he sought, or to remain as a director. They also deny any diversion of

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7 Low's AEIC at [22(b)]–[24]; Sim's AEIC at [28(b)], [30]–[31].

8 Wei's AEIC at [45]–[46], [56]–[59].

9 Plaintiff's Closing Submissions dated 14 December 2020 ("PCS") at [3], [4], [65]–[69].

corporate opportunity. They further claim that Wei has come to court with unclean hands.[10]

12 Section 216 of the CA encapsulates four limbs, namely oppression, disregard of a shareholder's interests, unfair discrimination and prejudice. The common element supporting these limbs is commercial unfairness, which is found where there has been a visible departure from the standards of fair dealing which a shareholder is entitled to expect. In assessing if there has been commercial unfairness, the court should determine if there has been departure from the commercial agreement between the shareholders as found in the formal constitutional documents, informal understandings, or, in a quasi-partnership, the legitimate expectations of shareholders (*Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] 1 SLR 771 at [28]–[29]).

Preliminary issues

13 I first deal with whether there was a relationship of mutual trust and confidence among the shareholders; whether Wei had a legitimate expectation to be a director of the Company; and whether he was entitled to participate in the Company's management and to its financial information as a director.

Relationship of mutual trust and confidence

14 Wei claims that the Company was founded on the basis of mutual trust and confidence among the shareholders, who are also its directors. He claims also that it was managed as a quasi-partnership based on that relationship and run on an informal basis by the shareholder-directors.[11] The Defendants claim

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10 First and Second Defendants' Closing Submissions dated 14 December 2020 ("DCS") at [2].

11 Statement of Claim (Amendment No. 5) ("SOC") at [6]; PCS at [77]–[78].

that Wei's relationship with them began with threats, lies, mistrust and suspicion. Whilst they knew that Seah was discussing with Wei in November/December 2014 for Wei to purchase Seah's shares in the Company, they had resisted this suggestion, and Wei only informed them about his purchase of Seah's shares after he and Seah had executed the sale and purchase agreement.[12]

15 I accept that the Company was founded on the basis of mutual trust and confidence and managed like a quasi-partnership and run on an informal basis which continued even when Wei came on board as a shareholder.

16 The Defendants stated that the shareholders and directors ran the Company's affairs informally and would independently make decisions for it, without having to seek approval from each other. Low stated that the Company was run on an informal manner even before he joined.[13] Seah attested that the Company was operated on the basis of mutual trust and confidence and like a quasi-partnership with each shareholder-director working together for mutual profit, and hence each shareholder was also a director and there was an expectation that each of them would be involved in key decisions and the direction of the business. In Suit 446/2016 ("Suit 446"), commenced by Seah against the Company to claim monies owed to him, the Defendants (who acted for the Company) pleaded that "The directors … were equal shareholders who were working together in a joint enterprise for mutual profit."[14] The directors also did not have written contracts of service with the Company and their remuneration was informally decided at meetings. Low stated that he, Sim and

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12 DCS at [113]; Low's AEIC at [51] and [55].

13 Low's AEIC at [27]–[30]; Sim's AEIC at [13] and [40]; DCS at [5]–[6].

14 Seah's AEIC at [8]–[10]; Defence in Suit 446 at [5].

Seah did not require formalities as the Company's directors and shareholders were the same.[15]

17 The Company was to be operated on the basis of mutual trust and confidence even after Wei became a shareholder and director, with the common understanding that the daily management would be left to the Defendants.[16] Even before joining the Company, Wei had a relationship with the Defendants. He had worked in SWP and its subsidiaries since the late 1990s and became acquainted with Low; SH began supplying Parts to the Company in 2010; and Wei and the Defendants (through their entities) subsequently entered into the JVA leading to SKL's formation.[17] Even in 2016 when there were internal disputes between Wei and the Defendants, the latter had told Wei's lawyers that the "management and operation of any business is based on mutual trust and confidence between directors and shareholders" and wanted to know "whether there [was] still the mutual trust and confidence amongst [the three of them] to weather the climate ahead".[18]

Legitimate expectation to be a director

18 Wei claims that he had a legitimate expectation to be a director of the Company and that the Defendants had orally assured him that he would be one. Low had further assured him of this by his 24 January 2015 email ("24 Jan 2015 Email") (copied to Sim), where Low also mentioned a proposed shareholders' agreement among them ("draft SHA") in which all the shareholders would be

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15 Low's AEIC at [27]–[30]; DCS at [5].

16 Low's AEIC at [65]; SOC at [8].

17 Low's AEIC at [11].

18 Agreed Bundle Vol 3 ("3AB") 1053 (Letter of 21 November 2016 at paras 4 and 6).

entitled to appoint a director. The Defendants deny that Wei had any such legitimate expectation. Further, the draft SHA was never executed.[19]

19 For a legitimate expectation to arise, there must be an agreement between the parties by way of words or conduct which gives rise to an expectation (*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* [2018] 4 SLR 331 at [59]). A shareholder's legitimate expectations are usually based on the formal company documents and agreements, however, in quasi-partnerships, the courts have been more willing to find legitimate expectations based on informal understandings (*Over & Over Ltd v Bonvest Holdings Ltd and another* [2010] 2 SLR 776 at [78], [83]–[84]; *Eng Gee Seng v Quek Choon Teck and others* [2010] 1 SLR 241 at [16]–[21]).

20 I find that Wei had a legitimate expectation to be a director and that there was an informal understanding that he would be one. This is also bearing in mind my findings that the Company was a quasi-partnership. I repeat my findings at [16] and [17] above. On 24 December 2014, Wei informed the Defendants that he had purchased Seah's shares and would be replacing Seah as a director. Low's reply to Wei (copied to Sim) did not refute this.[20] I also accept Wei's testimony, consistent with his earlier conduct, that at a meeting in early January 2015, he told the Defendants to register his shareholding without delay, and that Seah had informed him that as a shareholder he should be made a director as with past practice; and that they had orally assured him that he would be appointed as such. This was followed up with an email on 23 January

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19 SOC at [28]; Wei's AEIC at [54] and [58]; Agreed Bundle Vol 1 ("1AB") 276; DCS at [111]–[115].

20 Wei's AEIC at [47]; 1AB 263–265.

2015 sent by his representative Song Chumei ("Ms Song") to enquire about the status of the registration of his shares and whether his directorship had been reflected in the share certificate. It is also supported by the 24 Jan 2015 Email from Low (the contents of which Sim agreed to in court) pertaining to the assurance given by all shareholders that each shareholder would be able to appoint a director (see [18] above).[21]

21 Thus, Wei had a legitimate expectation to be a director of the Company by virtue of his equal shareholding; this is even if the draft SHA was never executed. Indeed, Wei was appointed as a director around 26 January 2015, shortly after the 24 Jan 2015 Email. The issue of whether his subsequent removal as director was justified will be considered later.

Participation in Company's management and right to information

22 The Defendants do not dispute that Wei, as a director of the Company, had a legitimate expectation to participate in key management decisions.[22] Additionally, s 199(3) of the CA gives a director a statutory right to inspect the accounting records and other financial documents of a company which fall under s 199(1). A director has an "almost-presumptive right" to inspect documents of the company within the ambit of s 199 and does not need to demonstrate any particular ground to do so. The burden is on the company to show that access should not be permitted, *eg*, because of an abuse of process (*Mukherjee Amitava v DyStar Global Holdings (Singapore) Pte Ltd and others* [2018] 2 SLR 1054 at [25]). The Defendants also do not dispute that a director is ordinarily entitled to the documents or information of the company.[23] I will

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21 Wei's AEIC at [54] and Tab 10 (p 227); 1AB 276; 13/10/20 NE 3–4.

22 Agreed List of Issues dated 12 November 2020 ("Agreed Issues") at s/n 2.

23 Agreed Issues at s/n 8(b); 18/9/20 NE 15; 1/10/20 NE 7; 13/10/20 NE 4–5, 40, 47.

discuss later whether Wei's legitimate expectations in these respects were breached. I now turn to the allegations of oppression.

Claims under s 216 of the Companies Act

Paying dividends improperly to the Defendants, and failing to pay dividends to Wei

23 The Company documents record that in 2011, Seah, Low and Sim owed the Company US$1,540,369.38, US$727,185.47 and US$698,137.61 respectively, and this continued to be owed until 2015 except for a *de minimis* reduction in the amount owed by Seah.[24]

24 On 31 December 2015, the Defendants signed a member's resolution ("2015 Resolution") purportedly pursuant to Art 54 of the Company's Articles of Association ("the Articles") to distribute US$4.5 million in dividends ("Dividends") to its shareholders. Hence, each shareholder was to receive US$1.5 million. The 2015 Resolution provided that the Dividends were to be paid on 31 January 2016. Wei did not sign the resolution, although there was a blank space intended for his signature.[25]

25 On 29 January 2016, the Company issued cheques of US$800,000 each to Low and Sim. Sim signed a tax voucher certifying the declaration of a US$1.5 million dividend to Wei pursuant to the 2015 Resolution. He claimed that Wei received this tax voucher.[26] Wei did not receive this dividend and the first time the Company forwarded to him a copy of the 2015 Resolution (which was unsigned) was on 16 February 2016, through its accountant, Tan Guek Joo

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24 Agreed Bundle Vol 2 ("2AB") 600–604; 29/9/20 NE 16–17; Seah's AEIC at [35].

25 2AB 491; Low's AEIC at [92].

26 2AB 492–493, 496; Low's AEIC at [93]; Sim's AEIC at [86].

("Tan"). A signed copy of the 2015 Resolution (bearing only the Defendants' signatures) was disclosed to Wei only in the course of the Suit.[27] Subsequently, the debts listed at [23] above were deemed as paid off and removed from the Company's balance sheet.[28]

26 The Defendants attested as follows.[29] When the Company sought to obtain a facility from HSBC Bank ("HSBC"), HSBC required it to clear the outstanding directors' loans as soon as possible after granting the facility. The Defendants suggested issuing dividends (the Dividends) to set off the directors' debts and HSBC did not object. They instructed Eric Oh ("Eric") of a consulting firm appointed by the Company to inform Wei of the 2015 Resolution. Wei's share of US$1.5 million of the Dividends was used to pay off Seah's debt of some US$1.54 million ("Seah's Debt") which Wei had agreed to undertake. Seah would receive nothing after the set off, whilst Low and Sim would each receive US$800,000 and cheques for those amounts were issued to them.

27 Wei stated as follows. He bought over Seah's shares to resolve the internal strife between Seah and the Defendants, as he was concerned that the strife would affect his factories in China which were supplying Parts to the Company and impact SKL's and SH's business with it.[30] Wei denies agreeing to repay Seah's Debt. Although Low had told him about Seah's debts to the Company when he informed Low of his interest in purchasing Seah's shares, he was not told that the debts would be resolved by way of dividends. Wei was not informed by Eric of the 2015 Resolution and there was also no basis to set off

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27 2AB 497, 561–565; 18/9/20 NE 84–86; 2/10/20 NE 50.

28 29/9/20 NE 68–69; Agreed Bundle Vol 10 at p 3963.

29 Defence (Amendment No. 6) ("Defence") at [20]; Low's AEIC at [48]–[51], [56]–[58], [76], [93] and [167]; Sim's AEIC at [46]–[49], [51]–[55], [86] and [164].

30 17/9/20 NE 54–56; 23/9/20 NE 13–15; Wei's AEIC at [34]–[35].

the dividends declared to Wei against Seah's Debt as it did not concern Wei. The Defendants did not tell him to sign the 2015 Resolution of which he received an unsigned copy in February 2016 and he had the impression from looking at it that he would be paid his share of US$1.5 million.[31] Hence, Wei claims that he is entitled to his share of the Dividends. Alternatively, the 2015 Resolution was passed in breach of the Articles and was defective, and that the Defendants' portions of the Dividends should be returned to the Company.[32]

Whether there was a debt owed by Seah to the Company at the material time

28 I deal first with whether Seah owed US$1.54 million to the Company when he left the Company. I find that this is not made out. On the contrary, at the time the Dividends were issued, the Defendants knew that either Seah's Debt was non-existent or that the quantum of it was doubtful; hence this debt should not have been attributed to Seah.

29 First, on 16 September 2014, Sim emailed Seah and Low to set out their mutual agreement to *equalise* the directors' loans *and reclassify* all expenses prior to September 2014 as "Non Tax Deductible Company Expenses". The Defendants admitted that there was this agreement, and Sim agreed that by this, it could not be said that Seah still owed the Company US$1.5 million.[33] If so, Seah no longer owed any debt to the Company when he sold his shares.

30 Second, the quantum of Seah's Debt was doubtful. Low admitted that some entries recorded as part of Seah's Debt were public accounts and not Seah's personal expenses, and should therefore not have been attributed to

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31 Wei's AEIC at [52], [61]–[67], [71]; 18/9/20 NE 71–72, 78–79.

32 SOC at [20] and [23], and prayers (1) and (1A) of relief.

33 2AB 393; Seah's AEIC at [37]; 29/9/20 NE 16, 20–23; 21/10/20 NE 70–72.

Seah.[34] Tan admitted that various items recorded in the Company's books as owed by Seah were not owed by him; Seah had asked her to place them under his name first because no one could verify which account it should be entered into. Tan stated that the Defendants knew of this practice.[35] Sim agreed that various entries in the Company's books reflected as Seah's debts did not make sense; and this was likewise attested to by Seah.[36] The Company's auditors had also in the audit reports for the Company's financial years ("FY(s)") 2011 to 2014, which the Defendants signed, given qualified opinions that they were unable to ascertain the existence and validity of the directors' debts.[37]

Whether Wei's share of the Dividends could be used to set off Seah's Debt

31 Assuming that the Dividends were validly declared (an issue I will return to) and that the Defendants had used Wei's share of the Dividends to set off Seah's Debt (as they claimed), I find that they had no right to do so, as Wei had not agreed to this. This is even if the Defendants had discussed with HSBC to clear the directors' loans by issuing dividends.

32 First, Low admitted in court that he had no right to use US$1.5 million declared to Wei to set off Seah's Debt; and the Defendants stated that even in April 2015 they had not proposed to Wei to bear Seah's Debt. Likewise, Sim stated that even in July 2015, there was no agreement by Wei as such.[38] It is unlikely that Wei would have thereafter agreed to bear Seah's Debt when there

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34 28/9/20 NE 68–69.

35 20/10/20 NE 10–19.

36 14/10/20 NE 117–119; 23/9/20 NE 67–70, 125–128; 2AB 600.

37 Agreed Bundle Vol 9 ("9AB") 3625, 3670, 3760 and 3809; 29/9/20 NE 27–34; 2/10/20 NE 74–76.

38 Low's AEIC at [66]; 28/9/20 NE 54–55; 29/9/20 NE 69–70; 2/10/20 NE 44–45.

was no incentive to do so, given that he was already a shareholder of the Company.

33 Second, there is no independent evidence to show that Wei had agreed to bear Seah's Debt. Low claimed that Wei's email of 26 December 2014 where he stated that "I can guarantee to [the Company] and yourself that I will take full responsibility pertaining to the transfer of [Seah's] equity to me", and another email from Wei on 30 December 2014 showed that Wei accepted the plan to issue dividends to clear Seah's Debt. However, this is not borne out by the emails.[39] I accept that Wei had only meant by the emails to help resolve the dispute between Seah and Low as he did not want the Company's reputation to be affected.[40] Further, the Defendants' "understanding" from the emails that Wei would bear Seah's Debt is contrary to Sim's admission that even in July 2015 Wei had not agreed to this (see [32] above).

34 Third, Seah attested that there was no agreement with Wei to bear his alleged debt.[41] In fact, the Company (represented by the Defendants) had entered into a settlement agreement with Seah on 24 November 2016, to settle Suit 446 and Seah's Debt with a payment of $155,000 to Seah.[42] If *Wei* had agreed to any dividends to be declared to him being used to set off Seah's Debt, there would have been no reason to resolve this issue subsequently *with Seah* by the settlement agreement. The Defendants' action, giving Seah the impression that Seah's Debt was still a live issue even in November 2016 and

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39 1AB 262–264; Low's AEIC at [56]–[58]; 28/9/20 NE 70.

40 18/9/20 NE 75–79.

41 Seah's AEIC at [49].

42 Seah's AEIC at [40] and Tab 13.

which led Seah to settle his claims against the Company for a lower sum,[43] and yet claiming that Wei's dividends were used to set off Seah's Debt, show them to be acting in bad faith.

35 Fourth, the Defendants were aware that the quantum of Seah's Debt was inaccurate and in any case they had agreed to equalise and reclassify all the directors' debts as Company expenses; this was even before Seah had offered to sell his shares to Wei. If indeed they had used the dividends declared to Wei to set off Seah's Debt, the fact that they did so despite knowing the above further showed that they were acting in bad faith.

36 Finally, I find that the Defendants had not informed Wei at the material time that US$1.5 million as dividends had been declared and issued in Wei's name. I disbelieve that they had asked Eric to forward the 2015 Resolution to Wei, and I accept that Wei was never informed by Eric on this matter. There is no evidence to show that this occurred. It was also strange that the Defendants did not correspond with Wei directly on this matter.[44]

37 Likewise, I disbelieve that the Defendants had informed Wei at a meeting in April 2015 in China that the Company would declare dividends to set off the amounts owed to it, in order to obtain financing from the banks.[45] This conversation is unlikely – they claimed they told Wei that they would declare dividends to Low, Sim *and Seah* which is inherently implausible because, as Low agreed, the Company could not in 2015 declare dividends to

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43 Seah's AEIC at [49(f)].

44 Wei's AEIC at [71]; 29/9/20 NE 50–53.

45 Low's AEIC at [68]; Sim's AEIC at [62].

Seah who was not a shareholder.[46] This conversation is also contradicted by Sim's admission that even in July 2015, Wei had not agreed to bear Seah's Debt.

38 Pertinently, Sim admitted that when Low and Sim instructed Tan to send to Wei the unsigned 2015 Resolution, they had already paid to themselves US$800,000 each.[47] There was no evidence to show that Wei knew or was informed of this or that his share had purportedly been set off against Seah's Debt. There was no reason to forward an unsigned resolution to Wei when the 2015 Resolution had been signed. Strangely, Low stated in court that he would not deny Wei his share of the Dividends.[48] Hence, if the Dividends were validly declared and Wei's portion was set off against Seah's Debt, the Defendants would have done so without Wei's permission and in bad faith.

Whether the Dividends were validly declared under the Company's Articles

39 Article 105 of the Articles requires dividends to be approved by the Company in general meeting and Art 54 provides that a resolution signed by every member shall have the same effect and validity as a resolution of the Company passed at a general meeting duly convened and constituted.

40 The Defendants rely on the 2015 Resolution to justify their actions of distributing the Dividends and pay themselves a portion of it. However, Wei did not sign the 2015 Resolution and the resolution did not comply with Art 54 and was defective.[49] Thus, the 2015 Resolution cannot be used to justify the payment

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46 28/9/20 NE 75.

47 2/10/20 NE 55–56.

48 29/9/20 NE 46–47.

49 1AB 11; PCS at [32].

of the Dividends. Low himself accepted that Art 54 was not complied with and that the Resolution must be signed by all three shareholders to be valid.[50]

41 Wei then argues in closing submissions that the Dividends may be validated if all the shareholders (who have the right to attend and vote at the Company's general meeting) assented to the matter, and it did not matter whether such assent or approval was given after the event (citing *In re Duomatic Ltd* [1969] 2 Ch 365 at 373 ("*Duomatic*") and *EIC Services Ltd and another v Phipps and others* [2004] 2 BCLC 589 at [122]). Even so, there is no evidence that Wei had assented to or approved the declaration of the Dividends. Instead, he pleaded that they were paid out by the Defendants in breach of Arts 54 and 105 of the Articles; he did not plead that they were validated, assented to or approved.[51] Wei also did not assert in his affidavit of evidence-in-chief ("AEIC") that he had agreed to the 2015 Resolution or decision taken therein by the Defendants after he discovered that they had declared the Dividends and paid themselves. That Wei "thought" he would be paid US$1.5 million from the Dividends after he saw the documents sent around *16 February 2016* to Ms Song, is equivocal. At that time, Wei was unaware that the 2015 Resolution (upon which the declaration and payment of the Dividends were premised) was not made in conformity with the Articles. Hence, there could have been no assent to or a waiver of the irregularity by Wei. Likewise, that Wei had prayed for the Defendants to pay him his entitlement to US$1.5 million does not signify the validation of the irregularity in the 2015 Resolution. Such relief was prayed for only in July 2020 after the Company had been wound up, as an alternative to the relief that the Defendants repay the Company the dividends paid to them.[52]

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50 29/9/20 NE 41–42, 94.

51 SOC at [20] and [24].

52 Wei's AEIC at [63]; see HC/SUM 2794/2020 filed on 22 July 2020.

Whether Seah's debt was set off

42 Pertinently, the issue is whether Seah's Debt had even been set off against the Dividends declared. The Defendants initially attested that Seah's Debt was recorded as having been repaid after the set-off but, in court, Low stated that Wei's dividends of US$1.5 million was still with the Company and he was unsure whether it had been set off against Seah's Debt.[53]

43 As the Dividends were declared pursuant to an invalid resolution, and the evidence showed that the directors' loans had been reclassified as company expenses and thus no longer owed to the Company, there could not have been any set off of Seah's Debt against the Dividends. In effect, Low and Sim had paid themselves US$800,000 each by relying on an invalid resolution.

Whether the Defendants' conduct was unfair, oppressive or prejudicial to Wei

44 I find that the Defendants' conduct pertaining to the Dividends had been oppressive and unfair to Wei. If they had set off Seah's Debt with what was purportedly Wei's portion of the Dividends, this would have been commercially unfair to Wei because they knew that Wei had not agreed to this, that they had no right to do so and that Seah's Debt was disputed and had in any case been equalised and reclassified as the Company's expenses. They kept Wei in the dark even after they came up with the 2015 Resolution and the Dividends were issued and gave Wei an unsigned copy of the Resolution. Their actions show that they wanted to conceal the truth from him.

45 I find that the Defendants issued the Dividends not to repay the directors' loans or to give effect to HSBC's request (see [26] above), but rather

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[53] Agreed Issues at s/n 4(c); Sim's AEIC at [86]; Low's AEIC at [93]; 29/9/20 NE 54–57.

to advance their own interests over Wei's interest and to deprive him of a share in the Company's assets.[54] They claimed that Wei wanted to advance SH's interest rather than the Company's, and thus they decided to take steps to run the Company "in a manner which promoted [the Company's] interest" by passing the 2015 Resolution and using the Dividends to repay the directors' loans.[55] But this did not promote the Company's interest because its money would be used to discharge purported loans that the directors owed to it which would result in a reduction of its assets – Low admitted this to be true.[56] It is also telling that a substantial sum of US$800,000 each were paid out to Low and Sim and clearly benefitted only them, at the cost of diminishing the Company's assets. Further, the Defendants' claim that HSBC wanted them to declare dividends to set off the loans "as soon as possible after receiving the [bank] facility" is unbelievable as HSBC extended the facility to the Company in November 2014 and the purported clearing of the directors' debts only occurred more than a year later when the Dividends were declared in December 2015.[57] It is also unexplained why Low had received US$800,000 instead of around US$773,000 in remainder, as the debt which he owed the Company was recorded as US$727,185.47.

Whether Wei is the proper plaintiff

46 The Defendants argue that even if the Dividends had not been properly declared, the proper plaintiff was the Company; alternatively, if the Dividends were properly declared, Wei should claim his share against the Company.[58]

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54 PCS at [25].

55 Low's AEIC at [92]; Sim's AEIC at [85]; 1/10/20 NE 123.

56 1/10/20 NE 125.

57 1/10/20 NE 124.

58 DCS at [125]–[127] and [133]–[135].

47 In *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [115]–[116], the Court of Appeal stated that although a wrong to a minority shareholder may often also constitute a wrong to the company, that shareholder may still bring an oppression claim for this wrong in appropriate cases. In determining whether a claim can be pursued under s 216 of the CA, the court will consider: (a) what the real injury is that the plaintiff seeks to vindicate, whether that injury is distinct from the injury to the company and whether it amounts to commercial unfairness against the plaintiff; and (b) what the essential remedy being pursued is, whether it is a remedy that meaningfully vindicates the real injury the plaintiff has suffered and whether that remedy can only be obtained under s 216 of the CA.

48 I find that Wei is entitled to bring this claim. Although Low and Sim paid themselves US$800,000 each pursuant to an invalid resolution which constitutes a wrong to the Company, the main injury that Wei is seeking to remedy is the oppression or unfairness to him by the Defendants' conduct in issuing dividends in his name without his agreement purportedly to set off Seah's Debt, keeping him in the dark, and benefiting themselves at his expense. This incident is just one of many instances of unfairness which Wei is raising to show a larger scheme of oppression or unfairness. Further, the primary remedy Wei seeks is a buyout order.

Director's bonuses and remuneration

49 I next deal with the following payments made to the directors:

(a) Low and Sim received $793,597 and $695,897 respectively from the Company, between 2 and 6 February 2015 ("Big Bonuses").[59] The general ledger dated 25 July 2018 showed that Low was paid US$580,501.93 and Sim was paid US$516,069.89 as director's bonuses in January 2015.[60] This was equivalent to the amount in SGD paid to them. However, the Company's journal voucher dated 31 December 2014 stated that Low and Sim were paid $756,800.00 and $672,800.00 respectively in January 2015.[61] These sums were slightly lower than the Big Bonuses and seem to have been mistakenly recorded. Both the general ledger and the journal voucher stated that these payments were accrued in December 2014.

(b) Low, Sim and Wei were paid bonuses of $42,800, $28,800 and $28,800 respectively in FY2016, for work done in FY2015 ("FY2015 Bonuses").[62]

(c) Low and Sim were paid directors benefits of US$54,256.77 and US$49,201.09 respectively for FY2015, to the exclusion of Wei. The Company's profit and loss statement for 2015 also showed US$27,413.41 paid to Fabian Teo ("Teo"), a former director (collectively "2015 Directors' Benefits").[63]

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59 First and Second Defendants' Bundle of Documents (Vol 2) ("2DB") 169–171; Wei's AEIC at [75]; SOC at [26.1(c) and (d)].

60 1AB 362.

61 1AB 329.

62 Wei's AEIC at [80]; Agreed Issues at s/n 6(a)(ii); PCS at Table at p 21 and [48]; 16/10/20 NE 82 to 83; 13/10/20 NE 148–149.

63 SOC at [26.1(a) and (b)]; Agreed Issues at s/n 6(a)(iv); 9AB 3859; PCS at [51].

(d) Low and Sim continued to receive their full salaries of $528,960 and $355,920 respectively in FY2018. In FY2019, Sim received S$284,940, whilst Low received a lower (but unknown) amount ("2018/2019 Salaries").[64]

(e) The Defendants' salaries were increased in FY2016 without Wei's knowledge or approval.[65]

Big Bonuses

50 The Defendants claim that the Big Bonuses were for work done in FY2014 when Wei was not a director; and approved at an EGM on 31 December 2014 ("2014 EGM") before Wei became a shareholder, although the amount of the bonuses was determined later.[66] They also claim to have told Wei in late January 2015 that he would not be receiving any bonus.

51 Wei claims that the Big Bonuses were paid out without his knowledge or approval when he was then a shareholder and director of the Company, in breach of Art 75 of the Articles which requires a general meeting to be called to determine and approve directors' remuneration. Wei claims that the 2014 EGM did not take place and, even if it had, the Big Bonuses were not approved there. The Big Bonuses were also not for work done in FY2014. If they were, they should have been reflected in the FY2015 accounts but were not. Finally, Wei submits that in any case, the Big Bonuses were excessive and unjustified.[67]

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64 1AB 359–360; 2DB 191; 16/10/20 NE 27–29; Agreed Issues at s/n 6(a)(v).

65 PCS at [38], [55].

66 DCS at [141] and [144].

67 SOC at [25]–[26]; Wei's AEIC at [76]; PCS at [42]–[45], [47]; 1AB at 14.

(1) Whether the Big Bonuses were determined and approved at a general meeting

52 It is undisputed that the Big Bonuses must be approved at a general meeting in order to be validly issued. This is stated in Art 75 of the Articles and admitted to by Low.[68] On balance, I accept that there had been a 2014 EGM.

53 The Defendants produced a notice of the 2014 EGM ("2014 EGM Notice") and the minutes of meeting ("2014 EGM Minutes"). The 2014 EGM Notice was sent to Seah (then a shareholder) on 18 December 2014.[69] Low stated that the 2014 EGM was attended by him, Sim and Tan, and Tan attested that she was present and prepared the 2014 EGM Minutes. Further, Ng Soh Ngoh ("Ngoh"), the senior secretarial manager of Yeng Management Services Pte Ltd ("Yeng"), the Company's external secretarial firm, produced Yeng's records which showed that the 2014 EGM Notice and Minutes were received by Yeng on 31 December 2014, which Ngoh reviewed on the same day.[70] I see no reason to doubt Tan's and Ngoh's testimony and Yeng's records.

54 Nevertheless, I find that the Big Bonuses were not discussed, let alone approved, at the 2014 EGM. As the Big Bonuses were paid out without a general meeting, this was in breach of Art 75 of the Articles. I elaborate below.

55 The Defendants claimed for *the first time* in cross-examination that the Big Bonuses were approved at the 2014 EGM.[71] Low claimed that this was reflected in item 6 of the 2014 EGM Minutes which states:

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68 30/9/20 NE 42–43.

69 1DB 25; 1AB 327; 14/10/20 NE 16–17.

70 2DB 181–187; 30/9/20 NE 43; 16/10/20 NE 99–103; 20/10/20 NE 33–34.

71 Low's AEIC at p 431; 29/9/20 NE 125–127; 13/10/20 NE 118–119; 1DB 25.

> To declare any round of bonuses for the staff before Chinese New Year in 2015.

In contrast, Sim claimed that this was reflected in item 5, which states:

> Declaration of monies from earnings after [Seah's] removal and before the new shareholder(s) to the company.
>
> Director [Sim] and [Low] to decide on such amounts and manner of distribution as they deem fit.

56 I find their explanations to be an afterthought. They were not pleaded nor mentioned in their AEICs, despite Wei having pleaded in his Statement of Claim that the bonuses were paid out without holding a general meeting. The Defendants also never informed Wei, when he asked them about the bonuses, that the bonuses were approved at the 2014 EGM.[72] Their explanations are also contradicted by their earlier testimony. They claimed in their AEICs that there was a meeting in late January 2015, after Wei became a shareholder, where they told Wei that they "would be declaring" bonuses and that he would not receive any as it was for work done in 2014. This gives the impression that the bonuses had not been declared even in late January 2015 and contradicts their position that the bonuses were approved at the 2014 EGM. In any event, I accept Wei's claim that there was no such conversation at a January 2015 meeting.[73] Low could not even recall whether the quantum of the Big Bonuses was declared before or after Wei had been registered as a shareholder (around 23 January 2015), and admitted that this was inconsistent with his AEIC. It is also not pleaded in the Defence that such a conversation took place in January 2015.[74]

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72 29/9/20 NE 147–149; 13/10/20 NE 117–118; 14/10/20 NE 17–19.

73 Low's AEIC at [64]; Sim's AEIC at [58]; 29/9/20 NE 143–144; 3AB 677.

74 29/9/20 NE 110–111, 137–138; Wei's AEIC at [56]; Defence at [26(a)(iii)].

57 In any event, the discussion of directors' bonuses was not expressly mentioned in the agenda for the 2014 EGM Notice. The 2014 EGM Minutes also do not show this was discussed or approved. Item 5 of the 2014 EGM Minutes does not mention bonuses, and Sim was unsure of what it referred to (although he relied on it). Whilst Low claimed that item 6 concerning "staff" bonuses referred also to directors, this was contradicted by Sim who stated that ever since the Company was incorporated in 2005 no shareholders' or directors' meetings have been held to declare such bonuses. Sim then claimed that the Big Bonuses were not declared via a resolution but merely by a "verbal agreement".[75] Pertinently, Low and Sim contradicted each other on which item in the 2014 EGM Minutes referred to director's bonuses.

58 Even if I accept that directors' bonuses had been discussed at the 2014 EGM, I find that it was not then decided that any such bonus should be paid. Tan admitted that no decision was made in relation to items 5 and 6 at the 2014 EGM, and that there was no resolution at the 2014 EGM because all the decisions made therein were only *tentative*; that was also why she had asked Yeng not to take any action on the items in the 2014 EGM Minutes.[76]

(2) When the Big Bonuses were decided and whether Wei was informed

59 I find that the Defendants decided to declare the Big Bonuses in early 2015 shortly before it was paid out around 2 to 6 February 2015, after they discovered on 24 December 2014 that Wei had purchased Seah's shares. I could not but infer that once they knew about Wei coming on board as a shareholder, they decided to quickly pay out a huge sum of bonuses to themselves to Wei's exclusion, and kept Wei in the dark about this at the material time.

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75 29/9/20 NE 127; 13/10/20 NE 118–122.

76 20/10/20 NE 44–46, 51–52.

60 I accept that the first time Wei could have discovered the Big Bonuses was when Sim sent an email to Ms Song on 29 July 2015 enclosing the Company's records and which showed that the Big Bonuses had been paid out to the Defendants for FY2014. In that email, Sim attached the Company's profit and loss statement from January to June 2015, which recorded directors' bonuses of US$567,742.28 and US$504,726.48 paid to Low and Sim respectively. However, the Big Bonuses were not brought to Wei's or Ms Song's attention and the email did not mention that that the bonuses reflected therein were for work done in 2014.[77] On 18 February 2016, Mr Song Dejun ("Mr Song"), Wei's representative, emailed Sim (copied to Low) pertaining to those two amounts and asked "Was [Wei] not included in 2015?" Neither the Defendants nor Tan responded to the queries.[78] This also supports that the Defendants did not, in January 2015, inform Wei that they would be declaring bonuses to themselves. If such conversation had taken place, the Defendants or their representative would have easily replied to Mr Song's query as such.

61 Instead, the Defendants' failure to reply suggests that they were attempting to conceal from Wei that the Big Bonuses were decided and paid out after Wei became a shareholder of the Company. This is supported by the manner of accounting for the bonuses. Low agreed that the Big Bonuses were first reported in the management accounts in *July 2015* and thereafter appeared in the management accounts every month until December 2015; however, it was curiously then recorded into the audited accounts for *2014*. Sim and Tan admitted that this was not the usual practice, because the practice was for bonuses paid out in FY2015 to be placed in the FY2015 accounts even if it was

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77 3AB 677, 808–809; 29/9/20 NE 112–115.

78 Wei's AEIC at [73]; 3AB 970, 976; 29/9/20 NE 124, 140–141; 13/10/10 NE 18.

for work done in FY2014.[79] The manner of accounting gives rise to the inference that the Defendants had caused this to be done to give Wei the false impression that the Big Bonuses were paid out in 2014.

(3) Whether the Big Bonuses were excessive

62 If the Big Bonuses were indeed for work done in 2014, I find that they were inordinately large and disproportionate to the year's profits as reflected in the audited accounts. I set out the director's bonus-to-profit ratio from FY2011 to FY2014, based on the Company's audited accounts read with its general ledger:[80]

FY	**Director's bonuses/ S$ (US$)**	**Profit (net)/ US$**	**% of bonus over profit (US$)**
2011	780,000 (620,544)	73,529	844%
2012	620,000 (496,099)	1,468,368	34%
2013	150,000 (122,820)	955,661	13%
2014	1,429,600 (1,096,571)	99,603	1,101%

63 Although the Company's net profits decreased drastically from 2013 to 2014, the Defendants paid themselves directors' bonuses in 2014 which were nine-fold that of 2013. Pertinently, there was no good reason to pay Sim a large sum of US$516,000, since he claimed to have been "banished" by Seah from the Company from 2012 until the end of 2014 and was uninvolved in its daily operations then. Sim's reason for receiving a large bonus in 2014, "for the

79 29/9/20 NE 113–114, 164–168; 13/10/20 NE 143–146; 15/10/20 NE 149–150, 160.

80 Plaintiff's Bundle of Documents ("PB") 507; 1AB 362.

hardship that [he had] gone through for the past three years", is unconvincing.[81] The Defendants' conduct in issuing such large bonuses (purportedly for work done in 2014) was also inconsistent with Low representing to Seah and Wei that the Company was facing financial difficulties even in December 2014, and the Defendants' conduct in requesting capital injection and the freezing of directors' salaries.[82] These further support that the Defendants had only decided to issue the Big Bonuses to themselves in response to finding out that Wei was entering the Company, to give themselves an unmerited windfall to Wei's exclusion.

(4) Unfair conduct

64 In sum, I find that the Big Bonuses were not declared at the 2014 EGM, that the Defendants had only decided to declare the Big Bonuses to themselves in early 2015 without Wei's knowledge or consent, and that they were paid out in breach of the Articles. The Defendants had also attempted to conceal the payment from Wei, by the manner of accounting for the Big Bonuses and by ignoring Mr Song's query about them. Finally, there was no good reason to pay such large bonuses to the Defendants allegedly for work done in 2014 when the Company's net profits had dropped drastically in that year and when Sim claimed that he was not involved in the Company's management. The Defendants had thus acted unfairly to Wei in relation to the Big Bonuses.

FY2015 Bonus

65 In closing submissions, Wei argues that the modest one-month bonus given to him in FY2015 was disproportionate to the sales for that year, which

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81 Wei's AEIC at [79]–[80]; 2/10/20 NE 89, 95–96; 13/10/20 NE 147.

82 1AB 235, 240 and 255; 29/9/20 NE 157–159; Wei's AEIC at [78].

was the highest yearly record of US$93 million, with profits between US$3.8 million and US$5 million, and retained earnings between US$6 million and US$11 million. He argues that this was an attempt to deny him a share of the Company's profits.[83]

66 The above was not pleaded by Wei although he had amended his Statement of Claim five times, with the last amendment in July/August 2020. There is no excuse for this omission since by 2018 or 2019, he had access to the Company's records which reflected the above figures. Wei also did not deal with this issue in his AEIC and the Defendants did not have the opportunity to address this matter.[84] As such, I disregard this argument in determining whether the Defendants had acted oppressively or unfairly to Wei.

2015 Directors' Benefits

67 Wei claims that the Defendants unjustifiably paid themselves the 2015 Directors' Benefits without them being approved by the shareholders at a general meeting, in breach of Art 75 of the Articles.[85] It is also unclear why Teo, who was not a director, was given director's benefits in 2015.

68 The Defendants explained that these were payments the Company made to the Inland Revenue Authority of Singapore ("IRAS") in 2015 for the directors' income tax liability in respect of salaries for 2014 when Wei was not a director. In 2006, the then directors-shareholders of the Company had made

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83 PCS at [48]–[49].

84 DCS at [149], [154]–[157].

85 PCS at [51]–[53]; SOC at [26]–[27].

the decision that the Company would pay the directors' income tax, as shown in Seah's pleaded case in Suit 446.[86]

69 I accept that these benefits in 2015 were for reimbursement of personal taxes incurred in 2014. This is corroborated by Tan and is consistent with the Company's profit and loss statement for FY2015 which recorded the payments as for "personal tax", which must mean that they were for taxes on income in the preceding year, 2014. Further, the Defendants had not breached Art 75 of the Articles that requires the remuneration of directors to be "from time to time determined by the Company in general meeting".[87] It was undisputed that the shareholders had, in 2006, decided that their taxes be borne by the Company every year. This assent was as binding as a resolution in general meeting (see *Duomatic* at [41] above). Article 75 only requires this decision to be revisited from "time to time". Hence there was no need to seek Wei's consent on these payments when he came on board or to revisit this decision yearly. Even if Wei's consent should have been obtained in 2015, it is not shown that the Defendants had deliberately kept him in the dark pertaining to the 2015 Directors' Benefits. The manner of treating such payments was agreed in 2006 and they could have simply forgotten to update Wei at the material time. Notably, Wei did not explain nor elaborate on this issue in his AEIC. Finally, I make no findings concerning the 2015 Directors' Benefit paid to Teo. This was not pleaded and the Defendants were not cross-examined specifically on this.

2018/2019 Salaries and the Defendants' salary increments for FY2016

70 In closing submissions, Wei submits that the 2018/2019 Salaries were decided without his knowledge. Further, by 2018, most of the staff had left the

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86 DCS at [147]–[148]; 2AB 578.

87 1AB 14.

Company as business was minimal, but the Defendants continued to pay themselves handsomely, which showed their desire to drain the Company before winding it up. Wei submits that it was questionable whether such high salaries were in the Company's best interests, given its poor financial situation then. Wei also argues in closing submissions that the Defendants had unjustifiably increased their salaries in FY2016 without involving Wei in this decision.[88]

71 I disregard these claims as they were not pleaded by Wei, and the Defendants were unable to address them in their AEICs or cross-examine Wei on it.[89] In any event, that they retained the same salary in FY2018 and a reduced salary in FY2019 does not, without more, show that they were attempting to deplete the Company's funds.

Withholding of information

Whether the Defendants withheld information from Wei

72 I find that there was deliberate withholding of information from Wei, and it was not disputed that Wei was provided the Company's accounts and financial statements only after repeated reminders to the Company.[90] The events below serve to illustrate the point.

73 Wei was not provided with information on the Company's affairs for several months after he became a director.[91] In a meeting in July 2015, Wei reiterated to the Defendants of his right to be kept informed of the Company's affairs and to be provided with financial statements and records. On 28 July

88 PCS at [38], [54]–[56].

89 DCS at [149]–[157].

90 Agreed Issues at s/n 8(a).

91 Wei's AEIC at [110].

2015, Ms Song followed up on this and asked the Defendants to provide such information. On 29 July, Sim forwarded the FY2012 audited report and FY2013 and FY2014 unaudited reports, and balance sheet and profit and loss statements for 2013, 2014 and June 2015. This was the first time Wei was given the Company's accounts.[92] Thereafter, it was only on 29 October 2015 after Mr Song's repeated chasers that Sim forwarded the Company's balance sheet and profit and loss statements or drafts thereof for July to September 2015.[93] The third time the Company's financial records were provided was on 16 February 2016, namely, the Company's draft balance sheets and profit and loss statements for October to December 2015, and again only after repeated reminders.[94]

74 Then, on 18 February 2016, Mr Song queried the Defendants regarding the documents. Sim admitted that the queries were reasonable but he did not answer them. Instead, he asked Mr Song to check with Eric. When Mr Song informed the Defendants on 11 May 2016 that Eric was unable to answer the queries and asked them to respond, they did not.[95] The next occasion when Sim provided information to Wei was on 12 March 2016, namely the management accounts for January and February 2016, and only after reminders. On 17 May 2016, Sim emailed Mr Song the financial statements for March 2016, again only in response to Mr Song's email of 11 May 2016.[96]

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92 3AB 839–846; 18/9/20 NE 19–22; 22/9/20 NE 40–41, 45; 13/10/20 NE 9; Wei's AEIC at [115]–[116].

93 Wei's AEIC at [118(a)] and pp 516–518; 3AB 855; 18/9/20 NE 29–32; 13/10/20 NE 9.

94 3AB 929–931, 962; 18/9/20 NE 28; 13/10/20 NE 14–15.

95 13/10/20 NE 21–26; 15/10/20 NE 87–88; 3AB 994, 970, 975–977.

96 Wei's AEIC at [118(c)]; 3AB 994–997; 18/9/20 NE 29–32.

75 On 22 June 2016, Sim emailed Mr Song the profit and loss statements and management accounts for April 2016, and stated that going forward, he would provide information only to Wei (and not Mr Song) as they needed "to adhere to corporate governance on company confidential matters". However, no further management accounts were sent to Wei.[97]

76 As such, Wei in September 2016 sought to nominate his lawyer, Mr Boey Swee Siang ("Boey"), as his alternate director to safeguard his interest in the Company.[98] In response, at a board meeting on 14 October 2016, the Defendants agreed with Wei that they would, with immediate effect, send him the monthly financial statements every month with Wei withdrawing his nomination of Boey. Despite this, they did not send Wei any more financial statements.[99] Wei thus invoked Art 83 of the Articles to summon a board meeting to be held in November 2016, to discuss various matters including the provision of the Company's financial statements to him. The Defendants did not call the meeting, although they admitted that they were obliged to do so. Boey then wrote to the Defendants on 19 January 2017 demanding on Wei's behalf immediate access to the management accounts and financial statements, but this was not acceded to.[100]

77 Subsequently, in January/February 2017, the Defendants proposed to buy over Wei's shares in the Company. Wei was agreeable and requested to see the Company's financial records to determine a fair buyout price. However, the Defendants refused to disclose the accounts and claimed that Wei did not need

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97 3AB 1019; 18/9/20 NE 29, 32, 35.

98 Wei's AEIC at [136]; Low's AEIC at [115]; 3AB 1034.

99 Wei's AEIC at [137]–[139]; 3AB 1090; 13/10/20 NE 35–36.

100 1/10/20 NE 17–21; 13/10/20 NE 36–42, 3AB 1047–1050, 1053–1054, 1067–1068.

to see them in order to accept their proposal to buy out his shares. It was only in discovery in 2017/2018 that they provided Wei with the audited financial statements for FY2013 and FY2014, although they had been audited much earlier.[101]

78 The events show that the Defendants had deliberately withheld information, particularly the Company's financial information, from Wei and only provided them after repeated requests. The Defendants do not deny their actions but merely seek to justify them.

Whether withholding of information and refusal to hold board meetings were justified

79 The Defendants claim that they refused to provide information to Wei as they suspected that he would forward it to SH, a competitor, to undercut the Company and that he did not have the Company's best interests at heart. They attested as follows.[102] In July 2015, Wei sought sensitive information about the identities of the Company's customers, and the prices at which the Company bought and sold Parts, purportedly for a "compliance audit" for SH required by Chinese law. The Defendants refused as they did not know why Wei needed the information. In November 2015, Wei sought the Company's records of purchase orders with its customers claiming that they were needed for an audit of SH. Again, the Defendants refused. Such information would also reveal the Company's trade secrets, allowing SH to undercut the Company. It was only in December 2015 that Wei informed them that the auditors sought to audit transactions in the companies in which he held shares and that the audit was to enable SH to be listed in China. The Defendants then provided Wei the

101 Wei's AEIC at [140]–[147]; 13/10/20 NE 42–43, 95–97; 9AB 3754.

102 Low's AEIC at [73]–[90] and [166]; Sim's AEIC at [163].

documents. Wei then tried to gain a majority shareholding over the Company by persuading the Defendants to sell their shares to SH in exchange for cash and shares in SH. In particular, Wei attempted to get Sim to sell his shares to Wei, in order to isolate Low. Thus, Wei no longer had the Company's best interests at heart as he was advancing SH's interests at the Company's expense. To protect the Company's interests, the Defendants passed the 2015 Resolution declaring the Dividends to themselves and stopped providing Wei the Company's management accounts in June 2016.[103]

80 Conversely, Wei claim that the Defendants' refusal to provide the Company's financial information, to allow him to inspect its books or to call a board meeting were further oppressive conduct against him.[104] Their excuse about potential undercutting was contrived as there was nothing in the Company's books that could be used to undermine its business.

81 It is undisputed that Wei, as a director, was ordinarily entitled to the documents and information pertaining to the Company (see also [22] above). I find that the Defendants were not justified in withholding the Company's records and financial information from Wei or in refusing to call a board meeting.

82 The Defendants claim that they stopped sending information to Wei from June 2016 due to potential conflicts of interest and undercutting of the Company's business. However, even *prior* to June 2016, there had been considerable delay in sending the accounts to Wei and only after repeated reminders, and as early as February 2016, they had refused to answer Wei's

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103 Low's AEIC at [92], [94]–[99]; Sim's AEIC at [85]–[91].

104 SOC at [19]; Wei's AEIC at [122]–[127].

queries on the accounts (in particular, the Big Bonuses) without good reason (see [60] and [74] above).

83 The Defendants' refusal to provide information to Wei on the basis that they were confidential or sensitive information that Wei could use to advance SH's interest was unconvincing. First, they admitted in court that the financial documents and information Wei sought did not contain confidential information that could assist SH to undercut the Company, and that even the contact information and identities of Apple's representatives and end customers were not confidential. In particular, the Defendants had even refused to give Wei information regarding bonuses and dividends declared, although this information would not have been adverse to the Company's interests.[105]

84 Second, the Defendants had taken a blanket approach to deny Wei, from June 2016, non-confidential or non-sensitive information just because Wei was purportedly seeking sensitive or confidential information; did not disclose the audit of SH and its intended listing in China; and had tried to buy out Sim's shares.[106] I find their reasons unconvincing. They never informed Wei of the reason for refusing him documents, until August 2017 when they issued a notice of EGM to remove him as a director. On the contrary they had consistently represented to Wei that they would provide him with the Company's financial information even after June 2016. Moreover, Low agreed that by June 2016, Wei had already informed the Defendants that SH had been listed.[107] In this regard, Wei had even in December 2015 informed them that he required information relating to the Company as a necessary requirement for SH's listing

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105 30/9/20 NE 80–83; 1/10/20 NE 13–17; 13/10/20 NE 33–34, 95.

106 1/10/20 NE 17.

107 PCS at [62]; Wei's AEIC at Tab 51; 1/10/20 NE 14–15.

in China. Further, Low agreed that once Sim had rejected Wei's offer to buy his shares, this reason for withholding information would have fallen away.[108] Indeed, if Wei wanted to buy more of the Company's shares, it would have been in his interest to promote its interests and not harm it. In any event, no confidential information was ever passed to Wei.[109]

85 In my view, the Defendants had refused to provide the Company's financial information because they were unhappy with Wei having entered the Company. Instead, they quickly decided to protect *their own interests* by paying themselves the Big Bonuses in early February 2015 and portions of the Dividends in 2016, which they kept Wei in the dark about. Contrary to their claim that they declared the Dividends to themselves to "promote [the Company's] interests", they were promoting their interest at the Company's expense. It was no coincidence that they ceased to provide the Company's financial information to Wei from June 2016, with the last accounts provided being up to the period of April 2016, shortly after Low had incorporated another company, LSW Pte Ltd ("LSW"), which I will deal with later.[110] I find that their dilatory conduct in furnishing financial information to Wei and their subsequent refusal to do so were to deliberately conceal from Wei the Company's affairs and what they were doing. They carried on this pattern of concealment in refusing to call for a board meeting as requested by Wei (see [76] above).

86 Finally, it was unfair for the Defendants to seek to buy out Wei's shares without providing him with relevant financial information (such as the management accounts) to enable Wei to determine a fair value of his shares.

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108 30/09/20 NE 73.

109 1/10/20 NE 127–128; 13/10/20 NE 96–97.

110 SOC at [30]–[32]; Wei's AEIC at [103].

Failure to call AGMs, audit financial statements and file annual returns

87 The Company did not call AGMs for FY2015 onwards, file annual returns from FY2014 or audit its financial statements from FY2015. Whilst AGMs were held on 15 December 2015, 30 June 2016 and 16 July 2016, these related to the approval of audited financial statements for FY2011 to FY2013.[111]

88 Wei claims that the above omissions occurred from the time he became the Company's shareholder and director and were intended to prevent him from receiving information about the Company or discovering its true state of affairs, in particular, from finding out how profitable the Company was in 2015 and 2016 and what happened from 2017 onwards.[112]

89 In their AEICs, the Defendants claimed that the annual returns were not filed and accounts were not audited because Wei refused to approve the FY2013 accounts in August 2016. Hence, the Company was unable to finalise them and proceed with auditing the subsequent years' accounts, as the FY2013 audited accounts had not been filed. They also alleged that SKL refused to provide the Company with supporting records of amounts due from the Company to it for FY2015, which prevented the auditing of the FY2015 accounts.[113] In closing submissions, they then claimed that the Company's books had been seized by the Corrupt Practices Investigation Bureau ("CPIB") in 2010 and by IRAS in 2012 for an investigation into the Company, which caused the delay in auditing the accounts. They submitted that AGMs were not needed as Wei was provided with the Company's financial information that he requested from time to time.

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111 Agreed Issues at s/n 11; Wei's AEIC at [130] and Tab 40.

112 PCS at [65]; Wei's AEIC at [128] and [134].

113 Low's AEIC at [100], [158]–[160]; Sim's AEIC at [96], [155]–[157].

Finally, they had also given Wei notices of various AGMs at which the FY2011 to FY2013 audited accounts were adopted.[114]

Whether the omissions were justified

90 I find that the Defendants had no good reason for failing to audit the financial statements from FY2015, file annual returns from FY2014 and call general meetings to deal with the Company's accounts pertaining to the years since Wei became a shareholder/director. I further find that their omissions were intentional to deprive Wei of information pertaining to the Company.

91 Contrary to the Defendants' assertion, I find that the omissions were not due to SKL. The Defendants agreed that there was no evidence that PG Wee, the Company's auditors, could not audit the FY2015 accounts merely because SKL did not provide the Company with the relevant information, and that PG Wee could have done so and given a qualified opinion as it had done in past years. This was confirmed by Tan. Sim admitted that the FY2015 to FY2019 accounts could have been audited. Indeed, Tan revealed in court that the FY2015 accounts were not audited at the material time because *Low, Sim and she had never instructed PG Wee to commence the audit*. Whilst Tan later claimed that she had asked PG Wee to start the audit in mid-2017, I do not find this to be credible as it was unsupported.[115]

92 I also find that the omissions were not due to Wei's conduct.[116] The Defendants' allegation that Wei refused to approve the Company's FY2013

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114 DCS at [164]–[172].

115 PCS at [68]; 30/9/20 NE 55–58, 62; 13/10/20 NE 51–55, 59; 15/10/20 NE 41–42, 45–50; 16/10/20 NE 32–34.

116 Low's AEIC at [159], [160]; Sim's AEIC at [157].

accounts and that they therefore did not proceed to approve and file the accounts, was not true. The FY2013 audited accounts were approved by the Defendants on 25 March *2015* and at the AGM on 16 *July 2016*. The FY2014 audited accounts and financial report were also approved by them without needing Wei to sign off on them.[117] The Defendants admitted that only two directors were required to approve the audited accounts or annual report; the FY2011 to FY2014 audited accounts and annual reports were all approved by the two of them only; the Company could have audited the accounts from FY2015 onwards even if Wei did not cooperate; and from FY2015 onwards it was never offered to Wei to approve the Company's accounts.[118]

93 Additionally, Ms Song had, on 12 August 2016, informed Yeng (copied to Low and Sim) not to delay the submissions of the filing of accounts to the Accounting and Corporate Regulatory Authority ("ACRA"), and the Company filed the FY2013 audited accounts/annual report with ACRA some three days after Ms Song's email to say that the filing should proceed. Sim conceded that Wei's actions in asking the Company to file the FY2013 audited accounts although Wei did not agree to sign it, was not obstructive.[119] I accept Wei's explanation to be reasonable – that he refused to sign off the FY2013 accounts because he was not a director or shareholder in 2013 and hence it would not be fair for him to approve of matters that he was not appraised of then. Likewise, whilst the Defendants had invited Wei to AGMs to adopt the audited financial statements, these were for FY2011 to FY2013, before Wei was a director (or shareholder) of the Company. Notably, it was only on 4 *July* 2016 that Wei

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117 PB 510–512; 9AB 3754–3791; 30/9/20 NE 49–54; 13/10/20 NE 49.

118 29/9/20 NE 26–33; 30/9/20 NE 53–54; 13/10/20 NE 49–52, 58; 9AB 3619, 3664, 3754, 3803.

119 Agreed Bundle Vol 4 ("4AB") 1285; 13/10/20 NE 57–58.

received the notice of AGM dated 31 *May* 2016 of an AGM to be held on 30 *June* 2016 to approve the FY2012 audited accounts.[120] Moreover, although the Defendants may have provided Wei with unaudited financial information, this did not remove the need for the accounts to be audited.

94 I also find that the Defendants' argument that the seizure of books by the CPIB and IRAS was a reason for the delay in auditing the Company's accounts to be unconvincing. In court, Low confirmed that the seizure of the Company's books was *not* a reason the FY2015 accounts had not been audited. The Company's books seized by CPIB pertained to FY2009 and earlier, and the books seized by IRAS pertained to FY2009 to FY2012. The seizure did not prevent the Company from auditing its accounts for FY2011 to FY2014, between June 2014 and August 2016, and thus it is unclear how it affected its ability to audit its accounts from FY2015. Further, IRAS had returned the Company's documents by June 2015. As such, there was no good reason why the FY2015 accounts could not be audited thereafter.[121]

95 Finally, the Defendants argue that Wei had not complained about the absence of audited accounts or the omission to convene AGMs at the material time, and there was no prejudice to Wei.[122] I disagree. The evidence shows that Wei had consistently sought information on the Company's accounts (see [73]–[76] above) and had asked for them to be audited. That there was a clear need to audit the FY2015 accounts can be seen from the huge discrepancies between a set of unaudited accounts for FY2015 disclosed on 16 February 2016 and another set disclosed on 7 August 2017, which Low agreed did not give a true

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120 DCS at [171]; 4AB 1221–1224.

121 30/9/20 NE 64–65; Wei's AEIC at [132]–[135]; Tan's AEIC at [26].

122 First and Second Defendants' Reply Closing Submissions ("DRCS") at [21]–[22].

picture of the Company's financial position in 2015.[123] I find that the Defendants had omitted to audit the Company's accounts to deprive Wei of financial information of the Company in the material years. Pertinently, even the FY2013 audited accounts were not disclosed to Wei until July 2018, despite it having been filed with ACRA in 2016.[124]

Diversion of corporate opportunity to LSW

96 At the material time, the Company was a 35% shareholder of SWTPL, which was in turn a 100% shareholder of SWP, which was in turn a 100% shareholder of Sei Woo Hi-Tech Polymer GmbH, a company incorporated in Austria ("SWA").[125]

Wei's case

97 Wei claimed that around January 2016, Low informed Wei that he planned to incorporate LSW for the benefit of the Company and the Sei Woo group. Low proposed that his father (Low YK), the Company, a Sei Woo entity and one Peter Lehmann ("Lehmann") be its shareholders with the Company having a 20% share, and that LSW would employ liquid injection moulding ("LIM") technology from SWA. Wei did not agree to this as it was not in the Company's interests. The Company was then indirectly a 35% shareholder of SWA and it did not make sense to divert SWA's LIM technology to LSW, which the Company would only own 20% of. Instead, the LIM technology

123 PB 507; 30/9/20 NE 68–69; 13/10/20 NE 67–70, 81–82.

124 30/9/20 NE 49–51.

125 28/9/20 NE 35; 30/9/20 NE 110–111.

should be used by the Company directly or it should have at least 35% shareholding in LSW.[126]

98 Wei did not hear from Low about the matter until some months later on 13 April 2016 when Low announced by email LSW's formation to house the LIM technology in Singapore, that Lehmann and Low would spearhead LSW's operations, and that they would transfer the LIM technology from SWA to LSW. Wei was not involved in the decision to incorporate LSW, and on 27 April 2016 queried Low on who LSW's shareholders were. Low did not address Wei's query. Wei subsequently found out that LSW had been incorporated on 8 April 2016, and that its shareholders were Low, Low's brother ("Kenny") and Lehmann in the proportion 40%, 40%, 20% respectively.[127]

99 Wei alleges that Low had preferred his and Kenny's interest over the Company's, by diverting a corporate opportunity from the Company to LSW. There was no commercial justification to set up LSW without the Company having a share, particularly when the Company could have employed the LIM technology directly to produce Parts for Apple. Wei claims that this was done to prevent him from enjoying the benefits that would flow to the Company. There were also emails which showed that the Company had invested in research and development ("R&D") of the LIM technology, which suggested that the Defendants had used the Company's funds to subsidise LSW's production of the LIM technology. In addition, LSW would now be a competitor of the Company, with the superior LIM technology. There was also no reason

126 Wei's AEIC at [82]–[86]; 21/9/20 NE 57.

127 Wei's AEIC at [87]–[95]; 2AB 572–574.

why Kenny should be given a 40% share of LSW when he did not contribute to the development of the LIM technology.[128]

The Defendants' case

100 The Defendants claim that Wei had rejected the proposal of setting up LSW and for the Company to be a shareholder. Moreover, the LIM technology was already widely adopted in Europe (but not adopted in Asia) and was not proprietary to SWA, and the Company could not have exploited this corporate opportunity because it did not have manufacturing operations.[129] Even if a corporate opportunity had been diverted, this was a corporate wrong against the Company actionable only by it.

Decision

101 I find that the Defendants had set up LSW with funding from the Company and with no intention of the Company being repaid, and the purpose of setting up LSW was ultimately to divert a corporate opportunity to it using the LIM technology to the Company's exclusion and to exclude Wei from reaping the benefits (through his shareholding in the Company). The Company was unfairly deprived of an interest in LSW. This is shown by the following.

102 First, LSW would have been unable to start its operations but for monies borrowed from the Company; this was admitted by Sim. The Defendants admitted that even before LSW was incorporated, the Company had by March 2016 expended substantial amounts into R&D for the LIM prototype, but that ultimately LSW would benefit from the successful prototyping. The Company

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128 Wei's AEIC at [98]–[102].

129 Defence at [32R]; Low's AEIC at [188] and [193]; DCS at [177]–[180].

had also, by loans to LSW, funded LSW's capital outlay and expenses, including the costs of investments in machinery and tooling, renovation costs of hundreds of thousands of dollars for LSW's tenanted premises, paying salaries of LSW's staff and paying LSW's utility bills.[130]

103 Second, the Company had undertaken this venture and risk (of lending substantial sums to LSW) even though it was not in the business of lending monies to a new venture. Sim claimed that the project was "under [the Company]" and that the distribution of shares in LSW would be determined later. These made no sense as the Company did not have a share in LSW and there was no intention for it to have a share (as Sim admitted), and LSW's shares had been allocated when it was incorporated.[131] Third, Low's email of 13 April 2016 (see [98] above) had announced the Defendants' intention for technology, know-how and personnel to be transferred from SWA (indirectly 35%-owned by the Company) to LSW.[132]

104 Fourth, by around 23 December 2015, the Defendants knew that Apple planned to deploy LIM technology fully by 2017. Sim stated that the Company wanted to ride on this. To that end, the Company informed Apple on 23 December 2015 that it was putting aside a substantial amount of R&D into development of LIM "in sync" with Apple's plans. Sim acknowledged that the Company intended to pursue the LIM technology because the Defendants wanted to ensure that it could continue to supply to Apple. That the Company was doing "a lot of R&D" and moving into LIM technology was reiterated to

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130 30/9/20 NE 115–118, 127–135, 141 137; 14/10/20 NE 32–35, 45–47; PB 569–570.

131 14/10/20 NE 43–44.

132 30/9/20 NE 119–120.

Apple in March 2016.[133] Moreover, prior to LSW's formation, SWA was already deploying the LIM technology to manufacture Parts to supply to the Company, and it could continue to do so for the Company to supply to its customers such as Apple.[134] Hence, LSW's set-up was unnecessary except to enable it to supply Parts using the LIM technology, and thus divert that opportunity from the Company to it. This is even more egregious bearing in mind that LSW was set up and maintained with the Company's funding (see [102] above).

105 By incorporating LSW, the Defendants did not wish for Wei (through his shareholding in the Company) to benefit from the above opportunity. Whilst they claimed that LSW was formed merely as a supplier to the Company and SWP (as an alternative to the Wei-related Suppliers) for the Company to supply Parts to Apple, and not for LSW to supply Parts to other entities directly,[135] this was not true. LSW sells Parts to Sei Woo Rubber Malaysia Sdn Bhd and Sei Woo Polymer Technologies Sdn Bhd, which in turn serves other end customers. I find Sim's explanation in court that Apple's business "centres around in China" and that it would be easier for an entity in Asia (LSW) to support it, was an afterthought. Low admitted that the Company could change its business model to undertake LSW's operations and manufacture the Parts.[136]

106 It is clear from the Defendants' conduct that the Company's contributions and loans to LSW were intended to benefit LSW and not the Company. Pertinently, there was no intention for the Company to recoup the

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133 4AB 1297; 14/10/20 NE 26–28, 30–31; Wei's AEIC at [100] and Tab 30.

134 23/9/20 NE 5–6; 14/10/20 NE 49.

135 Low's AEIC at [182]; Sim's AEIC at [178]; 28/9/20 NE 40, 42; 14/10/20 NE 39.

136 30/9/20 NE 139–140; 14/10/20 NE 50–51.

loans. Sim admitted that there was no attempt by the Company to recover the monies loaned to LSW of some $2.3 million, that if LSW failed the loaned amount would be lost, and that no collateral or guarantees were obtained from Low or Kenny for the loans.[137]

107 Next, the Defendants did not consult nor inform Wei about the Company's involvement in LSW or that it would be providing loans to fund LSW's operations.[138] Given the substantial assistance from the Company to LSW and that the LIM technology deployed to enable LSW to manufacture and supply Parts came from SWA, Wei should have been involved in the decisions. Low admitted that he did not want Wei to be involved in the decision to set up LSW, that he had acted unfairly by excluding Wei in the Company's decision pertaining to LSW, and that Wei's questions concerning LSW's shareholding and other matters were fair. Sim agreed that he did not give sufficient recognition to Wei's interest by failing to involve him in the discussions in setting up LSW.[139]

108 The Defendants' conduct showed that they had deliberately kept Wei in the dark to conceal that they were shortchanging the Company. The Company had been unfairly deprived of an interest in LSW and had lost a corporate opportunity wrongfully diverted to LSW. The Defendants agreed that the Company should have been a shareholder of LSW.[140] The LIM technology, even if not proprietary to SWA, could not be obtained without costs which the Company had borne. The Company indirectly owned 35% of SWA and would

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137 14/10/20 NE 42.

138 14/10/20 NE 36, 42, 47–48.

139 30/9/20 NE 123–127, 138–139; 14/10/20 NE 43–44, 53.

140 30/9/20 NE 142–143; 14/10/20 NE 52–53.

benefit where SWA supplied Parts either to it or to another entity, and if LSW supplied Parts utilizing the LIM technology from SWA, this would divert business from SWA, indirectly affecting the Company's interest. Additionally, the Company had suffered losses due to the loans made to LSW which the Defendants had no intention to cause the Company to pursue.

109 I also accept Wei's contention that Low had breached his duties to the Company.[141] Low had failed to act *bona fide* and in the best interests of the Company by diverting a corporate opportunity from the Company to LSW. He also put himself in a position of conflict of duty and interests (as both a director/shareholder of the Company and a shareholder of LSW) and he had failed to disclose this conflict to Wei (*Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 at [137], [138] and [147]). As LSW sold Parts to other entities (see [105] above), Low had breached his duty not to profit (through LSW) from opportunities which would have gone to the Company (*Mona Computer Systems (S) Pte Ltd v Singaravelu Murugan* [2014] 1 SLR 847 at [13]–[14]). Finally, I disagree with the Defendants' argument that this is a corporate wrong only actionable by the Company.[142] Wei is relying on the above matters as evidence of the personal unfairness to him arising from the Defendants' actions, for which he is seeking a buyout of his shares (see *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 at [68]–[69]).

Undisclosed related-party transactions between the Company and LSW

110 Wei alleges that there were several undisclosed related-party transactions between the Company and LSW, and that the Defendants had

141 SOC at [32(G)]–[32(V)].

142 DCS at [139].

stopped providing him with the Company's management accounts shortly after LSW was incorporated to prevent him from learning of these transactions. Low was in a position of conflict as he was a shareholder of both LSW and the Company, but failed to disclose his interest and these related-party transactions to the Company's board, in breach of s 156 of the CA.[143]

111 The Defendants claim that the transactions between the Company and LSW were commercial transactions. Low had in his 13 April 2016 email (see [98] above) informed Wei of his intention to set up LSW to supply Parts to the Company.[144] Further, Wei was not informed of the transactions between the Company and LSW because the management and day-to-day operations of the Company were left to the Defendants.

Decision

112 I find that there were related-party transactions which included the following. The Company had relocated to new premises after LSW was incorporated, with LSW as the master tenant and the Company its sub-tenant. For about eight months from 27 October 2016 to 20 June 2017, it paid LSW about $120,000 as rental deposit and rental.[145] The Company had also funded LSW's set-up and operations including the deposit for the master tenancy agreement between LSW and the landlord and other matters (see [102] above). Next, the Company's statement of affairs dated 21 July 2020 filed by the Defendants in HC/CWU 130/2020 showed some $1,269,157.82 and US$765,261.37 (totalling about $2.3 million) remain owing by LSW to it.[146]

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143 SOC at [30]–[32]; Wei's AEIC at [103]; PCS at [75].

144 Low's AEIC at [183] and [186]; Sim's AEIC at [178] and [183]; DCS at [186].

145 Wei's AEIC at [104]–[105] and Tabs 31–33; 4AB 1336; 30/9/20 NE 126.

146 14/10/20 NE 34; 9AB 3905–3909.

113 It is undisputed that transactions between LSW and the Company were not disclosed to Wei and that he was not consulted on management decisions pertaining to the Company.[147] Pertinently, Low was in a position of conflict by virtue of his interests in both the Company and LSW and should have disclosed this to the Company's board (particularly to Wei). The Defendants agreed that Wei was unfairly excluded from the Company's decision to relocate and become a sub-tenant of LSW, that the advances by the Company to LSW was a key management decision, and that their failure to consult Wei may have been wrong.[148] Moreover, the loans or advances from the Company were not secured by any collateral or guarantee from LSW's directors or shareholders and, I reiterate, there was no intention for the Company to recoup the loans of about $2.3 million from LSW. The 13 April 2016 email relied on by the Defendants did not inform Wei of the related-party transactions (*eg*, at [112] above) nor of Low's interest in LSW. Wei was also kept in the dark about LSW's shareholders.

114 The Defendants argue that the loans to LSW advanced the Company's interest and Wei has not suffered any prejudice; moreover it was part of the Company's business operations to assist its suppliers by purchasing machines and tools which it left with its suppliers to produce Parts for the Company.[149] However, I find that contrary to their claim, the loans to LSW would prejudice the Company (and Wei's interest as a shareholder) as they were used to fund LSW, a competitor to SWA. Prior to LSW's incorporation, SWA was deploying the LIM technology to manufacture Parts to supply to the Company and it could continue to do so. The Defendants loaned Company funds to LSW with no

147 30/9/20 NE 125–126; 14/10/20 NE 138–139.

148 30/9/20 NE 124; 14/10/20 NE 36, 48–49.

149 DRCS at [29]–[34].

intention for the Company to recover them. Even if the Company had previously assisted its suppliers in purchasing tools and lending monies to it, Wei should have been informed before it decided to advance such large amounts to LSW, given Low's conflict of duty and interest in both entities and that LSW was a potential competitor to SWA.

115 In light of the foregoing, I accept Wei's pleaded case that Low had breached his duty to act *bona fide* in the best interests of the Company and his duty to act honestly under s 157(1) of the CA, which is the statutory equivalent of the common law duty to act *bona fide*. Low had caused the Company to make loans to LSW, with no intention to recover them. In addition, Low had put himself in a position of conflict of duty and interest by entering into the related-party transactions and further failed to disclose this conflict to Wei. Pursuant to s 156(1) of the CA, Low was required to disclose his interest in the related-party transaction as soon as practicably possible.[150] The evidence overall showed that the Defendants had conducted the Company's affairs in a manner that was commercially unfair to Wei.

Wei's removal from the Company's board of directors

Wei's case

116 On 2 August 2017, Wei commenced OS 878/2017 to inspect the Company's books, as a director. On 22 August 2017, the Defendants issued a Notice of EGM calling for Wei's removal as a director claiming that he had: (a) breached his director's duties; (b) instigated the Wei-related Suppliers to stop shipments to the Company on the basis of arrears in payment, which resulted in it being unable to fulfil orders from customers and thus losing projects; (c) acted

150 SOC at [32] and [32A].

to poach the Company's customers; (d) disregarded the Company's interest by causing SH to commence proceedings in China against the Company; and (e) filed OS 878/2017 to compel the Company to release financial statements which he would not have been entitled to under the Suit. On 5 September 2017 at the EGM, the Defendants passed a resolution to remove Wei from the board. Wei claims that this was to stymie him from inspecting the books and that this breached his legitimate expectation to be a director of the Company.[151]

The Defendants' case

117 The Defendants argue that even if they had represented to Wei that he would be appointed a director, this did not mean that he would perpetually be one as long as he was a shareholder. In any case, they had good reason to remove him as a director.

118 First, Wei had begun to divert business from the Company to SH, thereby undercutting the Company.[152] Various Apple employees had informed Low that SH had approached Apple and informed it that SH had officially separated from the Company and sought the opportunity to work directly with Apple. Apple employees also informed Low of its concern with the Company's ability to ensure continuity of supplies as SH was no longer supporting the Company and consequently, Apple began to order Parts directly from SH.

119 Second, Wei had caused the Wei-related Suppliers to demand payment from the Company from October 2016 onwards, contrary to the "cooperative relationship and accommodative approach the [Wei-related Suppliers] had adopted towards their collection of payment since prior to 2013" (the

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151 Wei's AEIC at [151]–[154], [156]–[157] and Exhibits 50–51.

152 Low's AEIC at [128]–[147].

"Practice"). The understanding was that the Company would only make payment to the Wei-related Suppliers when its cashflow permitted it to do so and when it received payment from its customers. Wei caused the Wei-related Suppliers to cease supplying Parts to the Company when it failed to meet his demands, in contravention of the Practice.[153]

120 Third, Wei had abused his position as a director and shareholder of the Company to disrupt its operations and management. He sought to nominate Boey as his alternate director and continued to request for Company documents without reason. He also abused the legal system to exert pressure on the Company and to destroy and eliminate it as a competitor.[154] He commenced the Suit without basis; SH commenced legal proceedings in China to freeze payments due from the Company's end customers to the Company; and SKL commenced proceedings in Singapore (via SIC/S 6/2019) to claim sums that the Company owed to it for earlier deliveries.

Undercutting

121 Whilst Wei had a legitimate expectation to be a director by virtue of his shareholding in the Company, this was not an absolute or a perpetual one. I accept that SH (which Wei set up and is the chairman of) had attempted to undercut the Company to supply Parts directly to Apple, and that the Defendants had good reason to remove Wei as a director of the Company as he was in a position of conflict of duty and interest, as SH was a direct competitor of the Company vis-a-vis supplying Parts.[155] This is even if Wei was, as he claimed, removed as a director to stymie him from inspecting the Company's books.

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153 Low's AEIC at [31], [34]–[38], [102], [110], [112]; DCS at [71(b)].

154 Low's AEIC at [114]–[115], [122]–[124]; [148]–[152].

155 DCS at [82]; 21/9/20 NE 5.

122 SH had been attempting to undercut the Company even in early March 2017, *before* SH and SKL formally terminated the JVA by way of its "Official Statement" on 30 March 2017 to the Company and Ausom.[156] This is supported by various emails from Apple to Low.[157] On 8 March 2017, one "Chris" from Apple informed Low that he heard from his regional team that the Company no longer represented the plants in Suzhou, China; that Apple had communicated that "[SH] has officially separated from [the Company]"; and that Apple had been forwarded a company profile from SH (an entity which Chris had never heard of). Then, on 10 March 2017, one Clara from Apple informed Low that she had received an email from Apple stating that "[SH] confirmed that it's officially separated from [the Company]", and that SH's factories in China would not be represented by the Company anymore. Low replied to them to state that SH was going behind the Company's back to deal with Apple and that this was a betrayal by his "Chinese partner". On 16 March 2017, one Vinod from Apple emailed Low and stated: "Looks like you [*sic*] partner is pinging our team to work directly with Apple". Wei also admitted that since March 2017, SKL had communicated directly with Apple and informed it that SKL had not been receiving payment from the Company.[158]

123 After the Official Statement, SH and Wei continued in their conduct to divert business from the Company. On 7 April 2017, Wei informed Apple that the joint venture relating to SKL had been terminated, that SKL's employees had been transferred to SH, and that SH would assume SKL's responsibilities to supply products to Apple ("7 April 2017 Notification"). This was reiterated by SH on 8 April 2017 to Apple, which further sought Apple's support to work

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156 Agreed Bundle Vol 6 ("6AB") 2473A; PCS at [102] and [110].

157 6AB 2459–2462, 2469–2470; Low's AEIC at [129]; 21/9/20 NE 7–8.

158 23/9/20 NE 45–46.

directly with SH.[159] Wei claimed that he transferred SKL's employees to SH as SKL no longer had money to support the business and SH had to protect the jobs of SKL's workers.[160] Even if these claims were true, Wei nevertheless admitted that he wanted to ensure that he could continue to supply products to Apple as SKL was then the sole supplier of some of the Parts. This showed Wei's intent for SH to replace SKL (and thus the Company) to supply Parts directly to Apple, to undermine the Company's business.

124 By May 2017, Apple had begun engaging SH to produce Parts, and by June or July 2017, SKL had ceased supplying Parts to the Company. The Defendants testified that this caused the Company's customers to cease allocation of new production projects to, and placing orders with, the Company. These customers also stopped drawing down on their stockpiles of Parts supplied by the Company. These eventually led to the ceasing of the Company's cashflow and revenue.[161]

125 Even if there was no restraint of trade clause preventing the Wei-related Suppliers from dealing with Apple directly, the conflict of duty and interest existed so long as Wei remained a director of the Company.[162] Wei claimed that the 7 April 2017 Notification to Apple was necessary so that it would not think that the Wei-related Suppliers caused the supply problems because the Company would pin the blame on the Wei-related Suppliers for such problems.[163] I find this unconvincing. There was no evidence that at that time

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159 Wei's AEIC at pp 1057–1060; 6AB 2478; 21/9/20 NE 5.

160 21/9/20 NE 6.

161 21/9/20 NE 9–11; DCS at [87]; Low's AEIC at [146]; Sim's AEIC at [143].

162 PCS at [114].

163 Wei's AEIC at [180]; PCS at [112].

the Company was pinning the blame on the Wei-related Suppliers for any supply delay to Apple. Also, it is unclear how Apple would attribute any delay in the supply of Parts to it, to SH (which issued the "Official Statement" on 30 March 2017 and the 7 April 2017 Notification) as SH did not at that time have any direct contractual relation with Apple. The entities that Apple were familiar or transacted with then were SKL and the Company. Moreover, the 7 April 2017 Notification went beyond informing Apple of the "problems in the supply relationship". It sought to cast a negative light on the Company and proceeded to inform Apple that SH would take over from SKL the supply of Parts directly to Apple. Hence, I find that SH (and Wei) had contacted Apple as it wanted to supply to Apple directly.

126 For completeness, I discuss the other reasons the Defendants gave to justify Wei's removal as a director.

Demand for payment and ceasing of supply

127 There were many demands for payment from the Wei-related Suppliers to the Company.[164] I find that these demands were not unreasonable, and that there was no flexible payment arrangement or the Practice as the Defendants claimed. In closing submissions, the Defendants conceded that there was no formal agreement on when the Wei-related Suppliers would be paid and the latter could properly demand payment for goods sold and delivered. Sim admitted that there was no agreement on such Practice, and the Wei-related Suppliers merely gave indulgences to the Company.[165]

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164 22/9/20 NE 22–23.

165 Agreed Issues at s/n 15; 14/10/20 NE 62–63, 66–68.

128 Furthermore, the correspondence where SKL chased the Company for payments did not mention the Practice,[166] but showed instead that there was a fixed deadline for payment and that extensions of time were granted on a case-by-case basis, *eg*, in the minutes of a meeting on 13 December 2013, and emails of 20 February 2014, 4 December 2014 and 29 July 2015. The correspondence showed that the Company was extended credit terms to pay SKL by a stipulated time, and that it was subsequently informed by SKL that payments were due or overdue and asked to pay as soon as possible. The Defendants did not dispute the payment deadlines and Sim agreed that the Company should have abided by these express terms. On 1 September 2015, SH and SKL informed the Company that due to the constant delays by the Company in making payments, which had led to huge pressures on the Wei-related Suppliers and affected the operations of the factories in China, SH and SKL would be imposing a strict regime to restore regularity to the payment schedules.[167]

129 Even if there was such a Practice, the Wei-related Suppliers were entitled to demand payment, as the Company had been paid by its customers. The Defendants stated that the Company's customers had paid up, except for about US$800,000 (or at best US$2.8m, if amounts owed by SKL and SKLP to the Company were included). This outstanding sum was well below the US$10 million that the Company owed SKL.[168] Yet, the Company did not use the substantial sums it received to discharge its debt to SKL. Instead, it lent money to LSW and JNT Hi-Tech Pte Ltd ("JNT"), showing that it could pay SKL but chose not to.[169]

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166 Ms Song's AEIC at [19]–[40].

167 Ms Song's AEIC at [20]–[22], [26]–[27], [30]–[32], [36]; 5AB 1580–1582, 1598, 1616–1617, 1639–1641, 1678; 22/9/20 NE 13–18; 14/10/20 NE 66.

168 30/9/20 NE 159–166; 14/10/20 NE 72–73; 9AB 3909.

169 14/10/20 NE 59–60.

130 In fact, the debts had begun accumulating at end-2013, when the Company owed SKL around US$4.4 million, and demands for payment had been made. On 20 February 2014, SKL informed the Company that SKL was facing very tight cashflow and was "facing a serious shortage of funds which has already affected its normal productions and operations", whilst the Company owed it around US$6.3 million. On 23 December 2016, Wei informed the Defendants about the difficult financial situation that SH and SKL was facing, due to the Company's failure to pay for goods. By 22 February 2017, the Company owed SKL US$11.5 million and it was told that the outstanding payment had been more than two years and constituted a serious breach of contract.[170]

131 Given the circumstances and the massive amounts owed by the Company which it refused to pay the relevant Wei-related Suppliers although it could have done so (see [129] above), it was not unreasonable for them to demand payment and terminate the supply relationship with the Company from March 2017.[171] They had done so to preserve their interests, even if in consequence the Company would be prejudiced by losing a supply chain. I do not find that Wei's conduct in this regard justified his removal as a director of the Company, or even if it did, that this negated the Defendants' other acts of oppression or unfair conduct against him (see also [135] below).

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170 3AB 1077; 5AB 1580 and 1605; 6AB 2352–2354; 22/9/20 NE 51–52; 30/9/20 NE 161–162; 13/10/20 NE 150–155.

171 1/10/20 NE 43; PCS at [108].

Nomination of Boey as alternate director, seeking documents and legal proceedings

132 I find that Wei's intention to nominate Boey as an alternate director and Wei's request for the Company's financial documents at the material time were not good reasons for the Defendants to remove him as a director in September 2017. Wei was safeguarding his interest in the Company and was, as a director, entitled to the documents. He had good reasons to examine the Company documents given the matters that had transpired and how the Defendants had been keeping him in the dark regarding numerous transactions and management decisions that they made in relation to the Company. Pertinently, Wei withdrew his nomination of Boey after the Defendants agreed to provide him with the Company's financial statements, even though they did not follow through on their agreement (see [76] above).

133 I also find that Wei's conduct in bringing legal proceedings was not a good reason to remove him as a director. Even if it was, this did not negate the Defendants' other acts of oppression against him (see also [135] below). The evidence above shows there was a basis for Wei commencing the Suit for oppression, and for SH and SKL to pursue the Company for the substantial amounts owed by it to them. In any event, SKL commenced SIC/S 6/2019 against the Company only after Wei had been removed as a director.

Exclusion from management

134 Next, Wei asserts that the Defendants had excluded him from key management decisions pertaining to LSW and directors' benefits and dividends, which I have dealt with earlier. Wei also asserts that they had excluded him from key management decisions relating to lending a supplier, JNT, US$250,000 in 2017 and $25,000 in 2019 and writing off a bad debt of US$1.26

million in the Company's FY2015 accounts. I do not deal with these issues as they were not pleaded. In any event, they do not add anything more, as Sim conceded that he and Low never consulted Wei on any management decisions.[172]

Unclean hands

135 Finally, the Defendants allege that Wei has brought the Suit with unclean hands, largely for the same reasons raised at [118] to [120] above.[173] Although Wei was in a position of conflict when SH began undercutting the Company, this only occurred from around March 2017 and did not negate or justify the Defendants' prior acts of oppression or unfairness.[174] In *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30 at [106], the court stated that:

> … equitable defences in an action under s 216 are not meant to operate in an all-or-nothing fashion. It is not the case where inordinate delay or the absence of clean hands on the part of a plaintiff would automatically disentitle him to relief. Rather, any inequity on his party would simply be a relevant factor in the court's overall assessment of whether there has been unfairness warranting relief under s 216(2), and what type of relief is just and equitable in the circumstances. …

136 Further, although the Defendants claim that it was Wei who had caused the Company's downfall by using his entities to poach its business with Apple, the evidence shows that the Defendants had already caused the Company's assets to be depleted over time, such as by payments of the Dividends and Big Bonuses to themselves and by the loans to LSW which they never intended for the Company to reclaim. It is also telling that the Defendants took little action to cause the Company's accounts from FY2015 to be audited. Thus, while Wei's conduct may have contributed in part to the Company's downfall, it does not

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172 PCS at [79(d)] and [79(e)]; 13/10/20 NE 72–73; 14/10/20 NE 137–139.

173 DCS at [189].

174 PCS at [134]–[138].

prevent him from succeeding in a claim under s 216 of the CA, although his conduct may affect the relief that the court thinks fit to grant (*Re London School of Electronics Ltd* [1986] 1 Ch 211 at 221–222).

Whether claim under s 216 of the CA is made out

137 In the round, I find that the Defendants' conduct in various matters have been commercially unfair to Wei. They had conducted the affairs of the Company in a manner that is oppressive to Wei, and the acts which they had caused the Company to take also unfairly discriminated against or were prejudicial to him. These included:

(a) paying out the Dividends in breach of the Articles and without informing Wei, although he was then a director and shareholder of the Company, and to his exclusion;

(b) paying out excessive and unjustified Big Bonuses to themselves in 2015 in breach of the Articles without Wei's knowledge or consent although he was then a director/shareholder, and concealing this matter from Wei by recording it in the FY2014 (instead of the FY2015) accounts and ignoring Wei's subsequent queries on the Big Bonuses;

(c) withholding the Company's financial information deliberately from Wei and providing them to him only after repeated chasers; and from June 2016, withholding completely such information from Wei to conceal their actions pertaining to the Dividends and Big Bonuses;

(d) subsequently, seeking to buy out Wei's shares in the Company without providing to him the relevant financial information to determine the fair value of the shares;

(e) refusing to call board meetings despite being obliged to do so;

(f) intentionally omitting to audit the Company's accounts from FY2015, file annual returns from FY2014 and call AGMs to deal with the Company's accounts pertaining to the years since Wei became a shareholder/director of the Company, in order to hide the true state of affairs of the Company from him;

(g) diverting a corporate opportunity to LSW to exclude Wei from benefitting through the Company the use of the LIM technology (that came from SWA, which the Company had an indirect interest);

(h) Low failing to disclose to Wei related-party transactions between LSW and the Company despite his conflict of duty and interest; and

(i) failing to involve Wei in key management decisions pertaining to transactions between LSW and the Company such as the Company advancing loans to LSW for its set-up and operations and subsequent decision not to recover the loans from LSW.

Effect of winding up on a s 216 CA application

138 Wei seeks essentially the following reliefs:[175]

(a) that Low and Sim return to the Company US$800,000 each (received from the Dividends), the Big Bonuses and the 2015 Directors' Benefits;

(b) that the Defendants buy out Wei's shares in the Company: (i) valued at fair value and as at April 2016 or such other date as the court

175 SOC read with PCS at [139]–[140].

deems fit; (ii) adding back the sums at sub-para (a) above; (iii) valued on the basis that the Company is a going concern with no minority discount; and (iv) valued by an independent valuer; and

(c) if the court does not order a buyout of Wei's shares, an order that the Defendants pay him US$1.5 million being his entitlement to the Dividends.

139 Wei, in closing submissions, is not pursuing a relief that the Defendants be liable in damages or make restitution or account for monies paid from the Company to LSW; or that Wei be authorised to commence proceedings in the Company's name against the Defendants or other parties.

140 Wei argues that winding up does not bar relief under s 216 of the CA, relying on *Kumagai Gumi Co Ltd v Zenecon Pte Ltd and others and other appeals* [1995] 2 SLR(R) 304 ("*Kumagai*").[176] There is no reason why an aggrieved shareholder who had commenced an oppression claim before liquidation supervened should be barred from relief, if the reliefs sought do not interfere with the liquidation process.

141 The Defendants submit that any claim for the unpaid Dividends should be pursued against the Company via the winding up process, as this is a debt owed by the Company. Further, the court should not order a share buyout as the Company is in liquidation.[177]

142 Where an action under s 216 of the CA ("s 216 action") is commenced in respect of a company which is wound up before the trial of the action, the

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176 PCS at [141]–[142].

177 DCS at [133]–[135], [192].

question is whether such action can continue and whether the court can grant reliefs under s 216.

143 I am of the view that a s 216 action can continue against a company in liquidation, based on a reading of that section. Section 216 provides that a member of a company may apply to court for an order under that section. A "company" is defined broadly in s 4 of the CA and does not exclude companies which have been put into liquidation. Additionally, s 216(1)(*b*) allows a claim to be brought in relation to an act of the company that "has been" done or a members' resolution that "has been" passed which unfairly discriminates or is otherwise prejudicial to a member. This makes clear that a s 216 action can apply to past acts and not merely present acts. Thus, that a company is in liquidation and the directors are *functus officio* do not prevent a minority shareholder from making a claim in respect of acts of the company or members' resolutions that were previously committed.

144 It is also consistent with the purpose of s 216 to allow actions to be continued in respect of companies in liquidation, namely, to allow a member to seek redress for acts which are oppressive to him or in disregard of his interests, or which unfairly discriminates against or are prejudicial to him (collectively termed as "oppressive conduct" for convenience) and to bring an end to or remedy the matters complained of (*Kumagai* at [71]). Certain oppressive conduct may automatically come to an end where liquidators are appointed, as the directors are no longer in control of the company and would not be able to continue their oppressive conduct. However, there may be oppressive conduct which remains unremedied or have a continuing effect even after the company is put in liquidation.

145 The Court of Appeal in *Kumagai* accepted that a s 216 action could continue and even upheld certain reliefs granted by the High Court, even though the company was put in provisional liquidation after the s 216 action was filed (at [72]–[75]). The English courts have likewise allowed proceedings under s 994(1) of the Companies Act 2006 (c 46) (UK) ("CA 2006 (UK)") (pertaining to the affairs of the company being or having been conducted in a manner that is unfairly prejudicial to a member's interests) to proceed or continue, although the company was in administration (*Croly v Good and others* [2010] 2 BCLC 569; *Shepherd v Williamson and another* [2010] EWHC 2375 (Ch)) or in liquidation (*Re Tobian Properties Ltd* [2013] 2 BCLC 567; *Re Cabot Global Ltd* [2016] EWHC 2287 (Ch) ("*Re Cabot Global Ltd*")).

146 It may be argued that allowing a member to continue a s 216 action even after a company is placed in liquidation may open the floodgates of litigation of s 216 actions many years after the oppressive conduct had occurred, when the company had been wound up and the assets had been disposed of. However, this problem may be overstated. As observed earlier, certain forms of oppression come to an end once the company is in liquidation. Further, the court can examine the applicant's conduct (in bringing a s 216 action late) as a factor in determining whether or what relief is appropriate, even if there is oppressive conduct which has yet to be remedied.

147 Hence, the fact that a company is in liquidation is not in itself a bar to a s 216 action. However, that a company is in liquidation "would have a bearing on further order[s] to be made" (*Kumagai* at [72]). The Court of Appeal in *Kumagai* held that while the court's power to make an order pursuant to s 216 is "very wide", it must be made "with a view to bringing to an end or remedying the matters complained of". In determining what relief is appropriate, one must consider the circumstances at the time of the hearing and not at the time of the

application (*In re Hailey Group Ltd* [1993] BCLC 459 at 473). Whilst certain types of reliefs would not be appropriate if a company is already in provisional liquidation or if liquidators have been appointed (such as a derivative action, as the wrongdoers would no longer be in control) the appointment of liquidators is no bar to other reliefs (*Kumagai* at [72]).

148 In *Kumagai*, the High Court had, after finding that there was oppression, ordered the companies in question (KZ and its subsidiary KPM) to be wound up and gave other remedies alongside it. On appeal, in addition to the winding up order, the Court of Appeal upheld certain remedies ordered such as requiring the wrongdoer-shareholder and director of KPM (who was also the managing director of KZ) to purchase or procure the purchase of certain shares which had been acquired by KPM, which he had earlier caused KPM to purchase without consulting the minority shareholder of KZ. That the Company in the present case is in liquidation, as opposed to provisional liquidation, should not make a difference to whether reliefs may be granted, given that in both cases, the effect is the same: the liquidator or provisional liquidator steps into the shoes of the directors and manages the business and controls the assets of the company. If the court can grant reliefs alongside a winding up order (both under s 216(2) of the CA) as in *Kumagai*, there is no reason why it cannot similarly grant reliefs under s 216(2) of the CA where a winding up order has first been made (albeit under s 254(1) of the CA).

149 In *Re Cabot Global Ltd*, the applicant brought three s 994 CA 2006 (UK) petitions against certain shareholders of three companies, one of which was in administration, and another went into voluntary liquidation after the petitions were presented. The court found that unfair prejudice was made out and ordered the respondent shareholders to buy out the applicant.

150 Next, I consider *Campbell and another v Backoffice Investments Pty Ltd and another* (2009) 257 ALR 610, a decision of the High Court of Australia. The applicants brought oppression proceedings pursuant to s 232 of the Corporations Act 2001 (Aust) and applied for reliefs including the winding up of the company under s 233 or s 461 and a buyout of their shares. They also claimed damages pursuant to a statutory cause of action; this is not of concern in the present case. Shortly after, a court-ordered provisional liquidator was, by consent, appointed for the company. The court at first instance found that oppression was made out and held that the appointment of a provisional liquidator did not preclude the applicants from seeking a share buyout and thus granted such relief. By this time, the company was an empty shell and its assets had been disposed of by the provisional liquidator. On appeal, the majority of the Court of Appeal set aside the buyout order. The applicants sought leave to make a further appeal, which the High Court of Australia refused, stating that it had no prospect of success (at [60] and [183]). In the joint judgment of Gummow, Hayne, Heydon and Kiefel JJ, they stated (at [175], [179] and [182]) that whilst there may have been oppressive conduct, a share buyout should not be made, as by the time of trial, a provisional liquidator had been appointed and he had sold off the business and assets of the company and the shares in the company were worthless. French CJ made similar observations (at [72]). However, the High Court of Australia did not state that the fact that a company is in liquidation would preclude relief being granted; it merely found that a share buyout was inappropriate given the circumstances.

151 Hence, that a company is already wound up at the time of the trial of a s 216 action is no bar to the action continuing or to the court granting reliefs under s 216(2) where appropriate.

Orders

152 I note at the outset that the Suit (*ie*, the s 216 action) was commenced in 2017 and the Company was ordered to be wound up in June 2020 (pursuant to an application by the Defendants under s 254(1) of the CA), a few months before the start of the trial of the Suit. There was thus no substantial delay in bringing the s 216 action such that I should refuse to grant relief.

153 Nevertheless, I am not minded to order the Defendants buy over Wei's shares in the Company. The Company is likely insolvent given the amounts owing to its creditors (including the Wei-related Suppliers). The Company's accounts have not been audited from FY2015, and it is unlikely to be audited given that the Company has been wound up. Hence, there may be difficulties in a proper determination of what is fair value at the date of this decision or at April 2016 (as Wei has sought),[178] and any attempt at such determination is likely to be time-consuming and expensive. In any event, the liquidators may carry out investigations and take appropriate steps to redress any wrongs to the Company committed by its directors (see *Sakae Holdings Ltd v Gryphon Real Estate Investment Corp Pte Ltd and others (Foo Peow Yong Douglas, third party) and another suit* [2017] SGHC 73 at [293]). Moreover, whilst Wei claims that the downfall of the Company was caused by the Defendants' actions (such as paying themselves from the assets of the Company and causing advances to be made to LSW which have not been pursued by the Company), Wei had also contributed to the Company's demise when he caused SH to undercut the Company and supply directly to Apple. It bears remembering that Wei was at the material time also a director and shareholder of the Company. As fairness and equity play important roles in a s 216 action, the conduct of all parties

178 PWS at [139(b)(i)].

should be taken into account when considering the appropriate reliefs under s 216(2) of the CA. It would not be fair to give Wei a windfall by ordering the Defendants to buy over shares that may now be worth little when Wei had contributed in part to the devaluation of these shares.

154 Whilst that may be the case, the Defendants' oppressive conduct which occurred prior to SH undercutting the Company cannot be ignored. Thus, I order Low and Sim to pay the Company the sums paid to them pursuant to the invalidly declared Dividends, namely US$800,000 each, as well as the Big Bonuses I have found were made in breach of the Company's Articles. The payment of the Dividends and the Big Bonuses unfairly discriminated against and prejudiced Wei by reducing the overall assets of the Company of which Wei is a shareholder. In *Ho Yew Kong* (at [118]) the court noted that its wide discretion to fashion such relief it considers just can extend to making orders for the errant shareholder or director to make restitution to the company of monies that they have wrongfully diverted from the company. The Court however (at [119]) cautioned against too readily granting what is in essence a corporate relief in an oppression remedy and stated the necessity of focusing on the essential remedy the applicant is seeking. It also noted that a s 216 action should generally not be permitted where the essential remedy sought is for the company and in such a case the appropriate remedy would be a statutory derivative action under s 216A of the CA.

155 The above concerns do not bar the remedies ordered in the present case. Here, a s 216A derivative action would not avail the Company which has been wound up (see *Kumagai* at [72]; *Petroships Investment Pte Ltd v Wealthplus Pte Ltd and others and another matter* [2016] 2 SLR 1022). The mere winding up of the Company without an order to make restitution to it of the amounts improperly paid out to the Defendants from its assets, would not remedy the

commercial unfairness to Wei and bring an end to the oppressive conduct complained of. This is even if the order, which would increase the overall assets for distribution, may not result in sufficient net assets available thereafter for distribution to the shareholders (including Wei). Low and Sim, in paying themselves US$800,000 each (from the Dividends) and the Big Bonuses (of around $793,597 and $695,897 respectively), had committed personal wrongs against Wei as he was deprived of similar payments (if they had been paid out validly in conformity with the Articles of the Company). It bears noting also that whilst the claim pertaining to the Big Bonuses relates to Wei (and the Defendants) being directors of the Company, the right pertaining to management participation is closely related to Wei's right as a shareholder of the Company. The courts have protected the interests of a member *qua* director (see *Kitnasamy s/o Marudapan v Nagatheran s/o Manogar and another* [2000] 1 SLR(R) 542).

156 In light of the above order that I have made, there is no need to deal with Wei's alternative prayer that he be paid US$1.5 million by the Defendants. In any event, such relief is inappropriate as I have found the Dividends were invalidly declared and thus none of the shareholders (including Wei) were entitled to them.

157 As for Wei's submission for a declaration that the Defendants had breached their fiduciary duties to the Company, Wei did not plead this relief (despite having amended his Statement of Claim five times) and this was only raised in his closing submissions. I also do not see how such a declaration would bring an end to or remedy the oppressive conduct complained off. Further I have already made findings pertaining to Low's duties owed to the Company.

Conclusion

158 In conclusion, I find that Wei's claim under s 216(1) of the CA is made out, and I order that Low and Sim pay or return to the Company US$800,000 each and the equivalent of the Big Bonuses. I will hear parties on costs.

Audrey Lim
Judge

Jimmy Yim SC, Kevin Lee, Eunice Lau and Lim Joe Jee (Drew & Napier LLC) for the plaintiff;
Tan Chuan Thye SC, Jared Kok and Shaun Ou (Rajah & Tann Singapore LLP) for the first and second defendants.