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

[2024] SGHC 170

Originating Claim No 301 of 2022

Between

(1) Oon Swee Gek
(2) Tay Su-Lyn
(3) Tay Yiming

… *Claimants*

And

(1) Violet Oon Inc. Pte. Ltd.
(2) Murjani Manoj Mohan
(3) Group MMM Pte. Ltd.

… *Defendants*

Companies Winding Up No 195 of 2022

In the matter of Sections 125(1)(*f*) and 125(1)(*i*) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Violet Oon Inc Pte Ltd

Between

(1) Oon Swee Gek
(2) Tay Su-Lyn
(3) Tay Yiming

… *Claimants*

And

Violet Oon Inc. Pte. Ltd.

… *Defendant*

JUDGMENT

[Companies — Oppression — Remedies — Order requiring sale of shares in company by member to other members — Independent valuation of shares in company for compulsory sale]
[Civil Procedure — Costs — Quantum — Appendix G of Supreme Court Practice Directions 2021 — Costs guidelines for party-and-party costs for trials of commercial matters]

TABLE OF CONTENTS

INTRODUCTION **1**

PROCEDURAL HISTORY OF *VIOLET OON (MERITS)* **2**

RELEVANT FACTUAL BACKGROUND TO THE DISPUTE 2

PROCEDURAL HISTORY POSTDATING VIOLET OON (MERITS) 4

ISSUES TO BE DECIDED **7**

ISSUE 1: FACTORS THE VALUER MAY TAKE INTO ACCOUNT IN DETERMINING THE "FAIR VALUE" OF THE COMPANY'S SHARES **8**

ISSUE 1(A): WHETHER THE VALUATION MAY FACTOR IN A DISCOUNT FOR THE LACK OF MARKETABILITY OF THE COMPANY'S SHARES 10

Parties' positions *10*

My decision *11*

ISSUE 1(B): WHETHER THE VALUATION SHOULD FACTOR IN A PREMIUM FOR THE CONTROL OF THE COMPANY THAT WILL BE ACQUIRED BY THE CLAIMANTS 12

Parties' positions *12*

My decision *13*

ISSUE 2: COSTS OF OC 301 AND CWU 195 ..... **14**

ISSUE 2(A): WHAT WAS THE "EVENT" IN OC 301 AND CWU 195? 14

Parties' positions *14*

My decision *15*

ISSUE 2(B): WHAT IS THE APPROPRIATE QUANTUM OF COSTS TO AWARD FOR OC 301 AND CWU 195? 16

Parties' positions *16*

My decision 18

Oon Swee Gek and others
v
Violet Oon Inc Pte Ltd and others and another matter

[2024] SGHC 170

General Division of the High Court — Originating Claim No 301 of 2022 and Companies Winding Up No 195 of 2022
Philip Jeyaretnam J
23 May 2024

3 July 2024 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 This is a supplementary judgment to my earlier decision of 19 January 2024 in *Oon Swee Gek and others v Violet Oon Inc Pte Ltd and others and other matter* [2024] SGHC 13 ("*Violet Oon (Merits)*").

2 In *Violet Oon (Merits)* at [88], [90], [98]–[100] and [133], I held that the second defendant had, sometime in 2019, procured a shareholders' agreement with the claimants through duress and undue influence and therefore set it aside. Moreover, I found that the conduct of the second defendant rose to the level of commercial unfairness so as to engage s 216(1) of the Companies Act 1967 (2020 Rev Ed) ("CA 1967") (see *Violet Oon (Merits)* at [47]–[48], [63], [83]–[88], [94]–[98], [131] and [133]).

3 I held that the appropriate remedy under s 216(2) of the CA 1967 was for the second defendant to sell his shareholding in the company (owned by him via his wholly-owned corporate vehicle, the third defendant) to the claimants (see *Violet Oon (Merits)* at [126] and [131]). Hence, I dismissed the alternative remedy of an order for the winding-up of the company sought by the claimants (see *Violet Oon (Merits)* at [125] and [131]).

4 I directed the parties to seek to agree on an independent valuer, for the court-ordered sale of the third defendant's shares to the claimants, and indicated I would hear parties on terms of the valuation (see *Violet Oon (Merits)* at [127]–[128] and [130]). I also directed the parties to seek to agree on costs, failing which, I would determine and award costs (see *Violet Oon (Merits)* at [132]).

5 The parties were unable to agree on costs. Moreover, while parties have agreed on some terms of the valuation, others remain outstanding. I now decide on those matters concerning the independent valuation that have not been agreed, as well as the incidence and quantum of costs.

Procedural history of *Violet Oon (Merits)*

Relevant factual background to the dispute

6 The claimants are family members who, together, own and control a 50% shareholding in Violet Oon Inc Pte Ltd ("the Company"), a private limited company. They are also the Company's co-founders (see *Violet Oon (Merits)* at [7]–[8] and [10]). I refer to them collectively as "the claimants".

7 The second defendant acquired a 50% shareholding in the Company in 2014 pursuant to an agreement negotiated between him and the claimants (the "2014 SHA") (see *Violet Oon (Merits)* at [10]). That 50% shareholding was, at

first, directly owned by another wholly-owned corporate vehicle of his; those shares were later transferred to the third defendant, of which the second defendant is the sole shareholder, director, and Chief Executive Officer (see *Violet Oon (Merits)* at [8]).

8 The relationship between the claimants and the second defendant eventually broke down and this culminated in the claimants instituting two legal actions, both of which I disposed of in *Violet Oon (Merits)* at [131] and [133]. The first, HC/OC 301/2022 ("OC 301"), was their action for oppression under s 216 of the CA 1967 against the Company and the defendants ("OC 301"). In this action, the claimants sought to set aside certain agreements between them and the defendants that they concluded in 2019 ("the 2019 Agreements"). The claimants further sought an order requiring the third defendant to sell its shares in the Company to the claimants (see *Violet Oon (Merits)* at [23]).

9 In the alternative, the claimants sought a winding-up of the Company *vide* HC/CWU 195/2022 ("CWU 195"), but *only* if they could not obtain (in OC 301) an order for them to buy out the third defendant's shares pursuant to s 125(3) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (see *Violet Oon (Merits)* at [23]).

10 While the Company was the first defendant in OC 301 and the defendant in CWU 195, it was a nominal party, absent and unrepresented throughout the proceedings (see *Violet Oon (Merits)* at [8]). Accordingly, when I refer to the defendants in this judgment, I mean the second and third defendants.

11 Following a nine-day civil trial from 10 July 2023 to 18 August 2023, I rendered my decision in *Violet Oon (Merits)*, allowing the claimants' claims in OC 301 and ordering the third defendant to sell its shareholding in the Company

to the claimants, while making no orders on CWU 195 (see *Violet Oon (Merits)* at [126], [131] and [133]).

12 The parties, being dissatisfied, have filed cross-appeals. The defendants have appealed against the whole of *Violet Oon (Merits)* (*vide* CA/CA 37/2024) while the claimants have appealed against my making no orders on CWU 195 (*vide* CA/CA 8/2024). These appeals are still pending to date.

Procedural history postdating Violet Oon (Merits)

13 After I made my decision in *Violet Oon (Merits)*, there remained two outstanding matters to be disposed of: first, the terms of the valuation of the third defendant's shares for the purposes of the court-ordered buyout (see *Violet Oon (Merits)* at [127]–[130]); and second, the costs of both OC 301 and CWU 195 (see *Violet Oon (Merits)* at [132]).

14 The parties filed written submissions on these issues on 17 May 2024. By the time of the hearing before me on 23 May 2024, the parties had reached consensus on five points, which I now set out for completeness.

15 First, and by way of background, I accepted the defendants' contention in *Violet Oon (Merits)* (at [127] and [133]) that the shares had to be sold at "fair value" and ordered as such. The parties initially tendered submissions on the definition of "fair value" for the purposes of the valuation,[1] but by the time of the oral hearing the parties were agreed that "fair value" should be taken to mean "equitable value" as between a known buyer and known seller. The valuer may,

[1] Claimants' Written Submissions in HC/OC 301/2022 and HC/CWU 195/2022 dated 17 May 2024 ("CWS") at paras 1 and 11; 2nd and 3rd Defendants' Written Submissions in HC/OC 301/2022 and HC/CWU 195/2022 dated 17 May 2024 ("DWS") at para 4.

if thought appropriate, align their approach to the definition of "Equitable Value" as set out in paragraph 50.1 of the International Valuation Standards (effective on 31 January 2022), namely "the estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties", which "is a broader concept than market value".[2]

16 Second, parties had submitted on whether a market-based approach or an income-based approach was more appropriate for the valuation of the shares.[3] By the time of the oral hearing, the parties agreed to proceed on a market-based valuation method.

17 Third, parties had submitted on the relevance of post-valuation circumstances, including:[4]

(a) the extension of the Company's lease for its outlet at Jewel Changi Airport;

(b) the absence of certainty as to whether its outlet at ION would continue after its current lease expires in 2025; and

(c) whether the ION outlet may have to close for renovation works, with the Company incurring capital expenditures as a result.

By the time of the oral hearing, the parties agreed to proceed on the basis that the valuer should be limited to those facts which were reasonably foreseeable as at the valuation date, and whether such facts concerning the Jewel and ION

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2 DWS at para 4.

3 CWS at paras 36–40; DWS at para 3.

4 CWS at paras 31–35; DWS at paras 10–11.

outlets were or were not reasonably foreseeable should be determined by the independent valuer, to whom the parties may make submissions.

18 Fourth, parties had initially taken positions on whether the court could give directions on whether the valuation should take place on the basis that the Company must pay licence fees to the first claimant for the use and exploitation of her name in connection with the Company's business.[5] By the time of the oral hearing, the parties agreed that the court was *functus officio* on that issue. This is because I had already held in *Violet Oon (Merits)* at [129] that the valuation was to take place on the basis that the Company has the right to use and to exploit the first claimant's name without payment of a licence fee to her. The claimants expressly reserved their rights to take up that issue on appeal.

19 Fifth, parties had submitted on whether the valuation should proceed on the basis that the valuer may make adjustments to account for what the value of the shares would have been 'but for' the oppressive conduct of the defendants.[6] By the time of the oral hearing before me, the claimants indicated that they were content to make submissions to the valuer on this point or pursue other causes of action, including seeking leave to institute a derivative action or authorising an action against the third defendant by the Company for moneys allegedly paid pursuant to the set-aside 2019 Agreements.[7] After all, following the buyout (if and when it completes), it is the claimants who will be in control of the Company's affairs.

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5 CWS at para 2 n 4; DWS at para 13.

6 CWS at paras 22–30; DWS at paras 16–22.

7 CWS at paras 27–28.

20 Finally, by the time of the oral hearing, the parties had agreed on the valuer to be appointed, subject to the clearing of conflicts, confirmation of fee quotes, and other necessary administrative steps, and that parties would bear in equal shares the fees of the independent valuer. This was confirmed in parties' letters sent to court following the conclusion of that hearing on 27 May 2024 and 28 June 2024.

Issues to be decided

21 Therefore, by the time of the oral hearing before me, the issues that I had to decide had narrowed to the following two matters:

(a) First, what factors may the valuer take into account in assessing the "fair value" of the third defendant's shares? Two sub-issues arose in this connection:

(i) May the valuer discount the value of the shares of the third defendant on the basis of their lack of marketability, if such a discount is appropriate in their opinion?

(ii) May the valuer accord a premium to the value of the shares to account for the fact that the claimants will acquire full control over the Company after the buyout, if such a premium is appropriate in their opinion?

(b) Second, what order should the court make as to costs? Again, two sub-issues arose:

(i) What was the "event" of OC 301 and CWU 195 for the purposes of applying the default rule that costs should follow the event?

(ii) What quantum of costs should the court then award to the prevailing party?

22 I address each of these issues in turn.

Issue 1: Factors the valuer may take into account in determining the "fair value" of the Company's shares

23 When a specific shareholding in a private limited company is valued, there are a number of recognised factors that may either reduce or increase the value of that shareholding. Examples of factors that may operate to reduce the valuation of a shareholding include illiquidity and non-marketability of the shares in question: *Liew Kit Fah and others v Koh Keng Chew and others* [2020] 1 SLR 275 ("*Liew Kit Fah*") at [58]. On the other hand, a factor that may increase the valuation is where the purchase of a particular shareholding would give the buyer control over the company: *Liew Kit Fah* at [47].

24 The question that the court must consider is whether in the circumstances of a particular case it would be fair or unfair to apply such factors if one party has been adjudicated to have behaved in a manner commercially unfair to the other. Thus, where an oppressed minority successfully seeks a buy out of its shares, the court may decide that no discount for the minority status of the seller should be applied by the valuer.

25 Here, the claimants collectively hold 50% of the Company's shares, which is equivalent to the defendants' shareholding. It might be assessed by a valuer that if either party had sought to sell their shares to third parties, the fact that their shares did not carry full control of the Company – which would have been shared with the other party – would have had the effect of making the shares saleable only at a discount.

26 Conversely, if either party had freely negotiated with each other, a valuer might assess that each would have been prepared to pay extra because buying out the other would give that party full control of the Company.

27 The court's task is "to fix the minority's shares at a price that is fair, just and equitable as between the parties": see the judgment of the Court of Appeal in *Feen, Bjornar and others v Viking Engineering Pte Ltd and another appeal and another matter* [2021] 1 SLR 497 ("*Bjornar Feen*") at [22]. The court usually delegates the valuation proper to an independent valuer, setting the terms of reference that will guide the valuer. Setting the terms of reference may include ruling in or ruling out specific factors. In doing so, the court is instructing the valuer not on what the value of the shares in fact is, but on what adjustments the court considers would be fair or unfair for the valuer to consider, given the conduct of the parties that had led to the buyout. This exercise involves an evaluation of the facts of the case, and there is no universally applicable rule of law concerning the factors that should or should not be considered in cases under s 216 of the CA 1967. Ordinarily, the *amount* of any discount or premium for a factor that the court has not ruled out is a matter for the valuer's evaluation based on their expertise and experience.

28 Where the independent valuer proceeds in accordance with the terms of reference, it is implicit that the court will only intervene on limited grounds, such as patent or manifest error. This promotes the public interest in the finality of litigation: see *Bjornar Feen* at [23].

29 This division of labour between the court and the independent valuer is logical and efficient, because matters of fairness remain within the court's purview while the valuer deals with the technical aspects of valuation.

30 With this preamble, I now turn to the two sub-issues outlined at [21(a)] above.

Issue 1(a): Whether the valuation may factor in a discount for the lack of marketability of the Company's shares

Parties' positions

31 The claimants argue there should be a discount to account for the fact that the Company's shares – being shares in a private limited company for which there is no ready open market are not marketable.[8] They highlight that, having acted in a manner commercially unfair to the claimants, the defendants should not be able to acquire a benefit or windfall from their oppressive conduct. They suggest that that would be the case if they are bought out at a value which does not take into account the non-marketability of the shareholding.[9]

32 At the hearing before me, the claimants relied on the English case of *In re Bird Precision Bellows Ltd* [1984] 1 Ch 419 ("*Re Bird*"), which was a case originally cited by the defendants. The court in that case expressed at 430F–G the view that the price for the buyout of an oppressed minority shareholder in a private company that is a quasi-partnership should be fixed "pro rata according to the values of the shares as a whole and without any discount, as being the only fair method of compensating an unwilling vendor of the equivalent of a partnership share", while a "delinquent majority … should [not] receive a price which involved an element of premium."

33 The defendants on the other hand argue that there should be no discount for the lack of marketability of the Company's shares. Such a discount is meant

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8 CWS at para 4.

9 CWS at para 11.

to account for the higher transaction costs and attendant inconveniences in a would-be seller attempting to sell their shares in a private limited company without an available open market and with restrictions on transfers of those shares in the company's constitution.[10] Here, however, an unwilling seller is being made to sell their interest to a willing buyer.[11] In such a case, it would not be fair to apply a discount to the unwilling seller as if they were a willing seller engaged in a normal free market transaction.

34 The defendants rely on *Re Bird* at 430F and 431A for the proposition that, in the case of "an unwilling vendor of the equivalent of a partnership share", the fairer method of valuing that shareholding would be to "fix the price pro rata according to the value of the shares as a whole and without any discount" that may otherwise apply if it were a case of a "free election to sell".[12] However, this submission overlooks that the court in *Re Bird* was in that passage considering the position of an oppressed minority being bought out.

My decision

35 I adopt the approach that I have described at [27]–[28] above. *Re Bird* is consistent with that approach notwithstanding that it was focused on the limited category of "quasi-partnerships".

36 Given the conduct of the defendants in this case, which made it intolerable for the claimants to work with them, I would not rule out from the valuer's consideration the factor of lack of marketability. The defendants should not profit from their own wrong in having acted unfairly to the claimants. The

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10 DWS at para 6.

11 DWS at paras 7–8.

12 DWS at para 7.

discount to be applied in light of the shares' unmarketability (if any) is for the valuer to assess.

37 Nonetheless, there is an aspect pertaining to marketability that the valuer should disregard in assessing the extent of the discount to be applied (if any), namely the need for third party buyers to conduct due diligence on a private company and the uncertainty generated by the relative lack of information relating to private companies. Here, the compulsory sale is to persons involved in the business of the Company who do not need to do due diligence and are in the best position to know about its business. It would overcompensate the claimants if they had the benefit of a discount for reasons that do not apply to them.

Issue 1(b): Whether the valuation should factor in a premium for the control of the Company that will be acquired by the claimants

Parties' positions

38 The claimants advance two reasons why there should be no premium to account for control over the Company for two reasons. First, they argue that the shares being valued are the shares held by the third defendant, which is only a 50% shareholding in the Company. A buyer acquiring such a shareholding would acquire no control over the Company's affairs and hence no premium should be accorded.[13]

39 Secondly, even if one takes the position that it is the claimants who are the identified buyer purchasing the 50% shareholding of the third defendant, they stress that the claimants *collectively* own a 50% shareholding. As such, even after they have bought out the defendants, the shareholding will be split

[13] CWS at para 19.

between three different persons, who could disagree on a varied range of future management decisions.[14] None of them individually can be said to acquire any real or effective control over the Company's management after the buyout. Before the defendants came into the picture, the first claimant owned 40% of the shares in the Company while her two children (*ie*, the second and third claimants) owned 30% each (see *Violet Oon (Merits)* at [9]).

40 The defendants for their part argue that there should be a premium for control. Although the claimants together presently control only 50% of the Company's shareholding, the buyout would result in their acquiring full ownership of all shares in the Company (and therefore confer total control over the Company's management). That constitutes a tangible commercial benefit which should be accounted for in arriving at the "fair value" of the third defendant's shares' for this transaction.[15]

41 The defendants also highlight that, under the 2014 SHA, certain decisions require the approval of the third defendant and the claimants acting together. These restrictions will fall away once the buyout is completed. That is another material economic benefit that should be accounted for in ascribing a "fair value" to the defendants' shareholding.[16]

My decision

42 In my judgment, the defendants should not be deprived of the value attaching to their shareholding from their shared control of the Company. This was an intrinsic part of the agreement between shareholders. It would not be fair

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14 CWS at para 20.

15 DWS at para 9.

16 DWS at para 9.

to the defendants if they were not paid an amount for their shareholding that includes the value attributable to the fact that that shareholding carried with it the attribute of shared control.

43 The claimants, through this buyout, will gain sole control in place of the shared control originally agreed upon. It would not be unfair for them to pay for this advantage in such an amount as the valuer may attribute to it.

44 For completeness, I did not see force or even relevance in the claimants' contention that they are three different persons who may later disagree in relation to the business of the Company. So far as the venture between the claimants and the defendants is concerned, the claimants have certainly behaved as a bloc holding 50% of the Company's shares. Fairness must be assessed in relation to the way the claimants have thus far conducted themselves, and not by reference to speculation about how they may act in the future.

Issue 2: Costs of OC 301 and CWU 195

45 Having disposed of the issues pertaining to the valuation of the defendants' shares, I turn now to consider the costs orders that should be made concerning OC 301 and CWU 195 (as outlined at [21(b)] above).

Issue 2(a): What was the "event" in OC 301 and CWU 195?

Parties' positions

46 The claimants argue that they substantially succeeded in both OC 301 and CWU 195. They have acquired the primary relief that they sought, namely, an order compelling the sale of the third defendant's shares to them. The prayer for a winding-up order was only sought in CWU 195 as an alternative to the

first-mentioned prayer for relief.[17] Thus, the claimants argue that the defendants should bear the costs of both OC 301 and CWU 195.[18]

47 The defendants do not disagree that the claimants prevailed in OC 301. They argue, however, that account should be taken of the points on which the claimants did not prevail in my decision in *Violet Oon (Merits)*. In particular, they highlight that the claimants failed in their argument that the Company was a quasi-partnership (see *Violet Oon (Merits)* at [29]–[30]) and failed in making out several of their alleged legitimate commercial expectations between the parties in 2014 (see *Violet Oon (Merits)* at [34]–[36] and [45]–[47]). As for CWU 195, they argue that the "event" in CWU 195 is in their favour, since the claimants did not obtain an order winding-up the Company.

My decision

48 In my view, the claimants substantially succeeded in OC 301 and CWU 195 taken together and are therefore entitled to their costs. I accept that the claimants had legitimate reasons to file CWU 195, even though it was ultimately unnecessary to consider if a winding-up order should be made following my decision on the claimants' rights and remedies in OC 301. Indeed, I made observations to a similar effect in *Violet Oon (Merits)* at [116], namely, that "it was reasonable for the claimants to put before the court the remedy of winding up as one possible answer to the situation in the Company." Hence, "the claimants' pursuit of both proceedings was reasonable", and they "played their part in ensuring that both proceedings were dealt with expeditiously by the court without duplication or waste of court resources": *Violet Oon (Merits)* at [117].

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17 CWS at paras 42–45.

18 CWS at paras 41 and 47.

Issue 2(b): What is the appropriate quantum of costs to award for OC 301 and CWU 195?

Parties' positions

49 The claimants seek costs for both OC 301 and CWU 195 in the amount of $757,614.44 in total. This comprises $510,000.00 in party-and-party costs and $247,614.44 in disbursements.[19]

50 They acknowledge that the quantum sought is higher than that provided for by the costs guidelines set out in Appendix G (Guidelines for Party-and-Party Costs Awards in the Supreme Court of Singapore) to the Supreme Court Practice Directions 2021 ("Appendix G"). They submit that such an uplift is nevertheless justified on two grounds:

(a) First, the defendants are said to have unreasonably refused fair offers from the claimants to purchase their shares in 2021 and 2023 which, if accepted, could have obviated this litigation.[20]

(b) Secondly, they argue that there was unreasonable behaviour from the defendants during the litigation, including meritless requests for production of documents and belated disclosure of evidence.[21] In their oral submissions, the claimants also argued that the case was legally complex.

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19 CWS at paras 41 and 48; Claimants' Core Bundle of Documents in HC/OC 301/2022 and HC/CWU 195/2022 dated 17 May 2024 ("CCB") at pp 238–247.

20 CWS at para 50; CCB at pp 234–235.

21 CWS at para 51; CCB at pp 235–238.

51 The defendants, on the other hand, propose that the claimants should receive costs in the amount of $160,000.00 (inclusive of disbursements).[22] That quantum would be in line with the costs guidelines in Appendix G for trials of commercial matters. The defendants argue that the quantum should fall on the lower end of the range because this was a simple matter that was not legally complex.[23]

52 The defendants also urge the court to consider that they "made significant attempts to mediate the dispute but these were ultimately stymied by the [claimants'] shifting of the goalposts".[24]

53 The defendants' proposed quantum of $160,000.00 comprises the following:[25]

(a) $30,000.00 for pre-trial work, for which Appendix G provides a range of $25,000.00–$70,000.00;

(b) $70,000.00 for trial and post-trial work, for which Appendix G provides a range of $6,000.00–$16,000.00 per day (for a nine-day trial) and up to $30,000.00 for post-trial work;

(c) $6,000.00 for the defendants' unsuccessful application to strike out CWU 195, for which Appendix G provides a range of $6,000.00–$20,000.00; and

(d) $54,000.00 for disbursements.

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22 DWS at paras 23 and 34.

23 DWS at para 23.

24 DWS at para 31.

25 DWS at paras 23 and 25.

54 The defendants argue that the amounts sought by the claimants are excessive, being double the highest end of the ranges in Appendix G given for pre-trial, trial, and post-trial work for commercial matters.[26] They also argue that the defendants should not have to bear the bulk of the disbursements sought by the claimants attributable to the expert report of Mr Iain Cameron Potter (being $183,724.49 out of $247,614.44),[27] since they had always taken the position that expert evidence on the valuation of the shares was not necessary for the civil trial and Mr Potter's evidence was immaterial to the court's determination of liability.[28] After all, the outcome of the trial was that an independent valuation would follow (see *Violet Oon (Merits)* at [130]).[29]

My decision

55 First, I agree that the expert fees of Mr Potter should not be recoverable from the defendants. This is not a criticism of Mr Potter or his evidence. I disallow his fees because in this case, the defendants had consistently taken the position that valuation evidence was not relevant at the first stage on liability. Ultimately, his evidence was neither necessary nor material at that stage of the proceedings. I consider the remaining disbursements of the claimants to be reasonable.[30] Thus, I would grant the claimants' disbursements of

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26 DWS at para 25.

27 DWS at paras 23 and 26.

28 DWS at paras 28–29.

29 DWS at para 29.

30 CWS at para 41; Letter of Claimants' Counsel to the Supreme Court Registry dated 15 February 2024 at para 3(c).

$247,614.44.00,[31] save for the $183,724.49 attributable to the expert evidence of Mr Potter,[32] amounting to a balance sum of $63,889.95.

56 Secondly, in terms of quantum, I am of the view that the case was complex (bearing in mind particularly the interplay between matters of duress, undue influence, and s 216 of the CA 1967). The complexity was both legal and factual in nature. I would not reduce the quantum on account of the claimants' not having succeeded on all aspects of the matter, bearing in mind the general rule that a successful party should not be deprived of their costs in whole or in part just because they failed on some issues or allegations raised unless they had acted improperly or unreasonably (see *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 at [23]–[24]). None of the claimants' unsuccessful arguments (see at [47] above) amounted to unreasonable conduct in the nature of, for instance, raising unnecessary claims or issues that prolonged proceedings (see *Mohamed Amin bin Mohamed Taib and others v Lim Choon Thye and others* [2011] 2 SLR 343 at [4]) or raising plainly unsustainable, unmeritorious, or unreasonable issues that were put forward and argued at length (see *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2011] 1 SLR 582 at [36]).

57 I would also not reduce the quantum by reference to the parties' attitudes toward mediation. In my assessment, the claimants did not act unreasonably. There were legitimate differences between parties concerning the ambit of matters to be mediated and the terms.[33] As the English Court of Appeal noted in

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31 CCB at pp 238–247.

32 CCB at p 244.

33 CWS at para 50(a); DWS at paras 31–32.

Halsey v Milton Keynes General NHS Trust; Steel v Joy [2004] EWCA Civ 576 at [16], mediation and alternative dispute resolution processes:

> … do not offer a panacea, and can have disadvantages as well as advantages: they are not appropriate for every case. … The question whether a party has acted unreasonably in refusing [alternative dispute resolution] must be determined having regard to all the circumstances of the particular case. …

Hence, in these circumstances, I cannot agree that the claimants' approach to the terms of the mediation was unreasonable or deserving of an effective costs penalty.

58 I turn to the amount of costs. In relation to pre-trial work, I award $100,000.00, which is an uplift from the range of $25,000.00 to $70,000.00 provided for pre-trial work on commercial claims in Appendix G. For trial work, I award $112,000.00 for the evidentiary hearing, being the product of a daily rate of $16,000 (at the top of the range in Appendix G) over seven days. For the written and oral closing submissions, I award $75,000.00, which also incorporates an uplift from the range provided for in Appendix G. Finally, for HC/SUM 4224/2022 (*ie*, the defendants' unsuccessful attempt to strike out CWU 195), I award the claimants $12,000.00.

59 To summarise, I award costs of $299,000.00 in total, and disbursements of $63,889.95, in favour of the claimants, for which the second and third defendants in OC 301 shall be jointly and severally liable.

Philip Jeyaretnam
Judge of the High Court

Meryl Koh Junning, Justin Lai Wen-Jin, Shahera Safrin and Jacinth Teo Ying En (Drew & Napier LLC) for the claimants in HC/OC 301/2022 and HC/CWU 195/2022;
The first defendant in HC/OC 301/2022 and the defendant HC/CWU 195/2022 absent and unrepresented;
Thio Shen Yi SC, Chew Xizhi Stephanie, Phoon Wuei and Fu Wei Jun Nicholas (TSMP Law Corporation) for the second and third defendants in HC/OC 301/2022.
