IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1992] SGCA 29

CA 46/1990

Between

Chua Kien How

… *Appellant*

And

Goodwealth Trading Pte Ltd
Another

… *Respondent*

GROUNDS OF DECISION

Companies — Winding up

Version No 1: 11 Sep 2026 (01:05 hrs)

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Chua Kien How v Goodwealth Trading Pte Ltd and Another

[1992] SGCA 29

CA 46/1990
Chan Sek Keong J; Chao Hick Tin J; Warren Khoo L H J
29 April 1992

1 Cur Adv Vult

2 This is an appeal against the decision of Yong Pung How CJ ordering the winding-up of Goodwealth Trading Pte Ltd (`the company`) on the ground that it was just and equitable to do so under s 254(1)(i) of the Companies Act (Cap 185, 1970 Ed) (`the Act`). [See [1991] 2 MLJ 314 .]

3 The petitioner bought the company as a shelf company in 1984 for the purpose of carrying on the business of a restaurant at Shaw House, Orchard Road, Singapore after he had acquired a lease of the site. He then invited three other persons to join him in the business. They were the original directors and shareholders. The business commenced in December 1984 under the name of Chui Garden Noodle House and specialized in the sale of Hong Kong noodles.

4 The monthly rent for the premises was $94,957.50. In the first year of business, the company lost money. By August 1985, the company was in arrears of rent in the amount of $329,830, against which it had paid to the landlords a rental deposit of $284,872.50. The landlords were willing to reduce the monthly rent to $70,000 provided the arrears were paid. The company was unable to pay

the arrears and the landlords issued a writ of distress which was executed on 30 April 1986. The other shareholders wanted to terminate the business and wind up the company, but the petitioner, who was the managing director, was keen to carry on the business.

5 The petitioner invited his friend, Chua Kien How (`Chua`), who was known to the landlords` general manager, to continue the business with him. Chua became a shareholder in May 1986 after he had successfully sorted out the problem of the arrears with the landlords by giving his personal guarantee to the landlords in the amount of $280,000, whereupon the writ of distress was withdrawn. At about the same time, the other shareholders sold their shares in the company to Chua and the petitioner at the nominal price of one cent per share.

6 Following his entry into the company, Chua became a co-director with the petitioner and also the chairman of the board of directors. However, the company was jointly managed by the petitioner and Chua, with the petitioner being in charge of the day-to-day management of the business of the company, and Chua being a joint signatory of the company`s cheques.

7 What the petitioner and Chua had agreed between themselves as to their respective shareholdings in the company when they decided to buy out the other shareholders became a bone of contention between them in 1987 after the company had made a successful turnaround in its business. The petitioner`s version was that he and Chua agreed to become 50:50 shareholders. However, under the restructuring agreement signed by them, it was provided that Chua would acquire from the other shareholders enough shares to give him a majority shareholding in the company. The petitioner`s explanation for agreeing to Chua becoming the majority registered shareholder was that Chua had represented to

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the petitioner that the landlords were not prepared to withdraw the writ of distress unless Chua became the majority shareholder. The petitioner agreed to that condition provided that Chua agreed to hold the shares, numbering 76,800, which, together with his own shares, would give Chua the majority shareholding in the company, in trust for him and to transfer them back to him when the guarantee had lapsed. The petitioner alleged that Chua had agreed to this arrangement.

8 Chua denied that he had made any representation to the petitioner regarding the landlords` requirement. His version was that it was agreed from inception that he would be the majority shareholder on account of his exposure under the guarantee he had given to the landlords. As it later turned out, the landlords did not call on Chua`s guarantee.

9 The business of the company had picked up and become profitable. In February 1987, Chua executed a transfer of 76,800 shares to the petitioner, which, if it had been registered, would have equalized their shareholdings in the company. The consideration stated in the transfer form was $768, ie at one cent per share. The petitioner`s account of this was that he had requested Chua to transfer the said shares to him as Chua`s guarantee had lapsed. However, when the transfers were presented for registration, Chua sent a telex on 13 March 1987 to the company`s solicitors to stop the registration on the ground that he had not been paid the consideration by the petitioner. In this action, Chua gave an additional reason for having stopped the transfer. It was that he had agreed to the transfer provided that the landlords agreed to release him from the guarantee and that the landlords had refused to do so. Chua did not adduce any documentary evidence to support his allegations.

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10 Prosperity bred cupidity. According to the petitioner, from March 1987, Chua began to initiate steps to take over the control of the company. He first transferred 150,000 of his own shares to his wife, which made her the third shareholder in the company. It was, however, not disputed that the petitioner had agreed to the transfer. In February 1988, he attempted to transfer some of his other shares to his brother, CAB. He also attempted to remove the secretary of the company. Between August 1988 and October 1989, Chua convened 12 directors` meetings, one after another, with a view to appointing CAB as an additional director of the company. Each attempt was frustrated by the petitioner refusing to attend the meeting and denying it the quorum. Chua also requisitioned several general meetings but again could not get a quorum. There was adduced in evidence a copy of a signed minute by Chua of a general meeting having been validly held at which CAB was appointed a director. However, Chua later treated the said meeting as having no effect.

11 As a result of these disputes, the petitioner and Chua did not communicate with each other in the management of the company except through a mutual friend. The company was able to continue its business on a day-to-day basis, but no corporate decision could be or was made. Hence, as found by Yong Pung How CJ, the company was served, on 18 May 1989, with a summons for failure to submit its tax returns and audited accounts to the Comptroller of Income Tax for the year of assessment 1988. On 25 May 1989, the company was served with another summons for failing to hold an annual general meeting and to lodge its annual return within the time prescribed by the Companies Act.

12 In early April 1989, the landlords served the company with six months` notice to determine the tenancy of the restaurant premises by 31 October 1989 as the landlords wanted to redevelop the site. After the notice was given, the

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petitioner wanted to wind up the company. Chua was also agreeable as in July 1989 and September 1989 he spoke to the restaurant manager to dismiss the staff and sell the kitchen equipment. Chua and the petitioner gave to the chefs from Hong Kong, whose services were vital to the continuation of the restaurant business that was then carried on by the company, notices of termination of service on 30 October 1989. On that day, the restaurant closed its door and on 31 October 1989 all the restaurant fixtures, fittings and furniture, the kitchen and other operating equipment were sold by public auction. The restaurant manager ceased employment on 30 November 1989 and the audit clerk left on 31 December 1989. During this period of notice, no corporate decision was made to continue the restaurant business at any other location.

13 On 10 November 1989, the petitioner commenced an action against Chua for a declaration that the said 76,800 shares were held in trust by Chua for him and an order for their transfer to him.

14 On 15 November 1989, the petitioner commenced the winding-up action under appeal. The winding-up petition recited the origin of the business, Chua`s subsequent participation and involvement in its business and management, the dispute between the petitioner and Chua in relation to the ownership of the 76,800 shares, and the attempts of Chua to take control of the company. Paragraphs 15 and 16 of the petition set out the grounds on which the petitioner sought the winding-up order. They read:

> (15) On 5 April 1989, the company received notice to quit the premises at #01-02 Shaw House, Orchard Road from the landlord which notice to quit expired on 31 October 1989. The company`s only business is that of a restaurant operated at the aforesaid premises. Since the handing-over of vacant possession of the said premises to the landlord, the company has ceased business altogether.

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> (16) The dispute between your petitioner and the said Chua arising from the aforesaid has resulted in a complete deadlock in the company. It has become impossible for all concerned to conduct the business of the company. In the circumstances, it is just and equitable to wind up the company.

15 Although these paragraphs were not as well-drafted as they ought to have been, they are sufficient to show that the grounds on which the petitioner relied were: (i) the loss of the substratum of the company, and (ii) the deadlock between the two directors in the management of the company.

16 As regards the first ground, Yong Pung How CJ stated the law as follows [at pp 319-320]:

> *A company`s substratum is the main object which it was formed to achieve. If its main object was to carry on a certain business, and it is no longer able to carry on that business, its substratum is gone, and any member may petition for a winding-up order on the just and equitable ground. A memorandum of association invariably contains a long list of ancillary objects, with a correspondingly long list of powers which the company may exercise to achieve these objects. But the fact that the majority of shareholders may wish to keep the company in existence, and to exercise the powers to carry on a different kind of business, or even a similar business, will not prevent a dissenting shareholder from petitioning for a winding-up order. This will be so even if the company`s memorandum specifically provides that each of its objects shall be a principal object, because a court must determine the real object for which the company was formed, and will allow a winding-up petition if this object has to all intents and purposes been abandoned.*

17 His Honour then went on to make the following findings of fact [at p 320]:

> *In the present case, the company`s substratum was clearly the restaurant business in the choice location which Shaw House offered, in the heart of the best shopping and tourist district in Singapore, and the company was actually a shelf company which the petitioner purchased to cloak the business with a corporate personality. Even during the recession in 1985 and 1986 when the company was unable to pay even the rent on the premises, the petitioner was minded to soldier on, and Chua*

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> *himself was brought in to save the business. With the landlord`s decision to redevelop the whole property and consequently to terminate all the tenancies, including the company`s, it is clear that this restaurant business came to an end. Chua himself was involved in the steps taken to close the business, including terminating the employment of the all important Hong Kong chefs and other employees, and auctioning off the equipment, furniture and fittings. As a result, there was no longer any business long before the petition came on for hearing, and all the assets of the company had been realized and converted into cash deposits at the company`s banks. In actual fact, therefore, the company`s substratum had disappeared. I could not understand why Chua wanted the company to continue in existence, and oppose the petition, without drawing the obvious inference that for his own reasons he wanted to hang on to the control of the petitioner`s share of the capital, free of interest. The suggestion by Chua that the substratum of the company had not been affected, as the company had only ceased to carry on its restaurant business because the landlords, the Shaw Foundation, were redeveloping Shaw House, and that he was looking for alternative premises to carry on the business or some other business was clearly an afterthought, for the sole purpose of supporting his opposition to the petition for a winding-up order, and was of no merit, especially as he appears to have been a relatively inactive participant in the actual management of the company`s restaurant business. In such a situation, where the company`s substratum has disappeared, and there is opposition by one of the two shareholder groups to continuing in business with the other, it is clearly ` **just and equitable**` that the company be wound up, so that the cash assets can be distributed and each of the two groups can go his own way. For a court to refuse to order a winding-up and in effect force the warring parties to continue in partnership, when, as in the present case, it is clear that the parties can no longer work together would merely be to indorse an exercise in futility.*

18 As regards the second ground, his Honour found as follows [at p 319]:

> *In the present case, the relationship between the parties had deteriorated to such an extent that, even if the landlords had not decided to redevelop Shaw House, and the restaurant had been able to continue business in its premises, it would no longer have been possible for the two parties to continue to participate together in any form of business enterprise. They were not even on speaking terms. As Ms Chia put it, it would only have brought on a marathon of litigation. In such circumstances, the court cannot stand aside, much less remain in an ivory tower, and comfort itself by saying that the minority party can always bring an action later for oppression, if need be, as was suggested by*

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> *Chua`s counsel. To do so would be to risk bringing the court into disrepute.*

19 The grounds of appeal set out in the petition of appeal which counsel for Chua has relied on in this appeal may be summarized as follows: that Yong Pung How CJ:

> (1) failed to confine himself to the heads of complaint set out in the petition when he ordered the company to be wound up on the ground that the relationship of trust and confidence between the directors had broken down;
>
> (2) in any event, failed to consider (a) that the relationship between the petitioner and Chua was not in the nature of a partnership or quasi-partnership, and therefore, there was no necessity for them to work together; and (b) that the dispute with respect to the 76,800 shares was a private affair which did not affect the management of the company;
>
> (3) failed to consider that the petitioner did not come to court with clean hands in that the problems relating to the company`s management were caused by him;
>
> (4) erred in finding that there was a deadlock in the management of the company;
>
> (5) erred in disregarding the majority shareholding of Chua and also his casting vote as chairman at meetings of the directors; and
>
> (6) erred in finding that the company`s substratum was the business at Shaw House and that the closing of the restaurant located therein destroyed the substratum.

20 The first five grounds of appeal may be considered together as they are all related to the issue of deadlock in the company. The gist of Chua`s case based on these grounds is that he was the majority shareholder and that the ordinary principle of majority control applies, as in any other company. He says that there was no question of any deadlock which Chua could not have broken by his majority shareholding, sooner or later. There was no legal deadlock and any

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practical deadlock was of a temporary nature due to the refusal of the petitioner to attend the directors` or shareholders` meetings called by Chua.

21 As regards the first ground of appeal, that Yong Pung How CJ had gone outside the grounds set out in the petition, counsel referred to **Re Fildes Brothers Ltd** [1970] 1 WLR 592[1970] 1 All ER 923 where Megarry J, after referring to a passage in the judgment of Plowman J in **Re Lundie Brothers Ltd** [1965] 1 WLR 1051[1965] 2 All ERR 692 at p 1058 (that it would be wrong for the court to travel outside the allegations in a winding-up petition), said:

> *To that passage I may add the comment on it which I made in* ***Re Haines Plant Ltd****, No 001893 of 1968 June 12 1969 (unreported): `That was primarily said in relation to a petition under s 210, but I do not think it can be questioned that the same principle would apply to a petition for winding-up.` In cases in which there are no normal pleadings, it seems to me important that those who oppose a winding-up should know, in time to prepare their case, what are the allegations that they have to meet. If after a petition has been presented the petitioner wishes to broaden his attack, let him first amend his petition.*

22 In our view, the force of the above statements can be overstated. The rationale in every case is that a party should not be required to meet any new ground not set out in the petition as he may have no opportunity to meet it, eg by adducing evidence to meet the allegations of fact on which such ground is based. In this petition, although the petitioner did not expressly say that he and Chua had lost confidence in each other, it was clear from the allegations made by him in his many affidavits as to the events that led to the deadlock between him and Chua, particularly the manner in which Chua attempted to take control of the management of the company, that the petitioner had lost confidence in Chua, never mind that Chua might not have lost confidence in the petitioner. The actions of the petitioner could only have been consistent with and irresistably demonstrated his lack of trust and confidence in Chua. It should also be noted that the petitioner did not rely on the allegation of loss of trust and

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confidence as a separate ground in support of his petition but as a reason for refusing to attend any meetings, thereby leading to the deadlock between him and Chua. In our view, Yong Pung How CJ did not travel outside the petition. There was no merit in the first ground of appeal.

23 The second ground of appeal was that the relationship between the petitioner and Chua was not that of a partnership or a quasi-partnership. Although Yong Pung How CJ did not make an express finding that the company was in the nature of a partnership or quasi-partnership, his grounds of judgment clearly implied that he was of the view that that was the relationship between the petitioner and Chua. Counsel for the appellant argues that the company was an ordinary business arrangement between two parties in corporate form, one of which had majority shareholding and control from inception.

24 The leading authority on when a corporate undertaking would be wound up on the basis that it is a partnership or quasi-partnership is the case of **Re Yenidje Tobacco Co Ltd** [1916] 2 Ch 426 In that case, there were two tobacco manufacturers, R and W. They formed a private limited company to effect an amalgamation of their businesses. They were the only shareholders. The voting shares were issued as `A` shares held equally by them, although the non-voting `B` shares were held unequally by them. The articles of association provided that there would be no casting vote and that one director would form a quorum, and that any dispute between them should be referred to arbitration. Differences arose between them, as a result of which R commenced an action against W for fraud in connection with the agreement to amalgamate. The parties became so hostile that neither of them would speak to the other, communication having to be conveyed between them through the secretary. In spite of that, the company continued to carry on its business and made large profits. In these

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circumstances, W presented a petition to wind up the company on the ground of a complete deadlock and that it was just and equitable to do so.

25 The Court of Appeal affirmed the decision of Astbury J that the company be wound up. The principle of law was stated by Warrington LJ, at p 435, as follows:

> *I am prepared to say that in a case like the present, where there are only two persons interested, where there are no shareholders other than those two, where there are no means of overruling by the action of a general meeting of shareholders the trouble which is occasioned by the quarrels of the two directors and shareholders, the company ought to be wound up if there exists such a ground as would be sufficient for the dissolution of a private partnership at the suit of one of the partners against the other. Such ground exists in the present case. I think, therefore, that it is just and equitable that the company should be wound up.*

26 The principle can be simply expressed: if the only two directors of a company cannot agree with each other, and neither can overrule the other, there is a deadlock which, if it occurs in a partnership, justifies the court in winding up the partnership. Counsel for Chua contends that Chua has the power to break the deadlock in two ways: (a) at a directors` meeting when he could use his casting vote as chairman; and (b) at an annual meeting as he and his wife have the majority votes. These contentions, however attractive they appear to be, are not supported by the facts or the experience of the parties. The fact was that the petitioner was able to frustrate every move of Chua to exercise either his casting vote or his majority shareholding. This must imply that the arrangement between him and the petitioner as regards their respective shareholdings in the company and/or their management powers might not have been what is contended for by counsel for Chua. This was, of course, the petitioner`s case all along, that he and Chua had agreed to be equal shareholders with joint control of the company. Without the 76,800 shares, Chua had no voting majority. Until

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the petitioner`s claim for these shares was tried in court, Chua could not indisputably say that the shares were his and that if he had attempted to vote using these shares, the petitioner would have been able to obtain a court order to restrain him from so doing until his claim thereto had been disposed of. There was, in effect, a deadlock in so far as it depended on control by majority shareholding. Similarly, the casting vote would have been inconsistent with the petitioner`s allegation, if proved, that he and Chua had joint control. The relevant issue is not what the articles of association say but what the petitioner and Chua had agreed between them.

27 The factual position obtaining up to the trial of this action was that Chua was unable to exercise his powers as a majority shareholder and was unlikely to have been able to do so until the dispute on the beneficial ownership of the 76,800 shares was resolved in his favour. As at the date of hearing of this appeal, the date for hearing of the relevant action was not fixed. Neither counsel sought an adjournment of the hearing of this petition in order that the other action may be disposed of first. The result of that hearing would have resolved the issue of deadlock. At this stage of the proceedings, we must accept the facts as we find them. We cannot assume one way or the other as to the outcome of this action. The question is whether, on the evidence before him, Yong Pung How CJ was entitled to find that the company was unable to function as a commercial entity by reason of a deadlock in the management of the company. We are of the view that he was entitled to make that finding even though the dispute relating to the 76,800 shares had not been resolved. The fact was that Chua, with his nominal majority, was unable to break the deadlock for more than a year.

28 Counsel for Chua has also contended that the relationship between the petitioner and Chua was not one of mutual trust and confidence in that Chua was not one of the original shareholders. Presumably what is meant is that Chua

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became a shareholder for commercial gain and nothing more. We do not see the relevance or purport of this argument in the context of this appeal. However, on the facts, it seems to us that the petitioner and Chua must have reposed trust and confidence in each other. They were friends since 1980. When the company was about to go out of business, the petitioner sought Chua`s help. Chua willingly gave help and then became either a majority or equal shareholder with the petitioner. He assumed a potential liability of up to $280,000 when the company`s business was on the point of failing. They agreed to run the business together, with the petitioner looking after the day-to-day business and Chua in some sort of supervisory role as a cheque signatory. Chua must have trusted the petitioner to run the business properly and the petitioner must have trusted Chua to resolve any future problems with the landlords.

29 Counsel for Chua has also argued that the dispute over the 76,800 shares was a private matter which had nothing to do with the lack of confidence in the conduct and management of the affairs of the company. He says that there was no dispute as regards the management of the company and that in law, the lack of confidence must lie in the management of the company`s affairs. He refers to **Loch & Anor v John Blackwood Ltd** [1924] AC 783 where Lord Shaw, in delivering the opinion of the Privy Council, said, at p 788:

> *It is undoubtedly true that at the foundation of applications for winding-up, on the `just and equitable` rule, there must lie a justifiable lack of confidence in the conduct and management of the company`s affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company`s business. Furthermore the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company. On the other hand, wherever the lack of confidence is rested on a lack of probity in the conduct of the company`s affairs, then the former is justified by the latter, and it is under the statute just and equitable that the company be wound up.*

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30 In that case, the company was a family company but the managing director had a preponderating voting power. The directors had failed to hold general meetings, to submit accounts or to recommend a dividend, and they had laid themselves open to the suspicion that their object in so omitting was to keep the petitioners in ignorance of the company`s position and affairs and to acquire the petitioner`s shares at an undervalue. Lord Shaw`s statement was made in the context of a case where one director/shareholder had majority control. It does not apply to this case where the petitioner has claimed that he had equal control of the company with Chua, and that Chua tried to wrest sole control for himself. It is in that respect that the petitioner had lost confidence in Chua.

31 The factors which a court will take into account under the just and equitable ground have been analysed by Lord Wilberforce in **Ebrahimi v Westbourne Galleries Ltd & Ors** [1973] AC 360 At pp 379-380, he said:

> *My Lords, in my opinion these authorities represent a sound and rational development of the law which should be indorsed. The foundation of it all lies in the words `just and equitable` and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The `just and equitable` provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.*

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32 It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be `sleeping` members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members` interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

33 In our view, the above statement applies to this case. Although the presence of elements (i) and (ii) were disputed, we are of the view that there was sufficient evidence on which Yong Pung How CJ could be satisfied that they had been fulfilled. Element (iii) is certainly present. Leaving aside the question of who had the majority shareholding, the evidence shows that the petitioner and Chua had exercised joint control of the company since Chua became a shareholder until the cessation of the company`s business, ie from May 1986 to December 1989. Chua has not explained why the petitioner was able to exercise equal power in the company if what he had alleged was true.

34 Counsel for Chua also contends that the petitioner did not come with clean hands as any breakdown in confidence between him and Chua was due to the petitioner`s misconduct in refusing to attend directors` meetings and to carry

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out his duties and obligations as a director and shareholder. Having regard to the reasons for which the petitioner refused to attend any directors` meetings, which was basically his fear that Chua would use his casting vote to take over control of the company, this argument is also not sustainable.

35 In our view, the first five grounds of appeal fail.

36 We turn now to the sixth ground. Counsel for Chua contends that Yong Pung How CJ was wrong in holding that the company had one main object, which was the restaurant business, and, in particular, the business at Shaw House. He says that it is trite law that the sale or discontinuance by a company of the only business it has ever carried on will not justify an order being made under the just and equitable ground if the company has the power under the memorandum of association to resume that or any kind of business authorized by its memorandum. He submits that the issue of whether a company has one main object or several main objects depends on the construction of the memorandum of association. In support of this argument, he refers to the following authorities: **Re Taldua Rubber Co Ltd** [1946] 2 All ER 763 **Re Kitson & Co Ltd** [1946] 1 All ER 435 **Galbraith v Merito Shipping Co Ltd** [1947] SC 446 and **Re Tivoli Freehold Ltd** [1972] VR 445

37 Counsel makes two points in connection with this ground. Firstly, the main objects of a company are to be ascertained from the objects clause in its memorandum of association, and in the case of this company, the objects clause has prescribed a host of objects. In fact, it contains 59 objects and powers without distinguishing one from the other. That of restaurateurs appears as item 40. Counsel says all or some of the objects listed at the beginning of the clause may be regarded as the main objects of the company. Secondly, he says that if the main object or substratum of the company is the restaurant, it was not

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confined to the noodle house at Shaw House and the company could have located its business at any other place.

38 In our view, the objects clause in a memorandum of association sets out all the objects that the company is authorized to carry on for the time being. The objects clause is subject to amendment at any time. Within the limits of the objects clause, the business of a company may change from time to time. What was originally intended to be the main object of a company on its incorporation may have ceased to be so over the years if the company embarks on a different type of business authorized by its memorandum of association. It is therefore a question of construction of the memorandum, having regard to the intention and acts of the corporators or shareholders for the time being in relation to the actual business or businesses that is or are carried on from time to time. In some cases, the construction will be plain. In **Re Kitson & Co Ltd** [1946] 1 All ER 435 Lord Greene MR said, at p 438:

> *It must be remembered in these substratum cases that there is every difference between a company which on the true construction of its memorandum is formed for the paramount purpose of dealing with some specific subject-matter and a company which is formed with wider and more comprehensive objects. I will explain what I mean. With regard to a company which is formed to acquire and exploit a mine, when you come to construe its memorandum of association you must construe the language used in reference to the subject-matter, namely, a mine, and, accordingly, if the mine cannot be acquired or if the mine turns out to be no mine at all, the object of the company is frustrated, because the subject-matter which the company was formed to exploit has ceased to exist.*

39 An example of this type of case is **Re Palace Restaurants** [1909] LT 430 where the object for which the company was formed was to purchase, as a going-concern, certain businesses and undertakings of the British Tea Co (1897) Ltd, viz 24 paying restaurants held under leasehold titles, together with the businesses, furniture, fittings, trade equipment and utensils thereon. After the

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company was formed, it became impossible for the company to purchase the said restaurants, but by then the company had purchased a hotel and a dairy farm. The court ordered the company to be wound up on the just and equitable ground. In his judgment, Hamilton J said:

> *This is a question partly of construction and partly of fact. I am satisfied that the main object for which this company was formed was the acquisition of the restaurants carried on by the British Tea Table Co. As to the general words used in the memorandum of association of the company, I think they are clearly ancillary to the main object of the company, such as the purchase of an hotel, the carrying on of a dairy, and stock and share transactions. I will assume that the dairy is worth what was paid for it, and that all is going well; and I will assume the same thing with regard to the hotel. But transactions of a financial character are certainly not satisfactory. To my mind, all these are outside the principal object of the company. It is suggested that restaurants may be acquired at some future time. But I lay no stress on that nor do I think they will come to anything. The authorities quoted by [counsel for petitioner] are not really disputed by [counsel for the company], and he has certainly not been able to distinguish them successfully. Moreover, I am much impressed by the opinion of Warrington J in the last case to which [counsel for the company] referred. Applying the principle of construction to the present case, I am of opinion that the main object of the Palace Restaurants was to purchase the business of the British Tea Table Co. This has not been accomplished, and the opportunity of purchase has gone. That being so, I think that the substratum of the company has disappeared. It has been urged upon me that this petition is only supported by a minority of shareholders, and that a majority approved of the action of the directors. It is not to be overlooked, however, that a still greater number have taken no part in the proceedings, and the holding of those who support the petition is certainly substantial. I do not think there is anything to be gained by delaying this matter until the general meeting has taken place in October. As I hold that the substratum of the company has gone, there will be the usual order for winding-up.*

40 In the case before us, the memorandum of association lent no assistance whatever to the task of ascertaining the main object or substratum of the company. The reason is that it was formed as a shelf company by corporators with no particular object in mind. Their purpose was to sell it to whomsoever

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needs a corporate vehicle quickly in order to start a business. The objects clause was accordingly drafted to include as many objects as the draftsman could think of. They were all `paper` objects designed for all things and for all seasons.

41 In our view, the approach adopted by Yong Pung How CJ, although not articulated in the manner we had done so, was correct. In arriving at the finding that the main object of the company was its restaurant business located at Shaw House specifically and at no other place, Yong Pung How CJ took into account the circumstances in which the petitioner bought the company and Chua became a shareholder. The original shareholders wanted a corporate vehicle to carry on the restaurant at Shaw House after the petitioner had secured a lease of the premises therein for that purpose. They had no other object in mind. There is sufficient evidence from which the court was entitled to infer that Chua decided to become a shareholder because of the location of the restaurant. He was a friend of the general manager of the landlords to whom he had given his personal guarantee for $280,000. In the circumstances of this case, we are unable to say that Yong Pung How CJ was wrong in thinking that it was not conceivable that Chua would have become a shareholder if the restaurant had been located at some other place. On this finding, the company`s substratum disappeared with the termination of the lease of the premises at Shaw House.

42 But even if Yong Pung How CJ`s construction was unduly narrow and the main object of the company was to carry on the business of restaurateurs generally, this wider construction would not help the appellant in this appeal. There was sufficient evidence on which Yong Pung How CJ was entitled to find that the appellant had in fact agreed to cease or abandon the business of restaurateurs. He had caused the Hong Kong cooks to be dismissed and all the furniture and kitchen equipment of the restaurant to be sold. He made no effort during the six months prior to the termination of the lease to find new premises

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to relocate the restaurant. He put in evidence some documents showing some purported inquiries (and they amounted to no more than that) for alternative premises at other locations after the winding-up petition had been filed, but which Yong Pung How CJ justifiably rejected as no more than an afterthought. When the company finally stopped its only business, it was left with nothing but cash. The sixth ground of appeal also fails.

43 Accordingly, the appeal is dismissed with costs.

44 **Outcome:**

Chan Sek Keong J
Chao Hick Tin J
Warren Khoo L H J

Patrick Wee (Chua Hay & Wee) for the appellant
Chia Ee Lin (Ricquier Chia & Co) for the second respondent

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