IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 48

OS 467/1995

Between

Sum Hong Kum

… *Applicant*

And

Li Pin Furniture Industries Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Companies — Members — Meetings; Companies — Members — Meetings

Version No 1: 29 Oct 2026 (23:45 hrs)

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Sum Hong Kum v Li Pin Furniture Industries Pte Ltd

[1996] SGHC 48

OS 467/1995
Warren Khoo L H J
22 March 1996

1 By this originating summons, as amended by order on 11 September 1995, the plaintiff seeks declarations that certain directors` meetings and general meetings of the defendant company were invalid. He also seeks consequential reliefs. The case turns largely on a proper construction of certain provisions of the company`s memorandum and articles of association.

2 The company was incorporated in 1988 to take over an existing partnership business of manufacture and sale of furniture. There were three partners in that business, ie Lam Soo, Tan Choon Hua, and the plaintiff. It started in 1980. The partners all had equal shares. Tan Choon Hua had extensive experience in the furniture business and had extensive contacts. He took charge of the finances and marketing. Lam Soo was in charge of production while the plaintiff was in charge of delivery of the finished products.

3 When the company was incorporated, the areas of responsibility of these gentlemen remained largely as they had been before. The concept of equality among the three remained. They were each allotted an equal number of ordinary shares. They were all directors. They drew the same salary. They each had a

Mercedes car. However, the articles of association accorded and accord Mr Tan a pre-eminent position in certain respects. For example, in addition to the ordinary shares allotted to him, the articles provide for the allotment of the only one governing share to him. It is also provided that the governing share carries 25% voting power at all general meetings of the company. It is also provided that as the holder of the governing share, Mr Tan has the power to appoint three governing directors. He himself is to be a governing director and he is not subject to retirement by rotation. The articles were not as well drafted as they might have been, and there are ambiguities and problems of interpretation inherent in many of the provisions. I shall have to deal with some of these problems of interpretation in due course.

4 The relationship between the plaintiff and the other two shareholders, which had been good, began to go downhill in 1991. There were various incidents the rights and wrongs of which it is not necessary for me to go into. In December 1994, Tan told the plaintiff that the company had suffered a loss of $1.6m. The plaintiff was unable to accept what Mr Tan told him or the explanation given. His suspicion increased when Tan offered to buy out his shares in the company.

5 ***The meetings of 11 March 1995***

6 It was in this atmosphere of mistrust that three separate meetings purported to be held on 11 March 1995, all at the same venue, the registered office of the company. Firstly, before the annual general meeting, there was a meeting described as a board of directors` meeting at which Tan announced that he had in accordance with art 67A(a) of the company`s articles appointed two persons as governing directors. The minutes show the plaintiff as being present at this meeting. Secondly, there was an annual general meeting, which followed.

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One of the items on the agenda, of which the plaintiff had had advance notice, was the removal of himself as a director. According to the minutes of this meeting, when the attendance sheet was presented to him for his signature, he refused to sign. He left the meeting before it got down to business. In his absence, a resolution was passed that the plaintiff `retires in accordance with the company`s articles of association and that the vacancy arising therefrom not be filled.`

7 Thirdly, following the purported general meeting, there was a directors` meeting at which in the absence of the plaintiff it was resolved that the plaintiff cease to be paid any remuneration and that his privileges in respect of his Mercedes Benz car be withdrawn from him.

8 The plaintiff challenges the validity of all these three meetings. Before I deal with the matter, I have to deal with a preliminary point raised by him. The plaintiff says in his affidavit that when he subscribed to the memorandum and articles of association, he did not understand their contents or meaning; in particular, he was not aware of the special preferential provisions in regard to Tan, such as the allotment to Tan of the governing share and the special voting power attached to it. The point was not strongly pressed. I did not think it could be. I took the view that this contention was not open to plaintiff when he sought at the same time to rely on the articles to impugn the validity of the meetings. I decided that the memorandum and articles of association had to be taken as they were, warts and all.

9 ***Directors` meeting before the annual general meeting***

10 As stated above, the purported directors` meeting convened before the annual general meeting was for Tan to announce the appointment by him of two

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persons, Tham Chong Choy and Tan Chung Luang, as governing directors. Article 67A provides that the holder of the governing `shares` (sic) shall have power from time to time and at any time to appoint any three persons to be directors of the company, the persons so appointed being referred to as `governing directors`.

11 I take it that the reference to `governing shares` in the plural is just a typographical error, since there is provision in the memorandum for the issue of only one governing share. Tan as holder of the governing share is empowered by article 67A to make such appointments without reference to anyone. It was not necessary for a directors` meeting to be held in order for him to announce his appointment. To the extent that it might be necessary to do so, he could have announced the appointment in any other way. In so far as the directors` meeting was convened for the purpose solely of making this announcement, it was an unnecessary meeting. Since no decision was made by the meeting, I do not think it necessary to make any determination as to its validity.

12 ***The annual general meeting***

13 As stated above, the plaintiff left the meeting before it proceeded to business.

14 Article 51 of the articles provides as follows:

> *No business at an annual general meeting shall be transacted unless a quorum is present. Save as in these articles otherwise provided, three members present in person or by proxy shall be a quorum. Such quorum shall include member [sic] holding the governing shares [sic].*

15 In regard to the words `Save as in these articles otherwise provided`, my attention has not been directed to any other provisions in the articles concerning

the subject of quorum. I proceed on the basis that there are no such provisions in the articles on the subject that require consideration.

16 This article no doubt means what it says, that is that no business can be validly transacted at a general meeting without all three shareholders being present. The reason is not far to seek. The articles give special preferences to Tan, and the requirement of all three shareholders being present appears to have been a device to provide some sort of counterbalance against that. Article 51 is in the nature of a deadlock provision which one often finds in articles of small companies which are essentially quasi-partnerships where it is intended that all shareholders have a say in the affairs of the company and each shall have a sort of veto. A shareholder who does not wish to have any business transacted can simply abstain from attending a meeting. This was the defensive strategy, as Yong Pung How J (as he then was) called it, which was adopted by one of the shareholders in ***Re Goodwealth Trading Pte Ltd*** [1991] 2 MLJ 314 . There is nothing wrong about it. It is what the parties by contract have agreed. The result of such a deadlock is the winding-up of the company. There is nothing wrong with that, too, for the same reason.

17 This view of the intention of art 51 is strengthened when one takes into account the provisions in what is now s 179 and in art 47 of Table A for a quorum of two members at general meetings. There appears in the instant case to have been a deliberate departure from the norm, if one is justified in using that word.

18 Defence counsel contended that since the plaintiff was present at the commencement of the meeting, that was good enough. He cited ***Re Hartley Baird Ltd*** [1955] Ch 143. In that case, art 52 of the company`s articles provided as follows:

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> *No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business ... .*

19 Article 53 in that case provided as follows:

> *If within half an hour from the time appointed from the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.*

20 It was held by Wynn-Parry J that art 52 was sufficiently complied with if there was a quorum present at the beginning of the meeting when it proceeded to business and the subsequent departure of a member reducing the meeting below the number required for a quorum did not invalidate the proceedings of the meeting after his departure. He said that that interpretation was underlined when one considered art 53. That article was designed to cover the position which would arise if a quorum was not at any time present, and not merely where the numbers present were reduced below the number required for the quorum under art 52. He said that art 53 was clearly designed to save a meeting (other than one convened by requisition) which had been properly convened, but which could not proceed to business because no quorum was ever present. Article 52 thus did not require a quorum to be present when the meeting proceeded to vote, provided one was present when it proceeded to business.

21 In ***Tan Guan Eng v BH Low Holdings Sdn Bhd & Ors and other actions*** [1992] 1 MLJ 105 , the wording of the relevant article was the same as in ***Hartley Baird*** , and Wan Adnan J in the High Court in Penang reached the same conclusion as was reached in ***Hartley Baird*** .

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22 In the instant case, the wording of both art 52 and art 53 is quite different from that in the case cited. Firstly, art 51 in the instant case clearly says that no business can be transacted unless a quorum is present. The words `when it proceeds to business` are not there. Secondly, art 52 in the instant case, is designed to save a meeting (other than a requisitioned meeting) in the event that no quorum is present at any time. It is provided that in that event, the meeting shall be adjourned to the date time and place provided, but there is no provision that at that adjourned meeting the members then present shall form a quorum. Reading the two articles together, it seems plain that the requirement of a quorum of three members is mandatory and unalterable, and that the meeting cannot transact any business at all unless the requisite numbers are present at the time when a business is transacted, ie when a resolution is passed. If a meeting cannot be held because of lack of quorum, it has to be adjourned, and if at the adjourned meeting again there is no quorum, then the meeting must be dissolved, since there is nothing in art 52 to save it.

23 In so far as the plaintiff was not present when business was transacted at the purported general meeting of 11 March 1995, I held that the meeting was invalid, and that none of the resolutions purportedly passed at the meeting was valid, including the resolution purporting to remove the plaintiff as a director of the defendant company.

24 ***Directors` meeting after the general meeting***

25 After the general meeting, there was a second directors` meeting. Since the plaintiff had withdrawn from the general meeting, he was not there when this directors` meeting was held. However, the two persons who had been appointed by Tan as governing directors, Tham Chong Choy and Tan Chung Luang, were there. So were the other two original directors, Tan Choon Hua and

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Lum Soo. Tan Choon Hua purported to be there as a governing director. So there were three governing directors and one ordinary director. As stated above, decisions were taken at this meeting in the absence of the plaintiff concerning his remuneration and the car.

26 There are two main questions before me in relation to this directors` meeting. Firstly, was there a proper quorum in the absence of the plaintiff? Secondly, related to that, could the governing directors appointed by Mr Tan be counted for the purpose of deciding whether there was a proper quorum?

27 The articles dealing with the position of governing directors are among the most difficult to comprehend. While the position of Mr Tan as the governing director is tolerably clear, the position of the persons he appoints as governing directors and the implications of such appointments were never properly considered, or if they were considered, not properly reconciled by the various provisions dealing with governing directors. Article 76A provides that Tan Choon Hua shall be the first governing director of the company, and art 76B provides that the governing director shall not whilst he continues to hold office be subject to retirement by rotation. These provisions are tolerably clear. However, art 67A provides as follows:

> *(a) The holder of the governing shares [sic] shall have power from time to time and at any time to appoint any three persons to be the directors of the company and to remove from office any person so appointed. The directors appointed or deemed to have been appointed under this para (a) are hereinafter referred to as `governing directors`.*
>
> (b) The first three directors of the company shall be appointed in writing by subscribers, one of whom shall be the holder of the governing shares [sic], to the memorandum of association of the company. One of the first directors being appointed by the holder of the governing shares [sic] shall be a governing director.

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28 As I have said earlier, the use of the plural in the reference to `governing shares` is probably a mistake, since art 4 provides for the issue of only one governing share. The need for the provision in para (b) for the appointment of the first three directors of the company by the subscribers of the memorandum of association, however, is not immediately apparent, since art 67 already provides that the first directors shall be Tan Choon Hua, Lim Soo and the plaintiff. The provision in para (b) that one of the `first directors being appointed by the holder of the governing shares (sic) shall be a governing director` is quite impossible to understand in the context of the art 67 and 67A.

29 But I must move on to the quorum provisions. Article 87 provides as follows:

> *The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. The quorum necessary for the transaction of the business of the directors shall be three, one of whom shall be a governing director. Questions arising at any meeting shall be decided by a majority of votes ... .*

30 This provision is clearer than the others I have mentioned, but not clear enough. The quorum, it says, must be three, and one of those present must be a governing director. Here there were three governing directors. Can they together with Lum Soo, carry any resolution? Since the articles do not in terms provide the answer, I have to resort to general principles. The company, as I said earlier, evolved from a partnership in which the plaintiff, Lum Soo and Tan Choon Hua all had equal shares and equal say in the running of the business. By the time the company came to be formed, Tan appears to have established himself as the pre-eminent member of the trio. I accept that it was for this reason that he was accorded special place in the articles of the company. The conferment of 25% voting power by virtue of the holding of the governing share, and the conferment of the power to appoint up to three persons as governing directors

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of the company, represent a very substantial departure from this norm. But because of this, I think the articles which provide in his favour should be read restrictively against him, and one should proceed on the basis that any departure from the norm of equal participation in the affairs of the company by the original three founding members should clearly be provided for.

31 This is the approach that I think should be adopted when construing art 87. Since the articles do not provide that Tan`s appointees have the right to vote at directors` meetings, it would be right to hold that they do not. Otherwise, Tan could simply pack the board and run the company as his own fiefdom instead of the partnership it had been intended to be or even a company ruled by majority that it might, by the joint will of the founding three, evolve to be. In the circumstances, I would read the words `one of whom shall be a governing director` as meaning `only one of whom shall be a governing director` rather than as meaning `one or more of whom shall be a governing director` or `at least one of whom shall be a governing director.` The effect is that all of the original three shall be present to constitute a proper quorum for a directors` meeting, whether the governing directors appointed by Tan are present or not.

32 For these reasons, I would hold that the purported directors` meeting held after the general meeting on 11 March 1995 was invalid. If I am wrong on this, I hold in any event that the decision to deprive the plaintiff of his privileges of a director in the form of his remuneration and the car was invalid for the reason that he had not been properly removed as a director at the annual general meeting earlier held.

33 ***Section 392 of the Companies Act***

34 The relevant provisions of s 392 of the Companies Act read as follows:

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> *(1) In this section, unless the contrary intention appears a reference to a procedural irregularity includes a reference to -*
>
> *(a) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and*
>
> *(b) a defect, irregularity or deficiency or notice or time.*
>
> *(2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.*

35 Counsel for the defendant company relies particularly on s 392(2). He contends that the lack of a quorum did not cause substantial injustice. He refers to ***Re Pembury Pty Ltd*** [1991] 4 ACLR 135 for the proposition that it must be shown that procedural irregularity has occasioned the substantial injustice, not that the proceedings, ie the meeting and the resolutions passed at the meeting, have caused the substantial injustice.

36 With the rather brief submission of counsel, I was not very sure how the distinction could be applied to the facts of the present case. When giving the reasons for my decision at the end of the hearing, I did not rely on these propositions, but went largely on whether the resolutions passed at the meetings (general as well as directors`) caused substantial injustice to the plaintiff.

37 I have since considered the case cited in greater depth, as well as ***Re Broadway Motors Holdings Pty Ltd*** [1986] 4 ACLC 599, where Powell J at p 606 said `It must be shown that there is a nexus between the procedural irregularity which has occurred, and the matters of prejudice relied upon as constituting injustice.`

38 In ***Castlereagh Securities Ltd (No 1)*** [1973] 1 NSWLR 624 at p 631, it was said that the considerations of a procedural character requiring the court

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to consider whether as a matter of procedural fairness or justice the deficiency should be overlooked.

39 These dicta were all made in reference to Australian statutory provisions in similar terms to s 392(2) of our Companies Act, and they are, therefore, directly on point. I have no hesitation in accepting them as correctly stating the law. Indeed, the wording of the relevant statutory provision in terms support these views.

40 Applying the propositions to the facts of the case, I still come to the view that the procedural irregularity in this case, ie in proceeding with the general meeting and the second directors` meeting in the absence of the plaintiff constituted a procedural irregularity as defined in s 392(1) and that this procedural irregularity resulted in substantial injustice to the plaintiff. The irregularity deprived him of his right under the deadlock provisions of the articles to prevent any decision from being taken by the company without his agreement. This defect is a substantial defect which cannot be cured by s 392. On the other hand, the plaintiff can come to the court to ask the court to declare invalid the meetings mentioned above which took place without his participation.

41 ***Extraordinary general meeting of 9 June 1995***

42 Apparently on the advice of an accountant, the plaintiff requisitioned an extraordinary general meeting of the company. Item 1 of the agenda was `To consider the appointment of [the plaintiff] as a director until the next annual general meeting.` The meeting was duly held on 9 June 1995, and, as to be expected, this resolution was defeated, together with other resolutions proposed by the plaintiff. The question is what is the effect of this event? Counsel for the

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defendants submitted that the proceedings of this extraordinary general meeting had the effect of rectifying any irregularity of the annual general meeting, and that the decision on the item about the plaintiff`s directorship served to confirm the position that the plaintiff had retired by rotation and was not re-elected. I am afraid I cannot accept this submission. As I have said, the annual general meeting was not a valid meeting. So by right the plaintiff continued to be a director. This item of the agenda at the extraordinary general meeting erroneously assumed that he had ceased to be a director. Since he was still a director, it was otiose to appoint him. If the motion had been carried, that action would not have had any effect on the plaintiff`s position as a director. Equally, when the motion was defeated, as it was, the effect is also neutral. To have the effect of ratifying the proceedings of the annual general meeting, a resolution to that effect would have been necessary.

43 No argument was put before me on the basis of any waiver or estoppel arising from the plaintiff`s requisition for the extraordinary general meeting. Any such argument would be on the basis that the plaintiff had accepted the position that he had been properly removed as director. That would be quite contrary to the conduct of the plaintiff as a whole. It is clear that he never accepted that position. On the contrary, as the other shareholders would no doubt have been aware, he had been vigorously challenging the decisions of the annual general meeting and the directors` meetings in so far as they affected his position as director.

44 For these reasons, I declared as invalid the purported annual general meeting held on 11 March 1995 and the purported second directors` meeting held on the same day. I also made consequential and other orders.

45 ***Plaintiff`s claim allowed.***

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Warren Khoo L H J

Howard Cashin and Lim Khoon (Lim Hua Yong & Co) for the applicant
Winston Low and Justin Phua (Winston Low & Pnrs) for the defendants

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