

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1999] SGCA 20

CA 127 & 128/1998

Between

Yeo Hung Kiang

... Plaintiff

And

Dickson Investment
(Singapore) Pte Ltd

... Defendant

GROUND OF DECISION

Companies — Oppression; Companies — Oppression

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**Yeo Hung Khiang v Dickson Investment (Singapore) Pte Ltd
and Others**

[1999] SGCA 20

CA 127 & 128/1998

Karthigesu JA; Lai Kew Chai J; Yong Pung How CJ

19 March 1999

1 **KARTHIGESU JA**

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(delivering the grounds of judgment of the court): These two appeals are against the order of Chao Hick Tin J made on 11 April 1998 determining, pursuant to a previous order made by the learned judge on 7 July 1995, that the petitioner's shares in Dickson Trading (S) Ltd be purchased by Dickson Investment (Singapore) Pte Ltd and Dickson Poon at a price of \$4.67 per share. We dismissed both appeals and now give our reasons.

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2. By Originating Petition No 137 of 1992 presented on 14 December 1992 under s 216 of the Companies Act ('the Act') the petitioner ('Yeo') prayed, inter alia, that either or both the respondents, Dickson Investment (Singapore) Pte Ltd ('Dickson Investment') and Dickson Poon ('Poon') (collectively called 'the respondents') purchase the whole of his shares in Dickson Trading (S) Pte Ltd

(`the company`). The petition was fixed for a contested hearing scheduled for 15 days commencing 31 July 1995.

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4. Meanwhile, on 10 April 1995, after the trial dates were fixed, Poon wrote to Yeo`s solicitors suggesting that `in line with art 31 of the company`s articles of association` the company`s auditors, KPMG Peat Marwick, be appointed to value the shares of the company as of 1 October 1990 and the respondents would purchase all Yeo`s shares in the company as if the shares were purchased on that date. This was turned down by Yeo.

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4. By a Summons for Further Directions No 2312 of 1995 dated 18 April 1995, the respondents applied, inter alia, for an order that Dickson Investment purchase the whole of Yeo`s shares in the company at a fair value based upon a valuation to be carried out by the company`s auditors, KPMG Peat Marwick, and for a stay of the petition.

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5. The application was heard by Chao Hick Tin J on 4 and 7 July 1995. Counsel for the respondents submitted at the hearing of the application that the application was made without any admission of liability. This was objected to by Yeo. Yeo submitted that the application for the purchase of his shares could and should be dealt with at the hearing of and as part of the petition for minority oppression and, if ordered pursuant to the petition, Yeo would be able to claim

both interest and costs. On the other hand, if the application was granted without hearing the petition and without any admission of liability, Yeo would be denied interest and costs. As such, Yeo indicated that he was only prepared to have the application heard if the respondents agreed to bear interest and costs.

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6. The learned judge noted that, if he did allow the respondents' application on the basis that there was no admission of liability, this would lead to an untenable situation. Such a qualification would necessarily lead to difficulties in deciding the issue of interest and costs. The respondents then agreed to pay the costs of the petition subject to submission on quantum but wanted to reserve their right to submit on the issue of Yeo's entitlement to interest. As such, the learned judge told the parties that he would proceed to hear the application on the basis that oppression had been established.

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7. The learned judge then made the following orders:

- (i) Dickson Investment purchase the whole of Yeo's shares at a fair value to be determined by the court after taking into consideration an independent valuation of Yeo's shares in the company to be undertaken by Mr Nicky Tan of the firm of Price Waterhouse (the auditor).
- (ii) The auditor to value Yeo's shares at a fair value as at 1 October 1990 and the valuation to be undertaken on the following basis:
 - (a) That the shares be valued on the basis that the company is a going concern.
 - (b) That no regard to be had or notice to be taken of any events in the company occurring after 1 October 1990 or the state of accounts or financial condition of the company after 1 October 1990.
 - (c) That regard be given to any and all financial information and records of the company from the time of its inception in 1983 to 30 September 1990 as the auditors may deem necessary.
 - (d) That no discount be given for minority

shareholdings. (iii) The valuation report of the auditor to include the grounds and basis for such valuation, and the court will determine the fair value of Yeo's shares after taking into consideration that report.

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8. The valuation report was submitted on 28 October 1997. Pursuant to the respondents' request, the valuer was cross-examined by their counsel on certain specific areas. Submissions were made to the learned judge by both counsel and on 11 April 1998 the learned judge delivered an oral judgment as follows:

8.1 The respondents to purchase Yeo's shares at \$4.67 per share. 8.2 Completion to take place within three weeks from 11 April 1998, thereafter the purchase price to bear interest at the rate of 6% per annum. 8.3 The costs of the petition and the summons for further directions No 2312 of 1995 awarded to Yeo. 8.4 The respondents to bear the costs of the valuer. 8.5 Originating Petition No 137 of 1992 be adjourned sine die with liberty to Yeo to restore or discontinue.

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9. *The trial judge's decision*

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12 The learned judge had accepted the valuer's assessment that the fair value of the shares as at 1 October 1990 was between \$3.35 and \$3.57. He adopted the mean figure of \$3.46 as the mean value as at 1 October 1990. This ruling was accepted by both Yeo and the respondents. However, Yeo appealed against the learned judge's decision not to grant interest and the respondents appealed against his decision to enhance the value of each share to \$4.67.

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10. The learned judge's decision against awarding interest was the subject of CA 127 of 1998. It was submitted by counsel for Yeo that whatever was the fair price which the court might determine based on the valuation of Mr Nicky Tan, that sum should bear interest from 1 October 1990, or from a date prior to the date of judgment. However, it was argued by the respondents that until the court determined the price which they would have to pay for buying over Yeo's shares, no interest could accrue on the price prior to such a determination.

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11. The learned judge found that under s 216(2) of the Act, the court could make any order with a view to bringing an end or remedying the matters complained of. Amongst one of the possible orders laid down by the subsection was that the court may make an order for the purchase of the shares of the company by other members. However, he found that the subsection did not empower the court to impose interest payment for any period prior to the order for purchase. He was also inclined to agree with Nourse J's remark in **Re Bird Precision Bellows Ltd** [1984] Ch 419 [1984] 3 All ER 444 when Nourse J said, 'I have never heard of interest being payable before there is an obligation to pay principal' which remark was endorsed by Purchas LJ in the Court of Appeal (reported at [1986] Ch 658; [1985] BCLC 493). The learned judge further cited the case of **Irish Press plc v Ingersoll Irish Publications Ltd** [1995] 2 ILRM 270 as authority that s 216(2) of the Act does not empower the court to grant damages as that would not be a relief 'with a view to bringing an end or remedying the matters complained of'. As such, he found that he could not impose interest payment on the period before the order to purchase was made and consequently made no

order that the respondents pay interest on the purchase price of the shares from 1 October 1990 up to the date of judgment.

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12. As for the fair value of the shares, the learned judge felt that if he were just to adopt the valuer's value of each share at \$3.46 and make no adjustment in the price, that would be unjust to the petitioner, Yeo. He felt that an adjustment had to be made because ***`for some seven years the petitioner was denied the benefit of his shareholding while the respondents seemingly plundered the company or siphoned off its profits to the respondent's other entities. To take no account of that would be tantamount to sanctioning wrongdoings and rewarding the oppressor. That would be to turn justice on its head`***. As such, the learned judge enhanced the value of each share by fixing it at \$4.67 per share which represented a 35% increase over a period of seven years, that is, a 5% increase per year. In enhancing the value, the learned judge was taking into account the benefits and growth which would have accrued to the company but for the oppressive acts. This enhancement of the value of the shares was the subject of CA 128 of 1998.

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13. *Civil Appeal No 127 of 1998*

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18 This was an appeal by Yeo against the decision of the learned judge with respect to the issue of interest. Yeo contended that the learned judge erred in not

awarding interest on the purchase price of his shares in the company. Yeo`s counsel submitted that there were three issues arising in the appeal. The first issue was whether s 216(2) of the Act empowers the court to award or impose interest on the purchase price of Yeo`s shares in the company, by way of damages or otherwise, and whether such interest could be given for the period prior to the order for the purchase of the shares. The second issue was whether, if the first issue was decided in the affirmative, the court should, in the circumstances of the present case, exercise its discretion to order that such interest should commence from a date prior to the determination of the purchase price of Yeo`s shares. The third issue related to the date interest should commence from and the rate of interest applicable.

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14. *The background facts*

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21 The appellant`s case set out in lengthy detail allegations of oppression which were similar to that set out in Yeo`s affidavits. Yeo`s counsel submitted that there had been systematic oppression perpetrated against Yeo, there was deliberate delay in purchasing Yeo`s shares, there was loss and detriment suffered by Yeo and there were huge profits enjoyed by Poon and his companies. It was further submitted that the court should look at all these background facts in deciding whether it would be fair and equitable to award interest and the extent of the compensatory factor in fixing the rate of such interest and the period for such interest.

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15. We were of the view that there was really no necessity to go at such great depth into the facts. This was especially as the petition was never actually heard by the learned judge. In our opinion, it would suffice to say that oppression had been established and that was in fact the basis on which the learned judge had proceeded.

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16. It was clear that there was really only one main issue in the appeal. This was whether s 216(2) of the Act empowered the court to award or impose interest on the purchase price of Yeo's shares in the company, by way of damages or otherwise, and whether such interest could be given for the period prior to the order for the purchase of shares. If Yeo failed to satisfy the court on this issue, the other two issues would not arise at all.

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17. Yeo's counsel contended that s 216 of the Act was drafted widely to give the court an unfettered discretion to make whatever orders it thinks fit to end or remedy the effects of oppression and was wide enough to allow the court a discretion to award interest to Yeo. The relevant part of s 216 of the Act reads as follows:

(1) Any member ... may apply to the Court for an order under this section on the ground - (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members ... including himself or in disregard of his ... interests as members, shareholders or holders of debentures of the

company; ... (2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may ...

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18. Counsel submitted that s 216(2) specifically provided that the court may `with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit`. The list of orders which the court may make is expressly stated to be `without prejudice to the generality of the foregoing`. Counsel thus contended that the court has the power to order interest on such amount, for such period, at such rate and in such manner as it deems fit `with a view to ... remedying the matters complained of`. It was submitted that in a case such as the present, where it can be shown that Yeo ought rightly to have been bought out earlier and where the court subsequently directs a valuation of shares and gives a corresponding order for the majority shareholder to purchase the shares from the minority pursuant to s 216 of the Act, interest can be awarded under s 216(2) of the Act for the period prior to the order for the purchase of the shares. Thus, if interest was not awarded to Yeo, the matters complained of by him could not be brought to an end or remedied.

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19. In the present case, counsel contended that the governing provision, s 216(2) of the Act, gave the court a very wide discretion, not just to bring to an end the matters complained of, but also to `remedy` such matters. It was submitted that a wider discretion is clearly afforded to our courts as opposed to the Irish courts for instance. Section 205(3) of the Irish Companies Act only provides that the

orders a court may make are `with a view to bring to an end the matters complained of` unlike our Act which includes `remedying the matters complained of`. As such, s 216(2) ought to be construed on its own terms. In support of this proposition, **Re Kong Thai Sawmill (Miri) Sdn Bhd** [1978] 2 MLJ 227 was cited. This was a case heard by the Privy Council from an appeal from Malaysia and related to the construction of s 181 of the Malaysian Companies Act 1965. Lord Wilberforce said this in his judgment at p 228I (2nd column):

*This section (s 181) can trace its descent from s 210 of the United Kingdom Companies Act 1948, which was introduced in that year in order to strengthen the position of minority shareholders in limited companies. It also resembles the rather wider s 186 of the Australian Companies Act 1951. But s 181 is in important respects different from both its predecessors and is notably wider in scope than the United Kingdom section. In sub-s (1)(a) it adds disregard of the interests of members, etc to oppression as a ground for relief in this respect making explicit what was already inherent in the section (see **Re HR Harmer Ltd**). It introduces a new ground in sub-s (1)(b) and, most importantly, in sub-s (2), which sets out the kinds of relief, which may be granted, it provides for `remedying the matters complained of` and states as a specific type of relief that of winding up of the company.*

...

Their Lordships consider it important that courts applying s 181 should do so according to its terms and its purpose and should not regard themselves as necessarily bound by United Kingdom decisions, which are based upon a different section, and in some cases restrictive. The same applies, though with less force, to reliance upon Australian decisions upon s 186.

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As such, Yeo`s counsel submitted that, since a wider discretion is afforded to our courts, in an appropriate case, an element of compensation can and ought rightly to be included in the relief granted by the court.

20. Australian authorities were also cited to us in support of the proposition that interest can be awarded in a minority oppression case. The main authority relied upon was **Coombs v Dynasty** [1994] 14 ACSR 60. Since this was the main authority relied upon by counsel in support of her contention that interest should be awarded in this case, some detailed analysis of the case is required. **Coombs** was an oppression action under s 260 of the Australian Corporations Law. Section 260(2) of the Australian Corporations Law provides that 'the Court may ... make such order or orders as it thinks fit, including but not limited to, one or more of the following ...' and goes on to provide for specific reliefs. In **Coombs**, various oppressive acts were done by the majority shareholder, which were unfairly prejudicial to the minority shareholder. These acts included an allotment of shares at 31 March 1988 deliberately made at below net tangible asset backing of the shares to achieve a watering down of Mr Coombs' interest. Von Doussa J at first instance concluded that the shareholding of Mr Coombs should be valued immediately before the restructure occurred on 31 March 1988 and added that an 'interest factor should be allowed on that amount thereafter to arrive at a fair price at which his shares should be purchased now.' He then went on to state that 'it was necessary to add an interest factor on the value of the shareholding at 31 March 1988 to compensate for the deferred payment of that value.' A period of 61/4 years had passed between that time and the date of the order for the purchase of shares. Thus, the court then added 12% simple interest on the price of the shares for that period of time and added the value of this interest to the value of the shares, ie the price of shares was adjusted upwards to factor in interest. To see 12% simple interest on a figure of \$296,270 for 61/4 years would add \$222,202 giving a total of \$518,472. The fair price at

which the majority was to acquire the shareholding of the Coombs was thus ordered at \$518,000.

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21. In our opinion, this case could hardly be cited as authority for the proposition that the courts can award interest on the purchase price of Yeo's shares in the company for the period prior to the order for purchase of shares. The decision of von Doussa J in *Coombs v Dynasty Pty Ltd* was appealed against. The Federal Court of Australia in the appeal considered the award of interest by von Doussa J. They held that since the interest award was merely used as a proxy for measuring the loss suffered by Mr Coombs through not having access to his investment rather than being strictly interest in the conventional sense, it was thus an appropriate award. There was nothing wrong in treating the interest factor as 'compensation' for Mr Coombs not participating in those benefits. As was said in that case Mr Coombs was not awarded interest qua interest; rather the judge used interest as a proxy to measure the increment in the value of Mr Coombs' investment in the company appropriate to reflect the fact that the 'Thomas interest' had the use of Mr Coombs' investment since March 1988.

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22. It was clear that what was ordered in *Coombs* was an interest factor and not interest qua interest. In *Coombs*, the learned judge had, in the circumstances of the case, factored in the interest component at a commercial rate from the date of the issue of shares to the date of the order to arrive at a fair price at which the shares should be purchased. In the present case, Chao Hick Tin J had not used the method used by von Doussa J to compensate the minority shareholder.

However, he had increased the share value by 5% per year over a period of seven years in his assessment of the fair price at which the shares should be purchased. This was effectively what had been done in *Coombs*. To allow Yeo now to claim interest on top of the adjustment in the value would be in effect double-compensation.

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23.It seemed clear to us that Chao Hick Tin J had two alternatives as to how to compensate Yeo for being kept out of his money. One would have been what the learned judge in *Coombs* did which was to calculate the interest factor separately from the value of the shareholding as at 31 March 1998. The other alternative would have been what Chao Hick Tin J did in the present case: to increase the share value by a certain amount in order to arrive at what he believed to be an assessment of the fair price. The most important thing was to fix a price which represented fair value in the circumstances of the case. In the present case, Chao Hick Tin J clearly felt that increasing the share value by 5% over a period of seven years would be sufficient to arrive at a fair value. We saw nothing wrong with his exercise of his discretion and saw no reason to substitute this by awarding interest instead of the increase of 5%.

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24.Yeo`s counsel also cited another Australian case, **Re Dalkeith Investments** [1984] 9 ACLR 247 in support of her proposition that interest could be awarded to cover a period before the date on which the purchase order was made. Briefly, this was a case whereby the parties (members of a family) entered into an arrangement which was essentially a partnership in corporate form. A divorce

ruined the relationship between the parties. As such, it became difficult to conduct the affairs of the company. The court directed that the respondents were to purchase the petitioner's shares at a value to be assessed and the costs of and incidental to the transfers of shares including stamp fees etc and interest at 12% to be paid by the respondents to the petitioners. There was nothing in the case that stated when the interest was to run from. This was conceded by Yeo's counsel. However, counsel contended that this case seemed to treat it as trite law that the court had power to and did grant interest on the purchase price of the shares.

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25. In our opinion, this case could hardly provide any support for counsel's proposition. As Chao Hick Tin J observed, the court in ***Re Dalkeith Investments*** 'did not appear to have ordered the payment of interest in respect of the period prior to the date of judgment'. In fact, as the respondents' counsel pointed out, the court in that case made only one reference in the judgment to interest at p 255:

I order that the respondents ... do, on or before 21 December 1984, ... purchase and pay for the transfer of the shares ... at a price of \$305 per share, and that until such payment or transfer the said respondents do pay interest at the rate of 12 per cent per annum, ...

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The judge in that case had rendered his judgment one month earlier on 12 November 1984. We were inclined to the respondents' counsel's argument that the judge in that case must have been ordering payment of interest to run from the date of judgment (12 November 1984) until the date of purchase and

payment (21 December 1984). As such, this case was no authority for the proposition that interest can be awarded for the period prior to the date of judgment.

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26. On the other hand, the main authority relied on by both Chao Hick Tin J and the respondents for the proposition that interest cannot be awarded where the purchase order has not been made or where the principal sum has not been determined was **Re Bird Precision Bellows Ltd** [1984] Ch 419[1984] 3 All ER 444[1986] Ch 658[1985] BCLC 493 (CA). This case would also have to be examined in detail. In this case, the petitioners held 26% of the shares in a company and the respondents held the remaining 74% of the shares in the company. In April 1981, the petitioners were removed from office and excluded from the company's business. In October 1981, the petitioners presented a petition under s 75 of the Companies Act 1980 alleging that the affairs of the company had been conducted in a manner unfairly prejudicial to their interests as members and sought an order under s 75(4)(d) of that Act that the respondents purchase their shares. The petition came on for hearing on 23 November 1981. At this hearing, both parties came to an agreement that the respondents would purchase the petitioners' shares at a price that the court would determine and a consent order to that effect was made. The consent order contained an order for liberty to apply for directions as to payment of the purchase price and 'interest (if appropriate)'. The matter came before Nourse J on 28 October 1983 and the purchase price of the shares of the petitioner was determined. The matter was restored for hearing on 25 November 1983 for parties to argue on, inter alia, whether interest was payable.

27.Nourse J considered as a matter of principle whether interest could be awarded on the facts of the case. It was submitted by the petitioners that the purchase moneys adjudged to be payable for their shares ought to bear interest from an appropriate date before judgement at an appropriate rate. He stated at p 459:

... the court can only award interest before judgment in four categories of cases: firstly, in one or two exceptional cases at common law; secondly, where provision for interest is made by contract; thirdly, by statute; and fourthly, under the equitable jurisdiction of the court.

...

The first point to be made is that in a normal s 75 case, where there has been no agreement of any kind, I cannot see how there can be any question of interest being payable before a purchase order is made. Until that stage is reached there is no obligation to pay any sum at all, either quantified or unquantified. I have never heard of interest being payable before there is an obligation to pay principal. On analysis, it appears that what counsel for the petitioners is really saying is that the court has power under s 75(3) to award something equivalent to interest. That must, I think, be damages for loss of the use of the purchase moneys during a period when they ought to have been in hand. As will appear, the view which I take of this case makes it unnecessary for me to express a view on that point and I do not do so.

In the present case there was an agreement that the respondents should buy out the petitioners on a certain basis, ie at such price as the court should determine. That price was held to be a sum equivalent to the fair value of the shares. There was no agreement that the price should bear interest from some date prior to this determination or, indeed, from any date. An agreed liberty to apply for directions as to the payment of interest (if appropriate) is not an agreement that the price should bear interest. There was no agreement that the petitioners should receive damages for loss of the use of the purchase moneys. ...

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28. Yeo's counsel submitted that the decision in ***Re Bird Precision Bellows Ltd*** ought to be confined to its facts and not cited as authority for the proposition that interest could never be ordered on the purchase price of shares prior to an order for purchase in an action for minority oppression. This is because, in that case, there was an agreement between the parties for the sale of the shares which was put into a consent order and the consent order did not provide for interest to be paid on the purchase price or damages to be paid for the loss of use of the purchase price.

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29. In our opinion, the distinction counsel drew was an insignificant distinction. Upon a close reading of that part of Nourse J's judgment we have quoted above, it will be clear that he was not prepared to consider awarding interest in lieu of damages and he could not see how the question of interest could arise before the obligation to pay any sum at all had arisen.

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30. Although Nourse J noted the argument that the court may have the power under s 75(3) to award something equivalent to interest, like damages for loss of use of the purchase moneys during the period when they ought to have been in hand, he expressed no view on it; he awarded no interest in this case as there was an agreement for the respondents to pay out the petitioners on a certain basis, ie at such price as the court should determine, and that basis did not provide for the payment of interest.

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31. On appeal, reported at [1986] Ch 658; [1985] BCLC 493, Oliver LJ referring to the liberty to apply for directions as to payment of interest on the purchase price said at [1986] Ch 658, 677; [1985] BCLC 493, 507:

... It seems to me as plain as can be that the liberty to apply for directions as to payment of interest on the purchase price was simply inserted for the purpose of enabling the court, when it fixed the terms of the purchase, to provide, if the purchase price was not paid for interest to be paid on it as from a certain date. It seems to me that the judge was perfectly right in refusing to allow any question to be ventilated as to the payment of interest, as it were, in lieu of damages. ...

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32. Another case relied on by Chao Hick Tin J for not granting interest before the purchase order was made was the Irish Supreme Court case **Irish Press plc v Ingersoll Irish Publications Ltd** [1995] 2 ILRM 270. In this case, the court held that, under the corresponding provisions of the Irish Companies Act, it was not open to the court to award damages under an oppression petition. Blayney J stated at p 10:

It was also submitted that the provisions of s 205(3) were so wide that they would permit damages to be awarded. I am unable to agree. First, an award of damages would not satisfy the condition that the order be made 'with a view to bringing to an end the matter complained of'; secondly, an award of damages is a purely common law remedy for a tort, breach of statutory duty or breach of contract, and acts of oppression would not come within any of these categories, and finally, if the Oireachtas had intended to include the remedy of damages as one of the reliefs which could have been granted, there would have been no difficulty in doing so, and it is quite clear that this was not done.

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33. In distinguishing between the case at hand and **Scottish Co-operative Wholesale Society v Meyer** [1959] AC 324 and **Re Greenore Trading Co Ltd** [1980] 1 LRM 94, Blayney J said at p10:

While compensation was included in the relief given in each of these two cases, it was given in an extremely limited context - where the oppressor had been directed to purchase the shares of the oppressed shareholder, and where the compensation resulted from the court's determination of what would be a fair price for the shares in the particular circumstances. The element of compensation was incidental to the main relief which was the purchase of the shares. The cases are not authority for a general right to compensation for loss resulting from oppression, ...

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34. Ms Engelin Teh, Yeo's counsel, contended that this case could be easily distinguished. Section 205(3) of the Irish Companies Act provides that the orders a court may make are 'with a view to bringing to an end the matters complained of'. Section 216(2) of our Act is drafted more widely in that it provides that the orders 'are with a view to bringing to an end or remedying the matters complained of'. As such, a wider discretion is clearly afforded to our courts and in an appropriate case, an element of compensation can and ought rightly to be included in the relief granted by the court.

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35. In our opinion, Ms Teh was quite correct in noting the difference between the Irish provisions and our provisions. It is indeed true that s 216(2) of our Act is drafted more widely. In fact, even with the more restrictive Irish provision,

the Irish Supreme Court appeared to agree that, where the element of compensation was included as part of the share price, this would be allowed by s 205 of the Irish Companies Act. However, in this case, Chao Hick Tin J had already effectively allowed an element of compensation when he increased the share price at 5% per year for a period of seven years. However, Yeo was not satisfied with this and sought further relief. He contended that the court should award him interest on the purchase price of his shares as the shares should have been valued and purchased eight years ago by Poon. In our view, even under the wider drafted provision of our Act, the court does not have the power or jurisdiction to grant interest in order to compensate Yeo. This would be akin to seeking damages. As the Irish Supreme Court pointed out, an award of damages is a purely common law remedy for a tort, breach of statutory duty or breach of contract, and acts of oppression would not come within any of these categories. Further, if Parliament had intended to include the remedy of damages as one of the reliefs which could have been granted, it would have done so.

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36. In our opinion, the appeal hinged on mainly whether the court has the jurisdiction to award prejudgment interest in oppression cases. As Chao Hick Tin J held at [para] 14 of the grounds of judgment:

Section 9 of our Civil Law Act empowers the court to grant interest in respect of any debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment. Paragraph 6 of the First Schedule to the Supreme Court of Judicature Act empowers the court to grant interest in respect of damages, debts or any sum found due. The present proceeding was not a claim in respect of a debt or damages.

37. We were persuaded by the respondents' submissions that an exercise of a discretion could only arise where there is power or jurisdiction to exercise the discretion in the first place. If statute has not given the court jurisdiction to award pre-judgment interest in a minority oppression case, the court cannot claim to be able to exercise its discretion when it does not have jurisdiction to do so in the first place. The Singapore position can be contrasted with the position in Canada. Section 1 of the Prejudgment Interest Act in Canada provides as follows:

(1) Subject to s 2, a court shall add on a pecuniary judgment an amount of interest calculated on the amount of the judgment at a rate the court considers appropriate in the circumstances, but the rate shall not be less than the rate that applies in respect of interest on a judgment under the Interest Act (Canada), from the date on which the cause of action arose to the date of judgment.

38. In **Diligenti v RWMD Operations Kelowna Ltd (No 2)** [1977] 4 BCLR 134, the question of whether a buy out order made against a majority shareholder is a 'pecuniary judgment' arose. In that case, Fulton J held at p 171:

... The Prejudgment Interest Act does not restrict the kind of judgment to which interest is attracted to a judgment for payment of a debt or damages: it uses the broad term 'pecuniary judgment' which seems to me inescapably to contemplate an order for payment of money, which is what is involved here. As I appreciate the rationale of the Act, it is that when one party has been found to be liable in accordance with the law applicable to his conduct or acts to pay to another a sum of money, and he has failed or refused to pay that money, and thus has denied to the other the use of that money while himself enjoying the use of it, the other party is to be compensated by interest for the loss of

the use of that money which rightfully should have been paid to him. ...

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At p 173, the learned judge said:

... In the context of the `rationale` of The Prejudgment Interest Act - that interest is to be added where moneys found due have nevertheless been withheld - an award of prejudgment interest is warranted because in this sense here, just as in the type of case I have referred to, payment has been unjustifiably withheld - and no moneys paid into court in lieu - so that the respondents have had the use of moneys which have been due to but denied to the applicant, who on his part cannot be said in any real sense to have had any use or benefit of his shares in the meantime.

...

... The respondents having had the use of that money since then, instead of paying it to the applicant - or making a payment into court - while the applicant cannot be said to have had any meaningful use of his shares, the rationale of The Prejudgment Interest Act is satisfied, and I find that the order for purchase of the shares at the price as determined is a pecuniary judgment within the meaning of that Act.

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39. In our opinion, it was clear that the learned judge would not have awarded pre-judgment interest in the above case if he had held that the court was not empowered by statute to do so. The learned judge had the existence of The Prejudgment Interest Act. However, there is no equivalent statute in Singapore which allows the award of prejudgment interest in respect of `pecuniary judgments`. In Singapore, it is clear that prejudgment interest can only be awarded in respect of `debts or damages`. In this case, the proceedings were not a claim in respect of a debt or damages. As such, it was clear that the courts in Singapore have no jurisdiction to award interest in this case.

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40. The respondents quite correctly pointed out that unless s 216 of the Companies Act or any other statute empowers or grants jurisdiction to a Singapore Court to order payment of prejudgment interest in a minority oppression case, it has no power or jurisdiction to do so. An analogy can be drawn between this and the court's power or jurisdiction to order a company to purchase the shares of a shareholder. If s 216(2)(d) and (e) did not expressly provide for a company purchasing its own shares, the court has no power or jurisdiction to order that the company purchase its own shares. By s 76(1)(b)(i), a company is prohibited from purchasing its own shares. However, because Parliament has by s 216(2)(d) expressly empowered the court to order a buy out of its own shares by a company in an oppression case, there is no contravention of s 76(1)(b)(i). Accordingly, s 76(8)(h) was included to ensure consistency.

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41. In respect of the question of awarding interest, Parliament has by statute given the court the power or the jurisdiction to grant pre-judgment interest (from the date when the cause of action arose until the date of judgment) on `debt or damages` only. There is nothing in s 9 of the Civil Law Act and/or para 6 of the First Schedule of the Supreme Court of Judicature Act which allows the court to award pre-judgment interest on sums of money which are neither debts or damages. Since the current action is not one for either debts or damages, it seemed clear to us that this court does not have the power to award interest in this case for the period prior to the order for purchase of shares. In our view, there was clearly no statutory jurisdiction given to the court to award interest in this case.

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42. It seemed to us that what Yeo was actually asking for was for damages. What Yeo was in effect saying was that Poon was under a duty to buy his shares earlier. However, due to his wrongful refusal to buy his shares, the respondents must then pay interest as he had thus been wrongfully kept out of his money. In our opinion, that would be the case if there was actually a legal obligation on the part of Poon to purchase the shares. However, an actual agreement was never asserted. Further, it was held in **Re G Jeffrey (Mens Store) Pty Ltd** [1984] 9 ACLR 193 that the refusal of a majority shareholder to purchase the shares of a minority shareholder cannot form the basis of a complaint in a minority oppression case. As Crockett J said at 199:

... the mere refusal by the other shareholders to accommodate the applicant in getting his money out of the companies (a desire which is understandably predominant in his mind) by purchasing his shares does not amount to conduct of the affairs of the companies in a manner prejudicial to or discriminatory against the applicant. Still less does it amount to oppressive conduct. ...

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43. Furthermore, if the award of interest was by way of damages to compensate him for being deprived of the benefit of the use of the purchase moneys, it was clear that the case of **Irish Press plc** was persuasive authority that damages cannot be awarded in a minority oppression action. As the respondents pointed out, Yeo's contention would only stand if there had been a valid agreement between the respondents and him that the respondents would purchase his shares, and the respondents subsequently reneged on the agreement. This would be an action for breach of contract. An example of this would be our Court of

Appeal decision in **Tatung Electronics (S) Pte Ltd v Binatone International Ltd** [1991] SLR 204 whereby this court awarded three heads of damages for breach of contract by the defendant. The heads of damages included one for interest on the purchase price of the 7,665 television sets detained by UK customs as a result of the breach committed by the defendant. Yong Pung How CJ justified the award of interest on the purchase price. His Honour said at p 210 B-C:

... In the circumstances, the respondent having been deprived of the benefits and use of the whole market value of the 7,665 television sets for the period between detention and restoration, it was quite proper for the learned trial judge to award interest on it in the way he did. ...

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44.However, that was a case of breach of contract. By reason of the defendant`s wrongful breach, it had deprived the plaintiff of the benefit and use of the market value of the television sets detained by the UK customs. The present case is not one of breach of contract.

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45.Yeo contended that in **Re Bird Precision Bellows Ltd** , Nourse J did not think that it was necessary to express a view on whether or not the court had the power under s 75 to award `damages for loss of the use of the purchase moneys during a period when they ought to have been in hand.` However, one of the reasons why Nourse J thought it was unnecessary for him to express a view was that it was:

... far too late to make that claim. A claim for damages, even of that limited character, would have entitled the respondents to

adduce evidence and make submissions to the effect that the petitioners' loss was by no means what it might have seemed. ... it is no reason for allowing the petitioners to reopen the trial under the guise of a claim for interest. ... (at p 460).

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46. Here, Yeo's petition was neither heard nor had its merits been examined by Chao Hick Tin J. The learned judge had stayed the petition pending the determination of the fair value. In March 1998, only the valuer was cross-examined on his valuation report by the respective counsel for both Yeo and the respondents. It was too late for Yeo to make an alleged claim for damages for loss of use of the purchase monies.

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47. In summary, we were of the view that the appeal should be dismissed on the ground that the court had no jurisdiction to award pre-judgment interest in this case. Counsel for Yeo argued eloquently that s 216 of the Companies Act is wider than the equivalent Irish provision in that it not only allows the court to 'bring an end' to the matters complained of, but allows the court to 'remedy' the matters complained of. However, it has to be noted that Chao Hick Tin J had already more than effectively remedied the situation when he ordered the respondents to purchase Yeo's shares at a fair value. Not only that, he incorporated an element of compensation by adjusting the fair value of the shares upwards by 5% per year for a period of seven years. This seemed to us to be more than an adequate remedy. Yeo's contention, however, was that an award of interest was critical to remedy the matters complained of. We did not see any reason why this was so and as such dismissed the appeal.

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48. Civil Appeal No 128 of 1998

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60 The facts by which this cross-appeal arose were the same as those in CA 127/98. The issue in this appeal was whether the learned judge erred in enhancing the value of each share from the valuer's assessment at \$3.46 to \$4.67 which was effectively an increase of 5% per year over a period of seven years. The learned judge's reason for enhancing the value of each share was that an adjustment had to be made because:

... For some seven years the petitioner (Yeo) was denied the benefit of his shareholding while the respondents seemingly plundered the company and siphoned off its profits to the respondents' other entities. To take no account of that would be tantamount to sanctioning wrongdoings and rewarding the oppressor. That would be to turn justice on its head. ...

... if the business of the company had been managed as before, it was more likely than not that the general direction of the business would be on the upward trend, in line with the economy of Singapore. ...

... as the business of the company stabilised, its growth in percentage terms would, in all likelihood, be gradual and not as dramatic as the earlier years ... And this growth must be brought into account in determining the fair value as on 11 April 1998. ...

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49. The appellants' contentions (ie Dickson Investment and Poon's)

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63 To avoid confusion we will continue to refer to Dickson Investment and Poon who are appellants in this appeal as `the respondents` The respondents contended that the learned judge had erred in enhancing the share value. One of the reasons was that the shares were valued on the basis of the company as a going concern. The future growth of the company had been factored into the fair value of \$3.46 per share by the use of the capitalisation of future maintainable earnings (FME) basis, and accordingly Yeo could not be and had not been deprived of the benefit of his shareholding since 1 October 1990. They contended that it would thus be `double counting` if the future growth of the company was factored into the fair value already arrived at on a valuation done on the capitalisation of FME basis. In any event, they further contended that the growth rate of the company selected by the learned judge was mere speculation and unsupported by evidence. The respondents further contended that the learned judge had taken into account allegations of wrongdoings which had not been admitted or proved. In any event, they alleged that such wrongdoings did not have any effect on the value of the shares.

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50. *Yeo`s submissions*

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66 Yeo submitted that the learned judge was correct in enhancing the value of his shares in the company from the mean value of \$3.46 per share to the fair value of \$4.67 per share to take into account the growth of the company for the next seven years after 1 October 1990 as if there had been no oppression by the respondents. With regards to the method of valuation used by the valuer, it was

contended by Yeo that this method did not factor in the future growth of the company so as to give a value of the shares as at the date of the order for sale, ie 11 April 1998. As for the respondents' contention that the growth rate used by the learned judge was mere speculation and was unsupported by evidence, Yeo submitted that the learned judge was justified both in law and on the facts to do so as there was clear evidence in the petition and affidavits filed in the action as well as in the valuation report to support a growth of more than 5%. As for the respondents' last contention that the learned judge had taken into account allegations of wrongdoings which had not been admitted or proved, and which in any event did not have any effect on the value of the shares, Yeo submitted that since this was an action for minority oppression and the fact that the buy-out of the shares was the substantial remedy prayed for by him, the learned trial judge was entitled to take into account the allegations of wrongdoings and oppression in deciding to enhance the value of his shares in the company. Yeo submitted that it made no difference that the order to purchase his shares was made while the petition was stayed as the relief ordered was what was asked for in the petition. Further, the application for further directions was heard on the basis that oppression was assumed to have been established and costs were agreed to be paid by the respondents. As such, the acts of oppression were significant in affecting the value of the shares.

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51. *Issues in the appeal*

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69 In our opinion, there were three main issues to be dealt with. The first issue to be dealt with was whether the learned judge could take into account allegations of wrongdoings which had not been admitted or proved. The second issue was whether the valuation of shares based on capitalisation of future maintainable earnings took into account the future growth of the company such that the learned judge had `double counted` when he increased the mean value to take into account the growth of the company if there had been no oppressive acts by the respondents. A related issue was whether the court had the discretion to permit an enhancement of the share value. The last issue was whether the growth rate used by the learned judge was unjustified and mere speculation.

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52. Whether the learned judge could take into account allegations of wrongdoings which had not been admitted or proved

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72 The respondents submitted that the learned judge erred in taking into account allegations of wrongdoings and oppression which had not been admitted or proved. They contended that since by the order of court dated 7 July 1995, a stay of the petition was ordered and as such the petition and its merits were not heard by the learned judge; it was therefore wrong for the learned judge to rely on the allegations of oppression. Further, it was contended that when an order for a stay of an oppression action was made on the ground that there was an offer by the respondent to buy out the petitioner at a fair value of his shares it would be unreasonable for the petitioner to pursue his action further. The respondents cited **Re A Company (No 003843 of 1986)** [1987] BCLC 562

and **Re A Company (No 00836 of 1995)** [1996] 2 BCLC 192 as authorities in support. Even if the allegations of wrongdoing and oppression were true, these would merely constitute acts of oppression occurring after 1 October 1990, which the valuer had ignored in his valuation. As such, these acts could not and did not have the effect of depressing the value of the shares. Lastly, there was no evidence whatsoever that Yeo had been denied any benefit which the other shareholders had enjoyed.

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53. In our opinion, the learned judge did not err in taking into account allegations of wrongdoings and oppression despite the petition and its merits not being heard by the learned judge. A look at the background facts showed that the petition was stayed and the application was in fact heard on the basis that oppression was assumed to have been established. It was also for this reason that the respondents agreed at the hearing of the application to pay Yeo the costs of the petition, subject to submissions as to quantum. Further, a perusal of the order of court dated 11 April 1998 showed that the petition and all the affidavits filed by the parties were read and considered by the learned judge in giving his decision. In fact, [para] 25 of his grounds of judgment clearly referred to there being oppression.

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54. As for the respondents' contention that when an order for a stay of an oppression petition was made on the ground that there was an offer by a respondent to buy out a petitioner at a fair value of his shares it would be unreasonable for the petitioner to pursue his action further, the cases that the

respondents relied on could easily be distinguished. The respondents relied on the cases of ***Re A Company (No 003843 of 1986)*** and ***Re A Company (No 00836 of 1995)*** . However both these cases were stayed because the reliefs sought by the petitioners were found by the court not to have been realistic or appropriate under the particular circumstances of the case. The court in both cases found that the offers made by the majority shareholder to buy out the minority shareholders` shares were reasonable and reflected what the petitioners could realistically have expected upon prosecution of their petitions. It was under those circumstances that the court awarded a stay of the petitions.

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55. In the present case, Yeo had sought under s 216 of the Act for, inter alia, an order that either or both respondents purchase the whole of his shares in the company, with an alternative prayer for winding up of the company and a further prayer for civil proceedings to be commenced against Poon, his Hong Kong directors, and his related companies in Hong Kong for breach of fiduciary duties and breach of contract. These reliefs were realistic against the acts of oppression by the respondents. As such, it could not be contended in this case that the petition was stayed because it would have been unreasonable for Yeo to continue with his petition. We were thus of the view that the learned judge did not err in taking into account the allegations of wrongdoing and oppression.

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56. Valuation of shares in a going concern based on capitalisation of future maintainable earnings

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78 The respondents' counsel, Mr Joseph Ang, cited to us extracts from Steven Sirianos' discussion of the FME basis in his article 'Problems of Share Valuation Under Section 260 of the Corporations Law' in **Company and Securities Law Journal** at p 99:

The capitalisation of maintainable profits, or earnings capitalisation method as it is commonly referred to, is the preferred method of valuation of a business as a going concern. This valuation method is based on the earnings or income flow of the company. The objective of the earnings capitalisation method is to determine the capital value of a stream of future earnings. Thus, the method comprises two distinct steps: (i) a prediction of future earnings, and (ii) capitalisation of the predicted earnings by the appropriate capitalisation rate`.

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57.He also cited to us Vern Khrisna in his article 'Determining the Value of Company Shares' in **The Company Lawyer** Vol 8 No 2 commented at pp 67 and 68:

The investment value method, the conceptually preferred approach for valuing going concern business, is premised on the principle that the value of an asset or property is determined by what it can earn in the future. As Justice Holmes said:

`The value of property [as] of a certain date, like all values, as the word is used in law ... depends largely on more or less certain prophecies of the future...`

The objective is to determine the capital value of a stream of future earnings. Thus, the method comprises two distinct steps: (i) a prediction of future earnings, and (ii) capitalization of the predicted earnings by the appropriate capitalization rate.

An enterprise's future earnings may be estimated by extrapolating from an average of its past earnings after adjustments for any known changed circumstances. Thus, the theoretical premise of the method is to value the future of the

business; the mechanics of the calculation are by reference to historical earnings. ...

But forecasting earnings must not lead to unbridled speculation. Future prospects are `pertinent ... [and] must be considered` but only elements of future value `which are known or susceptible to proof ... and not the product of speculation, may be considered`.

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58.Mr Ang contended that since the capitalisation of FME basis was used by the valuer, the future growth of the company had already been taken into account in arriving at the fair value of Yeo`s shares. As such, Yeo could not be said to have been deprived of the benefit of his shareholding. He thus contended that the court should not allow Yeo on the one hand to enjoy a share value which has future growth already incorporated in it, and on the other hand to complain that he had not had the benefit of his shareholding.

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59.Further, if it was accepted that the fair value of the shares as determined by capitalisation of FME basis had already taken into account the future growth of the company, it would result in `double counting` to add the future growth of the company to the fair value. The respondents distinguished the case which the learned judge had relied on as authority for the proposition that he could enhance the value of the shares (**Coombs v Dynasty Pty Ltd** [1994] 14 ACSR 60). They submitted that the learned judge had relied on that case wrongly as, in that case, the valuer had used the net tangible asset (NTA) basis of valuation.

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60. The respondents contended that the learned judge had wrongly applied the principles in *Coombs* in that his Honour had failed to consider the circumstances under which von Doussa J had applied the interest factor, that is, that the valuation in *Coombs* had been done on an NTA basis. On the other hand, the valuation in this matter here was done on a capitalisation of FME basis.

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61. Mr Ang then discussed the NTA method of valuation and submitted that the NTA basis was not appropriate for valuing the worth of a going concern. If it were used to value the shares in a going concern, the shares would be undervalued. This was different from the FME basis in which the future prospects of the company were already factored into the value of its shares, and accordingly, a fair value as opposed to an undervalue had been determined.

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62. Further, Mr Ang contended that when the valuer was valuing the shares in the company on the capitalisation of FME basis, he was not actually valuing them as at 1 October 1990. What he was in fact doing was using the date of 1 October 1990 as a 'cut-off date', ie he used the earnings or profits of the company for a period ending just before 1 October 1990 to determine what were the maintainable profits for the future. In contrast, if the valuation had been done on an NTA basis, the valuer would be computing the value as at 1 October 1990, ie he would have obtained a fair value based on the current market value of the assets as at 1 October 1990. The respondents contended that, if the NTA basis had been used, only then would the learned trial judge be justified in enhancing the value of the shares like the trial judge in *Coombs*.

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63. In support of this, they cited cases such as **Re A Company (No 002612 of 1984)** [1986] 2 BCC 99 where no adjustment had been made despite the lapse of a year between the valuation as at the date of the petition and the date of the judgment. The valuation had been done on the capitalisation of FME basis. Another case cited was **Re Bodaibo Pty Ltd** [1992] 6 ACSR 509 in which again the method of valuation used was on a going concern basis at a high capitalisation rate. Again, no adjustment was made to the value of the shares. Further, in **Re Bird Precision Bellows Ltd**, no adjustment was made by reason of the lapse of almost two years between the date of the valuation and the date of the judgment. Again, the valuation was done on a capitalisation of FME basis.

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64. In our opinion, the respondents' argument seemed convincing at first glance. However, it was to be noted that what the learned judge had directed the valuer was to value the shares as at 1 October 1990. The valuer was never directed to value the shares in the company as at 11 April 1998 or any date after 1 October 1990 so as to take into account any growth the company may have enjoyed.

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65. The valuer was further directed that the shares were to be valued on the basis that the company was a going concern. As such, the FME basis was used rather than the NTA basis. In his valuation report, the valuer stated that valuation on the NTA basis:

... assumes that the shares of a company are worth the sum of its individual assets values, less its liabilities. It must be recognised that while this basis may form an acceptable basis to be used in share valuation in circumstances which for various reasons preclude the use of other bases, the value so arrived at may not necessarily reflect the eventual worth of the shares to a prospective buyer or seller. For example, it may not properly reflect the earnings potential of the company.

However, the NTA basis is appropriate where a company's assets have a readily realisable value independent of its business. Property companies and investment trusts are obvious examples. When valuing such companies it may be appropriate to value them solely on the basis of their net tangible assets. Additionally, the NTA basis is also appropriate for valuing a loss making company/business. In view of that fact that Dickson Trading was profitable and was operating in trading businesses, the NTA basis would not generally be the appropriate basis for valuing the shares in Dickson Trading ... (p 6)

88

66. In our view, both the capitalisation of FME basis and NTA basis of valuations would arrive at a valuation as at the given valuation date. The only difference was that different basis of valuation may be suitable for different businesses and in this case, the FME basis was clearly more appropriate in view of the fact that the company was a profitable going concern.

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67. As for the cases which the respondents relied on in support of their contention, a careful examination would reveal that they could easily be distinguished. In **Coombs**, von Doussa J had ordered that the shares be valued as at 31 March 1988 which was the date when a special meeting of the members of the respondents was held and before the restructuring of the company took place. Based on this date, the NTA basis was adopted because the company had

a history of losses since incorporation. The NTA basis was opted for as using the FME basis would result in an even lower share value due to the company's history of losses. It seemed to us that the principal consideration was merely the date which would give the fairest share price for the applicant. Once this date was determined, the method of valuation chosen would be one which was most appropriate for the state of the business at the date that the court had fixed for the valuation. This did not seem any support for the respondents' contention that the judge had only added an interest factor in that case because of the fact that the NTA basis had been used. In fact, von Doussa J had found that it was 'necessary to add an interest factor on the value of the shareholding at 31 March 1988 to compensate for the deferred payment of that value'.

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68. In the case of ***Re Bodaibo Pty Ltd***, Vincent J stated that in the ascertainment of a fair price, consideration must be given, inter alia, to the selection of the most appropriate method of valuation in the particular circumstances of the matter before the court. On the facts, the most appropriate basis was the assessment of the value of the business as a going concern. No compensation was added as the valuation date was only seven months before the judgment date. In any case, as Yeo rightfully pointed out, the issue was never raised. Nowhere in the judgment was it stated that in a case where shares were valued on a capitalisation of FME basis that an adjustment to the share value could not be made. Similarly in ***Re A Company (No 002612 of 1984)***, this issue was never raised and canvassed. Further, the time lapse was only one year and it may have been that there was no evidence of any possible appreciation in the share value but for the acts of oppression. In ***Re Bird Precision Bellows Ltd***, the case was again silent on this issue. Further, there was a consent order which

did not provide for interest to be paid on the purchase price or damages to be paid for the loss of use of the purchase price.

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69. *Whether the court has the discretion to enhance the share value*

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93 The respondents contended that the court has no power to make an award of damages in an oppression action and cited the cases of ***Re Bird Precision Bellows*** and ***Irish press plc v Ingersoll Irish Publications Ltd*** as authorities therefor. However, ***Re Bird Precision Bellows*** was not really an authority on this. What was held was that pre-judgment interest could not be awarded. However, Nourse J did note counsel's contention that the court under s 75 of the English Companies Act 1980 had the power to award 'damages for loss of the use of the purchase moneys during a period when they ought to have been in hand'. However, as there was a consent order in that case which he felt encapsulated all the terms of the agreement between parties, Nourse J did not think it necessary to express a view on that point and refrained from doing so.

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70. As for the case of ***Irish Press***, it was acknowledged that compensation could be included in the relief given in an extremely limited context. The court held that it was possible where the oppressor had been directed to purchase the shares of the oppressed shareholder to award compensation which resulted from the court's determination of what would be a fair price for the shares in the

particular circumstances. What the case stood for was that there is no general right to compensation for loss resulting from oppression. However, a limited relief could be offered like that in **Scottish Co-operative Wholesale Society Ltd v Meyer & Anor** [1959] AC 324 and **Coombs v Dynasty Pty Ltd & Anor** [1994] 14 ASCR 60 where von Doussa J at p 103 held that:

*... To arrive at a fair value to be paid now by valuing the shareholding at some date in the past and by adding to that value an allowance for the fact that the shareholder has been kept out of the enjoyment of that value in the meantime, to borrow the words of Lord Denning, is to give to the oppressed shareholder 'what is in effect money compensation for the injury done to [the shareholder]; but I see no objection to this. The section gives a large discretion to the court and it is well exercised in making an oppressor make compensation to those who have suffered at his hands': in **Scottish Co-operative Wholesale Society Ltd v Meyer** at 369. ...*

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In **Re Bodaibo Pty Ltd** [1992] 6 ACSR 509, Vincent J stated at p 515:

The provisions contained in s 260 of the Corporations Law have been drafted in wide form in order to accommodate the almost limitless varieties of oppressive behaviour possible and the need for the court to have an appropriately extensive discretionary power to effect justice in the particular circumstances of individual cases. In some respects the problems posed for the courts in the two cases to which reference has been made were perhaps more straight forward than that presently under consideration. In this matter the oppressive conduct has not directly affected the assets or viability of the company and thereby decreased its value, but rather created a situation that is intolerable for the minority shareholder which must approach the court for relief at a time when the market and the economy in general are depressed, in other words, when the market value of its shares and its assets would be low and not reflective of their longer-term worth. It would be strange indeed if the court, in endeavouring to offset the effects of oppression; could not by the adoption of a method of valuation based upon a more long range view of the situation make an adjustment to compensate for this factor.

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71. There is no doubt that s 216(2) of the Act, as similar provisions in other Commonwealth jurisdictions, is a wide-ranging section. In the words of Vincent J in **Re Bodaibo Pty Ltd** the section gives the court appropriately extensive discretionary power to effect justice in the particular circumstances of individual cases. As such, we were of the view that the court has the discretion to enhance the share value in a minority oppression case and that the learned judge did not err in doing so.

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72. Whether the growth rate used by the learned judge was mere speculation and unsubstantiated by evidence

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99 In our opinion, it was clear that the determination of share value need not be in accordance with strict accounting principles. The role of the court was merely to determine a price that is fair and just in the particular circumstances of the case. As stated by von Doussa J in **Coombs** at p 102:

... In the present instance the valuation of the shares is a complex issue having regard to the competing arguments as to the way in which the injections of money into Dynasty by way of capital subscription and distributions, and expense items such as the consultancy fees and legal costs, are to be reflected. The valuation exercise is not merely one of accounting, but one of deciding the competing arguments on these issues. That is a function which the court should perform.

... The court must fix a price that represents a fair value in all the circumstances of the case: ...

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Similarly, in **Re Bagot Well Pastoral Co Pty Ltd; Shannon v Reid** [1992] 9 ACSR 129, Cox J at p 147 said with regard to the assessment of the reasonable price to be paid for the petitioner`s shares:

... I do not envisage that the accounting exercise that I contemplate should be carried out in meticulous detail. No more than an approximate appraisal of the relevant factors is required. Apart from the impossibility of achieving exactness, the expense of pursuing that goal would probably not be economically worthwhile. Enough information, probably with expert advice, to make a fair estimate is all that is needed.

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73. In this case, the learned judge had considered all the relevant factors including the projections of the merchant bankers when the company sought listing on the SES in 1990 as well as the economy of Singapore. He was of the view that it was `abundantly clear` that Yeo had suffered unjustly under Poon`s oppression and decided to make an adjustment to the share price. In our view, the learned judge did not err in doing so.

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74. Accordingly this appeal was also dismissed by us.

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75. **Conclusion**

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105 For the reasons we have given both appeals CA 127 of 1998 and CA 128 of 1998 were dismissed.

Karthigesu JA
Lai Kew Chai J
Yong Pung How CJ

Engelin The SC and Sean Tan (Engelin Teh & Young) for the
appellant in CA 127 of 1998 and for the respondent in CA 128 of
1998
Joseph Ang and Chan Kia Pheng (Lee & Lee) for the respondent in
CA 127
