IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 169

Suit No 490 of 2013

Between

(1) Thio Syn Kym Wendy
(2) Thio Syn Ghee
(3) Thio Syn San Serene

… *Plaintiffs*

And

(1) Thio Syn Pyn
(2) Thio Syn Wee
(3) Kwik Poh Leng
(4) Thio Holdings Pte Ltd
(5) Malaysia Dairy Industries Pte Ltd
(6) United Realty Ltd

… *Defendants*

JUDGMENT

[Companies] – [Oppression] – [Minority Shareholders] – [Separate legal personality]

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Thio Syn Kym Wendy and others
v
Thio Syn Pyn and others

[2017] SGHC 169

High Court — Suit No 490 of 2013
Judith Prakash JA
26–29 April; 3–6, 10–13, 17–20 May; 5 August 2016

17 July 2017 Judgment reserved.

Judith Prakash JA:

Background

1 This action is a minority oppression claim by a brother and two sisters against their mother and two brothers in relation to the conduct of the affairs of three family-owned companies. The acts of commercial unfairness alleged by the plaintiffs span three broad categories concerning the affairs of the companies. It is also alleged that the companies are quasi-partnerships and that there was a common understanding that the plaintiffs were entitled to be directors of the companies.

2 Mr Thio Keng Poon ("Mr Thio"), born in 1931, was an enterprising businessman in the early years of independent Singapore. In 1960, he incorporated a company called United Realty Ltd ("URL") which carried on

business as a property investment holding company. It was a successful undertaking: URL now owns and rents out a number of residential, commercial and industrial properties. The root of the family fortune was, however, the joint venture that Mr Thio entered into in 1963 with the Australian Dairy Produce Board to manufacture and market sweetened condensed milk in Singapore and Malaysia.

3 The joint venture company, Malaysia Dairy Industries Pte Ltd ("MDI"), has been extremely successful. It now manufactures and distributes dairy products, fruit juices and health drinks under two well-established brands in this region, Vitagen and Marigold. By about 1968, the Australian Dairy Produce Board had been bought out and MDI was owned wholly by members of Mr Thio's family, including his wife, Mdm Kwik Poh Leng ("Mdm Kwik"), and his siblings. In due course, subsidiary companies were incorporated in Malaysia, *viz*, Malaysia Milk Sdn Bhd ("MMSB") and Cotra Enterprises Sdn Bhd ("CESB"). Collectively, MMSB and CESB are sometimes referred to as "the Malaysian Subsidiaries". A Singapore subsidiary, Modern Dairy International Pte Ltd ("Modern Dairy"), was also started.

4 In 1969, Mr Thio procured the incorporation of Thio Holdings Pte Ltd ("THPL") as an investment holding company. THPL owns 30% of the shares of MDI and 26.25% of the shares of URL. It also wholly owns Cotra Enterprises (Private) Limited, a Singapore company which is presently inactive. The shares of THPL are currently held by Mr Thio, his wife and five of his children. These same individuals are also shareholders in URL and MDI. These three companies, MDI, THPL and URL, are the corporate defendants in this action.

5 Mr Thio and Mdm Kwik have six children. They are:

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(a) Thio Syn Luan Vicki ("Vicki"), born in 1956;

(b) Thio Syn Pyn ("Ernest"), born in 1957;

(c) Thio Syn Kym Wendy ("Wendy"), born in 1959;

(d) Thio Syn Ghee ("Michael"), born in 1961;

(e) Thio Syn San Serene ("Serene"), born in 1962;

(f) Thio Syn Wee ("Patrick"), born in 1964.

For the purposes of this judgment, since the siblings have very similar Chinese names, to avoid confusion I will refer to them by their western names. These are the names which the siblings used for each other in the proceedings and in the correspondence which passed amongst them.

6 The plaintiffs in this action are Wendy, Michael and Serene. They are minority shareholders in each of the three corporate defendants. Together, they hold 18% of the shareholding of THPL, 13.75% of the shareholding of URL, and 20% of the shareholding of MDI.

7 The individual defendants in this action are Mdm Kwik, Ernest and Patrick. Together, they hold 77.25% of the shareholding of THPL, 30% of the shareholding of URL and 38.5% of the shareholding of MDI. All of them are directors of all three companies. Ernest and Patrick are, respectively, the managing director and deputy managing director of MDI. Mdm Kwik has been a director of all three companies since their respective dates of incorporation but has never played an active role in their day-to-day management.

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8 Mr Thio himself still has a substantial (*ie*, over 5%) minority interest in URL and MDI and has a small shareholding in THPL. He was not a party to this litigation but his conduct and his relationships with his various children set the stage for the action. The eldest child of the Thio family, Vicki, played no part in the litigation.

Events leading to this action

Events up to 2002

9 The three defendant companies, together with their subsidiaries and a Hong Kong company called Premier Enterprise Limited ("PEL"), form the Thio family's group of businesses ("the Group"). Until the 1990s, Mr Thio was the moving spirit of the Group. He was assisted by his brother and by a non-relative, one Mr Lim Choo Peng ("Mr Lim"), who is still a director of MDI. As his sons grew up, Mr Thio brought first Ernest, and then Patrick, into the business. Ernest was appointed a director of THPL, MDI and URL in 1983. Patrick joined MDI in the early 1990s and took over the marketing portfolio. In 1995, Ernest became the deputy managing director of MDI and took over the reins of the day-to-day management of the company. Mr Thio retained the titles of managing director and chairman but played less of a leadership role.

10 Mr Thio has been described as a "traditional autocratic patriarch". Over the years he gradually passed down the family wealth to his sons by allotting shares in MDI, THPL and URL to them. Initially, each of his three sons held the same number of shares but in 1991, when Michael was experiencing some financial difficulty, his shares were transferred to Patrick and Ernest. In the mid-1990s, after a shareholders' dispute between Mr Thio and his younger brother, Mr Thio bought out the latter and transferred his brother's shares to Patrick and Ernest. Thus, by the year 2000, the family members who held shares in the

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Group were Mr Thio, Mdm Kwik, Ernest and Patrick only. They were also directors of the Group companies.

11 In 2002, Mdm Kwik expressed a wish that some financial provision be made for her daughters. Ernest suggested that Michael and his sisters be given real property. Mr Thio disagreed and decided that Michael and his sisters should receive shares in the Group companies by way of bonus issues. The shares were issued to the four of them in March and April 2002, but Mr Thio retained full power in respect of the shares through blank share transfer forms and powers of attorney which each of them executed in his favour. Thereafter, Mr Thio usually acted as their proxy at shareholder meetings. At that stage, none of the four was made a director of any of the companies.

Events culminating in the Deed of Settlement and the appointment of the plaintiffs as directors

12 In May 2005, Michael's wife gave birth to twin sons. These babies were the first grandsons to bear the Thio surname. Mr Thio then proposed that bonus shares in the Group be issued to Michael's sons and that the constitutions of MDI and URL be amended so as to allow only his descendants bearing the Thio surname to hold shares in these companies. Ernest and Patrick objected to the proposed amendment. Their siblings were not in favour of it either. In anger, Mr Thio terminated Ernest's employment as deputy managing director of MDI on 8 December 2005. Ernest was reinstated by the other directors on the same day.

13 The dispute was eventually resolved by way of a Deed of Settlement entered into among the members of the Thio family, THPL and MDI on 23 December 2005 ("the Deed of Settlement"). The stated purpose of the Deed of Settlement was to record the family members' agreements with respect to

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"the rationalisation of their respective shareholdings and entitlements in" the Group. The structure of the shareholdings in MDI, THPL and URL today still reflects the arrangement made under the Deed of Settlement except for the fact that Vicki's shares have been transferred to Ernest and Patrick. Under the Deed of Settlement, part of Ernest's and Patrick's shareholdings in THPL and MDI, as well as part of THPL's shareholding in MDI, were transferred to Mr Thio. Ernest and Patrick also transferred some of their shares in URL to Michael. The Deed of Settlement and the share transfers were all executed on the same day in a lawyer's office.

14 Apart from providing for the adjustment of shareholdings, the Deed of Settlement contains two clauses which are of importance in this litigation. These are cll 13 and 15 which read as follows:

> 13. The Parties agree that the Companies [defined to include THPL, MDI, URL, PEL and another Hong Kong company] will be managed and operated for profit and in accordance with best corporate practices to return to shareholders maximum returns.
>
> 15. This Deed sets forth the entire agreement and understanding of the Parties with respect to the subject matter contained herein and supersedes all prior discussions and agreement, whether written or oral, relating to the subject matter herein.

15 Separately, directors' resolutions in writing were passed appointing the three sisters and Michael as directors of each of the Group companies. These resolutions are all dated 23 December 2005 but the parties dispute exactly when such appointments were proposed and executed.

16 After the Deed of Settlement, Patrick and Ernest retained majority control over MDI through the combination of their shareholdings in MDI and their control of THPL. The Deed of Settlement did not, however, end friction

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between them and Mr Thio as he continued to give them instructions and became angry when they disagreed with him. Another source of friction was that at some point Mr Thio had developed a relationship with another woman and set up a second family in Hong Kong. Ernest and Patrick were very upset with him because they felt it was an injury to Mdm Kwik who had been a devoted and dutiful wife. Mr Thio spent much time abroad but when he returned to Singapore he would live in the family home, sharing the same bedroom with Mdm Kwik as previously.

Disputes with Mr Thio

17 By 2007, Mr Thio had not been actively involved in the day-to-day management of the Group for almost ten years. In November 2007, Ernst & Young LLP issued a report ("the EY Report") after conducting a review of the travel expenses that Mr Thio had claimed from companies in the Group. The EY Report concluded that Mr Thio had claimed reimbursement from both MDI and CESB on nine occasions for the *same* airline tickets. This amounted to a double claim of about $45,000 from MDI and CESB.

18 An emergency meeting of the MDI board of directors was convened on 20 November 2007 (while Mr Thio was overseas in Canada, and with Mr Thio not receiving notice of the meeting) at which the EY Report was discussed. The directors in attendance (who included all the plaintiffs) unanimously approved a resolution to remove Mr Thio as director, managing director and Chairman of MDI, as well as an authorised signatory of MDI's bank accounts. At MDI's Annual General Meeting ("AGM") the next day, 21 November 2007, only one Wendy Lee, who acted as proxy for Mr Thio, objected to the resolution to ratify and approve the removal of Mr Thio from his positions in MDI. At the AGM, it was also resolved that Mr Thio be requested to vacate and by reason thereof

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was deemed to have vacated his offices as authorised bank signatory, director, managing director and chairman in Modern Dairy.

19 On 22 November 2007, Wendy and Serene withdrew the powers of attorney they had granted to Mr Thio. Three days later, Extraordinary General Meetings ("EGMs") were held in respect of THPL and URL. At the EGMs, Mr Thio was removed as a director of the two companies.

20 Shortly thereafter, Mr Thio counterattacked by commencing Suit 10 of 2008 ("Suit 10") which was an action for relief against oppression. The defendants were his wife and children, THPL, MDI, URL and Modern Dairy. Later that year, he started Suit 734 of 2008 ("Suit 734") against MDI and Modern Dairy, alleging that he had been improperly removed from his offices in both companies as procedural requirements in the Articles of Association had not been met. Modern Dairy counterclaimed that Mr Thio had breached his fiduciary duties by double claiming for travel expenses. The High Court dismissed both suits (see [2009] SGHC 135) and allowed MDI's counterclaim for reimbursement of the wrongfully claimed expenses. In relation to the first suit, Lai Siu Chiu J held that there was no understanding, as Mr Thio alleged existed, among the family members arising from the Deed of Settlement that Mr Thio would be entitled to participate in the management of the Group companies or to retain his offices until he decided to retire or relinquish his positions. Clause 15 would also in any event cause the Deed of Settlement to supersede any alleged prior understanding.

21 Mr Thio appealed against the decisions in respect of both suits. The Court of Appeal (see [2010] SGCA 16) affirmed Lai J's factual findings and held that Mr Thio had failed to prove the existence of any such understanding which, in any case, could not stand in the face of cll 13 and 15 of the Deed of

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Settlement. The minority oppression claim was thus not made out. The Court of Appeal, however, disagreed with Lai J's finding that the removal of Mr Thio as a director was a mere procedural irregularity. The Court of Appeal held that the non-compliance amounted to substantive irregularity that was not curable under s 392(2) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act"). The purported removal of Mr Thio from the various offices he held in MDI and Modern Dairy was thus void. In relation to the counterclaim by MDI, the Court of Appeal affirmed Lai J's order that there be interlocutory judgment for MDI against Mr Thio for an inquiry to be taken in respect of all sums which Mr Thio had claimed and received in breach of his fiduciary duties.

22 After the Court of Appeal's decision, on 3 May 2010 an EGM of MDI was convened to consider a resolution to remove Mr Thio from his (re-instated) position as director. Mr Thio arrived at the meeting with his solicitor, but withdrew from it after the other shareholders present decided that his solicitor should not be allowed to attend the meeting. Thereafter, the remaining shareholders, including the plaintiffs, collectively holding 88.5% of MDI's share capital, voted in favour of the resolution. Since then, Mr Thio has not held any office in MDI though he remains a director of some of the other Group companies.

Events relied on for the purpose of this action

23 I now set out a short recital of the basic facts which are pertinent to the complaints that the plaintiffs have brought against the defendants in this action.

Declaration of performance bonuses

24 The legal costs incurred by Mdm Kwik and the children for defending the suits brought by Mr Thio (and the appeals thereafter) amounted to

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approximately $2.5m. These costs were paid by Ernest and Patrick alone though all the others were liable for them too.

25 On 27 August 2010, there was a board meeting of the MDI directors immediately after the company's AGM. At this board meeting, Wendy, Michael and Mr Lim voted in favour of a resolution approving the payment of a performance bonus of $1m each to Ernest and Patrick for their contributions to MDI's exceptional financial results for the financial year ending 31 December 2009. These bonuses were initially stated to have been declared for the core executive management team of MDI (Mr Lim, Ernest and Patrick). Mr Lim, however, did not receive any such bonus as he had purportedly indicated that he would not accept any bonus. Notwithstanding what the resolution stated, all present at the meeting knew that the bonuses were intended to reimburse Ernest and Patrick in respect of their payment of the legal costs.

Investigations into Mr Thio's expense claims

26 Following the Court of Appeal's decision, Ferrier Hodgson Pte Ltd ("FH") was appointed by MDI to review Mr Thio's expense claims from MDI and its Malaysian Subsidiaries for the period from 1 January 2001 to 30 September 2007. During the course of the review, it was discovered that there were expenses reimbursed to Mr Thio outside that period. FH therefore expanded their scope of work to cover the period from 1 January 2001 to 18 May 2010 as well. A report dated 23 July 2010 was issued by FH ("the 2010 FH Report") in respect of the full period.

27 Subsequently, MDI also appointed FH to conduct a similar review of expenses incurred by Mr Thio in PEL, in particular his overseas travelling expenses, for the period from 1 January 2004 to 31 May 2011. A report dated

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21 November 2011 ("the 2011 FH Report") was issued by FH. This found, among other things, that Mr Thio had made duplicate and triplicate intercompany claims, as well as duplicate intra-company claims in PEL itself.

28 After the 2011 FH Report was issued, FH was asked to prepare a supplementary report on their review of Mr Thio's expenses in PEL for the period from 1 March 2006 to 31 May 2011. A third report was issued on 29 February 2012 ("the 2012 FH Report"). The 2012 FH Report stated that FH's findings in their 2010 and 2011 reports remained unchanged.

29 Before FH was appointed by MDI to look into Mr Thio's expense claims in PEL, PEL had already passed a resolution, on Ernest's and Patrick's prompting, to appoint FH to do the same. Notwithstanding this, Ernest and Patrick procured that MDI made the actual appointment as they thought that Mr Thio, who controlled PEL, would not see the appointment through.

Proposed buyout of plaintiffs' shareholdings in the Group

30 From 2011, discussions took place between Wendy, Serene and Vicki on the one part and Patrick and Ernest on the other regarding a possible purchase of the sisters' shares in the Group by Ernest and Patrick. Without informing their brothers, Michael and the sisters appointed Ernst & Young LLP ("E&Y") to prepare valuations of MDI, THPL and URL. According to Michael, they left it entirely to E&Y to decide what the right way to value the companies was. The only instruction given to E&Y was to provide an indicative value of 100% equity stake in each company and the indicative value of the siblings' respective equity stakes in each of the companies as of December 2010. E&Y provided its indicative valuation results in a presentation dated 9 September 2011 which was revised on 11 November 2011. E&Y valued MDI's equity as being between

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$1,197.6m and $1,295.2m. THPL's equity value was given as between $421.4m and $450.7m and URL's equity value was given as $178.2m.

31 The family met on 11 November 2011 to discuss the proposed buyout. Patrick and Ernest suggested that the valuation be conducted on a net tangible asset ("NTA") basis as this would avoid a stalemate in negotiation as no subjective premium would be applied. They stated that the NTA value could be derived from audited reports produced by the companies' auditor, PricewaterhouseCoopers ("PWC"). Serene and Wendy proposed that there be a jointly-appointed independent valuer, an idea that was rejected by Ernest and Patrick. They were, however, willing for Wendy to appoint another valuer at her own cost.

32 The family met to discuss this issue again on 6 February 2012. Just before this meeting, Michael informed Patrick, Ernest and Mdm Kwik of the earlier valuation obtained from E&Y. At the meeting itself, Michael presented figures derived from E&Y's valuations. Patrick and Ernest did not agree with the quoted figures, and offered to purchase the shares of the three sisters at a lump sum of $31.98m each and to purchase Michael's shares for $70.64m. These offers were based on what Ernest and Patrick considered to be the objective value of the companies' then current assets. The discussions on a proposed buyout broke down eventually. The plaintiffs considered that the offers made to them were grossly inadequate. Vicki, however, sold out to Patrick and Ernest in May 2013.

Proposed payment to Ernest and Patrick of backdated emoluments

33 On 22 February 2012, the boards of the Malaysian Subsidiaries each resolved to make payment of RM500,000 each to Ernest and Patrick. According

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to the resolutions, these payments represented backdated director's emoluments going back as far back as 17 years earlier. If implemented, Ernest and Patrick would each have received RM1m.

34 Michael was not happy about these resolutions. He requested that they be considered at a board meeting of the holding company, MDI. His request was acceded to and the MDI directors met on 9 July 2012 to discuss the issue. In a rare departure from her normal behaviour, Mdm Kwik attended this meeting. Mr Lim was also there and at Mdm Kwik's suggestion he was appointed the chairman of the meeting. There was a fairly lively discussion. Eventually, separate resolutions were passed approving the backdated director's emoluments to be paid by the Malaysian Subsidiaries. Ernest and Patrick each abstained from voting for the resolution concerning payment to himself but voted for the resolution in favour of the other brother (unlike the original joint resolution at the board meetings of the Malaysian Subsidiaries when Ernest and Patrick both abstained). After the resolutions were passed, both Ernest and Patrick declared they would renounce these payments for the sake of "family harmony".

Remuneration review in 2012

35 At the same MDI board meeting held on 9 July 2012, the remuneration of directors and executive employees of MDI and its subsidiaries, as well as the setting up of a remuneration committee, was discussed. Michael proposed a resolution to establish a remuneration committee comprising Wendy and Serene, two non-executive directors, to review the salaries of directors and executive employees and report to the board. This resolution was not passed. Instead, the board resolved, by a majority (with only Serene and Wendy voting against), to approve the commissioning of an independent review of the

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remuneration of all directors of MDI and its subsidiaries and to use the results of the review to guide the MDI board in assessing fair and equitable remuneration for the directors concerned. It was then further resolved that Mdm Kwik, being a founding director of MDI, would be excluded from this independent review. Only Wendy voted against this further resolution but Michael and Mdm Kwik abstained.

36 Aon Hewitt ("AH"), a consultancy firm, was appointed to conduct the independent review. In due course, it released its report dated 21 February 2013 ("the AH Report"). The AH Report benchmarked the ten positions reviewed on the basis of information provided by MDI for positions existing as of October 2012.

The minority oppression claims

The grounds of the claims

37 The plaintiffs mount a claim of minority oppression against Ernest, Patrick and Mdm Kwik. The alleged acts of oppression carried out by Ernest and Patrick, allegedly with Mdm Kwik's support, fall into three main categories:

(a) Abuse of control over the Group by using the Group companies for a collateral purpose: to engage in the continued pursuit of Mr Thio for his wrongful reimbursement claims motivated by their vendetta against him;

(b) Management of the Group in disregard of proper corporate practices in relation to:

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(i) the declaration of performance bonuses in MDI and backdated emoluments in its Malaysian Subsidiaries in favour of Ernest and Patrick;

(ii) the sale of a unit in Village Tower by URL; and

(iii) the denial of the plaintiffs' right to information;

(c) Conducting the affairs of the Group to the plaintiffs' detriment to punish them for their perceived defiance and/or to compel the sale of their shares at an undervalue, including by removing Wendy and Serene as directors of MDI and THPL respectively, reducing Michael's salary in the Malaysian Subsidiaries and removing Michael's and Serene's car benefits in MDI.

38 The plaintiffs assert that the affairs of the companies in the Group must be considered collectively and that the affairs of each of the companies are closely intertwined and, hence, unfair conduct in one company in a group structure is relevant in determining whether there was unfair conduct in a related company. The plaintiffs also submit that the Group is a quasi-partnership with the relevant measure of unfairness extending beyond the parties' strict legal rights as the Group was family-owned and family-managed with a personal relationship of mutual trust and confidence forming the basis of the Group. In this regard, the plaintiffs also take the view that there was a common understanding stemming from the Deed of Settlement that the plaintiffs were entitled to participate in the management of the Group.

39 Ernest and Patrick, on the other hand, contend that the separate legal personalities of the companies in the Group should not be ignored. They submit that the plaintiffs bear the burden of showing that the affairs of any particular

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company actually affected or impacted the affairs of another company in the Group. They also assert that the companies in the Group are not quasi-partnerships as there were no partnership-type obligations of mutual trust and confidence among the family members. As such, they contend that the measure of commercial unfairness suffered by the plaintiffs, if any, should be assessed by the plaintiffs' strict legal rights. As for the alleged common understanding, they deny its existence and claim that it is not made out on the evidence.

40 Mdm Kwik adopts Ernest's and Patrick's submissions that the Group companies are not quasi-partnerships. In addition, she asserts that she did not blindly support Ernest and Patrick and was not involved in the acts of alleged oppression. In that regard, she seeks an award of indemnity costs as the claims against her are baseless and misconceived. As for Ernest's and Patrick's submissions in relation to each alleged act of oppression, I will refer to them as I deal with each issue in turn.

Issues

41 Accordingly, the issues to be determined are:

(a) First, whether the Group is a quasi-partnership;

(b) Second, whether there was a common understanding that the plaintiffs were entitled to participate (and remain) in the management of the Group as directors;

(c) Third, how the fact that legally each member of the Group has a separate legal personality affects the analysis of the plaintiffs' global claim of minority oppression;

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(d) Fourth, whether the various alleged acts of commercial unfairness amounted to minority oppression; and

(e) Lastly, if minority oppression is made out, what the appropriate relief for the plaintiffs should be.

Legal principles applying to minority oppression claims

General principles

42 Our courts have frequently had to deal with minority oppression claims under s 216 of the Companies Act. As a result, there is a substantial body of established law for a judge to rely on. An excellent summary of the legal principles to be applied in assessing the merits of such a claim is given at [97] to [108] of the judgment in *Lim Kok Wah and others v Lim Boh Yong and others and other matters* [2015] 5 SLR 307 ("*Lim Kok Wah*"). Drawing on various authorities, Coomaraswamy J notes at [97] that the touchstone of a minority oppression claim under s 216(1) of the Companies Act is the element of unfairness. Prejudice to the claimant may be an important factor in the overall assessment of unfairness, but it is not an essential requirement: at [98]. Either a course of conduct or a single act can amount to oppression. The test of commercial unfairness involves a consideration of whether there has been a "visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect": at [99]. Conduct that is technically unlawful may not be unfair; and conduct can be unfair without being unlawful: at [100].

43 The applicable standard of fairness differs depending on the nature of the company and the relationship of the shareholders: *Lim Kok Wah* at [102]. The legal rights and legitimate expectations of members that are usually found

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in the company's constitution are to be taken into account. In addition, in the special class of quasi-partnership companies, shareholders' expectations from informal and undocumented understandings and assumptions may be taken into account in determining whether the minority has been unfairly treated: at [106]. When a quasi-partnership is found, the courts apply a stricter yardstick of scrutiny due to the peculiar vulnerability of minority shareholders in these situations where parties may not have spelled out their rights and obligations in entirety: at [107]. In the circumstances of the present case, it is also important to point out that to bring an action under s 216, a claimant must show that the conduct complained of affected him in his capacity *as a shareholder*: *Koh Keng Chew and others v Liew Kit Fah and others* [2016] 4 SLR 1208 at [97].

44 The approach is thus a textured one that is concerned with more than the strict rights of parties. A claimant must show sufficiently that:

(a) there are legitimate expectations derived from (i) strict legal rights as found in documents such as the company's constitution or shareholders' agreements; or (ii) informal understandings and assumptions from the parties' interactions and personal relationships in cases of quasi-partnerships; or (iii) informal understandings among shareholders *independent* of whether the company is a quasi-partnership; and

(b) that the conduct complained of is contrary to or has departed from such expectations to the extent that it has become unfair: *Lim Kok Wah* at [103]; *Lian Hwee Choo Phebe and another v Maxz Universal Development Group Pte Ltd and others and another suit* [2010] SGHC 268 ("*Lian Hwee Choo*") at [61]; *The Wellness Group Pte Ltd and*

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another v OSIM International Ltd and others and another suit [2016] 3 SLR 729 at [181].

45 The key characteristic of a quasi-partnership is that the shareholders agree to associate on the basis of a personal relationship involving mutual trust and confidence (*Lim Kok Wah* at [105]; *Ting Shwu Ping (administrator of the estate of Chng Koon Seng, deceased) v Scanone Pte Ltd and another appeal* [2017] 1 SLR 95 at [85]). They are, therefore, are prepared to accept a great degree of informality in spelling out the fundamental understandings and expectations underlying their investment. The equities of the situation thus render the express or implicit understandings of parties relevant to the inquiry.

46 The mere fact that companies are family-owned or family-run does not, however, *ipso facto* translate to an inference that such companies were incorporated or operated on the basis of any relationship of mutual trust and confidence amongst the members. Not all family companies in the broader sense of the term will be quasi-partnerships. Only where the "family interest is closely related to the *raison d'être* of the company" will mutual trust and confidence be as important as in a quasi-partnership: *Chow Kwok Chuen v Chow Kwok Chi and another* [2008] 4 SLR(R) 362 ("*Chow Kwok Chuen*") at [33].

47 In *Lim Kok Wah*, Coomaraswamy J held that although the parties were family members, their relationship in the two companies was not based on mutual trust and confidence (at [111]–[113]). Although there was such a relationship between the father who ran both companies as an autocratic patriarch and each son, there was no such relationship between each son and all of the other sons. Hence, the measure of commercial unfairness was defined by the parties' legal rights and their legitimate expectations derived from the company's constitution (at [115]).

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48 It is important to stress that if the plaintiffs fail to show that equitable considerations are relevant to the management of the companies by virtue of their being quasi-partnerships or that any informal understanding exists independent of quasi-partnership, the measure of commercial unfairness should be defined by the parties' legal rights and their legitimate expectations derived from and enshrined in the companies' constitutions.

Doctrine of separate legal personality and minority oppression claims

49 There are, additionally, points that have to be made with specific reference to the facts of this case because the oppression complained of relates not just to one company but to a number of companies which are related to each other in various ways. The doctrine of separate legal personalities of companies is not totally disregarded in minority oppression claims. Claimants should also be clear *whose* unfair conduct in relation to *which entity* is being complained of by *which claimant*.

50 Here, the plaintiffs' statement of claim and submissions set out a global claim of oppression without differentiating the acts of oppression each plaintiff suffered in each company and without differentiating which acts of oppression occurred in relation to which company. They submit that the alleged oppressive acts should be considered cumulatively as demonstrating a course of conduct taken by the defendants, and that the affairs of each of the companies in the Group must be considered *collectively* in determining whether there was oppression in THPL, MDI and URL because the affairs of each of these companies are closely intertwined and so the court should view the affairs of the related companies in their totality.

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51 However, I am of the view that the plaintiffs have taken the principles in the cases they rely on too far. Although the courts have adopted an approach that is not too legalistic, the separate legal personalities of the companies in the Group are not irrelevant and the doctrine must be respected.

52 In *Kumagai Gumi Co Ltd v Zenecon Pte Ltd and others and other appeals* [1995] 2 SLR(R) 304 ("*Kumagai*"), the Court of Appeal lifted the corporate veil in a s 216 oppression claim and considered the affairs of a subsidiary as being the affairs of the holding company where (i) the holding company nominated a director to the subsidiary's board; and (ii) the holding company had an interest in the nominee director discharging his duties to the subsidiary. Thus, the wrongful conduct in relation to the subsidiary was relevant conduct in the affairs of the holding company for the purposes of determining oppression under s 216.

53 In *Lim Chee Twang v Chan Shuk Kuen Helina and others* [2010] 2 SLR 209 ("*Lim Chee Twang*"), Quentin Loh JC (as he then was) examined *Kumagai* as well as various English and Australian cases which involved situations of holding and subsidiary companies with vertical structures. In *Lim Chee Twang*, the situation was not of a holding and subsidiary or a vertical structure, but that of a horizontal corporate structure with common shareholders, holding identical proportions of shares and who were directors in all these companies. Loh JC's conclusion (at [97]) was that the test for the affairs of one company to be considered the affairs of its holding company would be to show on the facts that "the affairs of the subsidiary actually affected or impacted the holding company". This approach was adopted and affirmed by the Court of Appeal in *Ng Kek Wee v Sim City Technology* [2014] 4 SLR 723 ("*Ng Kek Wee*") at [42] where it was opined that:

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> … Legitimate claims for relief from oppression should not be defeated by technical and legalistic objections relating to the company's shareholding structure; at the same time the **doctrine of separate legal personalities and the strict words of the statute ("the affairs of *the company*" [emphasis added]) must be respected**. In our view, the balance between these competing interests would be properly drawn by a requirement that commercially unfair conduct in the management of a subsidiary would be relevant so long and to the extent that **such conduct affected or impacted the holding company whose member was the party claiming relief** from oppression. The purpose and policy behind s 216 of the Companies Act is, above all, to grant relief from the oppressive behaviour to shareholders who would otherwise be unable to stop that abuse … If the affairs of the subsidiary do not affect or impact the holding company, shareholders and members of the latter could hardly complain that their interests were therefore prejudiced.
>
> [emphasis in italics original; emphasis in bold added]

54 The Court of Appeal in *Ng Kek Wee* thus agreed that the trial judge did not err in taking into account the appellant's conduct of the affairs of a wholly owned subsidiary company of a holding company whose sole assets were its wholly owned subsidiaries. The way in which the business was run there meant that the business of the subsidiary, which was the operational arm of the group, would undoubtedly have impacted the holding company. Similarly, Loh JC in *Lim Chee Twang* (at [135] and [136]) found on the facts that the affairs of the foreign related companies complained of impacted upon and affected the relevant Singapore companies.

55 Thus, in balancing the consideration of allowing legitimate claims for relief from oppression and the doctrine of separate legal personality, the plaintiffs cannot merely mount a global oppression claim and assert that everything must be looked at collectively just because the Group was managed by the same people and/or had common directors and shareholders. The plaintiffs have to satisfy the tests set out by the Court of Appeal in *Ng Kek Wee*; the burden of proof is on them to show that *the alleged acts complained of* in

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relation to related companies in the Group (such as the Malaysian Subsidiaries) actually *affected* or *impacted* the companies (THPL, MDI and/or URL) in respect of which they ask for relief from oppression. General claims that this group of companies were "closely intertwined", "interconnected", "share the same shareholders" and "the same directors (i.e., Ernest and Patrick) run these companies" are insufficient. To rely on these to ask the court to view the affairs of the companies in the Group "collectively" would not be respecting the doctrine of separate legal personality and instead would be inviting the court to disregard the strict words of s 216 and look at the Group as a single economic entity, which is a concept that has "no place in Singapore law" (see *Manuchar Steel Hong Kong Ltd v Star Pacific Line Pte Ltd* [2014] 4 SLR 832 at [130] and generally).

56 On the facts, the only relevant related companies in the Group that are not THPL, MDI or URL are the Malaysian Subsidiaries in which the plaintiffs have no direct shareholding interest. In relation to the Malaysian Subsidiaries, the relevant acts alleged to constitute oppressive conduct relate to the authorisation of backdated emoluments in favour of Ernest and Patrick in 2012. These were ultimately not paid out as the payments were renounced by Ernest and Patrick during the MDI board meeting that discussed these matters. In a way, this makes the inquiry unnecessary. The only reason, however, that the resolutions had no practical consequences was the voluntary renunciation. Otherwise the moneys would have been paid out and to the extent that payment out would have meant a reduction of RM1m in the assets of each of the Malaysian Subsidiaries, it can be inferred that there would have been an impact on the holding company, MDI. There is no evidence, however, which would enable an assessment of the extent of such impact.

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57 As for the alleged acts of oppression in relation to THPL, MDI and URL, the plaintiffs are minority shareholders in these companies. The only complaint in relation to URL relates to the sale of a property and the only complaint in relation to THPL relates to the removal of Serene as a director. Although isolated acts can amount to oppression, here, as I discuss later in this judgment, there are no circumstances pointing to commercial unfairness in relation to these two acts. The substantive case seems to be in relation to the defendants' conduct of the affairs of MDI.

Analysis and findings

Nature of THPL, MDI and URL

58 On the present facts, I have concluded that the companies in the Group were not run as a quasi-partnership, at least among the parties involved in the present proceedings. Although the relevant companies are family-owned and family-run in the sense that most of the directors in the relevant companies are members of the Thio family, both the plaintiffs and defendants accept that the day-to-day management of the Group is in the hands of Ernest and Patrick, assisted by Mr Lim. The plaintiffs' focus on how company resources are used for familial purposes or how Mdm Kwik's remuneration was excluded from the independent review on the basis of her being the founding director and the matriarch of the Thio family are beside the point. The fact that familial ties are taken into consideration when corporate policies and decisions are made may support but does not lead directly to the crucial inference that the companies were operated on the basis of a relationship of mutual trust and confidence between the members.

59 In this case, there are clearly no partnership-type obligations of mutual trust and confidence between the non-corporate parties in the proceedings. From

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their submissions, it seems that the plaintiffs take the position that the companies in the Group should be treated as having been quasi-partnerships from their *inception*. The plaintiffs trace the history of how Mr Thio founded the Group as a family business, issued shares to members of the Thio family without consideration throughout the years and brought his sons on board as executive directors. However, even if the basis of association in the companies may have been formed on the basis of a personal relationship involving mutual confidence, the inquiry has to extend to examine whether this basis continued. This is especially so when new shareholders come into the picture; the court should examine the realties to determine if the shareholders still agreed to associate on the basis of mutual trust and confidence.

60 There is no doubt that the companies are "family companies" in the broad sense. Notwithstanding this, I find that the members of the Thio family did not operate on a relationship of mutual trust and confidence in relation to how the companies were run. At the beginning it was Mr Thio and his siblings who were in charge. Gradually, Mr Thio bought out his siblings but he did not bring all his sons, let alone all his children, into the business. He groomed them selectively and whilst Michael, who was the second son, was given shares at an early stage and again in 2002, he was not brought into the management of the business until 2005. The daughters were given nothing until 2002 and even then the original idea was not to give them any share in the Group companies but to give them cash or real property. It is significant that even Mdm Kwik, whose concern for her daughters' well-being was the catalyst for the change, did not at the initial stage suggest that they be made shareholders of the Group companies. There was no assumption then that the children were entitled to shares much less to play a part in management.

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61 It is also telling that when eventually Mr Thio decided to give Michael and his three daughters bonus shares in 2002 (the cheapest way of providing for them), he ensured that he had full power to exercise their rights as members by having them sign blank share transfer forms and powers of attorney in his favour. This action was contrary to any intention or inference that the plaintiffs were brought on board as quasi-partners with obligations of mutual trust and confidence. The plaintiffs also acknowledge that Mr Thio was a traditional patriarch who only considered his sons as being entitled to carry on the family name and business. As soon as he acquired grandsons bearing the Thio surname, he proposed steps to restrict the transfer of shares to descendants with the Thio surname. Further, the daughters only ever held non-executive directorships in the companies and did not participate in the day-to-day management. Serene confirmed in previous proceedings that Ernest was "effectively *de facto* the one running [the company]" and that she left the "entire group" to him. It was never intended for all the children of the Thio family to work in concert to grow the companies and enhance the family fortune. Managing the companies in the Group was left to Mr Thio, and subsequently Ernest and Patrick. This situation was accepted by the plaintiffs for a long time. Even after they were made directors in 2005, Wendy, Serene and Vicki left day-to-day matters in the hands of Ernest and Patrick.

62 There may at one time have been a relationship of trust and confidence between Mr Thio and Ernest and there certainly seems currently to be such a relationship between Ernest and Patrick. That was not, however, the basis on which the plaintiffs were brought in as directors. Michael got an executive position in the Malaysian Subsidiaries at his mother's urging and it seems plausible that if Mr Thio made a suggestion in 2005 that his other children should be directors in order to safeguard their rights (as I discuss below) he did

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so more out of disgruntlement with Ernest than any belief that the children were entitled to such participation.

63 In these circumstances, I find that THPL, MDI and URL are not quasi-partnerships or companies that are akin to quasi-partnerships. It cannot be said that the members of the Thio family are quasi-partners with the alleged common understanding that they are to participate in the management of THPL, MDI and URL in order to protect their interests as shareholders. I also note that the plaintiffs, as respondents against Mr Thio in his appeal against Lai J's decision, had argued against the existence of an understanding outside of the Deed of Settlement and the companies' constitutions that Mr Thio was to be entitled to participate in the management of the Group until he decided to relinquish his right to do so. It is inconsistent (and seems self-serving) that the plaintiffs are now insisting that the Deed of Settlement gave rise to a common understanding that they are to participate in management, when they had previously denied the very same point in relation to their father.

Legitimate expectations (independent of whether the Group was a quasi-partnership)

64 The plaintiffs submit that the genesis of the alleged common understanding was the Deed of Settlement and that the appointment of the plaintiffs as directors was related to the events discussed at the signing of the Deed of Settlement.

65 I am not satisfied that the plaintiffs have proved their case. They rely mainly on inferences to be drawn from the fact that the documents relating to their appointment as directors were backdated to the same date as the Deed of Settlement, 23 December 2005. Even if I take their case at its highest and accept that the appointments were related to the Deed of Settlement, the understanding

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the plaintiffs allege existed was not a common understanding shared by everyone. Instead, it was an arrangement that was imposed upon them by Mr Thio who they say proposed such appointments at the lawyer's office when the family members were gathered to sign the Deed of Settlement.

66 There is no evidential basis to infer that such an alleged common understanding was shared among the members of the Thio family. The account given by the plaintiffs is that their father told them that they should be directors in order to protect their own interests. There is no evidence that thereafter the parties discussed this suggestion and agreed, expressly or impliedly, that the plaintiffs would be appointed as directors in order to manage the Group from then on. At that time, Mr Thio's wrongful claims had not yet come to light and although he had deep disagreements with Ernest, his children still tried to accommodate his requests to the extent they seemed reasonable. The execution of the Deed of Settlement itself demonstrates that. Any subjective expectation on the plaintiffs' part clearly cannot suffice (*Lim Kok Wah* at [121]). If the appointments were in fact discussed, any *prior* understanding would have been superseded by the Deed of Settlement via cl 15, as held in the previous proceedings in relation to Mr Thio's alleged understanding that he was to remain as director until he relinquished his offices (see [2009] SGHC 135 at [51] and [2010] SGCA 16 at [87]). The purpose of the Deed of Settlement was to settle the issue of share ownership and, as the plaintiffs themselves testified in 2008, there was no "understanding" that Mr Thio would not be removed from his positions in the Group by virtue of the Deed of Settlement which was to only make "very clear who owns what".

67 The plaintiffs themselves did not give consistent accounts as to when and how the alleged common understanding arose. Wendy initially pointed to some agreement that she would be appointed and remain as director *before* the

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Deed of Settlement was signed. Later she asserted that the understanding could be discerned from cl 13 of the Deed of Settlement together with Mr Thio's instructions to have them appointed as directors. Subsequently, she contradicted herself when shown the Court of Appeal's finding that Mr Thio's alleged understanding was superseded by cl 15. Wendy then changed her stance and asserted that the common understanding arose *after* the Deed of Settlement was signed. It is also telling that the right to be a director and the right not to be removed unless they did something wrong was never asserted or reflected in any e-mail or document, a fact accepted by Michael. Both Michael and Serene also accepted and agreed that the purpose of the Deed of Settlement was to settle the issue of shareholdings. Their evidence now is diametrically opposed to the evidence they gave and what they asserted in the earlier proceedings in 2008. Notably, Serene conceded that the common understanding was never spoken and communicated:

> Q: Those words were not spoken, ie, no one said that, "As long as you have shares, you continue to be directors, unless you do something". Correct?
>
> A: Correct.
>
> …
>
> Court: … The question is: did anyone say that you would always be a director?
>
> A: No.

68 Clearly, subjective expectations that were not discussed or communicated among the shareholders would not give rise to any enforceable informal understanding and expectation. Thus, it cannot be made out that there was a common understanding among the members of the Thio family that the plaintiffs were to be appointed and would *remain* as directors to participate in the management of the companies in the Group to protect their interests as shareholders. The lack of such a common understanding to participate in

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management as directors is further supported by the plaintiffs' subsequent conduct in that they did not show any interest in participating in the management of the companies after they became directors. Instead, apart from Michael's involvement in the Malaysian Subsidiaries which was for the purpose of earning a living, the plaintiffs including Michael were happy to leave management of the Group in Ernest's and Patrick's hands.

Unfair conduct complained of must affect claimant as a shareholder and must relate to the affairs of the company

Non re-election of Wendy and Serene

69 Having found that the companies in the Group are not quasi-partnerships and that there was no common understanding that any of the plaintiffs had a right to remain as a director as long as she did no wrong, the plaintiffs' complaint in relation to Wendy's and Serene's non re-election to the boards of MDI and THPL respectively must fail. The decision of the majority shareholders not to re-elect them was a valid decision which the companies' constitutions permitted these shareholders to make. In the circumstances, no equitable considerations can be imposed to enforce any unarticulated understanding that the plaintiffs were entitled to continue to remain as directors indefinitely. The proper standard of commercial fairness and fair dealing with regard to their directorships has not been departed from. Lai J held (at [61] of [2009] SGHC 135) that Mr Thio's complaint about his removal from his positions in MDI and Modern Dairy was not within the ambit of s 216 as it affected him in his capacity as a member of the *board*, and not as a member of the *company*. Similarly, the complaint here made by Wendy and Serene has nothing to do with their capacity as shareholders in the respective companies. The fact that they no longer hold directorships does not affect their rights as shareholders which remain unchanged.

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Attempt to buy shares at an undervalue

70 *A fortiori*, the purported attempt to compel the sale of the plaintiffs' shares at an undervalue during the negotiations for a buyout that eventually broke down cannot support a claim for minority oppression as it is not a matter that arises in relation to the conduct of the affairs of the respective companies in the Group. Any self-interested attempts to buy the plaintiffs' shares on the cheap, even if present, would not affect the plaintiffs' interests as members of the companies. In *Quek Hong Yap v Quek Bee Leng and others* [2005] SGHC 111, Belinda Ang J held that the decision of majority shareholders not to purchase a minority shareholder's shares has "nothing to do with, nor [is] it related to, the affairs of the company" (at [16]). Similarly, the conduct of negotiations between shareholders for a proposed buyout in this case is not relevant conduct that relates to the affairs of the companies under s 216. These are disputes between the shareholders in their personal capacities and they do not cross the line to become part of the companies' affairs. They do not affect the plaintiffs in their capacities as members.

Sale of Village Tower #07-03 by URL

71 It is difficult to classify the decision relating to the sale of Village Tower #07-03 ("Unit 07-03") by URL as being one that falls within the class of decisions that could amount to commercial unfairness. It is not the court's role to assess the business merits of companies' management decisions: *Lim Kok Wah* at [134]. In any event, Wendy clarified that she "[didn't] have a problem with the [price of Unit 07-03]", but only with the fact that she had no input in the decision as to whether that property should be sold.

72 Ernest and Patrick had asked the plaintiffs to sign a directors' resolution in writing to approve the sale of Unit 07-03 after an option to purchase it had

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already been granted, that is, at a stage when URL was already legally obliged to sell Unit 07-03 to the option holder. The plaintiffs, therefore, were presented with a *fait accompli*. The situation is similar to that in *Lim Kok Wah* where the plaintiffs complained that the defendants did not consult them before making important business decisions involving the purchase of several properties. Coomaraswamy J held (at [136]) that "[i]t does not lie in the mouth of a director who chooses not to take an active part in the management of the company to argue that is unfair that the company's executive directors have taken or implemented business decisions without involving him".

73 The decision to sell Unit 07-03 was made by the executive management of URL which, in the normal course of managing the business of URL, made such decisions from time to time. In fact, the plaintiffs had previously signed a resolution approving the sale of a similar unit at Village Tower (#13-03) in April 2011 without raising any questions. The evidence shows that the practice all along was for management decisions in URL to be made by Ernest and Patrick as executive directors, and for the other directors to give their approval subsequently. The concession that no issue arose with regard to the sale price and the lack of dispute over whether the decision to sell the unit was a commercially justifiable one are telling. After their appointments, the plaintiffs, as non-executive directors, had not concerned themselves with the active management of URL in relation to dealings in relation to the company's properties. They cannot, thus, argue that it is unfair that the executive management of URL implemented business decisions without involving them.

74 I note that this is the only act of alleged oppression complained of in relation to URL. Even if it had been oppressive, it would be a slender act to base a finding of oppression on. Further, in relation to the related companies, there has been no demonstration how this act actually impacted or affected MDI and

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THPL which, respectively, own 20% and 26.25% of URL's shares. Indeed, since the sale price was unimpeachable it is difficult to conceive of any impact on the related companies. Even if such decision-making in URL amounted to commercial unfairness, the plaintiffs have not demonstrated how these affairs of URL should be taken to be affairs of THPL or MDI for the purposes of s 216.

Pursuit of Mr Thio

75 I am of the view that Ernest's and Patrick's continued pursuit of Mr Thio for his alleged double (or even triple) expense claims in the companies in the Group would not *per se* amount to commercially unfair conduct that would constitute oppression under s 216. It must be in a company's interests for its directors to take action to recover amounts that have been wrongly paid out of the company's funds. The question here is whether such action was taken to extremes because it was motivated by personal anger rather than corporate concerns.

76 The potential unfairness lies not in the fact that Ernest and Patrick sought to investigate and recover the double claims from Mr Thio, but in their use of MDI, rather than PEL, to engage FH, and their withholding of the 2011 and 2012 FH Reports from the plaintiffs. This, the plaintiffs say, indicates that they were using MDI to pursue their own vendetta against their father. The plaintiffs also complain that Patrick and Ernest caused letters of demand to be sent to Mr Thio just a day before he was to undergo a heart operation in 2012. Michael did admit during cross-examination that sending the letters of demand was the "correct and proper thing to do", but he also asserted that Ernest and Patrick should have considered Serene's offer to repay Mr Thio's debt.

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77 I find that Ernest's and Patrick's conduct went well beyond the rational corporate action required to recover the amounts due to the companies. First, their refusal to accept Serene's standing offer to repay the sums claimed from Mr Thio was inexplicable. Second, the lengths Patrick and Ernest went to to persecute Mr Thio in relation to PEL and use of MDI for that purpose when the two companies were not connected indicates some crusade against Mr Thio founded on more than mere recovery of moneys.

78 In November 2011, Serene made clear her offer to pay compensation on behalf of Mr Thio after the FH Reports were issued as she did not want to put Mr Thio through more stress. However, this was immediately refused by Ernest on the basis that Mr Thio had committed fraud and therefore a lawsuit against him should be pursued. In engaging lawyers to issue the letters of demand despite Serene's offer, the plaintiffs essentially incurred *more* costs for the Group companies that approximated to a large percentage of what was ultimately recovered. Eventually, Serene did make payment on Mr Thio's behalf in response to the letters of demand without admitting to the validity of the claims.

79 Although, as the defendants point out, it is not part of the plaintiffs' pleaded case in relation to the companies party to the present oppression suit that Ernest and Patrick continued to persecute Mr Thio in PEL, I find that Ernest's and Patrick's conduct in relation to PEL in Hong Kong (such as their seeking to remove Mr Thio from his positions in PEL, to remove his entitlement to his apartment and car in Hong Kong, and in making a police report against Mr Thio) demonstrates that their motivations were not simply to remedy wrongs done to MDI and PEL. In using MDI to employ FH to investigate Mr Thio's claims in PEL, they were using it for a non-corporate purpose and to achieve an ulterior purpose. They were also going beyond the interests of MDI in

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employing lawyers to send out letters of demand to Mr Thio when they were fully aware of Serene's offer to settle the amount due. Indeed, in his affidavit of evidence-in-chief, Ernest acknowledges that in November 2011 Serene had offered to pay $250,000 for this purpose. The amounts demanded in the lawyers' letters in March 2012 were RM229,578.54 and $116,612.27 and thus the total amount demanded was within what Serene was willing to pay. Their use of MDI for the purposes of their vendetta was, therefore, commercially unfair vis-à-vis the other shareholders including the plaintiffs.

Other alleged acts of commercial unfairness

80 The other acts complained of in relation to MDI's affairs are:

(a) Ernest's and Patrick's selective application of the AH Report to:

(i) justify a reduction in Michael's remuneration while simultaneously increasing their own remuneration, and

(ii) remove Serene's and Michael's car benefits while simultaneously retaining other benefits for themselves and their spouses;

(b) Ernest's and Patrick's behaviour in relation to the declaration of performance bonuses to reimburse them for paying the costs of previous legal proceedings; and

(c) Ernest's and Patrick's delay in providing information and answering requests for information.

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Selective application of the AH Report

(1) Michael's remuneration from the Malaysian Subsidiaries

81 Michael's salaries from the Malaysian Subsidiaries were reduced by more than 40% after he was re-classified as a "local hire" subsequent to the issue of the AH Report. It is not disputed that the AH Report had not made any recommendation for Michael to be classified as a "local hire". Instead, this was one of three options contained in the AH Report. AH had proposed:

(a) Michael be only paid by the Malaysian Subsidiaries, instead of by both MDI and the Malaysian Subsidiaries, if he was classified as a "local hire" and to review his remuneration package which was "significantly above market median";

(b) Michael be benchmarked against the position of executive director and director/VP of sales and marketing in Singapore to receive "internal relativity with his peers in Singapore" if he was classified as an "expatriate" from Singapore on a business posting to Malaysia and to review his remuneration package which was "significantly above market median"; or that

(c) Michael be only paid by the Malaysian Subsidiaries and transit to a local-plus compensation policy where as a rule of thumb he would receive a total real wage equal to that that he would receive back in the home country (structured with a "hardship" allowance component) in two to three years' time if Michael was classified as a "local-plus hire".

82 The plaintiffs assert that because there was a need for someone to keep an eye on the Group's operations in Malaysia, there was an understanding that Michael would be an expatriate from MDI working in the Malaysian

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Subsidiaries. They also argue that Michael's remuneration package was in fact determined on an expatriate basis since he received a housing allowance in Malaysia. Their assertions, however, are not tenable. Michael was employed in the Malaysian Subsidiaries after Mdm Kwik asked for him to be given an "iron rice bowl". At that time, there was no vacancy available at a suitable level in MDI since Ernest and Patrick were already entrenched there. It was therefore decided that Michael was to be appointed deputy managing director of the Malaysian Subsidiaries instead. Granted that at Mdm Kwik's request, the intention was to give Michael a suitably senior and well-paying post, it does not follow inexorably that he was hired as an expatriate *from* MDI. It must be remembered that Michael was not an employee of MDI at the time although he was a non-executive director. However, it is clear that it was because the MDI board controlled the actions of the Malaysian Subsidiaries that Michael could be placed in those companies. The favourable compensation package he received, including the housing allowance, owed more to his status as a member of the family than to his being seconded from MDI.

83 There is nothing in the evidence to support a finding that Michael had a legitimate expectation that he would receive a certain quantum of remuneration or benefits as part of his employment with MDI. It would be noted that he became a shareholder in 2002 but was only offered employment in 2005 so there was no relationship between the two events. Further, all Michael says about his employment in the Malaysian Subsidiaries was that the family agreed in 2005 that he, being one of the sons, would look after the Malaysian aspects of MDI's business and be located in Malaysia for this. Michael gives no evidence of any discussion regarding his salary or any assurance that it would kept in tandem with the remuneration of his brothers in Singapore. Any assumption which he made to this effect would seem to be unilateral.

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84 In the absence of any express or implied understanding as to his remuneration, a complaint of minority oppression cannot be based simply on a decision by the boards of MDI and the Malaysian Subsidiaries, on a consideration of the AH Report, that Michael was overpaid and that as he was not an employee of MDI, he should not be receiving payments from it. Having reached these conclusions, it would *normally* be well within the strict legal rights of the directors to adjust his remuneration package accordingly. More crucially, the reduction of Michael's salary does not, in itself, affect Michael's interests (or for that matter that of any of the other plaintiffs) *qua* shareholder of MDI. *On the face of it*, this complaint affects Michael only in his capacity as an employee of the Malaysian Subsidiaries.

85 It cannot be gainsaid, however, that the reduction of Michael's remuneration was a spiteful act when taken in context, and not one motivated by rational corporate considerations. Michael's employment resulted from familial, not corporate, considerations. Mdm Kwik wanted his livelihood to be provided for; Ernest and Patrick accordingly found a position for him and paid him a salary that would achieve that aim. Michael was not recruited on the usual basis of a company with a vacancy giving a qualified applicant a market rate salary for the job. His position was special and, therefore, using the AH Report to justify a return to market rates for Michael's remuneration and to deprive him of an allowance from MDI would not have been anticipated. While Michael may not have had a basis to expect his salary to be increased along with his brothers', he would confidently have expected that they would not reduce it so as to shrink his rice bowl. The fact that they did so seems to me, accordingly, to have been a measure they took to rap him on the knuckles for his disagreements with them and not as a measure for the overall corporate benefit of MDI and the Malaysian Subsidiaries. While Michael's complaint of minority oppression

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looked at in isolation may seem more a familial matter than a corporate one, when it is seen in the context of how Ernst and Patrick also used the AH Report to justify depriving Serene and Michael of their cars and to improve their own positions, the impression changes.

(2) Increase in remuneration for Ernest and Patrick

86 In the light of how they treated Michael, the contrast with how Ernest and Patrick adjusted their *own* remuneration after the AH Report is telling. Quite apart from whether Michael's salary in the Malaysian Subsidiaries was fairly reduced, Ernest and Patrick saw it fit to procure resolutions from the MDI board to (i) peg their own remuneration in MDI as executive directors at the 65th percentile, thereby increasing their remuneration; and (ii) promote Patrick to deputy managing director of MDI to effectively justify Patrick's remuneration. Ernest was to receive a 14% increment from $777,216 to $887,624 per annum while Patrick was to receive an 18% increment from $585,216 to $693,079 per annum. This was despite the fact that Patrick's remuneration, like Michael's, had been assessed to be "significantly above market median" and Ernest's remuneration package was "at market median". These levels of remuneration were eventually approved by the majority of the shareholders at MDI's 50th AGM on 23 September 2013.

87 There has been no reasonable explanation to justify why the 65th percentile was adopted for executive directors while the 50th percentile was adopted for non-executive directors. Ernest's explanation for the uplift, which was that it was implemented to take into account any possible increase in the recommended salaries from the 2011 date of compilation of the data for the AH Report, would, presumably, also be applicable to the salaries of non-executive directors. This reasoning was disputed at MDI's board meeting on

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17 April 2014 where Michael pointed out that the AH Report had already aged the data to 2012 with a projected increase of salary of 4.4% and the figures were not as outdated as represented in the previous board meeting in March 2013.

88 Further, Ernest and Patrick also rejected AH's recommendation that MDI should adopt the market median pay mix by allocating a larger part of their remuneration to the variable pay component with the explanation that MDI should "keep to its philosophy in paying its Executive Directors fixed income and bonuses instead of shifting to largely variable pay" and that having large variable bonuses could encourage them to take higher risks. The ratio of variable pay to fixed pay in the *market* median pay mix was 49.1% to 50.9% for Ernest, while his pay mix ratio was 6.8% to 93.2%. For Patrick, the market ratio was 35.3% to 64.7% while his pay mix ratio was the same as Ernest at 6.8% to 93.2%.

(3) Inconsistent treatment of siblings' benefits

89 As for the complaint regarding the removal of Serene's and Michael's car benefits as directors of MDI, the removal would not amount to commercially unfair conduct *per se* as it does not affect the plaintiffs *qua* shareholders of MDI and it is undisputed that AH observed that it was uncommon for *non-executive* directors to enjoy car benefits. But the observations made by AH were not implemented across the board. Although AH had mentioned that it was also uncommon for executive directors to enjoy holiday benefits and that it was even less common for their spouses to enjoy such benefits, Ernest and Patrick saw fit to cherry-pick AH's comments and remove only the plaintiffs' car benefits while retaining the holiday benefits for themselves and their spouses. Ernest's justification for retaining these holiday benefits, *ie*, that it was a practice that they "had been doing … for many years" and that it was meant to force the

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directors to "take leave by having this holiday … to compel them to take a break" so that the directors can be "compensated for the leave that they [did not] take" is entirely self-serving and internally inconsistent.

90 I am of the view that Ernest's and Patrick's conduct in using the AH Report selectively to benefit (or continue to benefit) themselves while using their power as directors and shareholders to deprive the plaintiffs of long-enjoyed benefits, and in the case of Michael, substantially so, was commercially unfair and oppressive. The plaintiffs, being shareholders who disagreed with certain actions of the majority shareholders, were in effect punished for their disagreement by losing benefits that had never been previously questioned.

Performance bonuses in 2010

91 In 2010, Ernest and Patrick sought to procure the declaration of performance bonuses amounting to $1m each to themselves. The purpose of these bonuses was to reimburse them for the legal fees they had paid in relation to the legal proceedings in 2008.

92 The fact that Wendy and Michael had previously signed off on the board resolution approving the performance bonuses is not a strict bar to the plaintiffs later raising concerns about the matter. The Court of Appeal found in *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 (at [103] and [105]) that a share transfer which the minority had previously consented to was actually oppressive. In *Low Peng Boon v Low Janie and others and other appeals* [1991] 1 SLR(R) 337 (at [30]–[31]), although the minority did not take issue with certain practices of the majority for many years and had not immediately initiated legal proceedings complaining of unfair treatment, it was held that this did not preclude the minority from subsequently mounting the

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complaints and did not militate against a finding that the minority was oppressed.

93 However, in this case, it cannot be disputed that the plaintiffs were all well aware of the purpose of the performance bonus *before* the board meeting on 27 August 2010 at which the resolution was passed. Ernest and Patrick had told them at a family meeting in mid-2010 that bonuses would be declared to defray the legal expenses. Ernest and Patrick admitted during cross-examination that the performance bonuses were declared to defray the family's share of the legal costs of the proceedings brought by Mr Thio and that they were merely relying on the *form* of the resolution which stated that the bonuses were to reward them for the company's great financial performance. Since the plaintiffs had all along been aware of the reason for the performance bonuses and had in fact knowingly facilitated them, it does not lie now in their mouths to complain about Ernest's and Patrick's "deliberate obfuscation and lack of transparency". While it cannot be good corporate practice for directors to take money from the company to fund personal litigation, I am not willing to stigmatise this particular action as constituting commercial unfairness since all the plaintiffs were complicit in it.

94 To the extent that this pretext of performance bonuses was discriminating against Mr Thio and was in furtherance of Patrick's and Ernest's personal vendetta to injure Mr Thio (as the plaintiffs plead), the plaintiffs have no standing to complain of oppression on behalf of Mr Thio. Further, the contemporaneous evidence does not indicate any objection by the plaintiffs at the material time. Their only question was as to the mode of payment, *ie*, whether it should have been by way of a performance bonus or dividends. In any event, the plaintiffs did not seem to mind that funds to defray their legal

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fees would come from MDI probably because in the ultimate analysis they benefitted from this to the same extent as the defendants did.

95 The plaintiffs have couched this issue as reflecting the manner in which Ernest and Patrick had run the Group and that is borne out by the detriment suffered by Mr Thio who would not have known that the true purpose of an ostensible bonus was to make MDI pay the legal fees his children had incurred in fighting him. However, their submission that the "detriment suffered by [Mr Thio] illustrates Ernest's and Patrick's willingness to act in detriment to a minority shareholder (such as [Mr Thio]) while benefitting the other shareholders that were at that point aligned with them" contradicts their position that they are not seeking to complain of oppression on behalf of Mr Thio.

96 Nonetheless, the fact that Ernest and Patrick proposed the declaration of such bonuses to pay off what in effect were personal expenses of the Thio family members incurred in the legal proceedings brought by Mr Thio and had no qualms in arguing that they were justified in doing so based on the *form* of the performance bonuses demonstrated a knack on the part of the two brothers of bending corporate practices to suit their purposes.

97 As I stated above at [56], the issue of the backdated emoluments from the Malaysian Subsidiaries is not a live one. It is clear, however, that Ernest's and Patrick's conduct regarding those proposals was objectionable and showed a tendency to believe that they were entitled to special rewards and to take action to make good on the entitlement. Initially, they characterised the payments as bonuses but they re-characterised the same as backdated emoluments after Michael raised queries as to the basis for the bonus. Ernest even admitted in court that they had done so to come up with a better justification for payments that they wanted to be made.

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Delay in providing information

98 I turn to the plaintiffs' complaint regarding their rights to information. The plaintiffs submit that Ernest and Patrick did not take their rights to information as directors seriously, and dictated what information and documents would be available to them and cite four instances of this:

(a) Ernest's and Patrick's deliberate withholding of information relating to the FH Reports;

(b) Ernest's and Patrick's deliberate withholding of information relating to the sale of Unit 07-03;

(c) A delay of about seven to eight working days in fulfilling Serene's request for three categories of documents on 23 March 2012;

(d) A delay of slightly more than a year in fulfilling Serene's broad request for information relating to the remuneration, increments and benefits given to directors in MDI in August 2012.

99 The denial of access to company documents may fall within the general rubric of oppressive conduct: *Re Kumagai-Zenecon Construction Pte Ltd; Kumagai Gumi Co Ltd v Kumagai-Zenecon Construction Pte Ltd and others* [1994] 2 SLR(R) 970 at [94]. The concealment of information would only be wrongful in a minority oppression claim if the minority shareholders had a legitimate expectation of receiving such information and the information had been hidden with an improper purpose (*Ng Sing King and others v PSA International Pte Ltd and others* [2005] 2 SLR(R) 56 ("*Ng Sing King*") at [102]). In *Ng Sing King*, MPH Rubin J held that the minority shareholders (holding directorships) did not have a legitimate expectation to receive information about negotiations to form an alliance with a rival company, and

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that there was no proof of an improper collateral motive. If however, there was an "understanding between the shareholders that they were entitled to a reasonable flow of management information concerning the company", equitable considerations underlying the relationship among the shareholders would render the denial of such information commercially unfair as a failure to comply with such expectation (see *Lian Hwee Choo* at [64], citing *Re Regional Airports* [1999] 2 BCLC 30).

100 I first deal with the third and fourth complaint concerning Serene's requests for information. These requests were made to MDI's company secretary, Alfred Lim. The third complaint is a non-starter. Serene e-mailed Alfred Lim to ask for:

(a) any reports from FH regarding Mr Thio;

(b) documents relating to the payment of the performance bonuses to Ernest and Patrick; and

(c) documents relating to the appointment of Ernest as MDI's representative on the boards of the Malaysian Subsidiaries to "verify certain matters raised at pervious directors' meetings".

Serene made her request on a *Friday* and wanted the documents to be ready for her collection, or e-mailed to her, by the following *Monday*. These documents were eventually e-mailed to Serene within eight working days. Considering that (a) the delay, if any, was not more than a few days; (b) Serene could not articulate the prejudice or harm she suffered by this delay; and (c) Serene was upset by the "manner" in which Alfred Lim had treated her, and this unhappiness resulted in her later proposal that he be removed as company

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secretary, the third complaint cannot amount to a denial of information that would constitute an episode of minority oppression.

101 The fourth complaint concerns Serene's request for more information between August and September 2012. Serene made a broad request for information relating to the remuneration, increments and benefits given to directors of MDI. She admits that she was in fact "fishing for information" to find out if any improper claims had been made, the context being that "after what happened to the performance bonus and the backdated emoluments, [she had] concerns, and that's why [she] want[ed]" all this information that also extended to expense claims, profit sharing, bonuses and credit card bills charged to the company. In addition, it is undisputed that there was *no* denial of any information, but it was the "way" and the "timing" and how it "[took] so long" that made Serene unhappy. I am of the view that this complaint is without substance:

(a) in the event, Serene was not denied any information;

(b) no evidence of any collateral motive to conceal information has been adduced;

(c) Serene's requests in this regard were broad and vague with the admitted purpose of fishing for information to indicate any wrongdoing; and

(d) the information requested was not part of a "reasonable flow of management information" that shareholders could legitimately expect but was over and beyond that. Further, it would be unwise to find that *mere delay* in providing information that a shareholder is presumably entitled to and has legitimate expectations to receive (without any

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improper motive to conceal information or any evidence of prejudice or harm caused) can constitute commercial unfairness under s 216 of the Companies Act.

102 Similarly, I do not find that the FH Reports and the information relating to the sale of Unit 07-03 (which are the first and second complaints) were wrongfully withheld from the plaintiffs to the extent that such withholding amounted to minority oppression. The withholding of the 2011 and 2012 FH Reports by Ernest and Patrick for the reason that they were concerned that doing so would "jeopardise the … company's claim" was not an improper purpose *per se*. As for the "withholding" of information relating to Unit 07-03, I have explained above that the circumstances of the sale do not point to commercially unfair conduct.

103 As such, the plaintiffs' complaints regarding denial of information do not pass muster.

Mdm Kwik's involvement

104 Lastly, in relation to the acts discussed above that I have found oppressive or at least to have pointed to some unfair or discriminatory conduct, the plaintiffs have not established that Mdm Kwik was involved at all in these acts or that she acted oppressively. I point out in this regard:

(a) Mdm Kwik was not involved in Patrick's and Ernest's refusal to accept Serene's standing offer to repay the sums that Mr Thio had wrongly taken;

(b) Wendy conceded in cross-examination that Mdm Kwik was not involved in the declaration of the 2010 performance bonuses, and no

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evidence was led on how Mdm Kwik contributed to this act of alleged oppression;

(c) The complaints involving the denial of information to the plaintiffs do not relate to Mdm Kwik's conduct; further, she was not asked for information nor did she refuse to give any information;

(d) Mdm Kwik was not involved in the decisions as to how the AH Report was to be applied;

(e) Mdm Kwik was not involved in procuring the sale of Unit 07-03 (and had only signed off on a director's resolution to approve the sale); and

(f) Mdm Kwik was not a director of the Malaysian Subsidiaries and was not involved in the decisions at that level concerning the backdated emoluments. When the matter came before the MDI board, Mdm Kwik voted in favour of the resolutions. She testified that this was because she was persuaded by Mr Lim's explanation that these payments were justified. She cannot be faulted for taking this decision. There is no evidence to justify a finding that she supported Ernest and Patrick blindly and at their request, much though the plaintiffs would like me to hold otherwise.

105 It is unquestionable that the plaintiffs' unhappiness is really with Ernest and Patrick. Mdm Kwik has been dragged into the dispute simply because she thinks that they have been leading the Group well and is inclined to support them when it comes to a dispute with their siblings. She is entitled to have a view on the management of the Group and cannot be criticised for thinking that as they are more experienced in management, their views have more force

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especially when they are supported by old-timers like Mr Lim. It is not enough for the plaintiffs to baldly and vaguely assert that Mdm Kwik had "supported" Ernest and Patrick to make out a case of oppression against Mdm Kwik. One thing came across very clearly when Mdm Kwik gave evidence and that is that she loves all her children and wishes they could live harmoniously with each other. Her aim was to ensure all were looked after and she took action to achieve this goal. If she supported one side against another it was not with the object of favouring that side but because it seemed to her to be the best course.

106 In their submissions (as well as the discussion above), it is clear that alleged acts of oppression all emanate from the conduct of Ernest and Patrick. The plaintiffs' reliance on the New South Wales case of *Fexuto Pty Ltd v Bosnjak Holdings Pty Ltd* (1998) 28 ACSR 688 ("*Fexuto*"), a decision that was affirmed on appeal, is misconceived. The plaintiffs claim that Mdm Kwik played "a key role in the oppression … by virtue of her support for Ernest's and Patrick's actions, '*sink or swim*'" [emphasis in original]. They cite *Fexuto* for the proposition that a participant who goes along with the principal actor or even a bystander may be found liable in an oppression action, relying on the following passage at 746 of *Fexuto*:

> However, with the other categories of oppression found, even though Jim was the principal actor, Carol was either a participant or stood back with knowledge and there is no reason why she should not be in the same plight as Jim.

107 Mdm Kwik's involvement in the oppressive activities here, however, bears no comparison with that of Carol in *Fexuto*. As stated above, Mdm Kwik was not involved in the acts of oppression found to have been perpetuated by Ernest and Patrick. On the other hand, Carol had been an *active participant* in the various activities that prejudiced the plaintiff and was hence *directly involved*. She was thus a participant in the oppressive acts complained of. The

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position here is vastly different. Mdm Kwik's comment about supporting Ernest and Patrick "sink or swim" which the plaintiffs played up was taken out of context and did not mean what the plaintiffs implied. In any case, those were only words – there were no actions on which the plaintiffs could build a case.

108 The plaintiffs' case against Mdm Kwik is unmeritorious. It was not reasonable for them to pursue such allegations against Mdm Kwik considering the lack of foundation in the documentary evidence supporting such involvement and the fact that their claim against her is at most thin and, in some respects, far-fetched: *Tan Chin Yew Joseph v Saxo Capital Markets Pte Ltd* [2013] SGHC 274 at [99].

Conclusion

Ernest and Patrick were oppressive in MDI

109 In conclusion, only the claim of minority oppression against Ernest and Patrick in respect of the affairs of MDI has been made out in the following respects:

(a) their use of MDI to further their personal pursuit of Mr Thio when the matter could have been could have been settled by accepting Serene's offer to make compensation for the sums claimed against Mr Thio;

(b) their conduct in using the AH Report selectively to justify increasing their remuneration and at the same time to drastically reduce Michael's remuneration and take away long established benefits for non-executive directors while simultaneously refusing to implement comments that would have taken away their own benefits; and

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(c) perhaps to a lesser extent, their engineering of the situation where they would have received unjustifiable backdated emoluments from the Malaysian Subsidiaries had they not renounced the payments at the last minute.

Appropriate relief

110 The plaintiffs seek orders that:

(a) the defendants buy out the plaintiffs' shareholdings in THPL, MDI and URL at a price to be determined by an independent valuer pursuant to s 216 of the Companies Act; or

(b) that the companies be wound up pursuant to s 254 of the Companies Act.

111 In view of my findings, the remedies asked for can only be considered with respect to MDI. In my judgment, the second option is not justified. Although the plaintiffs have made out a claim of oppression in relation to Ernest's and Patrick's conduct with regard to the affairs of MDI, the plaintiffs have not "justifiably lost confidence in the management of the company" (see *Chow Kwok Chuen* at [18]). The recourse of a winding-up order is not available to a minority shareholder merely because he does not see eye to eye with the majority; caution is exercised before this remedy is imposed (*Chow Kwok Chuen* at [19]). This drastic remedy is not appropriate in the present case where the gravity of the case does not extend to serious mismanagement or defalcation of company funds or breaches of fiduciary duties. It is of vital importance when considering this remedy that MDI is still a going concern, with an active and competent management so that the company continues to grow and enjoy profits.

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112 Considering the breakdown of goodwill and trust among the parties with their correspondence being increasingly antagonistic and aggressive, it is obvious that the relationships have unravelled irretrievably. As such, it would not be right for the plaintiffs to remain tied up in MDI. I consider that the appropriate relief would be an order for Ernest and Patrick to buy out the plaintiffs' shareholdings in MDI at a price to be determined by an independent valuer on the basis that MDI is a going concern. The date of the buyout order should be the reference date for the valuation of the plaintiffs' shares by the independent valuer.

Orders

113 For the reasons given above, I grant the plaintiffs judgment against the first and second defendant in respect of their claim in relation to MDI. I dismiss the plaintiffs' claims against the third defendant. As the plaintiffs had no reasonable basis to sue the third defendant, I order them to pay her costs on the indemnity basis as taxed or agreed. As regards costs in respect of the plaintiffs' claims against the other defendants, as they have not been wholly successful and, indeed, have failed in relation to URL and THPL, I will hear the parties on costs.

114 I order the first and second defendants to buy out the plaintiffs' respective shares in MDI on the basis of a share price to be determined by an independent valuer who shall value the company as of the date hereof as a going concern. The valuer shall be appointed within one month of the date hereof. If the parties cannot agree on a valuer and the length of time needed for the valuation exercise, they shall apply to the court to decide on the valuer and the time period. The costs of the valuation exercise shall be borne by the first and

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second defendants. The parties shall be at liberty to apply for directions in case any are needed in regard to the valuation and the sale.

Judith Prakash
Judge of Appeal

Alvin Yeo SC, Joy Tan, Liew Yik Wee, Ho Wei Jie and Rich Seet (WongPartnership LLP) for the plaintiffs;
Ang Cheng Hock SC, Jason Chan, Paul Ong and Melissa Mak (Allen & Gledhill LLP) for the first and second defendants;
N Sreenivasan SC (Straits Law Practice LLC) (instructed) and Paul Seah, Keith Tnee, Alcina Chew and Rachel Chin (Tan Kok Quan Partnership) (on record) for the third defendant;
Siraj Omar and Joanna Chew (Premier Law LLC) for the fourth to sixth defendants.

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