IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 224

Suit No 1009 of 2018

Between

(1) Chong Kok Ming
(2) Tan Tat Wei Victor

… *Plaintiffs*

And

(1) Richinn Technology Pte Ltd
(2) Lim Swee Joo
(3) Lim Swee Chong

… *Defendants*

JUDGMENT

[Companies] — [Winding up] — [Just and equitable winding up]
[Companies] — [Winding up] — [Oppression]
[Companies] — [Winding up] — [Buy-outs]

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Chong Kok Ming and another
v
Richinn Technology Pte Ltd and others

[2020] SGHC 224

High Court — Suit No 1009 of 2018
Ang Cheng Hock J
3–6, 10–13, 17–20, 24–27, 31 March, 1, 2 April, 30 June 2020

22 October 2020 Judgment reserved.

Ang Cheng Hock J:

1 This case involves a private limited company and the disputes which have arisen between two groups of shareholders. One group comprises two shareholders, who together hold a minority stake in the company. The other group also comprises two shareholders, who are brothers. They hold the majority of the shares in the company. The minority shareholders have brought this application seeking to wind up the company on several grounds. One ground is that the shareholders have agreed to liquidate the company and go their separate ways, and that the majority shareholders are now reneging on that agreement. Among the other grounds relied upon, the minority shareholders also allege that the company is in truth a quasi-partnership, and that there has been a breakdown of trust and confidence between the two groups of shareholders such that it would be just and equitable to wind the company up. As is common in cases of this nature, the once close working relationship

between the two groups of shareholders has now been transformed into one of acrimony and litigation, with the parties feuding with each other not only in these proceedings but also in other related suits in Singapore and Malaysia.

The parties

2 The first plaintiff ("Chong") and the second plaintiff ("Tan") are the minority shareholders in Richinn Technology Pte Ltd, the first defendant ("Richinn"). The second defendant ("Richard") and the third defendant ("Robert") (collectively, "the Lims") are the majority shareholders. Chong, Tan, Richard, and Robert hold shares in the proportions of 17%, 23%, 30%, and 30% respectively.[1] As I will go on to explain, Tan and Chong worked in the laser cutting industry, while the Lims, through a group of companies, had business interests in industries ranging from silicone to stainless steel products.[2]

3 I note in addition that the first defendant, Richinn, is purely a nominal defendant in this dispute. The real dispute is between the shareholders, namely the plaintiffs and the Lims. Any references to "the defendants" in this judgment should therefore be construed as a reference to the Lims.

Background to the dispute

4 I begin by outlining how Chong, Tan, and the Lims came to be shareholders in Richinn.

5 Before 2003, Chong and Tan had been colleagues in Applied Cutting Technology Pte Ltd ("Applied Cutting"), a company which provided laser

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1 Defendants' Closing Submissions ("DCS") at [5].

2 DCS at [2] and [3].

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cutting services. Tan worked in sales, while Chong worked in production.[3] Tan left the company in March or April 2003, with a view towards setting up his own laser cutting business. As laser cutting machines were expensive, and Tan did not have the capital, he met with several potential investors who expressed interest in his plans. According to Tan, he was approached by Robert in the first quarter of 2004 as Robert was interested in entering into a laser cutting business. I note for completeness that the Lims claim that it was Tan who had approached Robert with an offer of collaboration, though in my view nothing specifically turns on this point.

[3] Plaintiff's affidavit supporting winding up filed on 27 April 2018 ("Winding up Affidavit") at [10], DCS at [3].

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6 Eventually, Chong, Tan, and the Lims agreed to set up a new laser cutting business. Chong left his job at Applied Cutting to embark on this venture. The Lims injected the initial capital for the enterprise.

7 The plaintiffs and the Lims agreed to use an existing company for the laser cutting business. This company was the first defendant, which was then called Richinn Trading Pte Ltd, and which had previously been incorporated by the Lims in 2002. The first defendant had been used by the Lims up to that time to trade in silicone. The laser cutting business was an altogether new business for the Lims, and the first defendant's name was changed from "Richinn Trading Pte Ltd" to its present name, Richinn Technology Pte Ltd, to reflect the new business of laser cutting services.

8 Tan and Chong joined Richinn in April 2004.[4] About six months later, on 15 October 2004, Tan, Chong, and the Lims entered into a written agreement (the "Shareholders' Agreement") which provided, *inter alia*, for an increase in the paid up capital of Richinn and the sale and purchase of shares in the company such that the parties' respective holdings were as follows:[5]

(a) Richard Lim and/or Robert Lim: 180,000 ordinary shares (60%)

(b) Tan or his nominee Mdm Lee Lye San (Tan's wife, "Mdm Lee"): 69,000 ordinary shares (23%)

(c) Chong: 51,000 ordinary shares (17%)

Even though it is not specifically stated in the Shareholders' Agreement, it was

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4 Transcript of 3 March 2020, Page 97, Lines 3 to 5.

5 Agreement at p 78 of Tan's AEIC, at [2.3].

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agreed between the parties that the plaintiffs would be employed by Richinn to manage and run the business. The directors of the company were specifically stated as being the Lims, Tan (or his wife as nominee), and Chong.[6] In addition, cl 4.2 of the Shareholders' Agreement ("the Non-Competition Covenant") stipulated that the shareholders undertook that they would not, directly or indirectly, be involved in a business in the same business as Richinn while they were still shareholders or directors of Richinn, or for a period of five years from the date of the Shareholders' Agreement, whichever was later.

9 Clause 4.2 of the October 2004 Shareholders' Agreement was later specifically extended by a written Extension Agreement dated 1 October 2013 (the "Extension Agreement").[7] The Extension Agreement recognised that the Shareholders' Agreement remained in "full force and effect",[8] and made clear that all the Extension Agreement sought to do was to extend the shareholders' undertaking under cl 4.2 of the Shareholders' Agreement.[9] Clause 2 of the Extension Agreement thus provides that each of the shareholders will not participate in a business with the same business as that of Richinn for a period of five years from the date of the Extension Agreement, or while he is still a shareholder or director of Richinn, whichever is later. I note also a separate agreement entered into in 2007 (the "Business Continuity Agreement") to provide for continuity of business in the event of the demise of one of the four shareholders.[10] The Business Continuity Agreement provided that if one of the

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6 Agreement at p 78 of Tan's AEIC, at [3.1].

7 Robert's AEIC at pp 122 to 123.

8 Extension Agreement at [1].

9 Recitals to Extension Agreement at [B].

10 DB1 at pp 174 to 178.

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shareholders were to pass away, the deceased shareholder's family would be provided with a monthly stipend, and the deceased's shares would devolve to one of the surviving shareholders, who would hold the shares on trust for the beneficiaries of the deceased shareholder.

10 The day-to-day business of laser cutting was run and managed by the plaintiffs. Specifically, Tan, who had previously worked in sales for Applied Cutting, was in charge of sales and business development, while Chong, who had prior experience in production, took charge of that area.[11] Tan and Chong were not only directors of Richinn, they also held executive positions in the company. They both drew salaries from Richinn from the end of 2005 up to the time of the dispute. Tan was managing Richinn until January 2018. Up to 2013, Chong had been involved in the day-to-day management of Richinn, but since 2014, his primary responsibility in this venture was to manage the Malaysian operations, as is described below from [12] to [14].[12]

11 As for the Lims, they controlled the finance and administration of the company. Specifically, they controlled all payments out, in that one of them had to countersign or give authorisation on all payments made by the company. They also held the tokens for Richinn's electronic banking accounts, and liaised with banks for banking facilities.[13] The Lims attended monthly management meetings to update themselves on the business and how well it was doing.

12 The business grew and was successful. Other corporate entities were set up in Singapore, Malaysia, and the Middle East by the shareholders of Richinn.

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11 Winding up Affidavit at [16].

12 DCS at [10].

13 DCS at [70].

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Of note is the company incorporated in Malaysia in 2004 called CJ Stainless Steel Sdn. Bhd. ("CJSS").[14] That company was established to act as a subcontractor for Richinn and Choon Hin Stainless Steel Pte Ltd (part of the Choon Hin group of companies owned by the Lims) to take advantage of the lower production costs in Malaysia.[15] CJSS was initially incorporated by seven shareholders, which then became six – the two plaintiffs, the Lims, Simon Puah Koh Choon ("Puah"), and Paul Ho Sang Bin ("Ho") – in 2015 when one of the original shareholders left.[16] Puah and Ho are the Lims' brothers-in-law. CJSS has now been wound up pursuant to an order of the High Court of Malaya at Johor Bahru, on the application of Tan and Chong. This had been resisted by the Lims and is, as at the time of the trial, pending appeal.[17]

13 Another Malaysian company which features in these proceedings is CKM Metal Technologies Sdn Bhd ("CKMMT").[18] That company was incorporated in 2014 by Chong and his brother, who were the initial shareholders and directors of CKMMT. Tan joined CKMMT as a shareholder and director not long after. CJSS's license only permitted 20% of its work to be Malaysian, while the other 80% had to be foreign-related (see [20] below). CKMMT's predecessor company, CKM Stainless Steel Works, had been set up as a sole proprietorship under Chong as a "standby" in case CJSS's Malaysian work exceeded that 20% limit. CKMMT was subsequently incorporated on 16

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14 Winding up Affidavit at pp 55 to 60.

15 DCS at [9].

16 DCS at [8]; Robert's AEIC at [51].

17 Plaintiffs' Closing Submissions ("PCS") at [30].

18 Richard's AEIC at [53] and [54].

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July 2014 to handle the bulk of CJSS's Malaysian work, and CKM Stainless Steel Works ceased its business after CKMMT was incorporated.[19]

14 After having worked full-time at Richinn from 2004 to 2011, Chong was asked by Tan and the Lims to assist in the management of CJSS.[20] In 2012 and 2013, Chong worked two days a week at Richinn and spent the rest of the work week at CJSS in Malaysia. From 2014, Chong transferred to work full time at CJSS and CKMMT, where he remained up to the time of the dispute.[21]

15 For completeness, I should also note that, over the years, as their working relationship grew closer, Chong, Tan, and the Lims also made investments together, either directly or through various corporate vehicles. They invested in a condominium unit at Lakeside Towers in Singapore. In Malaysia, they invested in properties at Yong Peng and Ulu Tiram, and also in two swiftlet houses, which farmed birds' nests.[22] The four of them also held bank accounts in their joint names in Singapore and Malaysia.[23]

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19 Richard's AEIC at [54].

20 Transcript of 24 March 2020, Page 122, Lines 21 to 24.

21 Richard's AEIC at [56]. See also Transcript of 24 March 2020, Page 122, Lines 21 to 24.

22 Transcript of 5 March 2020, Page 23, Lines 12 to 19.

23 PCS at [35].

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16 On 22 September 2017, there was a monthly management meeting of CJSS, which was held in Singapore.[24] The six shareholders and directors of CJSS were present. At that meeting, Robert said that he was facing some health problems. As such, he and Richard wanted to exit from the businesses of *CJSS and Richinn*. This was a significant development because the Lims were declaring their intention to end the venture between them and the plaintiffs. In their oral evidence at trial, the Lims both agreed that their intention was for both sides to end their business relationship and for the Lims and the plaintiffs to go their separate ways.[25]

17 There was a discussion which followed at the management meeting where the Lims proposed that CJSS be sold to an "outside buyer", to which Tan and Chong agreed. A brief note of the important points that arose from this meeting was recorded in a contemporaneous email by Ho, which was sent to the other shareholders on 23 September 2017.[26] It was recorded in that note that the necessary corporate and shareholders resolutions would be prepared by the company secretary of CJSS. Significantly, Ho also recorded the shareholders' agreement that, if there were no buyers for CJSS, the company would "*cease operation*" and they would "*take necessary action for closure of*" CJSS (emphasis added).

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24 Richard's AEIC at [78].

25 See for example, Transcript of 5 March 2020, Page 43, Lines 13 to 17.

26 AEIC of Ho Sang Bin ("HSB") at p 476.

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18 In early October 2017, some of CJSS's shareholders had a meeting with the auditor of CJSS to discuss the likely value of the company, and to give instructions for the valuation of CJSS's assets.[27]

19 On 24 October 2017, the shareholders and directors of CJSS passed written resolutions to the effect that (a) the shares of CJSS would be sold before 31 January 2018; and (b) the machinery of CJSS would be sold after 31 January 2018 if there was no sale of the shares in CJSS.[28] It was stipulated in the resolutions that the deadline for the sale, whether it be the machinery or the shares, would be 31 March 2018 or the date on which CJSS paid the final remuneration of its employees, whichever was later.[29]

20 After this meeting, Puah and Ho were asked by the Lims to take over the management of CJSS from Chong.[30] Following this, by early November 2017, CJSS started terminating the employment of its employees as part of the process of winding down its business.[31] Ho also instructed Chong not to renew CJSS's Licensed Manufacturing Warehouse license ("LMW license"), stating that it would be "useless".[32] For context, it is not in dispute that the LMW license is a license granted by the Malaysian government on the condition that the licensee handles 80% "foreign work", *ie*, products for export, and a maximum of 20% "local work", *ie*, products for sale in Malaysia.[33]

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27 Richard's AEIC at [82].

28 Richard's AEIC from [87] to [88].

29 Richard's AEIC at Tab 140.

30 See for example, Transcript of 26 March 2020, Page 84, Lines 14 to 16.

31 See D2, and also Transcript of 6 March 2020, Page 48, Lines 7 to 9.

32 Transcript of 25 March 2020, Page 6, Lines 4 to 5.

33 See, *inter alia*, Transcript of 10 March 2020, Page 31, Lines 15 to 22.

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21 As for Richinn, sometime in the middle of October 2017, Tan and Chong made a proposal to acquire the Lims' shares in the company, which involved a divestment of all their other joint investments in Singapore and Malaysia.[34] Tan communicated the offer to Richard. The offer was not accepted by the Lims, but there was no counter-offer from them. Instead, toward the latter part of October 2017, the auditor of Richinn, one Frederick Yap ("Yap"), was asked to come up with an indicative valuation of the company.[35] On 13 November 2017, Yap circulated his indicative valuation of Richinn, valuing it at approximately S$2.3m.[36] At around this time, the Lims indicated that they were expecting to be bought out at a premium.[37] While the reasons for this were not expressed, this must have been because the Lims held a controlling 60% stake of Richinn, and therefore felt that their shares accordingly commanded a premium.

22 An extraordinary general meeting ("EGM") of Richinn's shareholders was then convened on 29 November 2017. This meeting was audio recorded and the transcripts of the recording were adduced in evidence. The transcripts show that the parties had discussed the possibility of the sale and purchase of the shares in Richinn between the shareholders. From the transcript, it is clear that this was to be a potential sale of the Lims' shares in Richinn to Tan and Chong, if all parties could agree on a price.[38] This is hardly surprising since the Lims' expressed intention was to exit from the business. If no agreement could be reached on the sale of the shares, the consensus was that the shareholders

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34 PCS at [42]. Transcript of 6 March 2020, Page 84, Lines 27 to 32, and Page 86, Lines 13 to 15.

35 Transcript of 12 March 2020, Page 76, Lines 26 to 31.

36 7 PBAF 4645.

37 7 PBAF 4662. See also Transcript of 13 March 2020, Page 16, Lines 15 to 18.

38 DB1 103 to 158, and in particular 109.

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would proceed with a voluntary winding up of Richinn.[39] At the conclusion of the meeting, the following resolutions were unanimously passed by the four shareholders:[40]

> 1) *The members agreed to meet during 16th to 19th of Jan 2018 to review the company management accounts as at 30th November 2017 to finalize on the sale and purchase of shares between the present members.* The offered price between members shall be derived from the net book value of the company with added premium.
>
> 2) Any sale and purchase of shares shall be between the present members.
>
> 3) The final share price shall be based on audited accounts for financial year ended 31st December 2017 ("the final share price").
>
> 4) If the offered price is within 5% variation from the final share price, the sales and purchase of shares shall follow the offered price. If the variation is more than 5%, the sales and purchase of shares shall follow the final share price.
>
> 5) It is agreed that 90% of the share price in the sales and purchase of shares shall be paid upon the transfer of shares and 10% to pay 6 months after the effective date of shares transfer.
>
> 6) *If there is no agreement reached on the sale and purchase of shares on the mentioned meeting, the members agreed to proceed with members voluntary winding up of the company.*
>
> [Emphasis added]

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39 DB1 121 to 122.

40 7 PBAF 4662; Richard's AEIC at p 4638,

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23 In early December, Tan informed the sales and purchasing teams that the Lims would be leaving Richinn.[41] His oral evidence was that he did not tell the Richinn employees then that the company would be ceasing its business or that it would be wound up. In this regard, Tan acknowledged that his affidavit of evidence-in-chief at [37] was inaccurate. There, he had claimed that he informed the sales and purchasing teams about the potential winding up of Richinn.[42] Tan explained at the trial that his frame of mind then was that he and Chong might yet buy over the Lims' shares, and it was only if they could not come to an agreement that Richinn would be wound up.[43]

24 In mid-December 2017, Tan re-activated a dormant company that he owned.[44] This was a company that his wife, Mdm Lee, had incorporated in June 2015, called Wow Research Pte Ltd. The purpose of Wow Research Pte Ltd had been to carry out a business in the sale of e-scooters and other personal mobility devices, which it did until sometime in 2016. On 13 December 2017, Tan changed the name of that company to Novatac Pte Ltd ("Novatac"), with the intention that it be used to carry out the business of laser cutting.

25 Then, in the second half of December 2017, Tan separately met with two customers of Richinn, FA Systems Automation (S) Pte Ltd ("FA Systems")[45] and Nutek Pte Ltd ("Nutek"),[46] and he informed them that Richinn might be

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41 AEIC of Tan Tat Wei Victor ("TTWV") from [35] to [36]; Transcript of 20 March 2020, Page 52, Lines 13 to 14.

42 Transcript of 20 March 2020, Page 55, Lines 13 to 19.

43 Transcript of 20 March 2020, Page 59, Lines 22 to 32.

44 TTWV at [39].

45 Richard's AEIC at [101].

46 TTWV at [86].

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ceasing its operations very shortly.[47] He informed these customers that he would continue being in the laser cutting business and would be operating through Novatac after the cessation of Richinn's business. Further, in early January 2018, Tan travelled to Sri Lanka, where he met another customer of Richinn's, Kosan Crisplant Lanka (Private) Limited ("Kosan"), which he also informed about the likely cessation of Richinn's business, and his new laser cutting business through Novatac.[48]

26 By late December 2017 to early January 2018, Novatac was accepting orders for laser cutting from FA Systems and Nutek.[49] Novatac then made back-to-back orders with Richinn for the work commissioned by FA Systems and Nutek. In other words, Novatac was interposed between these two customers and Richinn. There was a mark-up in price between what Novatac charged FA Systems and Nutek, and what Richinn charged Novatac.[50] Quite clearly, Novatac was making a profit at the expense of Richinn.

27 Tan's actions were quickly discovered by the Lims. On 8 January 2018, the Lims' solicitors, KSCGP Juris LLP ("KSCGP"), wrote to Tan about his conduct and accused him of breaching his duties as a director of Richinn.[51] What is significant though is that this letter was also addressed to Chong, and also accused him of breaching his duties as a director. However, it was common ground by the time of the trial that Chong was not aware of what Tan had done,

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47 Transcript of 20 March 2020, Page 57, Lines 6 to 13.

48 TTWV at [41].

49 AEIC of Ng Wei Sen ("NWS") from [7] to [10].

50 See for instance, Transcript of 24 March 2020, Page 129, Lines 16 to 30.

51 Richard's AEIC at p 4754.

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whether before or at the time of Tan's actions.[52] Chong was not even aware of the existence of Novatac until he was told by Tan *after* they had received KSCGP's letter.[53]

28 It is also notable that KSCGP's letter of 8 January 2018 also touched on other matters apart from Novatac. It also raised a number of serious allegations against both Tan and Chong.[54] These included the allegations that they had misappropriated Richinn's customer information, diverted the business of Richinn to CKMMT, were competing with Richinn through companies such as Straits Industries Pte Ltd, and had persistently prevented the Lims from having access to Richinn's accounts. What is not disputed is that there was no evidence before me in these proceedings that *any* of these allegations against Tan and Chong were substantiated.[55]

29 KSCGP's letter ended with a statement that an EGM of Richinn would be convened to remove *both* Tan and Chong as directors of the company.[56] True to their word, what shortly followed was a notice signed off by the Lims as directors of Richinn dated 11 January 2018, giving notice of an EGM to be convened on 26 January 2018 to pass resolutions for, *inter alia*, the removal of Tan and Chong as directors of the company.[57]

30 Two days later, on 13 January 2018, another notice of an EGM for

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52 Transcript of 19 March 2020, Page 22, Lines 7 to 22.

53 Transcript of 26 March 2020, Page 98, Lines 5 to 19.

54 Richard's AEIC at p 4754 at [3].

55 Transcript of 10 March 2020, Page 32, Lines 7 to 11. See also, for example, Page 32, Lines 20 to 24, and Page 35, Lines 11 to 18.

56 Richard's AEIC at p 4755 at [6].

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Richinn was issued.[58] In this second notice, the proposed resolutions to be passed at the EGM, scheduled for a new date on 29 January 2018, were now changed to merely terminating the "managing powers" of Tan and Chong, and also terminating their employment as executives of the company. To replace them, it was proposed that Richard be appointed as the managing director of Richinn. In this second notice, there was a further proposed resolution to revoke the resolution of the company made at the EGM of 29 November 2017 that Richinn proceed with a members' voluntary winding up if there was no agreement reached on the sale and purchase of the shares in the company.

31 Not unexpectedly, given the serious allegations now raised against Tan and Chong, the two of them declined to meet with the Lims to discuss the sale and purchase of the shares in Richinn, as had been envisaged in the shareholders' resolutions passed on 29 November 2017.

32 At the EGM on 29 January 2018, Tan and Chong were absent. The Lims then proceeded to pass the resolutions referred to at [30] above.[59] As such, both Tan and Chong were removed from their executive positions in Richinn, though they continued to remain as directors of the company. I should just add for completeness that Tan and Chong resigned from their directorships of Richinn on 25 June 2019.[60]

Procedural history

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57 Richard's AEIC at p 4757.

58 Richard's AEIC at p 4758.

59 Richard's AEIC at [121] and [122].

60 Richard's AEIC at [123].

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33 On 27 April 2018, Tan and Chong commenced proceedings by way of an originating summons seeking to wind up Richinn on three separate but related grounds: (a) that the shareholders had agreed by their resolutions passed on 29 November 2017 to wind up the company; (b) that the Lims had acted in a manner that constitutes minority oppression; and (c) that it would be just and equitable for the company to be wound up.[61] On 20 September 2018, by consent of the parties, I ordered that the proceedings be converted into writ proceedings given the substantial disputes of facts that were raised in the affidavits filed by the parties.[62]

34 In the meantime, the Lims caused Richinn to commence Suit 1008 of 2018 ("Suit 1008") against, *inter alia*, Tan and Chong, claiming that they had breached their duties as directors of the company by, *inter alia*, (a) carrying on a laser cutting business in competition with Richinn using two entities – first with Novatac and then later with, *inter alia*, another company called Brown Metal Engineering Pte Ltd ("BME");[63] and (b) causing and/or conspiring to cause and conceal the diversion of business away from Richinn to, in particular, Novatac and BME.[64] It was alleged that Tan commenced competing with Richinn and diverting business to Novatac from December 2017,[65] while for Chong, it appears that he only became a director and shareholder of Novatac in August 2019.[66] As for BME, it was alleged that Tan and Chong became

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61 Winding up Affidavit at [2].

62 HC/ORC 6695/2018 at [1].

63 Statement of Claim (Amendment No. 2) in Suit 1008 at, *inter alia*, [54].

64 Statement of Claim (Amendment No. 2) in Suit 1008 at, *inter alia*, [51].

65 Statement of Claim (Amendment No. 2) in Suit 1008 at [11]; see also DCS at [17].

66 TTWV at [7].

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shareholders and directors of BME on or about 11 June 2018, and that competition and diversion of business occurred at or around that time.[67] In addition, several former employees of Richinn were also named as defendants in Suit 1008 because they had left Richinn to join Novatac and/or BME. These ex-employees were accused of conspiring with Tan and Chong to cause loss to Richinn. Novatac and BME were also defendants in Suit 1008 because they too were alleged to be part of the conspiracy.

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67 Statement of Claim (Amendment No. 2) in Suit 1008 at [12(c)].

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35 Suit 1008 was then consolidated with this suit, and the consolidated action proceeded to trial before me. On 17 March 2020, in the midst of the trial, I was informed by counsel that Suit 1008 was settled. I granted leave for Richinn to discontinue Suit 1008, with no order as to costs. The terms of the settlement were not disclosed to me.

36 Tan and Chong also commenced proceedings in Malaysia to seek the winding up of CJSS on the ground that it would be just and equitable to do so. After four days of hearing in 2019, where Chong and Robert were cross-examined, the High Court of Malaya at Johor Bahru (Commercial Division) found that CJSS was a quasi-partnership, and that the relationship of trust and confidence between the shareholders had broken down due to the Lims' actions.[68] On 24 September 2019, the court made an order that CJSS was to be wound up. The Lims, Ho, and Puah have appealed against that decision, and as at the time of this trial, that appeal remains pending. In the meantime, the order for winding up against CJSS has been stayed pending the appeal.

37 I should further add that the Lims have also commenced proceedings in Malaysia claiming that, *inter alia*, Tan and Chong hold shares in CKMMT on their behalf. This is denied by Tan and Chong, who claim to own the entirety of the legal and beneficial interests of their shareholdings in CKMMT.[69] Those proceedings are underway in Malaysia, and nothing stated in this judgment is intended to express any opinion on the merits of that dispute.

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68 DB1 at p 101. See also PCS at [195], and DB1A from pp 41 to 43.

69 TTWV at [64], PCS at [33] and [34].

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The plaintiffs' case

38 As has been mentioned, the plaintiffs rely on three bases to seek an order for Richinn's winding up. The first is that there was a unanimous resolution of the shareholders on 29 November 2017 that Richinn be wound up.[70] The plaintiff relies on s 254(1)(*a*) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act"), which provides that the Court may order winding up if the company has by special resolution resolved that it be wound up by the court. The plaintiffs submit that what is clear from the face of the unanimous resolution of 29 November 2017 is that, if there is no agreement reached for Tan and Chong to buy the shares of the Lims, or *vice versa*, then it had been resolved that Richinn should be wound up voluntarily. It is further submitted that, in truth, what was realistically contemplated by all four shareholders, which is borne out by the evidence in their discussions, was that it was Tan and Chong who were to offer an acceptable price to buy out the Lims.[71] Since no agreement was reached on that front, the condition precedent in the resolution was fulfilled, and the Court should order that Richinn be wound up as per the terms of the resolution.

39 The second ground raised by the plaintiffs is that the Lims have acted in the affairs of Richinn in their own interests rather than in the interests of all the shareholders as a whole, or that the Lims have acted in a manner which appears unfair or unjust to the plaintiffs: s 254(1)(*f*) of the Companies Act.[72] This ground is commonly described as one of minority shareholder oppression. The plaintiffs claim that the Lims had used Robert's ill health as a pretext to exit

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70 PCS from pp 17 to 33.

71 PCS from pp 20 to 22.

72 PCS from pp 34 to 49.

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their business venture with the plaintiffs. In truth, the Lims were allegedly planning to carry out a laser cutting business on their own through one of their companies, Choon Hin Iron Works Pte Ltd ("Choon Hin Iron Works").[73] Choon Hin Iron Works had purchased a new laser cutting machine in early September 2017, even before the Lims had started claiming that they intended to exit Richinn (and CJSS) on the grounds of Robert's ill health. The Lims did not inform the plaintiffs about the US$730,000.00 purchase of the laser cutting machine, and in fact, took steps to conceal it from the plaintiffs.

40 A further subset of the oppression is the plaintiffs' allegation that the Lims acted in a manner which placed pressure on the plaintiffs to buy the Lims out from Richinn at a premium over the value of their 60% shareholding.[74] When the plaintiffs came up with an offer, it was rejected by the Lims, who did not make any counter-offer of their own.[75] Further, when the Lims discovered Tan's use of Novatac in December 2017, they responded disproportionately by engaging in a "legal *blitzkrieg*" against *both* the plaintiffs, and not just Tan:[76]

(a) First, through KSCGP's letter of 8 January 2018, the Lims made a battery of allegations against Tan and Chong, many of which had no substance. In particular, in the case of Chong, he was not even involved in Novatac or aware of Tan's actions at the material time.

(b) Second, the Lims then moved to strip the plaintiffs of their management powers and dismissed them as employees. The Lims also

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73 Robert's AEIC at p 7308.

74 PCS at [129].

75 PCS at [131].

76 PCS at [231].

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passed a resolution at the EGM of 29 January 2018 to rescind the unanimous resolution passed at the 29 November 2017 EGM, which, it is said, was a breach of the agreement between the shareholders that Richinn would be wound up if there was no buy-out between them.[77] The Lims also procured that Ho, their brother-in-law, be appointed a director of Richinn, which is said to be contrary to the legitimate expectations of the plaintiffs that only they and the Lims would be directors of the company.

(c) Third, it is alleged that the Lims "hijacked" Richinn and then used the company's resources to engage in a "private vendetta" against the plaintiffs by bringing Suit 1008 against them and, amongst others, Richinn's ex-employees.[78] According to the plaintiffs, the wide-ranging and overblown claims raised against them in Suit 1008 were calculated to put pressure on them and to drain them financially.

41 The plaintiffs submit that the actions of the Lims are unfair and unjust because they are contrary to the parties' agreement as at November 2017 that the company be wound up and the parties go their separate ways. Also, by sacking the plaintiffs from their management positions in Richinn, but refusing to wind up Richinn, the plaintiffs claim that the Lims are attempting to prevent them from working in the laser cutting business. This is because, in Suit 1008, and even up to now, the Lims have been claiming that Tan and Chong are in breach of the Non-Competition Covenant in the Shareholders' Agreement and

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77 See for example, Tan's AEIC at p 110.

78 PCS at [160].

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Extension Agreement by working in Novatac and BME after they were sacked from Richinn.[79]

[79] See, *inter alia*, Transcript of 10 March 2020, Page 16, Lines 19 to 27; Transcript of 13 March 2020, Page 56, Line 30 to Page 57, Line 4; and Transcript of 13 March 2020, Page 79, Line 19 to Page 82, Line 4. See also Richard's AEIC at p 93.

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42 The third ground relied upon by the plaintiffs as a basis for the Court to order the winding up of Richinn is that it is just and equitable to wind up the company: s 254(1)(*i*) of the Companies Act.[80] The plaintiffs argue that Richinn is in essence a quasi-partnership between Tan, Chong, and the Lims. Even though parties had executed a Shareholders' Agreement, it did not change the fact that the four of them had come together to carry out a business venture on the basis of mutual trust and confidence. There were implicit understandings between them which undergirded their association with each other, and which were not spelled out in the Shareholders' Agreement. For example, it was understood that the Lims would initially finance the acquisition of the machines in order to set up the laser cutting business, and that Tan and Chong would be the ones who would manage and run the business.[81]

43 As for the manner in which Richinn operated, the plaintiffs argue that it is consistent with the fact that the company was a quasi-partnership, where all four of the "partners" played a part. While Tan and Chong were actively involved in the day-to-day running of the business and its operations, the Lims kept abreast of what was happening in the company through monthly management meetings. Significantly, the Lims were also co-signatories to Richinn's bank accounts and held the bank tokens for electronic banking.[82] The plaintiffs rely in particular on the fact that no significant payments could be made by Richinn without the approval of the Lims.

44 The plaintiffs also argue that the four shareholders' conduct over the

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80 PCS from pp 50 to 69.

81 See, for example, Richard's AEIC at p 94.

82 Robert's AEIC at [71].

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years, in entering into other agreements and making joint investments in, *inter alia*, property and other non-laser cutting businesses like swiftlet houses, shows that there was clearly a relationship of trust and confidence between them by 2017, even if it was the case that there was no such relationship when they first started the business in 2004.[83]

45 Tan and Chong submit that the relationship of mutual trust and confidence between the parties has ended.[84] They rely on the fact that the Lims had indicated from September to November 2017 that they wanted to exit the business venture. By the EGM resolution passed on 29 November 2017, the four shareholders had agreed that there would be an attempt for a buy-out of their shares *inter se*, and failing that, they would wind up the company. But, instead of an amicable winding down of their working relationship, the Lims launched a "legal *blitzkrieg*" on the plaintiffs by making serious, but mostly baseless, accusations against the plaintiffs via KSCGP's letter of 8 January 2018. Then, the Lims removed the plaintiffs from their management positions in Richinn, and also tried to resile from the agreement reached at the 29 November 2017 EGM that the relationship between the parties be amicably dissolved. Hence, the plaintiffs argue that the relationship between the parties had irretrievably soured by the end of January 2018.[85] Given the circumstances, the plaintiffs argue that that it is only fair that Richinn be wound up.

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83 Transcript of 5 March 2020, Page 23, Lines 12 to 19.

84 PCS at [221(c)].

85 PCS at [221(g)].

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The defendants' case

46 The Lims deny that the plaintiffs have satisfied any of the grounds for the Court to make an order for Richinn to be wound up.

47 In response to the plaintiffs' reliance on s 254(1)(*a*) of the Companies Act, the defendants argue that this is misplaced. The 29 November 2017 EGM resolution recorded the shareholders as having agreed to voluntarily wind up Richinn in the event that there is no sale and purchase of the shares in the company *inter se*.[86] It does not record the shareholders as having come to an agreement that Richinn should be wound up by the Court.

48 Alternatively, the Lims submit that, as per the terms of the 29 November 2017 EGM resolution, the decision to wind up Richinn would only be implemented if the shareholders were unable to come to an agreement, after the contemplated mid-January 2018 meeting, with regard to the sale and purchase of the shares in Richinn between themselves. But, that meeting in mid-January 2018 did not take place because Tan and Chong declined to meet with the Lims, who are alleged to have been ready and willing to meet with them. Given that the parties did not meet to discuss the sale of shares, there can be no question of any winding up of Richinn taking place because a condition precedent to the agreement for winding up has not been fulfilled.[87]

49 In any event, the Lims also argue that the 29 November 2017 EGM resolutions have been "withdrawn" by the resolution passed at the EGM of 29

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86 DCS at [43].

87 DCS at [44].

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January 2018.[88] As such, the plaintiffs can no longer rely on the 29 November 2017 EGM resolutions as a basis for the winding up of Richinn.

50 In response to the allegations of minority oppression as a basis for the winding up of Richinn under s 254(1)(*f*) of the Companies Act, the Lims deny that they have acted in a manner that is oppressive, unfair or prejudicial to Tan and Chong in their position as shareholders of Richinn.[89] The Lims argue that the plaintiffs' sacking as executives of Richinn was justified. Tan had breached his fiduciary duties as a director of Richinn by actions concerning Novatac. As such, his removal was necessary to protect the interests of Richinn and to prevent further loss to the company. The Lims emphasise in their submissions that Tan's interest as a shareholder of Richinn was distinct from his position as an executive employee of the company, and that it is only in the latter capacity that Tan's interest can be said to have been affected.

51 As for Chong, while the Lims accept that he was not involved in or aware of Tan's actions, they point out that Chong later found out about what Tan had done and chose to "align" himself with Tan in the legal proceedings in Suit 1008 and this suit.[90] As such, it is alleged that Chong also breached his fiduciary duties to Richinn. Hence, his exclusion from the management of Richinn was also with good reason and cannot constitute unfairness to him.

52 The Lims further argue that the wrongful actions of Tan and Chong, as outlined by the claims in Suit 1008, have caused loss and damage to Richinn, and also disruption to its operations. It is argued that Tan and Chong have

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88 DCS at [45].

89 DCS at, *inter alia*, [47] and [48].

90 DCS at [119].

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continued to act in breach of the Non-Competition Covenant in the Shareholders' Agreement and Extension Agreement by carrying on the business of laser cutting in Novatac and BME.[91] Given this, it is entirely reasonable for the Lims to exclude them from the management of the business of Richinn. It neither causes unfairness to the plaintiffs, nor does it prejudice them.

53 In response to the plaintiffs' reliance on s 254(1)(*i*) of the Companies Act, which provides for companies to be wound up on just and equitable grounds, the Lims contend that Richinn is not a quasi-partnership. Instead, they argue that there is a straightforward commercial arrangement between the Lims as passive investors in a company on the one hand, and the plaintiffs, who were left to manage and run the company almost entirely on their own, on the other.[92] In this regard, the Lims point to the Shareholders' Agreement as evidence that the parties' arrangement were purely commercial in nature.[93] The Lims' only role in Richinn is said to be the oversight of any payments of moneys out of the company.[94] As such, the Lims submit that the association between the four shareholders was not one that was based on mutual trust and confidence, and hence that Richinn cannot be regarded as a quasi-partnership.

54 It was also submitted by the Lims that, even if Richinn were a quasi-partnership between the four shareholders, this ended in 2014 when Chong was no longer actively involved in the business of Richinn on a day-to-day basis

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91 See note 75 above.

92 DCS from pp 24 to 31.

93 Richard's AEIC at Tab 3.

94 DCS at [63].

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because he moved to Malaysia to work full-time with CJSS and CKMMT.[95]

55 The defendants also argue that the plaintiffs are disentitled from seeking any relief on just and equitable grounds because they have not come to Court with clean hands. In this regard, the Lims' main contention is that any breakdown of the trust and confidence between the parties, assuming that Richinn is a quasi-partnership, was caused by the plaintiffs' own actions. In particular, the Lims refer to Tan having breached his fiduciary duties, and Chong's alleged "acquiescence" to Tan's breaches of his duties.[96]

56 The Lims also refer to the claims raised in Suit 1008, such as Tan and Chong carrying out business in competition with Richinn through Novatac and BME, as well as the alleged diversion of Richinn's customers from Richinn to Novatac. In respect of Tan specifically, he is further accused of colluding with certain ex-employees in January 2018 to hide his use of Novatac and hence conceal his breaches of duties.[97]

The issues

57 I note as a preliminary issue that while the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ("IRDA") came into operation on 30 July 2020, s 526(1)(*f*) of the IRDA makes clear that any application made before 30 July 2020 for the winding up of a company under s 253 of the Companies Act shall proceed under the old (and since-repealed) sections of the Companies Act which were in force immediately before 30 July 2020. Given that the

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95 DCS from [107] to [109]. See also Transcript of 24 March 2020, Page 122, Lines 16 to 26.

96 DCS from [110] to [113].

97 DCS from [139] to [173].

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present application was made in 2018, the old provisions of the Companies Act continue to apply.

58 From the parties' cases, the broad issues I have to decide in determining whether an order should be made for Richinn to be wound up are as outlined below.

59 First, was there a special resolution passed by the shareholders for Richinn to be wound up by the Court, as required by s 254(1)(*a*) of the Companies Act?

60 Second, have the plaintiffs established their case under s 254(1)(*f*) of the Companies Act that the defendants have acted in the affairs of Richinn in their own interests, rather than in the interests of the shareholders as a whole, or in a manner which appears to be unfair or unjust to the plaintiffs?

61 Third, have the plaintiffs persuaded the Court that it would be just and equitable for an order to be made for the winding up of Richinn? For this question, there are other sub-issues that arise. One is whether Richinn can be properly described as a quasi-partnership under which equitable considerations operate. Another is how the relationship between the parties broke down, and whether the real cause of the breakdown was the conduct of the plaintiffs, such that they should be disentitled to relief under s 254(1)(*i*) of the Companies Act.

62 It is to these issues that I now turn.

Section 254(1)(*a*) of the Companies Act

63 The starting point of my analysis on whether the plaintiffs can rely on s 254(1)(*a*) of the Companies Act is the resolution that was passed at the EGM

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on 29 November 2017.[98]

64 The defendants argue that, on its literal reading, the resolution envisages the possibility of the plaintiffs buying out the shares of the Lims, or the Lims buying out the plaintiffs' shares. Thus, the defendants submit that it is wrong to suggest that, since the plaintiffs claim that they had eventually decided that they would not make another offer to buy out the Lims from Richinn, it would follow automatically that Richinn would be wound up. The Lims contend that, if the parties had met and discussed the issue in mid-January 2018, as was contemplated, it might well have turned out that the Lims would make an offer to buy the plaintiffs out from Richinn.

65 I found the defendants' submissions as to the possibility of them making an offer to buy the plaintiffs out to be quite fanciful. Such a claim is unsupported by the evidence as to the conduct of and discussions between the parties leading to the passing of the resolution at the EGM on 29 November 2017. It is also at odds with the Lims' stated position that they wanted to exit the businesses because of Robert's failing health.

66 At the CJSS management meeting on 22 September 2017, the Lims had already declared their intention to exit the business of CJSS and Richinn, giving the reason that Robert's health was poor. What followed from that meeting was that the shareholders of CJSS took active steps to wind down the business.[99] The written resolutions of all the directors and shareholders of CJSS on 24 October 2017 are clear evidence of this. It was agreed that there would be an

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98 Winding Up Affidavit at p 67.

99 See in particular Winding up Affidavit at pp 65 and 66.

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attempt to sell off the company if there were any potential buyers, and that all of the machinery of the company would be sold after 31 January 2018 if no such potential buyers could be found. The Lims and Ho decided to impose a short period for Chong to find a buyer. This can be seen by the email exchange between Ho, Tan, and Chong in the days following the 22 September 2017 meeting, and the specific date of 31 January 2018 stipulated in the resolutions (passed on 24 October 2017) as the deadline for the sale of CJSS or *all* of its machinery.[100]

67 While the Lims valiantly tried in their oral evidence to deny that the intention of the 24 October 2017 resolutions was for CJSS's business to be wound down, and for CJSS to be eventually liquidated after the sale of the machinery, I found their evidence to be quite contrary to the reality of what happened. The undisputed evidence before me was that the employees of CJSS was being laid off.[101] CJSS' LMW licence was also not being renewed.[102] As a matter of commercial logic, given that all the machinery of CJSS would be sold off by 31 January 2018, it is obvious that the shareholders were proceeding towards a voluntary liquidation of CJSS. No alternative explanation was provided. The Lims' insistence, under cross-examination, that CJSS would still carry on its existence, reflects poorly on their credibility as witnesses.

68 In the meantime, Tan and Chong made an offer to purchase the Lims' shares in Richinn.[103] This was not accepted. The Lims did not expressly indicate

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100 Winding up Affidavit at pp 167 to 169.

101 Transcript of 6 March 2020, Page 48, Lines 7 to 9.

102 See note 31 above.

103 Transcript of 3 March 2020, Page 86, Lines 10 to 21.

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what price would be acceptable to them. The Lims also did not propose that they instead would buy the plaintiffs out of Richinn, nor did they make any offer to that effect.[104]

69 It is in this context that the four shareholders then attended the EGM of 29 November 2017 and had their discussion about the future of Richinn. There is really no room for dispute as to what happened at this EGM given that the transcript that was adduced in evidence. A review of that transcript shows quite clearly that the buy-out that was being discussed was predicated on Tan and Chong coming up with an offer price that would be acceptable to the Lims, at the meeting in mid-January 2018 that was planned.[105] There was no indication at all at the EGM that the Lims were interested in buying the plaintiffs' shares in Richinn.[106] The Lims' repeated claims, under cross-examination, that the shareholders had contemplated and discussed a bidding process, where each side could bid for the other side's shares is simply not borne out by the transcript.[107]

70 The transcript also recorded that the shareholders had discussed the liquidation of Richinn, if the price for a buy-out between them was not agreed. That the topic of liquidation was discussed and decided is shown not only by the final resolution that was passed at the EGM, but also in the transcript which captured the discussions on this. Yap, the company's auditor, who was present at the meeting, explained the voluntary liquidation process clearly to the four

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104 Transcript of 6 March 2020, Page 53, Lines 24 to 32.

105 1 DBD at p 109.

106 See for example, 1 DBD pp 134 to 136.

107 Transcript of 6 March 2020, Page 35, Line 28 to Page 36, Line 1.

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shareholders. At the trial, however, both the Lims repeatedly denied that liquidation was discussed at the EGM. When confronted with the transcript, they both denied understanding that the Chinese phrase used by Yap meant "liquidation". Remarkably, both Lims claimed that they thought it meant only that Richinn would sell all its assets, but remain in existence as a shell company.[108] I found this evidence to be quite extraordinary, especially given that both Robert and Richard were experienced and seasoned businessmen. I also found it unbelievable that *both* of them could have come away with this supposed mistaken understanding.

71 Thus, I find that the shareholders of Richinn came to a consensus at the EGM that the plaintiffs would make an offer to buy out the Lims' shares in Richinn when they met in mid-January 2018. Failing any agreement for the buy-out, the shareholders agreed to proceed with the voluntary liquidation of the company. It is in this context that the EGM resolutions of 29 November 2017 should be read.

72 However, while I do not accept the defendants' version of events in relation to the parties' discussions about the future of CJSS and Richinn, and the intent of the EGM resolutions of 29 November 2017, I find that the plaintiffs' reliance on s 254(1)(*a*) of the Companies Act suffers from two insurmountable difficulties.

73 First, the resolution on the winding up of Richinn is predicated on "no agreement [being] reached on the sale and purchase of the shares *[at] the mentioned meeting [in mid-January 2018]*" (emphasis added). While it is true

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108 Transcript of 6 March 2020, Page 61, Lines 1 to 17. See also Transcript of 13 March 2020, Page 23, Lines 19 to 25, and Page 28, Lines 1 to 10.

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that the plaintiffs had already made an offer to acquire the Lims' shares in October that had not been accepted, the terms of the resolution contemplate that the plaintiffs would at least try to make an improved offer to the Lims at the latest during the mid-January 2018 meeting. This is especially given that the four shareholders would have had the benefit of Richinn's management accounts as of 30 November 2017 when they were to meet again in mid-January 2018. In fact, it is specifically mentioned in the first resolution passed at the EGM on 29 November 2017 that the parties would review the management accounts of 30 November 2017 at the mid-January 2018 meeting so as to "finalize [*sic*] on the sale and purchase of the shares between the present members".

74 While I accept the plaintiffs' submission that they could not be expected to meet with the Lims after the Lims had made numerous baseless accusations against them in KSCGP's letter of 8 January 2018, that would not have prevented the plaintiffs from studying the management accounts of Richinn as at 30 November 2017, and thereafter making an offer to buy the Lims out in mid-January 2018. Since this was not even done, I am unable to agree that the condition precedent to the agreement to wind up Richinn was met. As outlined above at [71], the condition precedent outlined in the special resolutions of 29 November 2017 must be seen in the context of what the parties had agreed and were expecting. The plaintiffs' failure to even *put forward* or *propose* a further offer means that the condition precedent was not met.

75 More significantly, and even if I am mistaken as to the condition precedent outlined above from [73] to [74], the final resolution passed at the EGM of 29 November 2017 was that, failing an agreement for a buy-out, "the members agreed to proceed with *members voluntary winding up* of the company" (emphasis added). This is *not* the statutory requirement prescribed

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in s 254(1)(*a*) of the Companies Act, which provides that the Court may wind up a company if there is a special resolution by the members that "it be wound up *by the Court*" (emphasis added). Given this, I find that there is no legal basis for the plaintiffs to rely on s 254(1)(*a*) to wind up Richinn. There was simply no special resolution by the members that the company would be wound up *by the Court*. Rather, it was contemplated that the process that would be carried out would be a voluntary winding up, which would not involve any legal proceedings.

76 Given my findings above, there is no need for me to consider the Lims' further argument that the EGM resolutions of 29 November 2017 were validly rescinded by the resolutions passed by the Lims without Tan and Chong's votes on 29 January 2018.

77 For the reasons above, I find that the plaintiffs have not made out their case that Richinn should be wound up under s 254(1)(*a*) of the Companies Act.

Section 254(1)(*f*) of the Companies Act

78 In relation to the claim that Richinn should be wound up under s 254(1)(*f*) of the Companies Act because the Lims have carried out acts which constitute minority oppression against the plaintiffs, I find that the conduct alleged by the plaintiffs to be oppressive can be divided into three periods:

(a) First, when the Lims gave the pretext of ill health as an excuse to end the business venture with the plaintiffs, despite the Lims' real intentions being to carry on a laser cutting business on their own through Choon Hin Iron Works;

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(b) Second, when the Lims allegedly pressured the plaintiffs to come up with a higher price to buy out the Lims' shares in Richinn; and

(c) Third, the Lims' reaction in January 2018 and thereafter on the discovery of Tan's breaches of duties involving the use of Novatac.

I will deal with these three periods in turn.

79 First, it is not disputed that the Lims had, through Choon Hin Iron Works, acquired a laser cutting machine in mid-September 2017 at the cost of around US$730,000.00.[109] This was close to the date of the CJSS management meeting on 22 September 2017, when the Lims first announced their intention to exit from their business ventures with the plaintiffs in both CJSS and Richinn. The reason given for this intention to exit was that Robert's health was poor, but at trial, both the Lims admitted that this was actually untrue. It was simply used as an excuse. The true reason for the Lims' decision was their unhappiness about Richinn's business performance in recent years.

80 Under cross-examination, the Lims denied that they were planning to end the business venture at Richinn because they wanted to carry out the business of laser cutting on their own. However, I found it quite telling that the new machine, which they had purchased and which was delivered in December 2017, was stored at the premises of AK Lee Pte Ltd, a company owned by a friend of Robert's, even though the machine could have easily been stored at any of Choon Hin's premises.[110] Not only that, the Lims did not inform the plaintiffs about this purchase at all. When considered together, the facts appear

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109 Robert's AEIC at p 7304.

110 Transcript of 6 March 2020, Page 83, Lines 10 to 14.

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to suggest that the Lims wanted to keep the purchase a secret, at least until they had parted ways with the plaintiffs in relation to CJSS and Richinn. After all, Richard admitted in cross-examination that the use of the laser cutting machine by Choon Hin would hurt Richinn's business.[111]

81 I find that the Lims probably wanted to end their working relationship with the plaintiffs in CJSS and Richinn because they wanted to establish a laser cutting business on their own. As such, they gave excuses about Robert's health in order to explain why they wanted to exit the business without attracting otherwise unnecessary animosity. Having said that, I do not think that the Lims' conduct in this regard can amount to minority oppression.

82 The parties had been in business together since 2004. On 1 October 2013, the four shareholders of Richinn signed the Extension Agreement, which extended the Non-Competition Covenant for five years from the date of the Extension Agreement. There was no obligation on the part of the Lims to refrain from carrying on their own laser cutting business after 1 October 2018, if they were willing to sell their shares in Richinn and resign as directors. In September 2017, the Lims raised the idea of terminating their venture early, and this was accepted without protest by the plaintiffs. The fact that the Lims might want to go on to set up a laser cutting business of their own is something they are entitled to do after the end of the business venture with the plaintiffs, and they were not under any obligation to tell the plaintiffs of their future plans. They were also not under any obligation to tell the plaintiffs the real reason for wanting to end their venture. As such, I find that the fact that the Lims might not have given their real reasons for wanting to exit the business cannot be said to give rise to

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111 Transcript of 12 March 2020, Page 63, Lines 12 to 14.

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any claim for minority oppression. Furthermore, while the Lims might have been intending to engage in a laser cutting business to the exclusion of Tan and Chong, no evidence was placed before me which suggested that they had done so prior to the breakdown of the relationship between the parties, and I am not satisfied that the Lims' intentions to commence their own laser cutting business can, without more, warrant a finding of unfairness justifying winding up under s 254(1)(*f*) of the Companies Act.

83 Next, the plaintiffs rely on the fact that, in October and November 2017, the Lims acted in a manner which increased the pressure on the plaintiffs to buy the Lims out of Richinn at a price that was higher than the true value of the Lims' 60% shareholding. The plaintiffs refer to the fact that they had made an offer to buy out the Lims' shares which involved a swap of the plaintiffs' shares in other investments that were jointly owned with the Lims. But, this was not accepted, and the Lims did not make any kind of counter-offer. Instead, the Lims asked Richinn's auditor come up with an indicative valuation of Richinn, and also said that they expected to be bought out at a premium over the value that the auditor determined.[112] This is presumably because the Lims had majority control of Richinn.[113] The plaintiffs' evidence is that they felt pressured to come up with a higher offer for the Lims' shares, which they could not afford.

84 Even taking the plaintiffs' case at its highest in relation to this complaint, I do not find that oppression is made out as a matter of law. The Lims were

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112 Transcript of 6 March 2020, Page 61, Line 29 to Page 62, Line 7. See also Transcript of 13 March 2020, Page 15, Line 27 to Page 17, Line 7, and Page 59, Lines 25 to 32.

113 Transcript of 17 March 2020, Page 9, Line 14 to Page 10, Line 6. See also 7 PBAF p 4662, as well as Transcript of 17 March 2020, Page 34, Line 19 to Page 36, Line 10.

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perfectly entitled to act in their own interests in relation to the sale of their shares. They wanted the best possible price for their shares in Richinn, which was to be expected. To show oppression or establish unfair behaviour within the meaning of s 254(1)(*f*) of the Companies Act, the plaintiffs have to show how the Lims used their position as majority shareholders of Richinn, in October and November 2017, to act in a manner in relation to the affairs of Richinn that was unfair or unjust to the plaintiffs. This has simply not been shown on the facts. For example, there was no misuse of the company's assets or funds, nor was there any denial of information in relation to the company's finances. No specific considerations, equitable or otherwise, were highlighted to me which would operate to place fetters on the particular manner in which the Lims were permitted to sell or deal with their shares. Absent such considerations or legitimate expectations, I did not see why the Lims ought not to be permitted to pursue the best possible price for their shares, in the same way that their counterparties would also be entitled to pursue the lowest possible price. There has been no suggestion of impropriety in the manner in which the pricing was pursued.

85 Third, the plaintiffs rely on the Lims' response on the discovery of Tan's misconduct as a director and fiduciary of Richinn. The Lims' reaction and the steps they caused Richinn to take has been described by the plaintiffs as an overreaction and wholly disproportionate. In doing so, the plaintiffs submit that the Lims have "hijacked" Richinn to serve their own personal interests.[114]

86 In the case of Tan, it is not in any serious dispute that he breached his duties as a director of Richinn when he used Novatac to take orders from

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114 PCS from [135] to [161].

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Richinn's customers, FA Systems and Nutek, near the end of December 2017. After Tan received KSCGP's letter of 8 January 2018 which referred to, *inter alia*, his use of Novatac, he tried to cover his tracks by asking several employees of Richinn to switch the orders placed by Novatac to BME, then an existing customer of Richinn. Tan readily admitted to these facts in his cross-examination.[115] It is obvious to me, from his answers and his demeanour during cross-examination, that Tan acted in this misguided way in December 2017 and January 2018 because he thought that Richinn would be wound up very shortly, and he did not think it was wrong for Novatac to start accepting orders from Richinn's customers since the work was being passed on to Richinn.[116] He candidly admitted that he now realises, with the benefit of legal advice, that he was wrong to think and act in the way that he did. He explained in his oral evidence that that was why he decided to settle the claim in Suit 1008.[117] As indicated earlier, the terms of the settlement were not disclosed to me.

87 When faced with the discovery of Tan's breaches of duties in early January 2018, I find that it was reasonable for the Lims to have appointed solicitors to write to him about his actions, and also to then remove him from his position as an executive employee of Richinn, at the very least until further investigation was done and the full facts uncovered. This was to protect the interests of Richinn from any further potential loss. The fact that the Lims then caused Richinn to commence legal proceedings against Tan was also a reasonable course of action to take, since there is no dispute that Richinn did

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115 Transcript of 20 March 2020, Page 102, Line 1 to Page 104, Line 7. See also Transcript of 20 March 2020, Page 110, Line 4 to Page 111, Line 11.

116 Transcript of 20 March 2020, Page 88, Lines 1 to 16. Transcript of 20 March 2020, Page 104, Lines 12 to 23.

117 Transcript of 24 March 2020, Page 31, Line 25 to Page 32, Line 7.

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suffer some damage due to his breaches of duties.

88 In this regard, the plaintiffs have made submissions to the effect that the claims brought in Suit 1008, as well as those made in KSCGP's letter of 8 January 2018, were extravagant and over-reaching. It is argued that, save for the part of Richinn's claims against Tan for his actions regarding Novatac in December 2017 and January 2018, there was no basis for the extensive claims against Tan, Chong, Novatac, BME, and the ex-employees of Richinn for having engaged in a conspiracy to divert the business of Richinn's customers from February 2018 onwards. Since Suit 1008 has been settled by the parties, I do not propose to say much about the merits of that claim, although I note the following:

(a) Both the Lims admitted during cross-examination that there was little to no basis for their claims that there was diversion of business from Richinn to Novatac or BME from February 2018 onwards.[118]

(b) Several serious claims were levied in Suit 1008 against a number of the ex-employees of Richinn, but these claims lacked specificity. In particular, allegations of conspiracy and dishonest assistance were made, even while the Statement of Claim in Suit 1008 did not clearly particularise the specific wrongs and the details of those wrongs which each of the ex-employees was accused of having committed;[119]

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118 See for example, Transcript of 5 March 2020, Page 53, Lines 18 to 24 and Page 61, Lines 3 to 10. See also Transcript of 13 March 2020, Page 34, Line 20 to Page 35, Line 12.

119 Statement of Claim in Suit 1008 (Amendment No. 2) from [65] to [86].

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(c) The damages which the Lims might have received from Tan arising from Suit 1008, even in a best-case scenario, were acknowledged by the Lims to be disproportionately small as compared to the likely costs of trial;[120]

(d) The customers which Richinn claimed had been wrongfully diverted in Suit 1008 had themselves filed affidavits stating that they were not diverted, but Richinn nonetheless insisted on maintaining that head of claim;[121] and

(e) Tan was accused of having wrongfully terminated Richinn's ISO certification despite having *already* been removed from Richinn's management by the material time.[122]

It suffices for me to observe that the above points notwithstanding, there was still *some* basis for the Lims to cause Richinn to bring a claim against Tan for breach of his duties, given Tan's admissions about how he had used Novatac in late December 2017 and early January 2018. As such, in my judgment, one cannot say that Tan was oppressed in his position as minority shareholder of Richinn by the institution of legal proceedings in Suit 1008 against him.

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120 Transcript of 3 March 2020, Page 80, Lines 23 to 28.

121 See for example, Transcript of 13 March 2020, Page 35, Lines 4 to 12. See also AEICs of, *inter alia*, Ananda Pathinayake and Kunasegaran Vasu.

122 Transcript of 19 March 2020, Page 45, Lines 27 to 30.

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89 However, the position is quite different in the case of Chong. As I have mentioned more than once earlier in this judgment, it is not disputed that Chong was not involved in Tan's actions regarding Novatac, nor was he aware of them when they were taking place. Tan himself described Chong as having been "dumbfounded" upon finding out all that Tan had done in relation to Novatac and BME.[123] The evidence before me was that Chong was informed by Tan about his actions *after* both of them received KSCGP's letter of 8 January 2018, which accused the *both* of them of serious breaches of duties.

90 Even after Chong's removal from his executive positions in Richinn and CJSS by the end of January 2018, there was a complete absence of any evidence before me to show that Chong acted in any manner to cause the diversion of business from Richinn to Novatac or BME. There was also no evidence that he had conspired with any of the ex-employees of Richinn against the company, or that he had induced them to breach their employment contracts with Richinn. As such, I was left to conclude from the evidence before me at the trial that there was absolutely no basis for the Lims to cause Richinn to bring legal proceedings against Chong. It appears clear to me that the Lims had just *assumed* that Chong was involved in *all* of Tan's actions, without a proper inquiry as to whether there was a proper basis for such a belief.

91 Belatedly, with a growing realisation of the difficulties in explaining how they treated Chong, the Lims have tried to shift the focus during the trial and in their closing submissions to Chong's failure to "distance" himself from Tan's actions after being told in January 2018 of what the latter had done in relation to Novatac. Instead, the Lims argue, Chong "aligned" himself with Tan

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123 Transcript of 20 March 2020, Page 114, Lines 1 to 22.

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by joining him as a plaintiff to commence these winding up proceedings.

92 I am unable to accept that Chong's "inaction" when being told about Tan's conduct can amount to a breach of his duties to Richinn. It must be remembered that by then, the Lims had unjustifiably accused Chong of various breaches of duties, including involvement with Novatac. I am left to wonder what Chong should have done in these circumstances given the unsubstantiated allegations against him, other than to defend himself vigorously, which is what he did. There was no need for him to tell the Lims about what Tan had done concerning Novatac because they already knew about those acts.

93 As for the bringing of the winding up proceedings, Chong was fully entitled to start these proceedings. He had, after all, been egregiously and unjustifiably accused of all manner of unlawful and improper actions, and the Lims had used Richinn as a vehicle through which to make those claims. The fact that he was a co-plaintiff with Tan in these winding up proceedings is not a breach of his duties to Richinn, nor does it preclude him from relying on his *own* basis for seeking Richinn's winding up. In this regard, the Lims have not referred to any authorities which support their argument that Chong's conduct amounts to a breach of the duties Chong owed to the company.

94 From my review of the evidence in support of the claim in Suit 1008, I find that there was no basis at all for any claim to have been brought against Chong. There was also no basis for the allegations against him in the letter from KSCGP of 8 January 2018, and for the Lims to have removed him from his executive position in Richinn via the EGM resolutions of 29 January 2018. In the circumstances, I find that the Lims have caused Richinn to act in a manner that is in disregard of Chong's legitimate expectation that he would be part of the management of Richinn. As will be explained in the section of this judgment

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below on the claim to wind up Richinn on a just and equitable basis, both Tan and Chong had a legitimate expectation to be involved in the management of Richinn because that was the basis of their association with the Lims in forming this joint venture. I find that this exclusion was clearly unfair and unjust to Chong because he was innocent of any wrongdoing in relation to Richinn.

95 I note for completeness a point which was not seriously pursued before me. It may be argued that Richinn was entitled to pursue a claim against Chong for breach of the Non-Competition Covenant through his work with BME in the laser cutting business. While this claim was raised in Suit 1008, the Lims' closing submissions in the present proceedings focused instead on Chong's having "aligned" himself with Tan. Be that as it may, I find that Chong's conduct in working for BME from around 11 June 2018 may be justified on the basis that he simply had to work to earn a living after being unfairly excluded from his executive position in Richinn. He did not have any other realistic choice given that working in the laser cutting industry was his entire livelihood, and he had been unfairly "locked-in" to Richinn (see [108] and [109] below). In addition, I am not satisfied that the Lims' overall response, coupled with the entire litany of allegations made, was at all proportionate to any potential breach of the Non-Competition Covenant by Chong.

96 For the above reasons, I find that Chong has established a proper basis to seek a winding up order against Richinn under s 254(1)(*f*) of the Companies Act.

Section 254(1)(*i*) of the Companies Act

97 The legal principles that are applied in determining when a company may be wound up under s 254(1)(*i*) of the Companies Act are fairly well

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established. In *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 ("*Evenstar*") at [31], the Court of Appeal set out the general principles on just and equitable winding up as follows:

> We accept that the notion of unfairness lies at the heart of the 'just and equitable' jurisdiction in s 254(1)(*i*) of the CA and that the section does not allow a member to 'exit at will', as is plain from its express terms. Nor does it apply to a case where the loss of trust and confidence in the other members is self-induced. It cannot be just and equitable to wind up a company just because a minority shareholder feels aggrieved or wishes to exit at will. However, unfairness can arise in different situations and from different kinds of conduct in different circumstances. Cases involving management deadlock or loss of mutual trust and confidence where the 'just and equitable' jurisdiction under s 254(1)(*i*) has been successfully invoked can be re-characterised as cases of unfairness, whether arising from broken promises or disregard for the interests of the minority shareholder. …

98 As observed in *Seah Chee Wan and another v Connectus Group Pte Ltd* [2019] SGHC 228 ("*Connectus*") at [115] and [117], the court's just and equitable jurisdiction cannot be exercised at a whim. Rather, where the company is a "quasi-partnership" and it is shown to the satisfaction of the Court that keeping the company as a going concern would engender unfairness, that will provide a basis for the invocation of the court's just and equitable jurisdiction.

99 In this case, the plaintiffs assert that Richinn is a corporate embodiment of the quasi-partnership between them and the Lims. The plaintiffs go on to argue that the relationship of trust and confidence that underlay the quasi-partnership has been eroded by the series of events that took place from September 2017 up to January 2018, when that relationship was shattered completely.

100 The first issue I have to decide is whether Richinn is indeed a quasi-

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partnership. A quasi-partnership may include one or more of the following elements (*Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 ("*Ebrahimi*") at 379, cited with approval in *Evenstar* at [29] and *Connectus* at [116]):

> (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members) of the shareholders shall participate in the conduct of the business; [and] (iii) restriction upon the transfer of the members' interest in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

I note in addition the observation in *Evenstar* at [30] that "[o]ur courts … have not limited their jurisdiction to superimpose equitable considerations to merely the three circumstances mentioned" in *Ebrahimi*. In the same way, the three circumstances outlined should not be construed as *sine qua non* requirements before a quasi-partnership is found.

101 In this regard, the Lims have strenuously argued that while Richinn is a joint venture between the Lims and the plaintiffs, it is not a quasi-partnership because the facts show the following: (a) the plaintiffs did not have any pre-existing relationship with the Lims prior to coming together to set up the laser cutting business; (b) the shareholders had documented the "rules" governing their working relationship in the form of the Shareholders' Agreement and other agreements signed thereafter; and (c) the Lims were only investors in Richinn, as can be seen from the fact that they played no active role in the business save to check on the business performance at monthly management meetings and on any payments to be made by Richinn.

102 While it is certainly true that the Lims and the plaintiffs did not enjoy any personal relationship before they embarked on this joint venture, I think that

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there has been an over-emphasis on this point by the Lims. While this frequently does feature in many cases where quasi-partnerships are found, it is not a pre-requisite to a finding of quasi-partnership that the quasi-partners must have had a personal relationship prior to the start of their venture. As observed by this Court in *Lim Ah Sia v Tiong Tuan Yeong and others* [2014] 4 SLR 140 at [55], citing *Woon's Corporations Law* (LexisNexis, 2013) with approval, "… whether or not the Initial Shareholders were close personal friends or otherwise is not dispositive in the determination of whether the Company was a quasi-partnership …". This addresses the Lims' first objection to any finding of a quasi-partnership on the facts.

103 What is clear to me from the evidence is that the Lims on the one hand, and the plaintiffs on the other, had agreed to come together for this new venture of setting up a laser cutting business using Richinn. It was agreed that, to start the joint venture, the Lims would provide the initial capital for the acquisition of the necessary machines and provide a premises for the business to be operated. In turn, the plaintiffs would devote all their efforts to the setting up of the laser cutting operations, and would run the business on a day-to-day basis. Richard testified that there was an oral agreement between the four of them that Tan and Chong would manage the company.[124] In my judgment, this was the very core of the understanding and arrangements between the parties. It was the foundation of their willingness to associate with each other for this business enterprise. Yet, this core agreement was not documented in the Shareholders' Agreement or any joint venture agreement between the parties. There was nothing in writing which recorded the parties' respective responsibilities in the setting up of the business. The Shareholders' Agreement dealt primarily with

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124 Transcript of 5 March 2020, Page 8, Lines 5 to 24.

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the allocation of shares to the respective shareholders, and only stipulated general provisions that the parties would "use his best endeavour [*sic*] to promote and develop the business of the company". Thus, while the Shareholders' Agreement is no doubt an important document, it did not fully capture the parties' arrangements for their venture.

104 The best example of this is that neither the Shareholders' Agreement nor Richinn's articles of association provide that Tan and Chong would be given full-time employment at Richinn, or that they would be appointed as *executive* directors who would manage the company. Tan and Chong also never had any written employment contracts with Richinn which set out their salaries and remuneration. However, it was undoubtedly fundamental to the business arrangement between the plaintiffs and the Lims that the plaintiffs would be working full time at Richinn and drawing salaries from their roles there. Otherwise, they would not have agreed to participate in this joint venture. The plaintiffs were, after all, planning to make a living from running a business which they could, at least partially, own, unlike the Lims who had other sources of income from their business interests in the Choon Hin companies. Under cross-examination, the Lims agreed that the fact that Tan and Chong could work and make a living from running Richinn was a fundamental basis of their association.[125]

105 This makes it rather clear to me that, while the Lims on the one hand, and the plaintiffs on the other, did not have any personal relationship prior to them coming together for the joint venture, they were nonetheless prepared to work together on the basis of an unwritten understanding as to each other's

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125 Transcript of 5 March 2020, Page 8, Lines 5 to 10.

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responsibilities in the setting up and operation of the joint venture. While they did not know each other well in 2004, they were prepared to place at least *some* trust in each other, and were confident that each of them would live up to his word. That the four shareholders had associated with each other for this venture on the basis of certain unwritten understandings is a clear indicator that Richinn was operated as a quasi-partnership from the time the laser cutting business was set up. Put another way, both sides had legitimate expectations of each other in relation to this venture. For the plaintiffs, they had a legitimate expectation to be allowed to work at and manage Richinn.

106 The evidence of the manner in which Richinn's business was run also indicates to me that this was not one where the Lims were merely "sleeping" investors who played little or no role in Richinn's operations. While it is certainly true that it was Tan and Chong who ran Richinn's day-to-day business together, which was in accordance with the understanding underlying the joint venture arrangements, the undisputed evidence is that they could *not* authorise any payments from Richinn's funds, even for day-to-day operations, without getting the concurrence of at least one of the Lims.[126] The Lims were required cheque signatories, and they also held the bank tokens for the electronic operation of Richinn's bank accounts. This in itself already indicates that the Lims did play a significant role in the business of Richinn, in that they had to approve all payments by the company. Robert himself admitted, under cross-examination, that because of their control over any payments, the Lims had a "direct say" in the running of the company.[127]

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126 Transcript of 5 March 2020, Page 12, Line 27 to Page 13, Line 7.

127 Transcript of 5 March 2020, Page 13, Lines 3 to 7.

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107 It is also common ground that Richinn shared its administrative staff with the Choon Hin group of companies, which was controlled by the Lims. The Lims were also updated monthly on Richinn's business performance.[128] In addition, Tan gave evidence that he would consult with the Lims on business matters on occasion, given that they were older and more experienced businessmen. Robert confirmed this in his oral evidence.[129] Given all this, while it was Tan and Chong who managed the business and dealt with the customers on a daily basis, I accept their submission that Richinn's business was actually a collaborative joint effort between the Lims and the plaintiffs. It cannot be said that the Lims took no part in the business of Richinn at all. While not determinative of the question, this conclusion reinforced my view that the shareholders of Richinn had established a quasi-partnership in 2004, where they each had some distinct role to play in the joint venture. Clearly, it was not the case that the Lims were simply "sleeping" investors in the company, where the plaintiffs simply worked under and reported to the Lims. Indeed, both the Lims admitted, under cross-examination, that they regarded Tan and Chong as their business partners.[130]

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128 Transcript of 11 March 2020, Page 58, Lines 8 to 12.

129 Transcript of 5 March 2020, Page 19, Lines 11 to 13.

130 Transcript of 5 March 2020, Page 26, Lines 3 to 4. See also Transcript of 12 March 2020, Page 20, Lines 22 and 24, and Page 31 Lines 30 and 31.

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108 The next consideration is whether the plaintiffs can be said to be "locked in" to Richinn in the sense that they could not simply sell their stake in the company and leave. While there is no express restriction on share transfer in either Richinn's articles or the Shareholders' Agreement, the analysis of this issue requires a closer examination of the contractual relationship between the parties.

109 In my view, it is highly significant that the Shareholders' Agreement contains the Non-Competition Covenant at cl 4.2. This provides that none of the shareholders of Richinn are permitted to engage in a business in competition with Richinn, *so long as he remains either a shareholder or director of Richinn*. Neither the Lims nor the plaintiffs have taken the position or argued in these proceedings that the Non-Competition Covenant is not valid and effective. On the basis that the Non-Competition Covenant is enforceable, the plaintiffs are effectively bound to Richinn unless they are prepared to give up their shares at a price to be determined by the Lims or to work in an entirely different line of business which they have no experience in whatsoever. This is because Richinn is a private limited company, and the plaintiffs only hold a minority stake of 40%. The commercial reality of the situation is that it would be practically impossible for the plaintiffs to find potential buyers for their minority stake, other than the Lims or third parties with whom the Lims have agreed to work. Put bluntly, the plaintiffs are at the mercy of the Lims insofar as the disposal of their shares in Richinn is concerned. More significantly, the existence of the Non-Competition Covenant prevents the plaintiffs from working in any competitive business, unless they sell their shares in Richinn, for which, realistically, the only potential buyers would be the Lims. As such, the plaintiffs would be effectively trapped in Richinn unless they sold their shares to the Lims at a price which the latter could effectively dictate.

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110 The Court of Appeal expressly observed in *Evenstar* ([100] *supra*) at [36] that:

> The inequity justifying a winding-up order in such situations does not lie in the oppressive or wrongful conduct of the other shareholder in the *management of the company or the conduct of its affairs*, but in the opposing shareholder's insistence on locking the applicant shareholder in the company *despite the stalemate they have reached concerning the conduct of the company's business.*
>
> [Emphasis in original]

What is particularly instructive from this extract of *Evenstar* is that even in a situation where there is merely deadlock and where no oppressive acts have been attributed to either side, it would *still* be inequitable to "lock" a shareholder into the company. This applies *a fortiori* in a situation where a minority shareholder, in particular on the facts of this case, Chong, *has* suffered some form of oppression or unfairness by virtue of the other party's overt acts.

111 In my view, the Court should inquire into whether a minority shareholder is in fact "locked in" as a matter of *substance*, instead of simply checking to see if there is an express clause limiting the sale of shares. Given the drastic consequences that would follow if the parties were to fall out, in that the plaintiffs on the instant facts would have no realistic opportunity to work freely in a competitive business elsewhere unless they effectively surrendered their shares to the Lims, I find that the plaintiffs were *de facto* "locked in" at Richinn. In the event of a falling-out with the Lims, the plaintiffs would not be able to simply uproot and start their own laser cutting business elsewhere without giving up their shares in Richinn or running the risk of being sued under the Non-Competition Covenant. The Lims' insistence on the plaintiffs being "locked in" and continuing as shareholders of Richinn even after they had been sacked from their management of the company (and denied the salaries which

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accompanied those positions) needs to be seen in light of the above-outlined commercial realities.

112 Bearing in mind all the considerations above, I find that Richinn is indeed a quasi-partnership between the plaintiffs and the Lims. This was so from the point when Richinn's laser cutting business was established in 2004 and the plaintiffs became shareholders in Richinn.

113 Next, the Lims argue that, even if a quasi-partnership existed at the inception of the laser cutting business, any such quasi-partnership would have come to an end by virtue of the parties' conduct in 2014, when Chong went to Malaysia to work full-time with CJSS and CKMMT. This point can be disposed of quickly. The short answer is that the quasi-partners had agreed that Chong be given the task of running the Malaysian business operations.[131] There was no indication or evidence that they intended to fundamentally alter their underlying relationship such that the quasi-partnership was terminated. In fact, there was no evidence from either of the Lims that there was *any* change in their working relationship other than the fact that Chong was based in Malaysia to take care of their shared interests. There is really no doubt in my mind that the four quasi-partners contemplated that, even though Chong was working with CJSS and CKMMT, he still concurrently held management powers as an executive director in Richinn, albeit without a requirement for him to manage Richinn on a day-to-day basis. This is in fact shown by the shareholders' resolutions passed by the Lims on 29 January 2018, where they regarded Chong as still having an executive position in Richinn as at that time, and resolved to

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131 See for example, Transcript of 5 March 2020, Page 26, Lines 17 to 23 and Transcript of 12 March 2020, Page 69, Lines 15 to 16.

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remove all his management powers *in Richinn* and remove him as an executive employee.[132] Thus, the Lims themselves have acknowledged that there was no change in Chong's executive position in Richinn even though he was then based in Malaysia. I therefore reject the submission that the quasi-partnership ended in 2015 by virtue of Chong's working in Malaysia.

114 Given my finding that Richinn operated as a quasi-partnership from the time it started its laser cutting business, the question that then follows is whether the plaintiffs have established that the relationship between them and the Lims has broken down such that it is fair for Richinn to be wound up. In this respect, just like in the case of my analysis under s 254(1)(*f*) of the Companies Act, the conduct of the shareholders leading up to the time the originating summons for winding up was filed must be examined.

115 There is no doubt that, by the time the time the winding up application was filed, the shareholders' relationship had deteriorated beyond repair. The question is what caused this. The Lims argue that that the breakdown of the relationship was caused by Tan and Chong's breaches of their duties to Richinn, in particular, because of the use of Novatac in December 2017 to place orders with Richinn for items that were destined for FA Systems and Nutek. As such, since the breakdown was self-induced, it is contended that the plaintiffs cannot rely on it as a basis to seek a just and equitable winding up. On the other hand, the plaintiffs argue that the working relationship between themselves and the Lims was already coming to an end by that time because the Lims had declared their intention to exit the businesses, and the final nail in the coffin was caused by the Lims making unfounded allegations against the plaintiffs in January 2018

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132 Winding up Affidavit at p 80.

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and then removing them from their executive positions in Richinn.

116 On 22 September 2017, the Lims declared their intention to exit from the joint venture with the plaintiffs in CJSS and Richinn. There was no prior consultation or discussion with the plaintiffs about this intention to end the business venture.[133] The plaintiffs had really no choice but to accept the Lims' decision. In the case of CJSS, I have already found that the six shareholders then decided to sell off the machinery, let go of the employees, and wind down its business, if there were no buyers for the company.[134] This is evidenced by the resolutions for CJSS passed on 24 October 2017, and the steps taken thereafter.[135]

117 In the case of Richinn, the events that transpired in the months of October and November 2017 show quite clearly that the expectation was that the plaintiffs would try to buy the Lims' shares in Richinn, if they could afford to do so. This is shown by the fact that (a) it was the Lims who wanted to exit the business, ostensibly for health reasons; (b) the plaintiffs then made an offer to acquire the Lims' shares in Richinn, which was not accepted; and (c) the Lims did not make any kind of counter-proposal to buy the plaintiffs' shares instead. This conclusion is buttressed by the fact the Lims then instructed Yap, Richinn's auditor, to come up with a valuation of Richinn,[136] and indicated to the plaintiffs that they expected to be paid a premium for their shares, which represented a majority stake in Richinn.[137] The transcript of the recording of the discussions

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133 Transcript of 12 March 2020, Page 51, Lines 9 to 11, and Page 53, Lines 5 to 14.

134 See [19] above.

135 Richard's AEIC from [87] to [88].

136 Transcript of 12 March 2020, Page 76, Lines 26 to 31.

137 7 PBAF 4662. See also Transcript of 13 March 2020, Page 16, Lines 15 to 18.

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at the EGM of 29 November 2017 further confirms that it was the plaintiffs who were expected to come up with a price acceptable to the Lims when parties were due to meet again in mid-January 2018.[138]

118 Hence, for all intents and purposes, the working relationship between the plaintiffs and the Lims was headed to an end, either by way of a buy-out or a voluntary winding up, as is clear from the resolution passed by the Richinn shareholders on 29 November 2017.[139] In my judgment, this impending end was brought about by the Lims' stated desire to exit the business and the agreement between the parties to voluntarily wind up Richinn *if* the plaintiffs could not come up with a price acceptable to the Lims for the latter's shares.

119 Then, in December 2017 and early January 2018, as I have already found, Tan breached his duties as a director of Richinn by causing it to deal with Novatac.[140] Chong was not party to or involved in these actions, and cannot be said to be in breach of his duties to Richinn. In my view, the pivotal point came by way of KSCGP's letter of 8 January 2018.[141] This missive from the Lims' lawyers levelled a series of grave allegations against both Tan and Chong. As is clear from the evidence at trial, only the allegation against Tan regarding the use of Novatac had any basis. The other allegations, which spanned from alleged conflicts of interest by Tan and Chong involving other companies, to claims that the plaintiffs had denied the Lims access to Richinn's financial

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138 1 DBOD from pp 103 to 158, and in particular pp 109, 122, 128, 132, 133, 137, and 138.

139 Winding up Affidavit at p 67.

140 See [86] and [87] above.

141 Winding up Affidavit at pp 72 and 73.

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information, were unjustified and unwarranted.[142] KSCGP's letter also ended with a threat to remove the plaintiffs as directors of Richinn, which was followed up with a notice of an EGM seeking to carry out that threat.[143] Eventually, while Tan and Chong were not removed as directors, they were relieved of their management powers and executive positions in Richinn.[144]

120 In my judgment, the actions taken by the Lims against Tan and Chong in January 2018 were the proximate cause of the breakdown of their relationship. While it is true that Tan had breached his duties, I find that the Lims had gone overboard in their allegations against him by making a host of other unfounded allegations. There was also no basis at all for the allegations against Chong. In fact, one cannot help but be driven to the conclusion that the Lims were trying to capitalise on Tan's acts of folly concerning Novatac to place pressure on both Tan and Chong in the hope that they would come up with a higher price for the Lims' shares. That explains why the Lims wanted to go ahead with the mid-January 2018 meeting to discuss the sale and purchase of their shares despite their expressed outrage with the actions of the plaintiffs.[145] According to the Lims, they were still prepared to have an amicable discussion about a buy-out of their shares in Richinn.[146] However, while Robert testified, under cross-examination, that he could still sit down to talk with the plaintiffs about a possible buy-out,[147] he agreed that to expect the four shareholders to

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142 See, for example, Transcript of 10 March 2020, Page 31, Line 25 to Page 33, Line 23.

143 Winding up Affidavit at p 74.

144 Winding up Affidavit at pp 126 and 127.

145 Transcript of 10 March 2020, Page 51, Lines 21 to 28.

146 See for example, Transcript of 10 March 2020, Page 48, Lines 21 to 30.

147 Transcript of 3 March 2020, Page 93, Lines 12 to 18, and Page 90, Lines 18 to 23.

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work together after the lawyers' letters exchanged in January 2018 and the plaintiffs' removal as executives from Richinn would be another issue altogether.[148] I find this to be a candid admission that things had fallen apart by the end of January and what was done could not be undone. I was therefore quite surprised that, in these proceedings, the Lims seem to have adopted the diametrically opposite position – they appear to want Richinn to continue with the plaintiffs and themselves remaining as shareholders.[149]

121 As already mentioned, what is more likely to be the truth is that the Lims were hoping to apply pressure on the plaintiffs at the meeting in mid-January 2018 with threats of a lawsuit in order to extract a better price. When that did not materialise because the plaintiffs decided not to attend the meeting, the Lims then had a change of plan. The Lims passed the shareholders' resolutions on 29 January 2018 to rescind the 29 November 2017 EGM resolutions, and decided that they would exclude Tan and Chong from the operations of Richinn.[150] It appears to me that the Lims then decided that they would try *on their own* to continue with Richinn's business.

122 In my view, it is clear that that the course of action taken by the Lims from January 2018 onwards completely destroyed what was left of the working relationship between them and the plaintiffs, such that it is now irretrievable. On their own case, the Lims regarded the relationship as one where, even in early January 2018 after their discovery of Tan's breaches, they could still discuss with the plaintiffs the possibility of a friendly resolution of their

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148 Transcript of 3 March 2020, Page 95, Lines 18 to 24.

149 Transcript of 13 March 2020, Page 57, Lines 5 to 9. See also Transcript of 3 March 2020, Page 96, Lines 17 to 23. See in addition DCS at [237] and DRS at [84] and [85].

150 Winding up Affidavit at pp 126 and 127.

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business venture in Richinn.[151] This shows that the Lims did not view Tan's breaches relating to Novatac as ones which made it impossible for them to continue their talks with the plaintiffs. Instead, it is quite clear that it was the overreaching and mostly unfounded allegations against the plaintiffs in KSCGP's letter of 8 January which had created an atmosphere such that it was no longer reasonably possible for the plaintiffs to engage in any good faith discussions with the Lims about a buy-out.[152] Under cross-examination, Richard admitted that, even if the meeting had gone ahead in mid-January as originally envisaged, he would not have expected that there would be any meaningful discussion with the plaintiffs about the buy-out.[153] The position after the removal of the plaintiffs as executives would have been, *a fortiori*, worse.

123 In this regard, the Privy Council's decision in *Vujnovich and another v Vujnovich* [1990] BCLC 227 ("*Vujnovich*") is rather instructive. In *Vujnovich*, the parties were three brothers who owned companies in approximately equal shares. For reasons which the Privy Council did not specifically canvass, the original intention and purpose of the operation of the business as a quasi-partnership between the three brothers ceased, and a management deadlock arose. The appellants in that case sought to argue that the respondents were not coming to Court with "clean hands" in seeking the Court's exercise of its just and equitable jurisdiction. At 231 and 232, Lord Oliver observed that:

> What counsel for the appellants seeks to do is to extract from this the reference to coming to court with clean hands as if it stood alone and to suggest that, since both Henry J and the Court of Appeal were of the view that the respondent had misconducted himself in relation to the diversion of business

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151 Transcript of 3 March 2020, Page 93, Lines 12 to 18, and Page 90, Lines 18 to 23.

152 See for instance, [119] and [120] above.

153 Transcript of 13 March 2020, Page 52, Lines 1 to 4.

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> away from the company, that should have concluded the case against the making of a winding-up order. The same submission was made to the Court of Appeal who rightly rejected it. It is quite clear that Lord Cross was considering the position in which the petitioner's misconduct (and thus the relative uncleanliness of his hands) *was causative of the breakdown in confidence on which the petition was based*. On no analysis of the facts could that possibly apply here. The transaction concerned did not take place until 1986, long after all confidence between the parties had irretrievably gone, and it did not come to light until the trial. …
>
> [Emphasis added]

124 On the facts of the instant case, I find that while the working relationship between the Lims and the plaintiffs was strained by the end of December 2017 because of the Lims' stated desire to exit the business and Tan's breaches of his duties as a director, the shareholders still were able to work together and reach shared decisions. In particular, the shareholders still envisaged meeting for talks to discuss a potential buy-out and orderly exit for the Lims from the business, and, failing that, a members' voluntary winding up of Richinn. There was thus still a capacity for the shareholders to work together in the interests of the company, or at least discuss the future of the company together. This came to an end in January 2018 following KSCGP's letter of 8 January 2018, the Lims' threatened removal of Tan and Chong as directors, and the eventual removal of Tan and Chong from their management roles. What was causative of the breakdown of the working relationship in January 2018, therefore, was the action taken by the Lims. As such, I disagree with the Lims that the plaintiffs are attempting to rely on a self-induced breakdown of the relationship between the parties.

125 I note that the transactions alleged to give rise to unclean hands in *Vujnovich* post-dated the breakdown of mutual trust and confidence between the parties, whereas the same cannot be said on the instant facts. I do not see

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this as detracting from the analysis above, which centres on the Privy Council's reasoning that the petitioner's misconduct (and unclean hands) must have been *causative* of the breakdown and loss of confidence. On the facts, it cannot be said that Tan's breaches of duty, or indeed any of the wrongs the plaintiffs are alleged to have committed, were *causative* of the breakdown in mutual trust and confidence complained of, even if it was the case that Tan's conduct had precipitated the chain of events which led to the dispute.

126 In *Lau Shit Har and another v Lau Yu Man* [2008] 4 SLR(R) 348 at [32] and [33], the Court of Appeal emphasised that for an applicant's unclean hands to disentitle him from the winding up relief sought, the misconduct leading to the said unclean hands had to have been *causative* of the circumstances giving rise to the Court's discretion to wind up the company. Citing the Hong Kong High Court's decision *In the Matter of the Companies Ordinance, Cap 32 and in the Matter of Power Point Engineering Limited* [2000] HKCFI 800; [2000] HKCU 501 ("*Power Point Engineering*"), the Court of Appeal expressly approved the following observation of the Hong Kong court at [46] of *Power Point Engineering*:

> [W]here the relevant misconduct was causative of the circumstances giving rise to the discretion, *prima facie*, the absence of clean hands would disentitle the petitioners to the relief sought.

127 The court in *Power Point Engineering* observed that the suspension of the company's business in that case was *solely* attributable to the petitioners' breach of fiduciary duty, in that the petitioners had acted in concert with a third party to oust the company from projects. The petitioners were thus *solely* and *directly* causative of the circumstances giving rise to winding up, and therefore their unclean hands, at least *prima facie*, disentitled them from the relief sought. This is a far cry from the instant facts, where I have found that the actions of the

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Lims in January 2018, starting with the KSCGP letter of 8 January 2018 and ending with the removal of the plaintiffs from their executive positions, caused the final breakdown in relations. Further, even before that, the Lims' expressed desire in September 2017 to exit from the business of Richinn can be seen as significantly contributing to the end of the business relationship between them and the plaintiffs.

128 My view in this regard is buttressed by the view of Judith Prakash J (as she then was) in *Re Lee Tung Co (Pte) Ltd and other matters* [2008] 1 SLR(R) 800 ("*Re Lee Tung*"). That case concerned three brothers who had fallen out. They were roughly equal shareholders in the family companies. The eldest brother, Chi, had applied to wind up the family companies. His brothers resisted the application for winding up on the basis that, *inter alia*, Chi had "unclean hands" and that the loss of trust and confidence was self-induced (see *Re Lee Tung* at [38]). At [39] and [40], Prakash J observed that:

> 39 It is clear on the authorities that if Chi was the cause of the deadlock, then he should not be allowed to obtain a winding-up order. It is only Ching who blames Chi for the deadlock and he has as many grievances with Chuen as he does with Chi. Chuen himself accepted Chi's assertion that 'no one brother can be singled out as being the main cause or contributor to the strife and discord [among the brothers]. Each of [them] must bear part of the blame for [their] collective predicament'. …
>
> 40 … There is enough evidence in this case alone (not to mention the evidence in the oppression suits) to support a finding that all the brothers have contributed to the poor state of their relations with each other. In these circumstances, it would be wrong to deprive Chi of the remedy which he seeks simply because he was also one of the causes of the current state of affairs.

In my judgment, even if one were to accept that Tan was "also one of the causes of the current state of affairs", that does not *ipso facto* preclude him from seeking the winding up of Richinn. It certainly does not impinge on Chong's

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ability to do so.

129 I note for completeness that the appeal against Prakash J's decision in *Re Lee Tung* was dismissed, and that the Court of Appeal in fact expressly agreed with Prakash J at [43] of the judgment for the appeal (reported as *Chow Kok Chuen v Chow Kok Chi and another* [2008] 4 SLR(R) 362) that:

> Nor is the present case a situation where one director has been responsible for the others' loss of confidence in him and thus cannot rely on his own acts to exit the company at will. … Having played an equal part in contributing to the acrimony and breakdown in relations, Chuen cannot now insist on his strict legal rights in refusing to allow his siblings to liquidate their assets. Here, it would be unfair to let Chuen hold his siblings to ransom by virtue of his more than 25% shareholding in the Companies.

130 Given the complete breakdown of the relationship between the parties, the next question is whether it would be unfair to the plaintiffs if a winding order is not made in respect of Richinn. In my judgment, there would be clear unfairness and injustice if I were to decline to order that Richinn be wound up. As already mentioned, the Non-Competition Covenant in the Shareholders' Agreement prohibits any shareholder from working in any business that is competitive with Richinn's. Tan and Chong have been working in the laser cutting business for most of their working lives. From the evidence, that is the only business which they know.[154] They make a living for themselves from the laser cutting business. They do not own a group of companies, with diversified businesses, like the Lims, who own the Choon Hin group.[155] It would be manifestly unjust to the plaintiffs if they cannot work freely, without fear that they might be sued by the Lims for beaching the Non-Competition Covenant,

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154 Winding up Affidavit from [10] to [15].

155 Richard's AEIC at [7], Robert's AEIC at [7], Winding up Affidavit at [5].

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now that the Lims have chosen to exclude both of them from working and earning a living at Richinn.

131 While it is certainly true that Tan breached his duties to Richinn in his use of Novatac, that suit against him (Suit 1008) has now been settled. I can only presume that the terms of the settlement would have compromised the claims that Richinn had against him in a manner that was acceptable to both Richinn and Tan. That being the case, I am of the view that limited weight, if any, should be placed on the potential claims against Tan in my assessment of whether there would be unfairness to Tan if Richinn were not wound up.

132 In addition, insofar as the Lims are relying on conduct of the plaintiffs *after* their removal from the executive positions in Richinn, some of which has been raised in Suit 1008, I do not think that such conduct disentitles the plaintiffs from seeking relief. After being excluded from Richinn as a place where they could work and earn a living, I find that the plaintiffs had little choice but to seek alternative employment elsewhere. Giving their experience in laser cutting, it is no surprise that they ended up working in the same business with BME. Such conduct, by any stretch, cannot be described as being so inequitable that it would bar the plaintiffs from seeking relief under s 254(1)(*i*) of the Companies Act.

133 In my judgment, since the Lims and the plaintiffs have now effectively gone their separate ways, it would be unfair to the plaintiffs if they remain "locked in" as minority shareholders of Richinn.[156] They currently derive no benefits whatsoever from Richinn, whether in terms of salaries or dividends.

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156 See [0] above.

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On the contrary, they now carry on their work in laser cutting under the cloud of potential suits that might be brought at any time by the Lims for breach of the Non-Competition Covenant in the Shareholders' Agreement. This continuing risk is primarily due to the fact that the plaintiffs remain as shareholders of Richinn, a situation from which they are unable to extricate themselves.

134 Furthermore, Richinn is now quite a different creature from when the quasi-partnership was first established in 2004. Tan and Chong are no longer involved in the business of the Richinn. Now, Richinn is being operated by the Lims and their brother-in-law, Ho.[157] The Lims have also appointed Ho as an additional director of Richinn.[158] This appointment of Ho as a director was never contemplated when the plaintiffs and the Lims first set up the laser cutting business for Richinn in 2004, and is contrary to the legitimate expectations of the four shareholders that it was only them who would be involved in Richinn's business.

135 My conclusion on the unfairness of the present situation is confirmed by the evidence given by Robert when he was cross-examined on the commercial thinking behind the Non-Competition Covenant.[159] He said that it was to ensure that that the shareholders of Richinn focused their energies entirely on the business of Richinn.[160] But, Robert also added that:[161]

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157 Richard's AEIC at [122], [137], and [138].

158 Richard's AEIC at Tab 353.

159 Transcript of 5 March 2020, Page 20, Lines 6 to 11,

160 Transcript of 5 March 2020, Page 19, Line 20 to Page 20, Line 5.

161 Transcript of 5 March 2020, Page 20, Lines 6 to 11,

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> If they really want to start another business, then they should tell us. I don't think that it would be any issue. We can still discuss. If we force them to stay or we try to pull them back, I think it is not good that way. We should just end this amicably.

In other words, Robert *himself* took the view that if a day should come where a shareholder wanted to leave to start a competing business, there should be an amicable parting of ways, since there is no point in forcing unwilling parties to work together. In my view, that day has arrived, and parties should not be forced to remain together as shareholders of Richinn.

136 In these circumstances, I find that the conditions under s 254(1)(*i*) of the Companies Act are satisfied, and that it would be just and equitable for the Court to order the winding up of Richinn.

Conclusion

137 As I have set out above, there is proper basis under ss 254(1)(*f*) and254(1)(*i*) of the Companies Act to order that Richinn be wound up. Nonetheless, since the Lims have repeatedly expressed the sentiment in their oral evidence and closing submissions that they *now* wish to keep Richinn in existence because it has value, I am prepared to make an order under s 254(2A) of the Companies Act for the plaintiffs' shares to be purchased by the Lims, if they wish to purchase those shares.[162] Such an order for a buy-out will be on terms that the plaintiffs' 40% stake in Richinn be bought out at fair value, without any discount, and for the shares in the company to be valued as at the date of 19 January 2018, by an independent valuer agreed by the parties. Choosing that date would be fair given that that was the intended last date on

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[162] DCS at [237], DRS at [84] and [85]. See also Transcript of 6 March 2020, Page 62, Lines 10 to 24.

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which an agreement could have been reached for the sale and purchase of shares between the shareholders before Richinn would have proceeded to a members' voluntary winding up. It would not be fair to order the valuation date to be the date of the commencement of the trial, as contended by the Lims, or the date of this judgment or any buy-out order to be made, because the plaintiffs have been excluded from the management of the Richinn since 29 January 2018.

138 Of course, I will only make an order under s 254(2A) of the Companies Act if the Lims are interested in buying out the plaintiffs' shares in Richinn on the abovementioned terms. In that regard, the Lims will have ten days from the date of this judgment to let me know their decision by writing to the Court. If the Lims are not interested in acquiring the plaintiffs' shares on the terms as set out above, I will grant an order for the winding up of Richinn. In that eventuality, I will hear parties as to their nominations for the choice of the liquidator.

139 I will deal with the question of costs separately.

Ang Cheng Hock
Judge

Wong Siew Hong and Sanjay S Kumar (Eldan Law LLP) for the plaintiffs;
Lee Mun Kong Lawrence (Aptus Law Corporation) for the defendants.

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