IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(A) 9

Appellate Division / Civil Appeal No 72 of 2024

Between

(1) Thia Tiong Siong
(2) Han Jieling
(3) Teo Ban Lim
(4) Ting Cher Lan

… *Appellants*

And

POP Holdings Pte Ltd

… *Respondent*

In the matter of Suit 27 of 2022

Between

POP Holdings Pte Ltd

… *Plaintiff*

And

(1) Ting Cher Lan
(2) Eer Kin Pring
(3) Thia Tiong Siong
(4) Teo Ban Lim
(5) Han Jieling

… *Defendants*

Appellate Division / Civil Appeal No 73 of 2024

Between

H8 Holdings Pte Ltd

… *Appellant*

And

(1) Lee Boon Leng
(2) Leong Poh Choo
(3) RIC Dormitory (SG) Pte Ltd
(4) POP Holdings Pte Ltd

… *Respondents*

In the matter of Suit No 1006 of 2021

Between

H8 Holdings Pte Ltd

… *Plaintiff*

And

(1) RIC Dormitory (SG) Pte Ltd
(2) POP Holdings Pte Ltd
(3) Lee Boon Leng
(4) Leong Poh Choo

… *Defendants*

GROUNDS OF DECISION

[Contract — Misrepresentation — Damages]
[Companies — Oppression — Minority Shareholders — Valuation of shares]

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND FACTS **3**

EVENTS LEADING TO H8 AND POP'S ACQUISITION OF THE COMPANY 3

THE ACTS THAT ALLEGEDLY CONSTITUTED OPPRESSIVE CONDUCT AGAINST H8 4

PROCEDURAL HISTORY **6**

DECISION BELOW **8**

POP'S DECEIT CLAIM 8

Liability for deceit *8*

The award of damages *12*

H8'S OPPRESSION CLAIM 14

PARTIES' CASES ON APPEAL **16**

THE APPELLANTS' CASE 16

Deceit (AD 72) *16*

Oppression (AD 73) *18*

THE RESPONDENTS' CASE 19

ISSUES **19**

ISSUE 1: LIABILITY FOR DECEIT **19**

ISSUE 2: THE AWARD OF $3.5M IN DAMAGES **21**

THE TRANSACTION DATE RULE 21

POP HAD NOT PROVED THE QUANTUM OF ITS LOSS 29

ISSUE 3: THE OPPRESSIVE CONDUCT 32

ISSUE 4: THE TERMS OF THE BUYOUT ORDER.....39

THE LAW ON THE APPLICATION OF MINORITY DISCOUNTS 39

MINORITY DISCOUNTS WERE NOT APPROPRIATE IN THE PRESENT CASE 41

CONCLUSION.....45

Thia Tiong Siong and others
v
POP Holdings Pte Ltd and another appeal

[2025] SGHC(A) 9

Appellate Division of the High Court — Civil Appeals Nos 72 and 73 of 2024
Woo Bih Li JAD, Kannan Ramesh JAD and Debbie Ong Siew Ling JAD
13 May 2025

4 July 2025

Woo Bih Li JAD (delivering the grounds of decision of the court):

Introduction

1 The appeals in AD/CA 72/2024 ("AD 72") and AD/CA 73/2024 ("AD 73") arose against the backdrop of disputes between two opposing factions of shareholders. On one side was Lee Boon Leng ("Jason") and Leong Poh Choo ("Annie"), who were the shareholders of POP Holdings Pte Ltd ("POP"). The other side comprised Thia Tiong Siong ("William"), Han Jieling ("Jieling") and Teo Ban Lim ("Terrence"), who were the shareholders of H8 Holdings Pte Ltd ("H8"). POP and H8 were respectively the majority and minority shareholders of RIC Dormitory (SG) Pte Ltd (the "Company"), which was a Singapore joint venture company in the business of running foreign worker dormitories. POP and H8 had acquired the Company from its former owners, Eer Kin Pring ("Eer") and Ting Cher Lan ("Ting").

2 In HC/S 1006/2021 ("S 1006") filed on 8 December 2021, H8 commenced a claim in minority oppression against POP, Jason and Annie over several acts of oppressive conduct. The judge below (the "Judge") found that two acts of oppression were made out, namely the dilution of H8's shareholding and an excessive increase in Jason's director's fees and remuneration. The Judge ordered the reversal of these transactions and also ordered POP to buy H8's shares in the Company, at a price to be determined by an independent valuer taking into account a discount for lack of control ("DLOC"). The question of a discount for lack of marketability ("DLOM") was left to be determined by the valuer.

3 In HC/S 27/2022 ("S 27") filed on 16 January 2022, POP commenced claims in deceit and unlawful means conspiracy against William, Jieling, Terrence, Eer and Ting. Its claim centred around an alleged fraudulent misrepresentation by the five defendants concerning the legally approved capacity of one of the foreign worker dormitories run by the Company at 34 Kaki Bukit Place ("34KB") which purportedly induced POP to purchase shares in the Company. The Judge allowed the deceit claim and awarded POP $3.5m in damages.

4 The Judge's decision and reasoning are set out in *H8 Holdings Pte Ltd v RIC Dormitory (SG) Pte Ltd and others and another suit* [2024] SGHC 177 (the "Judgment").

5 Save for Eer, the defendants in S 27 appealed, in AD 72, against the Judge's finding of deceit and the award of $3.5m in damages. AD 73 is H8's appeal against some of the Judge's findings and orders in relation to its claim for minority oppression. For the purposes of these grounds, we will simply refer

to the appellants and respondents in both appeals as the "Appellants" and the "Respondents" respectively.

6 At the close of the hearing before us, we allowed the appeal in AD 72 only in respect of the quantum of damages awarded by the Judge. As for AD 73, we allowed the appeal only in respect of the Judge's orders as to DLOC and DLOM. We now set out the reasons for our decision.

Background Facts

Events leading to H8 and POP's acquisition of the Company

7 The Company was incorporated on 16 March 2011. Its shareholding was equally split between Eer and Ting, with the latter holding her shares as a nominee on behalf of William, her husband.

8 In August 2012, the Company purchased a leasehold property at 34KB. William, Terrence and Jieling ran a foreign worker dormitory at 34KB on behalf of the Company. On or around 23 February 2013, H8 was incorporated to run a foreign worker dormitory at 8 Enterprise Road ("8ER"). At the material time, the lease over 8ER was held by RIC Marine Pte Ltd ("RIC Marine") to whom H8 paid a management fee.

9 Sometime in April 2013, William asked Jason if he was interested in a joint venture. His proposal involved the Company acquiring RIC Marine to gain control over 8ER, and H8 and POP then acquiring all the shares in the Company from Eer and Ting to get the benefit of both 34KB and 8ER. Annie eventually followed up on the discussion. It was initially contemplated that H8 and POP would be equal shareholders in the Company, and this intent was reflected in a draft shareholders' agreement sent by POP to H8 in January 2014 (the "Draft

50:50 SHA"). However, the Draft 50:50 SHA was never executed. Eventually, POP agreed to buy 70% of the shares with H8 buying 30%.

10 On 16 July 2014, CKS Property Consultants Pte Ltd ("CKS") issued a report valuing 34KB at $14m as at 26 June 2014. The valuation took into account information that the 34KB dormitory could house 360 workers. In this regard, it is undisputed that the Urban Redevelopment Authority ("URA") had only given approval for the 34KB dormitory to house 130 workers. Among the seven storeys of 34KB, only the fifth to seventh storeys were approved for use as a foreign worker dormitory. However, it appears that the second to fourth storey had also been used by the Company as a dormitory from 2012 until sometime around 2017.

11 On 5 March 2015, the Company acquired RIC Marine for $16.4m. On the same day, POP and H8 entered into a sale and purchase agreement ("SPA") to purchase the Company's entire shareholding from Eer and Ting for $42m. As mentioned, POP acquired 70% of the shares and H8 acquired 30%. The purchase price was based on 34KB and 8ER being valued at $14m and $28m respectively. It was said that POP's 70% stake was purchased for $29m even though 70% of the total price of $42m was actually $29.4m, but nothing material turns on this discrepancy. There was no shareholders' agreement between POP and H8. The transaction was completed on 18 January 2016. Terrence, Jason and Annie were appointed as the Company's directors.

The acts that allegedly constituted oppressive conduct against H8

12 It was undisputed that the following acts had been committed:

(a) First, on 23 April 2018, at the Company's 4th Annual General Meeting (the "4th AGM"), POP voted against the re-election of Terrence as a director of the Company.

(b) Second, also at the 4th AGM, POP voted in favour of resolutions for the issuance of rights shares, at $1 for each new share, to the shareholders in proportion to their shareholding. However, as H8 did not take up its entitlement while POP did, this exercise resulted in the dilution of H8's shareholding from 30% to 15%, and the corresponding increase in POP's shareholding from 70% to 85%.

(c) Third, on 23 May 2018, the Company held an Extraordinary General Meeting (the "2018 EGM") where POP voted to increase the monthly directors' remuneration of Jason and Annie to $30,000 and $10,000 respectively. Prior to the 2018 EGM, Annie and Terrence had each been paid a salary of $2,000, while Jason did not receive any remuneration. The Company had not declared any dividends since the start of the joint venture.

(d) Fourth, on 3 April 2020, Annie applied on behalf of the Company for a bridging loan from RHB Bank Bhd ("RHB"). RHB granted the Company a bridging loan of $3m (the "Bridging Loan"), for which Jason and Annie provided a joint and several personal guarantee. Of the $3m received by the Company, $2m was transferred by the Company to POP as part repayment of certain shareholder loans that POP had extended to the Company.

Procedural History

13 On 6 January 2020, POP brought claims against Eer and Ting in HC/S 10/2020 ("S 10") alleging that they had misrepresented the legal capacity of the 34KB dormitory. On 30 November 2020, POP discontinued S 10. It was unclear to us whether the discontinuance was part of a settlement negotiated with William.

14 Subsequently, H8 commenced S 1006 on 8 December 2021 for minority oppression, which was mostly based on the acts as described in [12] above.

15 We make one important clarification at the outset. As mentioned, H8 commenced S 1006 on 8 December 2021. The action to seek relief for oppression was made under s 216 of the Companies Act 1967 (2020 Rev Ed) (the "Companies Act"). In so far as the action sought relief by way of a winding up order of the Company or an order for POP to buy H8's shares, this was permitted under s 216(2) of the Companies Act if oppression was established.

16 Furthermore, previously, s 254(1) of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act 2006") allowed the court to order a winding up of a company on various grounds. In particular, s 254(1)(*f*) allowed the court to order a winding up if the directors have acted in their own interests or in a manner which appears unfair or unjust to other members of the company. Section 254(1)(*i*) allowed the court to order a winding up if the court was of the opinion that it was just and equitable to do so. However, under s 254(2A) of the Companies Act 2006, the court could make an order for the company or one or more members to buy out the shares of one or more members instead of making a winding up order, under s 254(1)(*f*) or (*i*), if the court is of the opinion that it is just and equitable to do so.

17 Hence, in summary, the court could order a buyout under s 216(2) of the Companies Act if oppression was established, or under the previous s 254(2A) of the Companies Act 2006 if the ground under s 254(1)(*f*) or s 254(1)(*i*) pertaining to an action for winding up was established.

18 Sections 254(1)(*f*), 254(1)(*i*) and 254(2A) of the Companies Act 2006 have been replaced by ss 125(1)(*f*), 125(1)(*i*) and 125(3) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") respectively. The IRDA came into operation on 30 July 2020. It was passed to consolidate personal and corporate insolvency laws and the laws in respect of debt restructuring by individuals and companies which were previously found in the Bankruptcy Act (Cap 20, 2009 Rev Ed) (the "Bankruptcy Act") and the Companies Act 2006. Hence, the IRDA repealed the Bankruptcy Act and some provisions of the Companies Act 2006.

19 However, s 216 of the Companies Act 2006 was not repealed and survives as s 216 of the Companies Act. Only a minor amendment was made to s 216(3) which we need not mention.

20 Hence, POP was entitled to rely on s 216 of the Companies Act in S 1006 for its oppression claim. Perhaps it could have also sought to rely on s 125 of the IRDA for a winding up order or a buyout order but it did not.

21 POP commenced S 27 on 16 January 2022, with the crux of its claim being that William, Terrence and Jieling had, in the course of negotiations leading up to the SPA, made fraudulent misrepresentations to Jason and Annie that the legally approved capacity of the 34KB dormitory was 362 beds and that the misrepresentations by William were made on behalf of Eer and Ting in order to procure POP to enter into the SPA.

22 As an aside, in respect of S 27, the Judge had noted that the parties had interchangeably stated the capacity of the 34KB dormitory to be 300, 360 or 362 workers at various points of the evidence (Judgment at [40]). That said, the Judge took the view that the differences were not material. On appeal, the parties took no issue with this aspect of the Judgment, and our decision therefore proceeded on the same basis. We also note that references to the number of workers or number of beds were made interchangeably and we do so likewise.

Decision below

23 The Judge addressed POP's deceit claim first as the events underpinning that claim preceded those relating to H8's claim for oppression. Therefore, we set out first the Judge's decision on POP's deceit claim, followed by H8's oppression claim.

POP's Deceit Claim

Liability for deceit

24 As a preliminary issue, the Judge construed the reasonable interpretation of the representation as pleaded by POP. POP had pleaded that the Appellants had represented "that the capacity of the workers' dormitory at 34 Kaki Bukit was 362 workers or beds" (the "Representation"). After the trial commenced, POP then amended its Statement of Claim (the "SOC") to add the sentence that "[i]n its natural and/or contextual meaning, "capacity" was the legitimate and legally approved number of workers or beds". The Judge held that the only logical and reasonable meaning of the pleaded Representation was that the *legally* approved capacity of the 34KB dormitory was 362 beds (Judgment at [38]). This meant that the Representation was false since it was undisputed that the legally approved capacity was 130 beds.

25 The Judge then found that William, Terrence and Jieling had made the Representation based on evidence concerning events that occurred in the lead-up to the SPA. The Judge accepted Annie's evidence that William and Terrence had told her that the capacity of the dormitory was 362 beds when she was shown around the premises around April 2013 (Judgment at [49]). William had also accepted that he had told Jason and Annie that the Company's revenue for 34KB came from 362 beds, which amounted to an implied representation as to the 34KB dormitory's legal capacity since the revenue earned would have been from the legally approved capacity (Judgment at [48]).

26 Additionally, the Judge found that Jieling had, on William's instructions, sent Annie several documents on 14 May 2014, the contents of which amounted to an implied representation as to the legally approved capacity of the 34KB dormitory (Judgment at [50]–[51]). For instance, one of the documents was a list of tenants at the 34KB dormitory as at May 2014 that showed a total of 362 workers were being housed at the 34KB dormitory.

27 The Judge also noted that Annie was never provided a document subsequently issued by URA on 21 August 2014 refusing an application for planning permission made on 14 August 2014 to change the use of the third and fourth stories of 34KB to that of a workers' dormitory (Judgment at [53]). From this, the Judge inferred that William must have withheld this letter from Jason and Annie to maintain the false impression that the legally approved capacity of the 34KB dormitory was 362 beds.

28 The Judge found that a slew of events that occurred in 2017 and 2018 indicated that the Representation had indeed been made before POP entered into the SPA:

(a) In a meeting between Annie and Terrence on 16 March 2017 at 8ER, Terrence had mentioned to Annie that he wanted to shift workers out of the second to fourth floors of 34KB in anticipation of inspections by the Ministry of Manpower ("MOM") and URA and to move the workers back after the inspections. The Judge found that the conversation between Annie and Terrence was consistent with William and Terrence having made the Representation back in 2013 and 2014. Although H8's counsel had suggested to Annie that her responses to Terrence then indicated that she already knew that the legally approved capacity was 130 workers, the Judge found that Annie's responses instead indicated that she was trying to clarify the actual legal capacity of the 34KB dormitory (Judgment at [65]–[67]).

(b) In a directors' meeting on 29 November 2017 between Jason, Annie and Terrence, Jason and Annie repeatedly asserted to Terrence that neither William nor Terrence had informed them that the actual legally approved capacity of the 34KB dormitory was 130 beds. Terrence did not deny the assertion. Indeed, Terrence agreed with Jason's assertion that William had "told [them] it's 300 from Day 1 until now" (Judgment at [70]).

(c) The minutes of a directors' meeting between Jason, Annie and Terrence on 5 April 2018 stated that the "ex-directors" of the Company had misrepresented from July 2014 to the conclusion of the deal that the capacity of the 34KB dormitory was 300 workers when the approved capacity was 130 workers. While the then ex-directors of the Company were Eer and Ting, the Judge reasoned that the Representation must have come from William, Terrence and Jieling since Eer and Ting never

had any discussions with Jason and Annie at the material time (Judgment at [71]–[72]).

29 Lastly, the Judge noted that William, Terrence and Jieling had made key admissions under cross-examination which showed that they had made the Representations, or they had given evidence that dented their credibility as witnesses:

(a) Under cross-examination, William alleged that he had told Jason and Annie across five to six meetings between February and April 2014 that URA had only given approval for 130 workers to be housed in the 34KB dormitory. However, this allegation was raised for the first time at trial, and did not feature in his affidavit of evidence-in-chief ("AEIC") or pleaded defence (Judgment at [46]).

(b) As for Terrence, the Judge noted his admission under cross-examination that he had represented to POP, Jason and Annie that the 34KB dormitory had a capacity of 362 workers, which was according to the "approved papers given by the respective authorities" (Judgment at [64]). This amounted to an implicit concession that he had made the Representation.

(c) Jieling admitted on the stand that she had represented to Annie that the capacity of the 34KB dormitory was 362 workers, and that she did not point out to Annie that the capacity was not approved by URA (Judgment at [76]).

30 Having found that William, Terrence and Jieling had made the Representation, the Judge held that, on the evidence, they knew it was false and had by making it intended to induce POP to acquire a shareholding in the

Company. Further, POP had relied on the Representation in entering the SPA, as demonstrated by a letter of intent sent by POP to the Company on 23 May 2014 stating that the valuation of the Company at $42m for the purpose of the acquisition was subject to 34KB being valued at $14m and 8ER being valued at $28m (Judgment at [84]).

31 As for Eer and Ting, they were consequently held liable for the Representation, which was made by William within the scope of his actual or apparent authority as Eer and Ting's agent (Judgment at [90]–[92]). On appeal, there was no dispute on this finding.

32 Finally, the Judge rejected the Appellants' argument that certain clauses in the SPA afforded them a contractual defence that excluded liability for fraudulent misrepresentations (Judgment at [94]–[108]). The Appellants no longer relied on these contractual defences in their appeal and we need not say anything more about them.

The award of damages

33 The Judge utilised the valuation method of calculating losses as stated by the House of Lords in *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 ("*Smith New Court*") and assessed the quantum of damages to be awarded to POP by taking the price paid by POP less the real value of the property (Judgment at [109]–[111]). However, the Judge declined to assess the real value of 34KB as at the transaction date, *ie*, the date of the SPA, but instead opted to assess the value of 34KB as at the date that POP, Jason and Annie discovered the fraud (Judgment at [114]–[116]).

34 Based on the aforementioned approach, the Judge considered the evidence and found that POP had discovered the fraud sometime in November

2018 or, at the earliest, April 2018 (Judgment at [115]). To assess the value of 34KB as at POP's date of discovery of the fraud, the Judge then relied on a valuation report prepared by CKS on 5 March 2019 (the "2019 Valuation Report"). The 2019 Valuation Report valued 34KB at $9m as at 5 March 2019 and was apparently done on the revised basis that the 34KB dormitory had a capacity of 130 workers. The Judge found that the 2019 Valuation Report was sufficiently proximate in time to POP's discovery of the fraud in 2018, such that it was appropriate to rely on that valuation to determine the actual value of 34KB in 2018 (Judgment at [116]).

35 Consequently, considering that 34KB was valued at $14m in 2014 (see [10] above) and that POP had acquired a 70% shareholding in the Company, the Judge assessed POP's loss to be $3.5m. This was calculated on the basis of 70% of the difference between the valuation of 34KB at $14m in 2014 and the $9m valuation in 2019 (Judgment at [119]).

36 The Judge also dismissed the Appellants' argument that a subsequent revision of URA's guidelines in September 2016 precluded POP from recovering any losses that could be attributed to the revision. The revised guidelines, at best, indicated that any further increases to the legal capacity of the 34KB dormitory would not be permitted and this merely meant that the true state of the 34KB dormitory's legal capacity would continue to prevail. Therefore, the causal connection between the Representation and POP's loss remained unbroken (Judgment at [132]).

37 In light of her decision in respect of POP's deceit claim, the Judge did not address POP's alternative claims for negligent misrepresentation and conspiracy (Judgment at [134]).

H8's oppression claim

38 The Judge then proceeded to consider the merits of H8's oppression claim. The Judge first found that, contrary to H8's submissions, the Company was not operated as a quasi-partnership between H8 and POP. Among other things, the Judge found that the parties' initial allocation of roles merely reflected the fact that H8's representatives had prior experience in the dormitory business and that this was not meant to be immutable. Consequently, the lack of any record of the allocation of the parties' roles in any formal documentation did not mean that the parties associated on the basis of mutual trust and confidence, but instead reflected the reality that there was no agreement between H8 and POP delimiting the respective roles they would play in the joint venture (Judgment at [153]–[164]). Further, the Judge did not accept the evidence adduced on behalf of H8 that there had been an informal understanding which gave rise to legitimate expectations that H8 would be involved in the management of the Company by having a representative on the board and that unanimous consent was required for major decisions. (Judgment at [136]–[139] and [165]–[174]).

39 Turning to the instances of oppression raised by H8, the Judge rejected all but two of H8's claims. These two claims pertained to (a) the issuance of new shares in the Company which resulted in the dilution of H8's shareholding, and (b) the increase in Jason's director's remuneration to $30,000 a month (Judgment at [182]–[196] and [197]–[204]). As to the rejected claims, the Judge found that:

> (a) the non-re-election of Terrence as a director was not oppressive, because there was no express or implied understanding that H8 would always have a representative on the Company's Board of Directors.

Further, Terrence's removal was neither commercially unjustifiable nor unfair (Judgment at [175]–[181]).

(b) the increase in Annie's director's remuneration to $10,000 a month was not excessive in light of the responsibilities undertaken by Annie (Judgment at [197]–[204]);

(c) the application of $2m of the Bridging Loan towards the repayment of POP's shareholder loans was not oppressive against H8 as it did not cause any distinct injury to H8 (Judgment at [205]–[209]); and

(d) the allegation that Jason and Annie had attempted to sell 8ER without H8's knowledge or consent was rejected for lack of evidence (Judgment at [210]–[212]).

40 As for the appropriate relief, the Judge ordered the reversal of the two acts which amounted to oppressive conduct (Judgment at [214]–[216]). The Judge further ordered POP to purchase H8's minority shareholding in the Company on the basis that the parties' relationship had irretrievably broken down (Judgment at [224]).

41 The Judge held that it was appropriate for a DLOC to be applied in the valuation of H8's minority shareholding having regard to the equities of the case. In particular, the Judge relied on the following facts: (a) the beginning of the breakdown in the parties' relationship could be traced to the emergence of the fraud perpetrated by William, Terrence and Jieling on POP by misrepresenting the capacity of the 34KB dormitory; (b) H8 was not an unwilling seller; (c) only two instances of oppressive conduct were successfully established, and the conduct in question had not been specifically directed at worsening H8's position as a shareholder to compel H8 to sell its shares; and

(d) H8 had not contributed in any substantial or meaningful way to the Company's business. Although POP would wholly own and control the Company following the buyout of H8's shares, the Judge considered that this factor was outweighed by all the foregoing factors (Judgment at [226]).

42 Additionally, the Judge empowered the independent valuer to "consider whether to apply a discount for lack of marketability, and to apply such a discount if the independent valuer deems it appropriate" (Judgment at [228(c)(iv)]).

43 Finally, the Judge declined to make an order for an audit of the Company which H8 had initially sought to determine if the Company was a going concern. Although the parties had eventually agreed that the Company was a going concern, H8 continued to seek an audit due to alleged "concerns" over the state of the Company's financial affairs arising from certain alleged conduct of Jason and Annie. This was a shift from its pleaded case. POP had also never opposed the conduct of an audit on the Company and had only asked H8 to bear the cost of the audit (Judgment at [232]–[239]).

Parties' cases on appeal

The Appellants' case

Deceit (AD 72)

44 The Appellants first submitted that the Judge erred in finding that they were liable in deceit. Broadly speaking, their arguments were as follows:

(a) that the Representation only referred to the factual capacity of the 34KB dormitory, and the Judge had erred in interpreting the

Representation to refer to the legally approved capacity of the 34KB dormitory;

(b) that the Judge ought to have drawn an adverse inference against POP for failing to disclose certain correspondence with MOM in Annie's AEIC;

(c) that the Judge did not give due weight to the change in the URA guidelines around September 2016 that prevented any future increases in the legal capacity of the 34KB dormitory, which Annie and Jason were notified of on 1 February 2017 by their legal advisor; and

(d) that the Judge erred in finding that William, Terrence and Jieling had acted dishonestly.

45 As for the Judge's award of $3.5m in damages, the Appellants contended that only nominal damages should be awarded. Their argument essentially was that the Judge erred in assessing the value of 34KB as at the date on which POP discovered the fraud for the purpose of valuation, and that there was no reason to depart from the normal measure of assessing the value of 34KB as at the transaction date. They also disputed that the 2019 Valuation Report was an appropriate basis for ascertaining POP's damages.

46 H8 further argued that at the 16 March 2017 meeting with Terrence, Annie's responses showed that she had acquiesced in Terrence's proposal to move workers in and out of the 34KB dormitory due to inspections by MOM and URA.

47 Lastly, the Appellants raised the argument that POP's claim for damages in the trial below differed from its pleaded case.

Oppression (AD 73)

48 The Appellants submitted that the Judge erred in finding that the Company did not operate as a quasi-partnership and that there was no informal understanding between H8 and POP that gave rise to legitimate expectations (see [38] above). The Appellants also contended that the Judge erred in finding that the refusal to re-elect Terrence as a director, which they referred to as the removal of Terrence as a director (the "Director Removal"), and the transfer of $2m of the Company's Bridging Loan to POP (the "Loan Repayment") were not oppressive.

49 The Appellants also argued that the Judge erred in ordering a DLOC to be applied to the valuation of the shares. Any wrongdoing by William, Terrence and Jieling in respect of the Representation did not excuse the acts of oppression committed by POP. Contrary to the Judge's finding, H8 was not a willing seller as it only intended to exit the Company due to the severely strained relationship between the parties. The Judge also failed to properly take into account H8's contributions to the Company's business as a key operational partner managing the Company's day-to-day activities. The buyout order would also grant POP the benefit of full control over the Company. Consequently, it would be fair and equitable to value the shares at market price without any DLOC. Likewise, the Appellants argued that the Judge erred in leaving the applicability of the DLOM to be decided by the independent valuer. Instead, the Judge ought to have ordered that no discount should apply in the valuation of the shares given that this was a situation where the minority shareholder was compelled to exit.

50 Finally, the Appellants also submitted that the independent valuer should be empowered by the court to investigate whether there was any misuse of the Company's funds.

The Respondents' case

51 In response, the Respondents essentially affirmed the Judge's findings and reasoning on both the Deceit claim and the Oppression claim.

Issues

52 The following issues arose for our determination in these appeals:

(a) In AD 72:

(i) whether the Judge erred in finding the Appellants liable for fraudulent misrepresentation ("Issue 1"); and

(ii) whether the Judge erred in assessing the damages suffered by POP to be $3.5m ("Issue 2").

(b) In AD 73:

(i) whether the Judge erred in finding that the Director Removal and the Loan Repayment did not amount to oppressive conduct ("Issue 3"); and

(ii) whether the Judge erred in her decision on the terms of the buyout order ("Issue 4").

Issue 1: liability for deceit

53 Before we proceed to elaborate on our reasons in respect of Issues 1 and 2, we mention that we did consider whether S 10 (against Eer and Ting) was discontinued as part of the settlement with William (see [13] above). However, in the appeal, none of the Appellants argued that there was a settlement which precluded the Respondents from pursuing S 27 against any of them. Hence, nothing material turned on the discontinuance of S 10.

54 The Appellants' appeal against their liability for fraudulent misrepresentation may be dealt with summarily. The Judge had given cogent reasons for her finding of liability for the Representation and the Appellants were not able to establish that she had erred.

55 First, the Appellants' argument that the Representation referred to the factual capacity of the 34KB dormitory instead of the legally approved capacity did not make commercial sense. We agreed with the Judge that a reasonable person in the position of POP, a law-abiding investor, would be more interested in the legally approved capacity of the 34KB dormitory than its factual capacity. POP was purchasing shares in the Company at a price based on the valuation of leases which the Company had over two properties. The valuations could only be based on legitimate use of those properties which in the case of 34KB must be on the approved capacity for workers. The Appellants would have known that and the Representation was made to address the approved capacity.

56 The Appellants had also urged this court to take cognisance of the fact that it was only midway through the trial that POP amended its pleadings to state that the Representation referred to the legally approved capacity of the 34KB dormitory. The suggestion was that until the amendment was made, it had been POP's case that the Representation merely referred to the factual capacity of the 34KB dormitory. In our view, POP's amendment was merely clarificatory in nature and did not alter POP's pleaded case. We were therefore not persuaded by these arguments.

57 Second, we saw no reason to disagree with the Judge's findings of fact that William, Terrence and Jieling had made the Representation knowing that it was false and with the intention of inducing POP to acquire a shareholding in the Company. We have summarised the Judge's findings at [25]–[30] above.

The Judge had taken a meticulous approach towards analysing the evidence and the Appellants have not explained how the Judge erred in this respect. Given the overwhelming evidence against the Appellants, POP's failure to disclose certain correspondence with MOM would only have a peripheral impact on the court's findings. At most, the correspondence might elaborate as to when POP discovered the fraud, but not the fact that the fraud had been perpetuated against it.

58 Third, we were not persuaded by the Appellants' argument that POP's loss allegedly flowed from URA's refusal in September 2016 to increase the legal capacity of the 34KB dormitory. These arguments were rejected by the Judge at [132] of the Judgment and we saw no reason to disagree. URA's refusal to increase the legal capacity in September 2016 did not change the fact that prior to the SPA, the legal capacity was only 130 workers.

59 For these reasons, we dismissed the Appellants' arguments on Issue 1.

Issue 2: the award of $3.5m in damages

The transaction date rule

60 Turning to Issue 2, we first set out some of the relevant principles in relation to assessment of damages for fraudulent misrepresentation. It is trite that the measure of damages in the tort of deceit is an award that puts the claimant in the position he would not have been if the representation had not been made: James Edelman, *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021) ("*McGregor on Damages*") at para 49-002. The claimant is entitled to compensation for all actual loss directly flowing from the transaction induced by the wrongdoer, which includes heads of consequential loss: *Smith*

New Court at 282D, affirmed in *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [22].

61 As correctly noted by the Judge, the valuation method is the normal method of assessing the claimant's loss where the fraudulent misrepresentation induced the claimant to buy property (see Judgment at [109], citing *Smith New Court* at 284A). In fact, the parties proceeded on the basis that the valuation method was the appropriate method to assess POP's loss.

62 As for the time of the assessment, the law normally takes the difference of the price paid less the actual value of the property *at the time of the acquisition*: see James Goudkamp and Donal Nolan, *Winfield and Jolowicz on Tort* (Thomson Reuters, 20th Ed, 2020) at para 12-022 and *McGregor on Damages* at 49-010. This was described in *Smith New Court* as the "date of transaction rule" (*per* Lord Steyn at 283H), although it is by no means a strict or inflexible rule and in *Smith New Court*, *a different* date was applied based on the circumstances in that case. We refer to the date of transaction rule as the "transaction date rule" for convenience. One of the advantages of the transaction date rule is that it avoids difficult questions on causation as other factors between the transaction date and a later date (such as the date of resale of the asset) may have influenced the value of the asset or the resale price of the asset: *per* Lord Browne-Wilkinson in *Smith New Court* at 266E.

63 Indeed, the parties initially proceeded on the basis that the material date for assessing the damages was the date of the transaction, *ie*, 5 March 2015 being the date of the SPA. Later, in POP's further closing written submissions, it suggested that that the material date was the date of completion, *ie*, 18 January 2016. However, as there was no suggestion of any material difference between

these two dates in the present circumstances, we need not consider the date of completion any further.

64 In the present case, after the parties had tendered their closing submissions, the Judge had asked parties to submit as to whether some date other than the transaction date should apply. The Judge referred to *Smith New Court* on the premise that the House of Lords had held that the transaction date rule would not normally apply where the misrepresentation continued to operate so as to induce the plaintiff to retain the asset, or where the circumstances were such that by reason of the fraud, the plaintiff was locked into the property. Eventually, the Judge applied the date of discovery of the fraud (see [33]–[35] above).

65 It is important to bear in mind that POP had pleaded three alternative scenarios for its loss and damage as a consequence of the Representation. It was the third scenario that was material. In that scenario, POP had alleged that had it known that the legal capacity for 34KB was 130 workers, "[i]t would have negotiated and/or agreed to a significantly reduced Purchase Price and paid significantly less than $29m for the said 70% stake." This was clearly a reference to the transaction date and not any other date.

66 In the circumstances, while it was open to the Judge to query whether the transaction date was the appropriate date to assess the loss of POP, it was not open to the Judge to ask for submissions based on some other date, at least not until POP amended the SOC.

67 Furthermore, even if the SOC were amended, the parties should have been asked if they wanted to adduce fresh evidence on the value of 34KB as at the alternative date, *eg*, the date of discovery of the fraud. This was not done.

Instead, as mentioned, the Judge applied the valuation in the 2019 Valuation Report to determine the value as at the date of discovery of the fraud. This contributed to our difficulties with the Judge's finding on the quantum of POP's loss and POP's case on appeal.

68 Aside from the pleading point and the point about fresh evidence, we come back to the question whether the Judge was correct to apply the date of discovery of the fraud on the facts in the present case.

69 As indicated above, *Smith New Court* established that the transaction date rule was not to be applied inflexibly where doing so would prevent the claimant from obtaining the full compensation for the wrong suffered. Two possible, non-exhaustive circumstances for when a court may use a different date of assessment were set out by Lord Browne-Wilkinson at 267C:

> … although the circumstances in which the general rule should not apply cannot be comprehensively stated, it will normally not apply where either (a) the misrepresentation has continued to operate after the date of the acquisition of the asset so as to induce the plaintiff to retain the asset or (b) the circumstances of the case are such that the plaintiff is, by reason of the fraud, locked into the property.

70 On the facts of *Smith New Court*, the House of Lords held that the transaction date rule could be departed from because the plaintiff was considered to be locked into the property. The plaintiff in that case (Smith) was induced to purchase shares in a company (Ferranti) as a result of a fraudulent misrepresentation by an employee of the defendant (Citibank) that there were other interested buyers for those shares. As a result of the fraud, Smith had bought the Ferranti shares at 82p per share with a view to holding them on its books over a comparatively long period to be sold at a later date, *ie*, as a market-making risk. It was further found that, if Smith had not intended to purchase the

Ferranti shares as a market-making risk, it would not have bid more than 78p per share. Subsequently, there was a substantial decline in the value of the shares as a result of new information coming to light that an unrelated fraud had earlier been perpetrated by a third party on Ferranti. Smith eventually sold the shares at a substantial loss. Lord Browne-Wilkinson held as follows (at 268A–268D):

> … The judge found that the shares were acquired as a market-making risk and at a price which Smith would only have paid for an acquisition as a market-making risk. As such, Smith could not dispose of them on 21 July 1989 otherwise than at a loss. ***Smith were in a special sense locked into the shares having bought them for a purpose and at a price which precluded them from sensibly disposing them.*** It was not alleged or found that Smith acted unreasonably in retaining the shares for as long as they did or in realising them in the manner in which they did.
>
> In the circumstances, it would not in my judgment compensate Smith for the actual loss they have suffered (i.e. the difference between the contract price and the resale price eventually realised) if Smith were required to give credit for the shares having a value of 78p on 21 July 1989. Having acquired the shares at 82p for stock Smith could not commercially have sold on that date at 78p. It is not realistic to treat Smith as having received shares worth 78p each when in fact, in real life, they could not commercially have sold or realised the shares at that price on that date. ***In my judgment, this is one of those cases where to give full reparation to Smith, the benefit which Smith ought to bring into account to be set against its loss for the total purchase price paid should be the actual resale price achieved by Smith when eventually the shares were sold.***
>
> [Emphasis added in bold italics]

71 Notably, in the Judgment, the Judge relied on the English High Court (Chancery Division) case of *4Eng Ltd v Harper and another* [2007] EWHC 1568 (Ch) ("*4Eng*") at [53] for the proposition that the transaction date rule may be varied where the true nature and extent of the fraud took some time to emerge after the acquisition, even though certain aspects started to manifest themselves immediately (see Judgment at [114]–[115]). However, with respect, the

circumstances of the present case were not analogous to those in *4Eng*. In particular, an important consideration taken into account by the court in *4Eng* was that the emergence of aspects of the fraud at an early stage effectively rendered the company unsellable until the fraud was fully identified and capable of accurate disclosure to any purchaser, and the fraud only fully emerged at the subsequent hearing of a criminal trial approximately four years after the date of transaction, by which time the company had no value (at [53]). Accordingly, the court held that the appropriate date of assessment should not be the transaction date.

72 In our view, the court in *4Eng* departed from the transaction date rule primarily because it considered the company to be unsellable at all material times until it became valueless, all by virtue of the fraud. *4Eng* can thus be explained as falling within the *Smith New Court* exception of the claimant being "locked in" to the property by virtue of the fraud. Conversely, in the present case there is no evidence that POP was locked in at all and it was important to bear in mind that POP was not asking to rescind the SPA.

73 If POP was not "locked into" the transaction by virtue of the fraudulent misrepresentation, we saw no other basis to depart from the transaction date rule. POP was able to obtain full compensation for the wrong suffered, namely by determining the amount which POP had overpaid for its shares in the Company flowing from the misrepresentation as to the legal capacity (and consequent overvaluation) of the 34KB dormitory, which would properly be assessed with reference to the actual valuation of 34KB *as at the transaction date*. Importantly, as the Appellants pointed out, permitting a departure from the transaction date rule just because the fraud took some time to emerge and/or was discovered at a later date could render the transaction date rule otiose, given that it would usually take some time to discover a fraud. It will be recalled that

initially, POP had itself relied on the transaction date rule until the Judge invited further submissions (see [63] and [64] above).

74 We noted that POP had argued at the trial below that it was "locked into" 34KB because (a) it was a 70% shareholder in the Company, and (b) 34KB was being used as the premises for an ongoing business. It did not seem that the Judge accepted this argument (see Judgment at [129] and [131]) and on appeal, POP's counsel said that it was not pursuing this argument. Nevertheless, we were satisfied that even if POP had pursued this argument, it would have failed in any event. We were unable to see how the fact that POP was a majority shareholder or that the property was still being used as an ongoing business locked POP into the property.

75 In this regard, it appears to have been suggested in *Zong and another v Wang* (2022) 401 ALR 698 ("*Zong v Wang*") that a claimant can be considered to be "locked in" where he had been induced to purchase shares in a private company that could not be practically disposed of. In *Zong v Wang*, the appellant had made certain fraudulent misrepresentations to the respondent that induced the respondent into participating in a business venture of hiring yachts to tourists. The respondent therefore acquired a minority shareholding in a company that purchased a yacht. The Court of Appeal of New South Wales held that, amongst other things, the respondent was locked into the company because it was a "closely held proprietary company in which the shares were not readily transferrable" and further noted that the appellant had refused the respondent's request to buy him out. The court also opined that the fact that the respondent could have applied for the company to be wound up was not sufficient to displace the finding that the respondent was locked into the company (at [59]).

76 The aforementioned passages of *Zong v Wang* may suggest that a claimant who is fraudulently induced to invest in a private company as a minority shareholder would be "locked into" its investment so long as its shares could not be readily transferred. In our view, aside from the fact that POP acquired a majority stake in the Company, such an approach is too broad. A court should not be too ready to find that a claimant is "locked in" just because he has purchased shares in a privately held company and consequently finds those shares not readily marketable or transferrable. Taken to its extreme, such an approach may risk expanding the ambit of the "locked-in" exception, unduly denuding the transaction date rule of its significance. Furthermore, we observe that the decision in *Zong v Wang* may not be consistent with the English High Court (Chancery Division) case of *Invertec Ltd v De Mol Holding BV* [2009] EWHC 2471 (Ch) ("*Invertec*"), where the plaintiff was held not to have been locked into continuing to hold the share capital of a company even though the company could not have been sold to a third party. The court in *Invertec* opined that the plaintiff could have rescinded the agreement for the share purchase or allowed the company to go into administration or liquidation (*Invertec* at [383]; see also *McGregor on Damages* at para 49-017). Nevertheless, we recognise that whether a claimant can be considered to be "locked in" such that adopting the transaction date rule would prevent him from obtaining full compensation is a question dependent on the circumstances of each case.

77 The Judge had also relied on *Zong v Wang* for the proposition that the deterioration in the value of an asset after its acquisition would not militate against departing from the transaction date rule if such deterioration could be considered to be "inherent", as such deterioration would not constitute "supervening events, but characteristics of the venture in which [the claimant] was induced to invest" (*Zong v Wang* at [57]–[58]; Judgment at [118]). The

court there considered it permissible to adopt the value of the company at the date of the hearing as the appropriate comparator because, among other things, the depreciation of the yacht was an "inherent" characteristic of the venture in which the respondent was induced to invest.

78 We did not agree with the Judge's reliance on *Zong v Wang*. The case of *Zong v Wang* concerned an asset which was of a fundamentally different character from that in the present case. It was common ground that a new yacht would depreciate, and thus the court there considered losses arising from such depreciation to be "inherent". This was not the case here. While we accepted that the value of 34KB had the potential to depreciate over time as its lease term approached expiry, it could equally be said that the value of 34KB might have benefitted from a rising market in the intervening period. However, POP had adduced no evidence which could assist the court in determining this issue one way or the other. Importantly, we were of the view that even where the asset in question would depreciate over time, the fact of the depreciation would have been obvious from the date of acquisition. Hence, that factor does not adequately explain why the asset should not be valued as at the transaction date.

79 Bearing in mind the general principles of calculating loss caused by deceit, we disagreed with the Judge's decision to use POP's date of discovering the fraud as the appropriate assessment date. In our view, there was no appropriate basis in the present case to justify departing from the transaction date rule.

POP had not proved the quantum of its loss

80 To recapitulate, the Judge had held that it was appropriate to use the 2019 Valuation Report for the purpose of assessing the actual value of 34KB as

at April or November 2018 because the valuation date of the 2019 Valuation Report (being 5 March 2019) was sufficiently proximate in time (Judgment at [116] and [131]). Given our decision above, this reasoning no longer applied since POP's loss ought to be calculated by taking the price POP paid in respect of 34KB, less the real value of 34KB as at 5 March 2015 being the transaction date.

81 POP had not adduced any evidence of the value of 34KB that was close in time to the date of its entry into the SPA even though it had initially said that that was the relevant date to calculate the loss.

82 Another factor weighing against the use of the 2019 Valuation Report was that it was actually adduced to show the value of the shares when the rights issue was contemplated (and not valuation at the date of discovery of the fraud) and the maker of the 2019 Valuation Report was not called to testify in the trial below. Apart from any concern about admissibility, it was not clear what information the author of the 2019 Valuation Report relied on to calculate that the revised valuation of 34KB was $9m. That report was rather brief. It simply stated that the revaluation was based on information stated in the report dated 9 October 2014 and "new information provided". While it might be fair to infer that the new information included information that the legally approved capacity was for 130 workers, instead of 360 workers, it was unclear if other information had been taken into account such as the shorter duration of the lease of 34KB as at 2019.

83 Before us, counsel for POP sought to bridge this gap in POP's evidence by urging the court to make an order for an independent valuer to assess the value of 34KB as at the transaction date, *ie*, 5 March 2015 without more. In our view, it would not have been appropriate to make such an order bearing in mind

that counsel was not asking for the case to be remitted back to the Judge for further evidence to be given. Even if he had done so, such a request would not have been persuasive on its own. As stated by the Court of Appeal in *Grains and Industrial Products Trading Pte Ltd v Bank of India and another* [2016] 3 SLR 1308, it would generally not be appropriate to order a further assessment of damages in circumstances where there was no bifurcation of the questions of liability and damages, and evidence of loss has not been led by the claimant. Permitting a further assessment of damages might otherwise give the claimant a second bite of the proverbial cherry (at [117]). Indeed, in *Turf Club Emporium and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655, the Court of Appeal declined to grant leave for further evidence to be tendered on the issue of quantification of damages because such evidence should have been tendered at the trial below, and it would not be appropriate to make an order which would in effect lead to a bifurcation of the proceedings, where no order for bifurcation had been sought and made (at [305]). Similarly, granting the order sought by POP's counsel would have amounted to giving POP a second bite of the cherry. Moreover, it was not for an appellate court to make an order for an independent valuer to assess the value of 34KB as at the transaction date when this would effectively amount to fresh evidence which ought to be tested in the ordinary way at trial.

84 We add that even if the Judge was correct to use the date of discovery of the fraud in 2018 as the applicable date of assessing POP's loss, it is questionable whether she was correct in using the 2019 Valuation Report to establish the quantum of the loss. That report had valued 34KB as at 5 March 2019. The Judge found the date of discovery of the fraud to be in November 2018 or at the earliest, April 2018. It is doubtful that the difference of about four months or about 11 months can be said to be proximate in time for the purpose

of valuation especially when the author of the 2019 Valuation Report did not give evidence to this effect.

85 The consequence of the foregoing was that POP had failed to prove the quantum of its loss and could be awarded nominal damages only. In the circumstances, we set aside the Judge's order granting $3.5m as damages to POP and substituted it with an order for the appellants in AD 72 to pay POP damages fixed at $1,000, as nominal damages.

86 For completeness, we mention that as regards the Appellants' argument that POP had acquiesced in the Representation at the 16 March 2017 meeting, this defence was not pleaded. In any event, it was doubtful that acquiescence could be established or that it would preclude POP from claiming damages.

87 We were also of the view that POP did plead that one of the bases of its claim for loss was the difference in value of 34KB based on the number of beds as represented when compared with the legally approved number.

Issue 3: the oppressive conduct

88 We turn to address the issues arising from H8's appeal in AD 73. H8 had contended that there were two additional instances where POP had committed oppressive conduct which the Judge had erroneously rejected, namely the Director Removal and the Loan Repayment. We did not see any merit in these contentions.

89 To begin with, we disagreed with H8's characterisation of the parties' relationship as a quasi-partnership in respect of its allegation about Director Removal. It was well-established that a quasi-partnership was one where the parties operated on the basis of mutual trust and confidence, *ie*, in the belief that

the majority would always take the minority's interests into account in the management of the Company's affairs and that any problems would be readily and civilly ironed out (*Lim Kok Wah and others v Lim Boh Yong and others and other matters* [2015] 5 SLR 307 ("*Lim Kok Wah*") at [105], citing *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 379; *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [83]). This could be contrasted with "purely commercial" ventures based on an arm's length relationship, where the rights and obligations of the parties would typically be adequately and exhaustively reflected in the formal documents such as the articles of association and the shareholders' agreements (*Anita Hatta v Lee Siow Kiang Georgia and others* [2020] 5 SLR 304 at [70]).

90 It was therefore incumbent upon H8 to show that the *substance* and *objectives* of the parties' association went beyond a purely commercial one to also encompass a relationship of mutual trust and confidence (*Over & Over* at [87]). In this connection, H8 sought to raise a host of factors which purported to support its case, which may broadly be summarised as follows: (a) H8 was experienced in running dormitories and POP was content to entrust the operations and management of the Company to H8's representatives; (b) major decisions and shareholder resolutions were made unanimously between H8 and POP; (c) communications between the parties took place informally; (d) William and Jason were acquainted since the 1980s, prior to their association in the joint venture; and (e) H8 and its representatives were entitled to financial information, documents and financial transparency.

91 In our view, none of these factors (whether individually or as a whole) suggested that the parties associated primarily on the basis of mutual trust and confidence. These arguments were a rehash of the submissions which were fully ventilated and considered by the Judge in the proceedings below. We agreed

with the Judge's reasons for rejecting these arguments at [155]–[164] of the Judgment. We further noted that Jason and William, who appeared to be the driving forces behind the joint venture, were both experienced businessmen who had entered into the joint venture to further their own commercial interests. In such circumstances, there needed to be evidence of an understanding that the parties would have to jointly make important decisions before the court would engage in the post-hoc judicial imposition of a quasi-partnership (*Over & Over* at [85]). It is one thing to believe that parties would work together. It is another to allege that all decisions would have to be taken unanimously, and each party would always have board representation. The evidence for the latter was lacking in the present case.

92 Likewise, we saw no reason to disturb the Judge's finding of fact that there was no informal understanding between the parties that H8 would always be involved in the management and operations of the Company. H8's asserted timeline of events as to when the understanding arose could not withstand scrutiny. It alleged that the informal understanding had arisen during negotiations which took place sometime between February and April 2014. However, at that time, the parties had contemplated a different shareholding structure (namely, equal ownership) to the one which was eventually adopted. Any informal understanding concerning H8's involvement in management that arose during the course of the negotiations would clearly have been premised upon H8's *equal ownership* in the Company but eventually the ownership changed to 70% and 30% for POP and H8 respectively.

93 William must have realised this as he said in oral evidence that the parties had entered into a written shareholders' agreement based on the 70:30 shareholding structure but there was no such written agreement. Indeed, he had

not alluded to this before his oral evidence was given and the Judge was correct not to believe it.

94 Furthermore, when Annie was cross-examined, counsel for H8 had sought to rely on the draft shareholders' agreement based on a 50:50 shareholding structure even though the draft had not been signed. They sought to rely on cl 12.1 of the draft in which certain issues required unanimous approval of POP and H8. However, there were other provisions in the draft which militated against the argument about a quasi-partnership. First, cl 12.1 was limited to the issues stated in that provision under the heading "RESERVED MATTERS". Under cl 6.2, each party was entitled to appoint one director for every 25% of shares and under cl 6.4, the Chairman of the board was to be appointed by POP and he would have a second or casting vote. Therefore, even if the shareholdings of POP and H8 had remained at 50:50, POP would still have the casting vote if the draft had been executed without amendment. Likewise, under cll 7.3 and 7.4, all matters raised at a meeting of shareholders would be decided by ordinary resolution unless required by the Companies Act or under cl 12. Again, POP was entitled to appoint the chairman at a meeting of shareholders and the chairman would have the casting vote.

95 Significantly, cl 29 of the draft stipulated that nothing in the agreement would be deemed to constitute a partnership between the shareholders. Thus, ironically, the draft would have contradicted H8's allegation about a quasi-partnership, even if it were to be taken into account in the overall evidence.

96 As for decisions in the past being made unanimously, this did not in itself mean that they must always be made unanimously.

97 It was also telling that when Terrence was not re-elected as a director, there was no protest by H8. Neither did H8 suggest a replacement director to represent its interest on the board or allege that it was always entitled to do so under an informal understanding. William deposed that H8 had not commenced its oppression action sooner because he, Terrence and Jieling were holding onto the prospect of H8 being bought out without conflict. However, that did not explain why no protest was lodged with POP or why there was no request for a replacement of Terrence on the board. Either step could have been taken to protect H8's rights without jeopardising any prospective sale of its shares, but neither was done.

98 In all the circumstances, the evidence supported the Judge's finding that there was no quasi-partnership and no informal agreement as alleged. We add that since the Judge had made other findings of oppressive conduct and had ordered that POP buys out H8's shares, the existence of a quasi-partnership or of an informal agreement was no longer necessary to establish oppression. However, it might have been relevant to whether the Judge should have ordered a DLOC or to left it to the valuer to decide whether there should be a DLOM. We will address the DLOC and DLOM later.

99 It followed that H8 did not have any legitimate expectations to ensure that it had a representative on the Board of Directors of the Company. We further rejected H8's argument that the non-re-election of Terrence as a director was without commercial justification. The Judge had carefully considered the evidence available and found that Terrence's removal was premised on the fact that he had overlooked certain things regarding the maintenance of 34KB and had been procuring the Company's breach of URA regulations by shifting workers out of the 34KB dormitory during URA inspections, causing fines to be imposed on the Company (Judgment at [178]–[179]). We disagreed with

H8's submission that Terrence was being scapegoated for acts which Annie had acquiesced to. This submission relied on an extremely strained interpretation of a meeting which took place between Terrence and Annie on 16 March 2017:

(a) In the first place, Annie clearly expressed serious reservations and doubts about Terrence's plans to shift workers out of the 34KB dormitory, responding that she had "no comment" regarding Terrence's plans. She also questioned why Terrence was seeking her approval to proceed with the plan and asked Terrence to send an email detailing the matters that were discussed.

(b) Although Terrence replied to Annie's request by saying that he would "send an email and say that we had a meeting and we decided to do it this way", the Judge rightly assessed that Annie's response, being "ok" (in the Chinese language, 嗯) was equivocal and did not indicate her assent (Judgment at [68]).

(c) Furthermore, at this meeting, Terrence maintained the fiction that there was no issue with circumventing URA's requirements and that the 34KB dormitory could house 360 workers. This undermined H8's case as any acquiescence by Annie would plainly have been made while she was labouring under false pretences.

100 We also saw no merit in H8's contentions regarding the Loan Repayment. In this regard, the Judge had found that the Loan Repayment was not oppressive because H8 did not suffer any personal injury distinct from that which the Company would have suffered (Judgment at [208]).

101 On appeal, H8 argued that the personal injury it suffered stemmed from the fact that it was kept in the dark about these transactions, thus breaching its

legitimate expectations to be informed and to trust that their funds would not be mismanaged by the majority shareholders. Further, the misapplication of funds indirectly hindered the Company's ability to maintain working capital and finance its own operations.

102 In our view, H8's arguments failed to appreciate the distinction between *personal* wrongs suffered by the minority shareholder (which may be remedied through a minority oppression claim) and *corporate* wrongs (for which the proper plaintiff to bring a claim against the errant director would be the company) (see *Suying Design Pte Ltd v Ng Kian Huan Edmund and other appeals* [2020] 2 SLR 221 at [30] and *Ho Yew Kong v Sakae Holdings and other appeals and other matters* [2018] 2 SLR 333 at [88] and [115]). Generally speaking, breaches of duty committed by a director would amount to corporate wrongs and the proper plaintiff in such cases would *prima facie* be the company itself (see *Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] 1 SLR 771 at [35]). H8's sole complaint was that Jason and Annie had misapplied funds that had been granted to the Company by way of the Bridging Loan which, though granted for the purpose of the Company's working capital, were instead used to repay POP's shareholder loans.

103 The Judge found that even if Jason and Annie had breached their duties as directors of the Company, that was an injury caused to the Company and not H8 as a shareholder. We saw no reason to disagree with the Judge on this issue.

104 For these reasons, we dismissed H8's arguments on Issue 3.

Issue 4: the terms of the buyout order

The law on the application of minority discounts

105 However, we were persuaded by H8's arguments that the Judge had misapplied the law on minority discounts and therefore set aside the Judge's orders on the DLOC and DLOM. We take the opportunity to briefly clarify the approach to be adopted in determining whether minority discounts ought to apply in buyout orders made pursuant to s 216(2)(*d*) of the Companies Act.

106 The starting point in our analysis was the recognition that the court's power to order a buyout stemmed from s 216 of the Companies Act. In this regard, it was well-established that commercial fairness is the touchstone by which the court determines the appropriate relief to grant under s 216 of the Companies Act (*Over & Over* at [81]).

107 In *Kiri Industries Ltd v Senda International Capital Ltd and another and other appeals and other matters* [2024] 2 SLR 1 ("*Senda*"), although the Court of Appeal was addressing the issue of whether a DLOM should have been ordered by a court, its observations extended to both a DLOM and DLOC. The court explained (at [243]) that the general rubric of commercial fairness which informs the exercise of discretion would apply equally to a DLOC and a DLOM. Thus, in setting the terms of a buyout order under s 216(2) of the Companies Act, the court is tasked with determining the anterior question of whether it is fair and appropriate to order a DLOM (*Senda* at [241]) and presumably a DLOC as well. In other words, it is for the court to decide first whether to apply such a discount. If so, it would be for the valuer to determine the quantum.

108 In the context of a non-quasi-partnership, there is no presumption as to whether a discount ought or ought not to be applied and the court will instead

have to look at all the facts and circumstances of the case (see the Court of Appeal's decision in *Thio Syn Pyn v Thio Syn Kym Wendy and others and another appeal* [2019] 1 SLR 1065 ("*Thio Syn Pyn*") at [19] and [33]). The burden lies on the party asserting that a discount should be applied to satisfy the court that the discount would be fair and equitable in the circumstances of the case (*Thio Syn Pyn* at [19], citing *Koh Keng Chew and others v Liew Kit Fah and others* [2018] SGHC 262 at [11]).

109 However, by the time the court considers whether a minority discount would be fair and equitable, it would have satisfied itself that there were grounds for a personal remedy (as defined in s 216(1) of the Companies Act) and deemed a buyout order to be appropriate. In other words, the court would have already found that some act of oppression, disregard of a member's interest, unfair discrimination and/or prejudicial conduct had taken place and that the appropriate remedy would be for the oppressed member to exit the joint venture. In such a situation and where there is a quasi-partnership, there is a strong presumption that no discount should apply because the oppressed member has no choice in the matter and a buyout is the only practical way out, short of a winding up (see *Thio Syn Pyn* at [17], citing *In re Bird Precision Bellows Ltd* [1984] Ch 419 ("*Bird Precision*") at 430). Such a rationale might arguably be said to apply even where there is no quasi-partnership (*Thio Syn Pyn* at [17] and [32]–[34]).

110 Applying this rationale, the inquiry was whether H8 could be treated as having freely elected to sell its shares, which might have justified (albeit not necessarily mandated) applying a discount, or if it was the oppressive conduct which made it no longer tolerable for the petitioners to retain their interest in the company. This did not derogate from the fact that the court is empowered to consider all the circumstances of the case in coming to its conclusion, which

would include a consideration of factors such as the conduct of the minority shareholder in the course of the relationship between the parties (*Thio Syn Pyn* at [30], citing *Sharikat Logistics Pte Ltd v Ong Boon Chuan and others* [2014] SGHC 224 at [246]).

111 Where the facts point clearly to a situation where the minority had acted in such a way as to deserve its exclusion from the company, there would be no impediment for the court to order that the valuation should be subject to minority discounts. One factual example of this is the case of *Davies v Lynch-Smith and others* [2018] EWHC 2336 (Ch) ("*Davies*"), where a discount was awarded because the breakdown in relationship between the majority and minority shareholders was entirely precipitated and caused by the minority shareholder. His Honour Judge Hodge QC (sitting as a Judge of the High Court) found that the exclusion of the minority shareholder from his limited role in the management of the company and his employment was not unfairly prejudicial but was entirely justified on the basis of his involvement with a competitor and his deliberate refusal to disclose his competing interest (at [83]), as well as his interception of commission due to the company (at [92] and [94]). The minority shareholder was therefore treated as a willing and not a reluctant seller (at [114]).

Minority discounts were not appropriate in the present case

112 We were aware that decisions relating to the imposition of minority discounts fell squarely within the exercise of the court's broad discretionary powers, and that an appellate court would ordinarily not interfere with the lower court's decision unless it was shown that it had erred in some way (*Senda International Capital Ltd v Kiri Industries Ltd and others* [2020] 2 SLR 1 at [32]). In the present case, the Judge had left it to the valuer to decide whether a

DLOM should be applied while she ordered that a DLOC be applied. As mentioned at [107] above, it is for the court to decide whether any discount should be applied. The Judge had erred in leaving it to the valuer to decide whether to apply a DLOM. We add that initially in POP's written closing submissions, it did not suggest a DLOC or DLOM if the court were to order it to buy H8's shares in the Company. With respect, we were of the view that neither a DLOM nor DLOC should apply. In so far as the Judge was of the view that a DLOC should apply, we concluded that the Judge had also erred.

113 First, the Judge was of the view that it was the discovery of the fraud in the Representation that led to the breakdown of the parties' relationship. Although the Judge had found two acts of oppressive conduct on the part of POP, she did not think that they necessarily rendered the relationship irreparable. While not excusing the two acts of oppression, she placed more weight on the irretrievable breakdown in the relationship to decide to order a corporate divorce by way of an order for POP to buy out H8's shares in the Company. We were of the view that she placed too much weight on the breakdown in the relationship bearing in mind that H8 did not rely on the just and equitable ground to seek a winding up or a buyout order. It was the court's finding of oppression and not the irretrievable breakdown in the relationship *per se* that made the difference in determining whether a buyout order should be granted. Accordingly, in ordering a buyout with the imposition of a DLOC, it appeared that POP was being rewarded for its oppressive conduct, although that was not the Judge's intention.

114 Second, while H8 was not an unwilling seller in that it was already looking to exit the Company, this did not mean that it was a willing seller at any price. Furthermore, it has been observed in an academic article that where a minority shareholder is forced to relinquish his shares because of oppressive

conditions, the minority shareholder should receive his proportional share of the value of the business, *ie*, without a discount (see *Senda* at [239], citing Douglas Moll, "Shareholder Oppression and 'Fair Value': of Discounts, Dates and Dastardly Deeds in the Close Corporation" (2004) 54(2) Duke LJ 293 at 322). Thus, the fact that H8 may have been willing to exit should not be given undue weight.

115 Third, the Judge placed insufficient weight on H8's contributions to the Company. While it was true that H8's contributions tapered off in subsequent years, we agreed with H8's submissions that the joint venture would not have materialised without the initiative of William and H8's initial contributions. H8 was already involved in the management of 34KB and 8ER prior to the joint venture and evidently continued to play a crucial role in the operations. As acknowledged by both Jason and Annie, the day-to-day handling of the operations of 34KB and 8ER was left to Terrence, as he was experienced in the business of operating workers' dormitories.

116 Fourth, the Judge should have placed more weight on the fact that POP would gain full control as the sole shareholder of the Company after the buyout. The fact that the majority shareholder would gain a significant increase in control has been described in case law as an "important factor" and a "crucial consideration" (see *Thio Syn Pyn* at [38]–[39]; *Over & Over* at [132]). Thus, if the majority shareholder were to gain a tangible or collateral benefit from the buyout, it should not enjoy a further benefit through the application of a minority discount (see *Liew Kit Fah and others v Koh Keng Chew and others* [2020] 1 SLR 275 at [50]). In our view, the tangible benefit that POP gained from the buyout was not insignificant in the light of the setting aside of the additional shares issued to POP. We elaborate. It will be recalled that the parties commenced this joint venture on the basis that POP and H8 held a 70:30 stake

respectively in the Company. As a result of the rights issue approved at the 4th AGM which POP picked up, POP's shareholding increased to 85%. When this rights issue was set aside for being oppressive, POP's shareholding would revert to 70%. There is a difference between a stake of 70% and 85%. The latter allows the majority shareholder to pass a special resolution, at a shareholders' meeting, which requires a 75% vote. Indeed, during closing submissions before the Judge, POP's counsel accepted that if the rights issue were set aside, and POP's shareholding reverted to 70%, there should be no DLOC in the buyout order.

117 For these reasons, we concluded that the threshold for appellate intervention had been met to warrant interference with the Judge's exercise of her discretion. We therefore set aside the Judge's orders on the DLOC and DLOM and ordered that the independent valuer should value H8's shareholding without accounting for a DLOC or a DLOM.

118 Finally, we saw no basis to interfere with the Judge's decision to reject H8's request for an audit of the Company. Indeed, H8 was not seeking an audit only. In its Appellant's Case, it said it wanted the court to empower the valuer "to investigate and account for any misuse of the Company's funds in the valuation of the share price". It relied on the two acts of oppression to support this application. However, the increase in Jason's renumeration had been set aside by the Judge. Furthermore, the use of the Bridging Loan to pay loans from POP would not in itself affect the value of the shares. Moreover, these allegations had been made when the oppression proceedings were pursued and yet at that time, before the trial, no such relief had been sought. The proposed investigation would go much further than an audit and H8's pleadings did not seek an investigation. It was a late attempt to widen the scope of relief which was unjustified. There was simply no basis for us to grant H8's application for such relief.

119 We should address one more point. In deciding to impose a DLOC, the Judge noted the equities of the case. An example was that H8 had failed on a greater number of pleaded oppression allegations than the two acts of oppression it had established. H8 submitted that it was wrong in principle to take its failure on the other allegations into account in deciding whether to order such a discount. The failure should only be relevant to the question of costs. H8 submitted that the Judge had relied on *Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) and another v Ayaz Ahmed and others and other appeals* [2024] 1 SLR 1016. In that case, the Appellate Division of the High Court cited, at [378], the case of *Lim Chee Twang v Chan Shuk Kuen Helina and others* [2010] 2 SLR 209 ("*Lim Chee Twang*") at [69] and [150(a)] for the point that the court had ordered a discount to reflect a minority shareholding after considering various factors including the point that many of the allegations of the minority shareholder had not been successful. The suggestion was that this was a factor in deciding whether to order a DLOC. However, H8 submitted that *Lim Chee Twang* was not an authority for that proposition. While the minority shareholder in that case did not succeed on various allegations, this was not mentioned as a factor to be considered whether to order a discount. We agreed with that submission. Hence, in deciding whether to order a DLOC, we did not take into account H8's failure to establish the various allegations of oppression.

Conclusion

120 For the reasons above, we partially allowed the appeals in AD 72 and AD 73. We also made orders on the costs of the appeals and the proceedings below by consent of the parties.

121 For completeness, we noted that, in the course of the litigation between the parties, William had made Annie an offer for POP to buy out H8's

shareholding for $1m. On 14 September 2020, Annie then sent William an email indicating her acceptance of the offer subject to terms and conditions, but this buyout offer was eventually not followed through. At the hearing before us, we asked the parties whether they were still willing to consider following through with the buyout offer at $1m as that would avoid the need for a valuation. The parties have not reverted and we say no more about that offer.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Walter Ferix Silvester and Siraj Shaik Aziz (Silvester Legal LLC) for the appellants in both appeals;
Zhulkarnian bin Abdul Rahim, Sean Chen Siang En and Lam Zhi Yong Daniel (Dentons Rodyk & Davidson LLP) for the respondent in AD/CA 72/2024 and the first, second and fourth respondents in AD/CA 73/2024;
Sim Chong (Sim Chong LLC) for the third respondent in AD/CA 73/2024.