IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 19

Civil Appeal No 56 of 2018

Between

(1) Thio Syn Pyn

… *Appellant*

And

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

… *Respondents*

Civil Appeal No 59 of 2018

Between

(1) Thio Syn Wee

… *Appellant*

And

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

… *Respondents*

In the matter of Suit No 490 of 2013

Between

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

… *Plaintiffs*

And

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

… *Defendants*

GROUNDS OF DECISION

[Companies] — [Oppression] — [Minority shareholders]
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Andrew Phang Boon Leong JA, Tay Yong Kwang JA and Quentin Loh J
18 February 2019

27 March 2019

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 Both appeals are the latest instalment in a series of suits between the members of the Thio family. These suits concern the management of three companies incorporated in the 1960s ("the Group") by Mr Thio Keng Poon ("Mr Thio"), the family patriarch. One of those companies, Malaysia Dairy Industries Pte Ltd ("MDI"), is the subject of these appeals.

2 Three of the Thio siblings, namely, Thio Syn Kym Wendy ("Wendy"), Thio Syn San Serene ("Serene") and Thio Syn Ghee ("Michael"), are the respondents in these appeals ("the Respondents"). They are minority shareholders of the Group, including MDI. They acquired their shares by way of bonus issues in 2002, because their parents, Mr Thio and Mdm Kwik Poh

Leng ("Mdm Kwik"), wished to provide for them financially. Their brothers, Thio Syn Pyn ("Ernest") and Thio Syn Wee ("Patrick"), are the appellants ("the Appellants"). They are controlling shareholders of the Group, including MDI.

3 In earlier proceedings, the Respondents sought relief from minority oppression for acts committed by the Appellants and Mdm Kwik, and asked for a buyout order in respect of their shares in the Group. The trial judge ("the Judge") found for the Respondents in part (see *Thio Syn Kym Wendy and others v Thio Syn Pyn and others* [2017] SGHC 169 ("Liability Judgment")). Her decision was largely affirmed by this court on appeal (see *Thio Syn Kym Wendy and others v Thio Syn Pyn and others and other appeals* [2018] 2 SLR 788 ("CA Judgment")).

4 In the CA Judgment, we affirmed the Judge's finding that while the Group were "family companies" in the sense that most of the directors were members of the Thio family, the Thios did not operate on the basis of a relationship of mutual trust and confidence in relation to how the companies were run. Neither was there a common understanding among the parties that the Respondents were entitled to participate in the management of the Group as directors. Thus, the companies were neither quasi-partnerships nor akin to quasi-partnerships (CA Judgment at [6]–[7]).

5 We also affirmed the Judge's decision to allow the claim of minority oppression in two respects. First, the Appellants' use of MDI to further their personal pursuit of Mr Thio for his alleged multiple expense claims in the Group went well beyond the rational corporate action required to recover the amounts due to the companies. The matter could have been settled by accepting Serene's offer to make compensation for the sums claimed from Mr Thio. Indeed, in engaging lawyers to issue the letters of demand despite Serene's offer, the

Appellants essentially incurred more costs for the Group that approximated to a large percentage of what was ultimately recovered. In the circumstances, their use of MDI for the purposes of their vendetta was commercially unfair vis-à-vis the other shareholders including the Respondents (Liability Judgment at [75]–[79]; CA Judgment at [14]).

6 Second, the Appellants' conduct in selectively using the results of an independent report prepared by Aon Hewitt, a consultancy firm ("the AH report") to justify increasing their remuneration, drastically reducing Michael's remuneration and taking away long established benefits for non-executive directors (including the other Respondents), while simultaneously refusing to implement comments that would have taken away their own benefits, was oppressive and unfair. Pertinently, Michael's employment resulted from familial, not corporate, considerations. Mdm Kwik wanted his livelihood to be provided for, and Ernest and Patrick accordingly found a position for him and paid him a salary that would achieve that aim. In other words, Michael was not recruited on the usual basis of a company with a vacancy giving a qualified applicant a market rate salary for the job. His position was special and, therefore, using the AH report to justify a return to market rates for Michael's remuneration and to deprive him of an allowance from MDI would not have been anticipated. Seen in this context, the reduction of Michael's remuneration was a spiteful act and not one motivated by rational corporate considerations (Liability Judgment at [81]–[90]; CA Judgment at [15]).

7 In the circumstances, we affirmed the Judge's order that the Appellants purchase the Respondents' shares in MDI on the basis of a share price to be determined by an independent valuer who shall value the company as a going

concern. The Judge also granted the parties liberty to apply (CA Judgment at [26]; Liability Judgment at [114]).

8 As it turned out, parties could not agree whether a discount should be applied to the valuation of the Respondents' shares in MDI. They therefore sought a court determination of the issue. The Judge's decision can be found at *Thio Syn Kym Wendy and others v Thio Syn Pyn and another* [2018] SGHC 54 ("Valuation Judgment"). The present appeals arise out of the Valuation Judgment.

The decision in the court below

9 The Judge held that the shares should *not* be valued on a discounted basis. She noted that where the company in question is a quasi-partnership, there is a strong presumption that no discount should be applied. However, she considered that the converse did not apply. Instead, the starting point is that there is *no general rule* when valuing non-quasi-partnerships – the court must look at all the facts and circumstances when determining whether a discount should be applied. The Judge also clarified that the above principles relate only to the question of whether the court should order a minority discount for lack of control, and not in respect of a discount for non-marketability. In her judgment, the question of whether to apply a discount for non-marketability should ordinarily be left to be determined by the independent valuer in his expertise. She thus left it to the valuer to consider whether it would be appropriate to apply any discount for a lack of marketability of MDI's shares (Valuation Judgment at [24]–[32] and [40]). No appeal was filed with respect to her decision on non-marketability.

10 On the facts of this case, the Judge concluded that the Respondents' shares should *not* be valued on a discounted basis. She reached her decision on the basis that the Group was "family-run and family-owned, even if it did not amount to a quasi-partnership or import any obligations of mutual trust and confidence between the shareholders". She found that "[t]he family-run nature of the Group and the way in which the various parties had come into their shareholdings suggest that the [Appellants] were always meant to ensure that the interests of MDI and their siblings would be protected or at least not harmed". She also took into account "the [Appellants'] commercially unfair and oppressive actions and the [Respondents'] lack of culpability as minority shareholders in causing the breakdown of the relationship between the parties" (Valuation Judgment at [39]).

11 While the parties had also relied on other factual aspects of the case to support their respective positions as to whether a discount should be applied, the Judge did not think that much weight should be placed on most of them (Valuation Judgment at [35]–[38]). We will address these factual aspects below.

The issue

12 The sole issue in these appeals was whether the Judge was correct to order that no minority discount on the basis of lack of control be applied to the Respondents' shares in MDI. This encompassed the legal issue as to whether there is or should be a presumption that minority shares in non-quasi-partnerships should be valued at a discount.

The parties' arguments

The Appellants' arguments

13 The Appellants urged this court to recognise a presumption that shares in non-quasi-partnerships should be valued on a discounted basis. They relied on a line of English cases, including *Irvine v Irvine (No 2)* [2006] EWHC 583 ("*Irvine v Irvine*"), *Strahan v Wilcock* [2006] 2 BCLC 555 ("*Strahan v Wilcock*") and *Booth v Booth* [2017] EWHC 457 (Ch) ("*Booth v Booth*") in support of their proposition. They submitted that the purpose of a buyout is to bring to an end to, or remedy the oppression, not to punish the shareholder who has acted oppressively. Thus, a minority shareholding should be valued in the ordinary way unless there is any reason why that particular shareholding has special characteristics. They submitted that where the minority shareholder was not entitled to participate in management (as in non-quasi-partnerships), any buyout should proceed on the general basis that a minority discount should be applied to reflect the value of the shareholding which is fair to both the vendor and purchaser, because (a) while the shareholder is not a willing seller, an ordinary minority shareholder who takes shares as an investment has no right or expectation to receive more than the actual value of his shares; and (b) no rights of control are attached to the minority shareholding. They argued that a valuation of minority shares which do not reflect these realities would be "artificial".

14 The Appellants further submitted that the facts of this case did not justify a pro-rata valuation. In particular, they pointed out that the Respondents acquired the shares by way of a gift and did not contribute to the financial success of the company. They also emphasised that the Respondents were interested in selling their shares in 2011 – in other words, they were not

unwilling sellers and should not be treated as such.

The Respondents' arguments

15 The Respondents agreed with the Judge that the court must look at all the facts and circumstances when determining whether a discount should be applied when valuing minority shares in quasi-partnerships. They pointed out that the Appellants' reliance on *Strahan v Wilcock* and *Irvine v Irvine* was misplaced, because the court's observations in the former were *obiter dicta*, whereas in the latter case, the court's observation was itself premised on the *obiter dicta* of *Strahan v Wilcock*. They also pointed out that the English courts had in recent cases emphasised that there is no presumption or general rule (see *Re Sunrise Radio Ltd* [2010] 1 BCLC 367 ("*Re Sunrise Radio*") and *Estera Trust (Jersey) Ltd v Singh* [2018] EWHC 1715 (Ch) ("*Estera Trust*")). They further submitted that there should be no general rule as a matter of policy, because (a) the purpose of applying a minority discount in a commercial sale does not apply in a court-ordered buyout; (b) an oppressed minority shareholder should not be treated as having elected freely to sell his shares; and (c) a default rule for the application of a minority discount may encourage minority oppression and discourage settlement.

16 On the facts of this case, the Respondents agreed with the Judge that while MDI was not a quasi-partnership, the family-run nature of the company gave rise to certain expectations which were not met, and this justified a pro-rata valuation of the shares. They further pointed out that the Appellants would control 76% of the company's shares after the buyout, up from 56%. They submitted that this was a substantial increase in control which justified a pro-rata valuation.

The applicable legal principles

17 As a matter of logic and first principles, it does *not* ***necessarily*** follow that, if there is a presumption that no discount should be applied in the case of a quasi-partnership, there ought to be a presumption of a discount in the case of a *non*-quasi-partnership (see *eg*, Robin Hollington, *Hollington on Shareholders' Rights* (Sweet & Maxwell, 8th Ed, 2017) ("*Hollington*") at para 8-152) – although such a presumption could be rebutted on the facts (see *eg*, the English Court of Appeal decision of *Re Phoenix Office Supplies Ltd, Phoenix Office Supplies Ltd and others v Larvin* [2003] 1 BCLC 76 at [28]−[33] and the Supreme Court of New South Wales decision of *Byrne v A J Byrne Pty Ltd* [2012] NSWSC 667 ("*Byrne*") at [64]−[73]). Indeed, in the former situation of a quasi-partnership, there is a strong presumption that no discount should be applied because the minority shareholder has no choice in the matter and that a buy-out is the only practical way out short of a winding up (see *eg*, the oft-cited English High Court decision of *In re Bird Precision Bellows Ltd* [1984] 1 Ch 419 ("*Bird Precision*") at 430 (affirmed, *In re Bird Precision Bellows Ltd* [1986] 1 Ch 658); see also *Byrne* at [64]). Indeed, such a rationale might arguably be said to apply *even in* the situation of a *non*-quasi-partnership – which would be ***the complete opposite*** of the presumption which the Appellants were in fact arguing for in the present appeals (and *cf* the observation by Chua Lee Ming J in the recent Singapore High Court decision of *Koh Keng Chew and others v Liew Kit Fah and others* [2018] SGHC 262 ("*Koh Keng Chew*") that "a buyout order … is an exercise of the coercive power of the court" (at [12], citing the Singapore High Court decision of *Poh Fu Tek and others v Lee Shung Guan and others* [2018] 4 SLR 425 at [38]; see also *per* Chua J at [26]); reference may also be made to the Ontario Court of Appeal decision of *Re Mason and Intercity Properties Ltd* (1987) 37 BLR 6 ("*Mason and Intercity Properties*") at [39]−[40] as well as Pearlie Koh in Ch 11 of Hans Tjio, Pearlie

Koh and Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015) ("*Corporate Law*") at para 11.097). However, as the Judge noted (at [26] of the Valuation Judgment), there is also a (*more specific*) reason for drawing a distinction between quasi-partnerships and non-quasi-partnerships, centring on Lord Millett's view in *CVC/Opportunity Equity Partners Ltd and another v Demarco Almeida* [2002] 2 BCLC 108 ("*CVC*") (at [41]) that the rationale for denying a discount in the context of a quasi-partnership "lies in the analogy between a quasi-partnership company and a true partnership". As the Judge observed (*ibid*):

> The valuation of shares is a quasi-partnership is based on a notional sale of the company *as a whole* to an outside purchaser, rather than a direct sale of the outgoing partner's share to the continuing partners. The majority shareholder must buy the whole of the company, partly from themselves and partly from the minority, "[i]n order to be free to manage the company's business without regard to the relationship of trust and confidence which formerly existed between them" ([*CVC*] at [42]). [emphasis in original]

18 It might also be noted that the legal position just mentioned in the preceding paragraph with regard to *quasi-partnerships* appears to be firmly established in the Singapore context, although it should be noted that the order that there be no discount was often given as a matter of course (see *eg*, the Singapore High Court decisions of *Low Janie v Low Peng Boon and others* [1998] 2 SLR(R) 154 at [67]; *Tan Choon Yong v Goh Jon Keat and others and other suits* [2009] 3 SLR(R) 840 at [117]; *Eng Gee Seng v Quek Choon Teck and others* [2010] 1 SLR 241 at Annex A; and *Spectramed Pte Ltd v Lek Puay Puay and others and another suit* [2011] SGHC 43 at [134]; as well as the decision of this Court in *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 at [92(c)]).

19 However, *even if* we take the Appellants' case at its *highest*, a *non*-quasi-partnership is (compared to a quasi-partnership) a *much broader* category that can cover (potentially at least) *a myriad of* situations (including situations where there is not only, in substance, a free election by the minority shareholder to sell its shares and which therefore would justify (*albeit not necessarily mandate*) applying a discount *but also* situations where there is no choice on the part of the minority shareholder which would justify *not* applying a discount). In the circumstances, the Judge's approach, which applies no presumption and which (most importantly) entails the court having to look at *all the facts and circumstances* of the case in arriving at its decision as to whether a discount ought or ought not to be applied – *instead of* (as the Appellants argued) there being a presumption of the application of a discount – appears to be a sound one. As Chua J aptly observed in *Koh Keng Chew* at [11], "the party asserting that a discount should be applied has to satisfy the court that the discount would be fair and equitable in the circumstances of the case" (see also at [15], [18], [22(a)] and [22(c)], as well as *Hollington* at para 8-152). Indeed, what relevant legal material that exists points, on balance, in favour of the Judge's approach instead of that advocated by the Appellants. Let us turn, at this particular juncture, to the relevant case law as well as legal literature.

20 The relevant *case law* is, in our view, ambiguous at best. Indeed, on a *closer examination* of the case law, it appears clear to us that it does ***not*** in fact support the presumption in the context of *non*-quasi-partnerships that a discount ought to be applied (in *contrast* to the situation of quasi-partnerships where there is, as noted above, a strong presumption that *no* discount should be applied). Let us elaborate.

21 As already noted the Appellants relied on a number of cases in order to argue that a presumption of a discount ought in fact to be applied in the context

of *non*-quasi-partnerships. As we shall see, however, theirs was, with respect, a selective use of the case law that, when more closely examined, did *not* support their argument (in the main, because many of the decisions cited by the Appellants were either not directly on point or were plucked as it were out of their context and/or relied on passage(s) in previous cases that themselves suffered from the difficulties just referred to or were just mere assertions without more). We pause at this juncture to note that there also appear to be cases that point in the *opposite* direction instead (*viz*, that there is a presumption that *no* discount ought to be applied (see *eg*, the Supreme Court of New South Wales decision of *Re North Coast Transit Pty Ltd* [2013] NSWSC 1119 ("*North Coast*") at [23]) as well as G Shapira, "Valuation of Shares in Buyout Orders" (1995) 16 Company Lawyer 11 ("*Shapira*") at pp 12–13 (where there is a valuable survey of the relevant Canadian case law (including *Mason and Intercity Properties* at [40]; see now also the Supreme Court of British Columbia decision of *1043325 Ontario Ltd v CSA Building Sciences Western Ltd* [2015] BCSC 1160 at [18]–[19])). However, let us put this last-mentioned category of cases to one side for the moment and consider the decisions that were cited by the Appellants instead.

22 For example, the English Court of Appeal decision of *Strahan v Wilcock* was cited – in particular, the observations by Arden LJ (as she then was) at [17]. However, a close perusal of that particular paragraph will reveal that the learned judge was by no means expressing a definite view and, in any event, her observations were clearly *obiter dicta* simply because that particular case related to a *quasi*-partnership (instead of a non-quasi-partnership). Hence, the Appellants' reliance on the subsequent English High Court decision of *Irvine v Irvine* – inasmuch as it relied upon Arden LJ's observations in *Strahan v Wilcock* – is also unpersuasive in so far as case law authority in favour of the

Appellants is concerned (although the court in *Irvine* accepted that the company concerned was a non-quasi-partnership). We note that the subsequent English High Court decision of *Re McCarthy Surfacing Ltd, Hequet and others v McCarthy and others* [2009] 1 BCLC 622 relied, *inter alia*, on *Irvine v Irvine* (at [92]) – which, as we have just seen, is itself unpersuasive authority (see, to like effect, the English High Court decision of *Booth v Booth* at [140]; the Scottish Court of Session decision of *Fowler v Gruber* [2010] 1 BCLC 563 ("*Fowler v Gruber*") at [184]−[186] (citing, successively, *Strahan v Wilcock* and *Irvine v Irvine* at [184] and [185], respectively, and distinguishing (at [183]) *Bird Precision* as relating to a quasi-partnership); the Irish High Court decision of *In the matter of Skytours Travel Limited* [2011] 4 IR 651 (citing *Strahan v Wilcock* at [32], *Irvine v Irvine* at [33], and *Fowler v Gruber* at [34] before arriving at the conclusion (at [35]) that "it is only in the case of a quasi-partnership company or where some other exceptional circumstance exists that a minority shareholding should be valued on a non-discounted basis" and that a discount ought to apply (on the basis of the authorities just cited) as what was involved in that case was a non-quasi-partnership company)).

23 The English High Court decision of *Croly v Good* [2010] EWHC 1 (Ch) related to a *quasi*-partnership company and, hence, the court's observations at [8] were *obiter dicta*; more importantly, they are, with respect, mere statements without more.

24 As for the English High Court decision of *Re Sunrise Radio*, whilst the court did cite *Irvine v Irvine* (at [291]) and *Strahan v Wilcock* (at [292]), it also cited *Bird Precision* and (more importantly) appeared (at [297] and [299]) to endorse the approach adopted by the Judge in this case in the court below – which is the *precise opposite* of the argument which the Appellants were relying upon.

25 Indeed, we observe that where the court concerned has in fact applied a discount in *non*-quasi-partnership context, this has been after the court has considered all the relevant facts and circumstances – an approach that is consistent with that adopted by the Judge in the present case (see *eg*, the English High Court decision of *Re Elgindata Ltd* [1991] BCLC 959 at 1007).

26 We now turn to more *recent* English decisions which appear to be *contrary* to the legal proposition which the Appellants argued for in the present appeals and which expressly adopted the approach set out by the Judge in the present case.

27 One such decision is that of the English High Court in *Re Blue Index Ltd; Murrell v Swallow and others* [2014] EWHC 2680 (Ch) ("*Re Blue Index*"), which (perhaps significantly) is a decision by Mr R Hollington QC who was sitting as a Deputy Judge of the High Court (and who is, not insignificantly in our view, also the author of one of the leading texts to which we have already had occasion to refer (*viz*, *Hollington*)). In that case, the learned judge undertook a detailed analysis of the leading English decision of *Bird Precision* (to which we have already referred above). He then proceeded to observe as follows (at [23]–[26]):

> 23. In my view it is reasonably clear that the distinction that Nourse J was drawing between the two categories of case for the purpose of his exposition of the underlying principle, i.e. as to whether or not a discount for a minority shareholding was applicable, was a distinction between the general case where it was unfair to treat the wronged petitioner as a willing seller and therefore for the price to be fixed on a discounted basis, and the exceptional case where it was fair to do so because (for example) he had acquired his shares at a discounted price. In other words, the emphasis in his exposition of the underlying principle lay in the unfairness in treating a successful petitioner as a willing seller. Nourse J was not drawing a distinction between a quasi-partnership and a non quasi-partnership, because it would have been easy for him to express himself to

> that effect and he did not. For the purposes of his exposition of the underlying principle, the quasi-partnership case was the case where typically the wronged petitioner could not be treated as a willing seller (to the contrary where he had deserved his exclusion) or as having acquired his shares at a discounted price.
>
> 24. The matter may be tested by taking the example of a non quasi-partnership case where shares have been acquired on a full pro rata basis without any discount for a minority shareholding. Suppose the minority shareholder has been seriously wronged and prejudiced such as to justify relief on the oppression ground, whether it be by way of a share purchase order or, in the absence of such a remedy, a winding up order. It would be just as unfair to the wronged minority shareholder in such a case for his shares to be purchased by the oppressing majority with a discount for a minority shareholding as it would be if it were a quasi-partnership case. Take further, by way of contrast, the quasi-partnership case where shares have nevertheless clearly been acquired at a discounted price. Such a case would fall into the second category in the analysis of Nourse J, as was indeed noted by Peter Gibson J (as he then was) in *Re a company (No. 005134 of 1986), ex parte Harries* [1989] BCLC 383, discussed below.
>
> 25. In other words, I can see nothing in the fact that the case is a quasi-partnership one for that to be the determining factor as to the general applicability of a discount for a minority shareholding.
>
> 26. It may be objected, as it was argued unsuccessfully before the Court of Appeal in *Re Bird Precision Bellows* [1986] Ch. 658, that this ignores the reality that the shareholding to be purchased is a minority shareholding. But that argument was rejected. And it is in my view a fallacious one, since the whole purpose of the unfair prejudice remedy is to grant the oppressed minority a remedy which it would not otherwise have. It would substantially defeat the purpose of the new remedy if the oppressing majority were routinely rewarded by the application of a discount for a minority shareholding.

28 Another is the English High Court decision of *Estera Trust*, which, in fact, cited *Re Blue Index* (at [638]; see also at [640]).

29 Turning to relevant local cases, in the Singapore High Court decision of *Lim Chee Twang v Chan Shuk Kuen Helina and others* [2010] 2 SLR 209,

Quentin Loh JC (as he then was) found (at [79(a)]) that *no* quasi-partnership existed. Whilst he did (at [150(a)]) in fact apply a discount in so far as the valuation of the shareholding was concerned, this was *not* effected by way of *a general presumption* as such and appeared to be based on the specific facts and circumstances of the case (which is, in fact, consistent with the approach adopted by the Judge in the present case).

30 In *Sharikat Logistics Pte Ltd v Ong Boon Chuan and others* [2014] SGHC 224, another decision of the Singapore High Court, Judith Prakash J (as she then was) was prepared (at [246]) to acknowledge the possibility of a discount if the minority had acted in such a way as to deserve its exclusion from the company. This does not contradict any of the general propositions we have considered. More importantly, we must assume that the learned judge (who was the same judge in this case in the court below) was aware of her previous decision and nevertheless proceeded to articulate a clear legal proposition which the Appellants controverted.

31 At the hearing, counsel for Ernest, Mr Cavinder Bull SC ("Mr Bull"), directed us to *North Coast*, where the court stated at [24] that "the remedy under s 233 [of the Australian Corporations Act 2001 (Cth)] is one that must be calculated to alleviate the consequences of the oppressive conduct and no more". On this premise, Mr Bull submitted that that the court's focus should be on *compensating* the oppressed shareholders, and no more. He further argued that since the value of the Respondents' shareholding was not reduced by the Appellants' oppressive conduct, there was no reason to value the shares otherwise than on a discounted basis. While we agree that the Appellants' conduct in this respect is relevant, it is but one factor in the analysis. Further, the minority in *North Coast* had always been liable to compulsory acquisition by another interest willing to pay for it in an auction, oppression or no

oppression. As a result, the court held that the minority could not be entitled to a result superior to which would have prevailed under the auction process (*North Coast* at [24]). This was the context in which the quotation which Mr Bull relied on was made. The court was not laying down a general rule that minority shares in non-quasi-partnerships should be valued at a discount. Indeed, it recognised at [23] that when valuing shares of a company in a buyout, the court "usually does not provide for a discount for minority interest for the minority shareholder".

32 The relevant *legal literature* also suggests that there ought *not* to be a presumption of a discount in the context of *non*-quasi-partnerships. What the court concerned ought to do is simply to look at *all the facts and circumstances* of the case in arriving at its decision as to whether a discount ought or ought not to be applied (see *eg*, Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 3rd Ed, 2017) ("*Chew*") at paras 4.303–4.304 and *Hollington* at para 8-153).

33 In our view, there does *not* appear to be an overarching principle or legal policy that justifies (as *a general rule*) the raising of a presumption of a discount in the context of non-quasi-partnerships. None is to be found in the relevant case law or legal literature. Indeed, the latter strongly suggests otherwise. The question may be raised as to whether the proposition that the court concerned ought simply to look at all the facts and circumstances of the case in arriving at its decision as to whether a discount ought or ought not to be applied in the context of non-quasi-partnerships is a viable principle to begin with. There is no conceptual objection to this proposition being a viable principle simply because it *would* have *normative force* inasmuch as it would be *an objective universal or general starting-point* for each court. Indeed, even if there were a presumption of a discount (which we hold is *not* the legal position), the court

concerned would *still* be *required* to consider *all the facts and circumstances of the case* in order to decide whether such a presumption ought to be *rebutted* – in which case *no* discount would be applied.

34 Indeed, in *Koh Keng Chew*, the court adopted the *same* legal position as that set out above, *viz*, that whether or not a discount should be applied in the context of a non-quasi-partnership would depend on the precise facts and circumstances of the case. *However*, the court in that case in fact went ***further***, holding that the principle just enunciated would apply *even in* the case of *quasi-partnerships* inasmuch as there would *no* strong presumption that no discount should be applied where a buyout order is made in the context of a quasi-partnership (see at [19], [20] and [22(e)]). In other words, that principle just enunciated would apply *across the board* – a proposition that appears to have strong support from the leading academic commentators (see *eg*, *Chew* (especially at para 4.305) and *Hollington* (at para 8-158)). That does not, however, appear (as we have noted earlier on in this judgment) to be the perceived legal situation in both the case law as well as the legal literature in so far as quasi-partnerships are concerned, although Margaret Chew perceptively observes as follows (see *Chew* at para 4.305):

> Before any generalisations can be made to apply to or distinguish between quasi-partnership shares and (non-quasi-partnership) investment shares, it remains to remind that the parameters of a quasi-partnership have yet to be conclusively charted, and the endless range of companies that may constitute a class of non-quasi-partnerships would render drawing any meaningful rules of universal application for such a class in this regard quite impossible.

35 As the situation we are now concerned with in the present appeals does *not* relate to the situation of a quasi-partnership, we will *not* set out a definitive view until the situation (relating directly to a quasi-partnership) comes squarely before this Court.

Our decision

36 We note, first, that the shares were meant to be "financial provision" for the Respondents. By way of background, the Respondents did not hold any shares in the Group companies immediately prior to 2002. This changed when Mdm Kwik expressed her wish that some financial provision be made for her daughters. Mr Thio then decided that Michael and his sisters should receive shares in the Group companies by way of bonus issues. Indeed, Mr Thio was so adamant about this that he had threatened to disown Ernest if the latter did not agree to his proposal. The shares were thus issued to the Respondents in March and April 2002, although Mr Thio retained full power in respect of those shares.

37 The Appellants accepted this fact, but emphasised that the intention behind the gift was to provide each of the Respondents with a minority shareholding "with all that entails". However, we think it highly unlikely that Mr Thio or Mdm Kwik had in mind the specific possibility that the Respondents' minority shares could be valued at a discount in the event of a court-ordered buyout. On the contrary, the fact that the Appellants had acted oppressively against the Respondents in the management of MDI should not leave the Respondents worse off. Indeed, allowing the Appellants to purchase the Respondents' shares at a discount would undermine Mr Thio's and Mdm Kwik's intentions.

38 We note further that the result of the buyout in this case is that there will be a *direct impact* on the *control* that the Appellants will gain. In point of fact, they will control 76% of the shareholdings in the company, up from 56%. Such *significantly increased control* over the company after the buyout further justifies, in our view, an order of *no* discount. More specifically, the buyout will

take the Appellants' control of MDI's shareholding over the 75% threshold necessary to pass special resolutions. This will enable them to alter or add to the constitution of MDI (see s 26(1) of the Companies Act (Cap 50, 2006 Rev Ed)). For instance, share transfer restrictions in Articles 4A–C and 6A–B of the Articles of Association of MDI may be amended, while the prohibition on the issue of shares to the public in Article 3 may be deleted to facilitate an initial public offering. The Appellants will also have the power to amend the articles governing the alteration of share capital (Articles 46–49) and the appointment and dismissal of directors (Articles 82–90). In our view, these benefits which the Appellants will obtain from the buyout should be reflected in the price of the shares.

39 That this is an important factor that the court does take into account is also evidenced by the case law (and see, in the Singapore context, the decision of this Court in *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 at [132] (where the majority would become the *sole* shareholder, *viz*, having a shareholding of 100% (and see, to like effect, the Manitoba Court of Appeal decision of *Kummen v Kummen-Shipman Ltd* [1983] 2 WWR 577 at [16] (Huband JA dissenting))) and, in the English context, *Estera Trust* (at [644]−[647], especially at [646] (reference, *inter alia*, to the raising of the majority's combined shareholding above 75%); reference may also be made to the Supreme Court of Queensland decision of *Re D G Brims and Sons Pty Ltd* (1995) 16 ACSR 559 at 595) as well as legal literature (see *Corporate Law* at para 11.097 as well as *Shapira* at pp 12–13).

40 We briefly address the remaining arguments. We did not accept the Appellants' submission that allowing the Respondents to realise the full value of their shares would result in an unjustified "windfall" since the Appellants were largely responsible for the financial success of MDI. In our view, having

regard to the fact that the shares were only meant to be financial provision for the Respondents, it is only natural that the Respondents did not participate in the management of MDI, and this should not be held against them. We also rejected the Appellants' submission that the shares should be discounted because the Respondents had wanted to sell their shares in 2011, *ie*, they were not unwilling sellers, a reason for not ordering a discount (see [14] and [17] above). As the Judge pointed out, the Respondents had eventually refused to sell their shares in 2012 over a disagreement in price, and this showed that the Respondents were not willing to sell at any price (Valuation Judgment at [36]).

41 For the reasons given above, we dismissed the appeals.

42 We ordered that costs of $28,000 (all-in) were to be paid by each Appellant to the Respondents. We also made the usual consequential orders.

Andrew Phang Boon Leong Judge of Appeal	Tay Yong Kwang Judge of Appeal	Quentin Loh Judge

Cavinder Bull SC, Kong Man Er and Fiona Chew (Drew & Napier LLC) for the appellant in Civil Appeal No 56 of 2018;
Jason Chan, Paul Ong, Melissa Mak and Afzal Ali (Allen & Gledhill LLP) for the appellant in Civil Appeal No 59 of 2018;
Alvin Yeo SC, Joy Tan, Ho Wei Jie, Jeremy Tan and Wang Chen Yan (WongPartnership LLP) for the respondents in Civil Appeals Nos 56 and 59 of 2018.