Lim Ah Sia *v* Tiong Tuang Yeong and others
[2014] SGHC 154

Case Number : Suit No 364 of 2013

Decision Date : 31 July 2014

Tribunal/Court : High Court

Coram : Edmund Leow JC

Counsel Name(s) : Ahmad Khalis bin Abdul Ghani and Muralli Rajaram (Straits Law Practice LLC) for the plaintiff; Tan Chau Yee and Laila Jaffar (Harry Elias Partnership LLP) for the defendants.

Parties : Lim Ah Sia — Tiong Tuang Yeong and others

Companies – oppression – minority shareholders

31 July 2014 Judgment reserved.

Edmund Leow JC:

1 The plaintiff, Lim Ah Sia ("Lim"), is a minority shareholder in the 3rd defendant, VStars Business (Singapore) Pte Ltd ("the Company"). He brought proceedings seeking relief under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) on the ground that the affairs of the Company were conducted in a manner oppressive or in disregard of his interest as a shareholder of the Company. [note: 1] Further, he also sought a declaration that the 1st and 2nd defendants, Tiong Tuang Yeong ("Tiong") and Corrine Ng ("Corrine"), had acted in breach of their duties as directors. Lastly, he also sought in the alternative a declaration that it was just and equitable to wind up the Company. [note: 2]

2 On 7 April 2014, I informed counsel that I found that there was oppression and that the most appropriate remedy was a buyout of Lim's shares. I then directed that the parties work out the detailed structure of the buyout and to return to me when it was ready. The parties indicated to me that they were unable to agree on a buyout figure, and a separate hearing was fixed on 21 July 2014 to deal with the outstanding issues.

Facts

3 The Company was incorporated on 6 November 1996. Lim and Tiong were two of the initial members of the company. The other two founding members were Han Jong Kwang ("Han") and Low Kin Wai ("Low"). Lim met Tiong sometime in 1993 or 1994, when they were both teaching computer training courses at Jing Tian Computer Services Pte Ltd. Tiong had known Han for about 12 years at the time of the Company's incorporation. [note: 3] I will refer to Lim, Tiong, Han and Low collectively as the "Initial Shareholders". Each of the Initial Shareholders had a 20% stake in the Company at the outset, except for Low, who had a 40% shareholding. All of them were also the Company's directors. [note: 4]

4 The Company was initially set up with the intention of entering into a joint venture with a Hong Kong-based company. This led to the incorporation in 1997 of a joint venture company, Vanda Systems Integration Pte Ltd ("VSI"), which employed all the Initial Shareholders, except Low. [note: 5]

Unfortunately, the joint venture broke down just two years later, in 1999. [note: 6] The Company's shareholding in VSI was purchased by the other party in the joint venture. [note: 7]

Events after the collapse of the joint venture

5 Despite the fact that the original purpose of the Company no longer existed, the Initial Shareholders decided to expand the Company's own business. All of the Initial Shareholders therefore went on to join the Company as employees. Han and Tiong joined the Company as employees on 1 January 2000. Lim followed on 1 February 2000 while Low joined as an employee two years later, on 1 March 2002. [note: 8]

6 Han left soon after because he was unable to put in more capital as required by the other directors. [note: 9] He resigned from his employment in the Company on 30 April 2000, although he remained as a shareholder and director until 30 June 2000. [note: 10] Han sold his 20% shareholding to Lim and Tiong equally for the net sum of $3,000, which was followed by a series of adjustment top-ups by the remaining shareholders. [note: 11] After these adjustments, Lim and Tiong had 33% shareholding each and Low had 34%. [note: 12]

7 A few years later, Low also resigned from his employment in the Company on or about 31 January 2004, apparently because he was unable to financially contribute to the Company. [note: 13] Low accepted the offer price of $1.20 per share for his 34% shareholding and resigned as director in or around October 2004. On 7 October 2004, he sold his shares to Lim, Tiong and two employees of the Company, namely Corrine and Kong Chong Hin ("Kong"). [note: 14] After the departures of Han and Low, the resulting share allocation of the Company was as follows: [note: 15]

(a) Lim - 45%

(b) Tiong - 45%

(c) Corrine - 5%

(d) Kong - 5%

8 Tiong and Corrine had assumed that Corrine and Kong would be appointed directors after they became members in the Company. [note: 16] However, they were not appointed as a result of Lim's objections. [note: 17] Therefore Tiong and Lim ended up as the only directors in the Company from 2004 to 29 May 2012.

The Additional Role and the restructuring of the Company

9 From around 1999, Lim also had the additional role of dealing with matters relating to administrative, human resource and financial matters of the Company ("the Additional Role"). This was a demanding job, and in April 2005, Lim asked Tiong by email that the Additional Role be rotated. [note: 18] It was subsequently agreed that Lim and Tiong would take turns every five years being responsible for the Additional Role. [note: 19] This led to a disagreement as to whether Tiong should be given additional remuneration for the Additional Role, and whether Lim had been receiving additional income for the aforesaid role. In the end, it was agreed that Tiong would not receive extra pay for his

new duties. [note: 20]

10 At around the same time, in May 2005, Tiong suggested to Lim that the Company's business operation be divided into two teams that each deal with the company's main lines of business, namely, software products and outsourcing services. Lim agreed. Lim would head the outsourcing services division ("Outsourcing Services") and Tiong would head the software products division ("Software Products") as the business managers of their respective teams. [note: 21]

11 Sometime in or about December 2005, Lim and Tiong verbally agreed on the following: [note: 22]

(a) that 20% of the profit before tax from each division would be allocated to that division, for the payment of sales commission and bonus to the employees of that division; and

(b) that the balance 80% of the profit before tax would go to the Company's general funds.

12 It was common ground that the two divisions were largely autonomous. Tiong and Lim were responsible for the business sales and technical support within each division. Nevertheless, Tiong and Lim consulted each other on issues relating to the management of the Company. [note: 23]

The termination of the Philips Contract

13 Everything was smooth sailing when both divisions were contributing to the Company's bottom line. This changed on 30 June 2011 when Philips Electronics Singapore Pte Ltd ("Philips") terminated its outsourcing contract with the Company ("the Philips Contract"). [note: 24] At that point, the Philips Contract was the main, if not the only, source of revenue for Outsourcing Services. [note: 25] All staff employed to manage the Philips Contract were subsequently let go. [note: 26] Software Products, meanwhile, remained profitable.

14 Tiong blamed Lim for not finding other clients to reduce his division's dependence on Philips, especially when Philips had indicated in 2009 that the contract was likely to be terminated. [note: 27] Lim, on the other hand, claimed that he did his best under the circumstances but was unable to find other clients, given the competitive market for outsourcing services which was increasingly being dominated by larger multinational corporations. [note: 28] Lim claimed that he had already done well to prolong the Philips Contract for as long as he did. [note: 29]

15 On 28 September 2011, Tiong asked Lim for Lim's business development plan and whether there would be incoming revenue from October to December 2011. Lim replied with a rather bare outline, and did not respond when Tiong returned with further questions. [note: 30]

16 On 24 October 2011, Lim emailed Tiong to ask Tiong to hand over the Additional Role to Lim as the agreed term of five years was over. In an email on 14 November 2011, Tiong essentially declined to decide on the matter of the Additional Role and instead asked Lim to justify his position as a business manager, when his division was no longer generating any revenue. [note: 31]

17 Lim admitted that he was asking for his Additional Role to be returned to him in order to enable him to continue contributing to the Company [note: 32] while he continued his marketing efforts to find alternative sources of revenue after the loss of the Philips Contract. [note: 33] Whether Lim was at fault for failing to find other clients, or whether the Philips Contract could have been further

prolonged, was a commercial question on which I would not express a view. However, it was clear that after the loss of the Philips Contract, Lim was no longer pulling his weight financially. Tiong's division, on the other hand, was successful in expanding its business from one year to the next.

18 At Lim's request, a meeting of the Company's board of directors was convened on 14 November 2011. This was a meeting between Tiong and Lim, being the Company's only directors at the time. Corrine recorded the minutes and it was clear from the minutes that Tiong had no intention of handing over the Additional Role to Lim, on the basis that the Additional Role should have been rotated 15 months before the board of directors meeting. Tiong also expressed his view that Lim's business plan was not viable, and mentioned that Lim's own salary and allowances cost more than the forecasted revenue of $27,590 till end of December 2011. [note: 34]

19 On 23 November 2011, Tiong told Lim at the void deck of Tiong's flat that he no longer wished to have a business relationship with Lim. This was after Lim informed him he could not come up with a better business plan by 25 November 2011. [note: 35]

The proposed share buyout

20 Soon after, Lim and Tiong agreed that Lim should exit the Company. After some negotiations, the terms of a proposed share buyout were finalised at the extraordinary general meeting on 6 December 2011. The terms of the agreement reached ("the 6 December 2011 Agreement") were as follows: [note: 36]

(a) The accumulated retained earnings up to financial year 2010 closing on 31 December 2010, which was $731,015, would be distributed in accordance with the percentage of share ownership.

(b) The bonus/commission/director's fees for 2011 would be paid in accordance with the figures set out in a worksheet prepared by Tiong, which was in accordance with past practice that had been agreed by Lim and Tiong.

(c) The profit for financial year 2011 ("the Retained Earnings") would be distributed after the audited financial statements for financial year ending 31 December 2011 ("FY 2011") were made available before June 2012.

(d) One of the Company's assets, the "Available for Sale Stamp Collection" would be distributed in proportion to the share ownership as at 31 December 2011.

(e) The director's fees for FY 2011 would be fixed at $10,000 per director.

(f) Lim would sell his shareholding to Tiong at $1 per share (this would amount to $45,000 since Lim held 45,000 shares) upon the distribution of the Retained Earnings.

(g) After the sale of his shares to Tiong, Lim would resign as a director of the Company.

(h) Lim's last day of service as business manager would be on 5 January 2012. In this regard, the employment termination letter for Lim's employment was served on Lim at the end of the EGM.

21 On 21 December 2011, Lim received $328,956.75 as his share of a distribution of dividends of $731,015, being the Company's retained earnings for FY2010, pursuant to sub-para (a) above. [note:

[37] Lim's employment was also terminated with effect 5 January 2012, pursuant to sub-para (h) above. [note: 38]

The Deferred Income issue

22 In March 2012, Lim reviewed the draft financial statements for FY 2011 (which had been prepared by the auditor on the instructions of Tiong and Corrine) and noticed that there was a major departure from past practice in computing the profit before tax. Instead of using the full earned sales revenue for FY 2011 to calculate the Retained Earnings, a certain sum of the Company's sales revenue was classified as "deferred income" ("the Deferred Income") instead. [note: 39] There was no deferred income component in the past. [note: 40]

23 The implication of this change in accounting was apparent. This would decrease the potential dividend to be paid out as part of the distribution of Retained Earnings under the 6 December 2011 Agreement. Unsurprisingly, Lim did not see why the accounts were prepared in this way and sought to ensure that the deferred income component was not a cent more than it would have to be.

24 The Deferred Income was initially assessed to be $427,038, but after discussions with the Company's auditor, Lim eventually managed to reduce the Deferred Income figure to $396,312. [note: 41] Ultimately, without the Deferred Income, the Retained Earnings amounted to $123,939. [note: 42] If one added the Deferred Income to the Retained Earnings, the total profit up for distribution would have been $520,251 instead.

25 The defendants accepted that the change to the Company's accounting practice (which was allegedly initiated by Corrine [note: 43]) took place *because* of the 6 December 2011 Agreement. [note: 44] Only the *motive* was in issue. The defendants' position was that the decision to exclude the Deferred Income was to "facilitate" the term of the 6 December 2011 Agreement that related to the distribution of the Retained Earnings, as the new accounting treatment would reflect more accurately the retained earnings of the Company as at the specific date of 31 December 2011. Lim had been given "full opportunity to review, adjust, and object to the draft financial statements" and he had signed off on the finalised FY 2011 audited financial statements without listing out any objections. [note: 45]

26 Corrine's testimony was essentially that she had uncovered three invoices where money had been paid to the Company in 2011 for work to be done in 2012. She then raised this to Tiong, as she wanted to ensure that the Retained Earnings would accurately reflect the value of the Company as at 31 December 2011 because of the impending share transfer. Tiong directed her to inquire with the Company's auditors, which then led to the uncovering of the alleged mistake in how the Company's financial statements were prepared in the past. [note: 46] However, it became apparent during cross-examination that Corrine knew very little about accounting. It was highly unlikely that she would have been able to spot an accounting mistake by herself, or that she would have been able to inform Tiong that the "net tangible asset" method of calculating the Company's accounts would most accurately reflect the Company's value as at 31 December 2011. [note: 47] For these reasons, I found Corrine's evidence quite unbelievable.

27 I noted that earlier in 2008, there had been a distribution of the Company's retained earnings as at 31 December 2007 to the Company's shareholders at the time (namely, Tiong, Lim, Kong and Corrine). [note: 48] This distribution was made in anticipation of the entry of a potential new

shareholder, one Gan Khuat Giap (although the contemplated share transfer did not eventually materialise). At the time, the issue of deferred earnings did not even come into play. [note: 49] The defendants tried to explain this away by saying that in 2008, there was no concern of having the net tangible assets of the Company determined as at a specific date. [note: 50] I did not think that was a good excuse. First, there was no indication under the 6 December 2011 Agreement that the Company should be assessed on a net tangible assets basis. Second, the original proposal to distribute the accumulated profit as at 31 December 2007 clearly had a stipulated end date. Third, both the pay out in 2008 and the proposed pay out in 2012 were to be made because of anticipated changes in shareholding in the Company.

28 Finally, there was also the fact that Tiong had included the Deferred Income in determining the bonus that would be paid out to himself and his team in January 2012. [note: 51] In an email dated 16 April 2012, Lim asked for a revision of the bonus based on the adjustments to the FY 2011 financial statements and for the bonuses paid out to be recovered. However, this request was rejected by Tiong. [note: 52] While I agreed with the defendants' submission that Tiong's payout accorded with past practice, [note: 53] that was not the point. It was unfair and inconsistent for Tiong and Corrine to change the way retained earnings were calculated and yet insist on past practice to enjoy a higher share of bonuses, which would also have the effect of also reducing the dividend that would be paid out to Lim.

29 Therefore, it seemed likely to me that when the parties entered into the 6 December 2011 Agreement, it must have been on the assumption that any distribution would be based on the Company's longstanding accounting practice. They could hardly have contemplated otherwise, because Lim, Tiong and Corrine had no familiarity with the accounting concept of deferred income in the first place. While Lim did sign off on the FY 2011 financial statements, it only indicated that he accepted that there was nothing wrong with it from an accounting standpoint, [note: 54] and that the Deferred Income issue was really an internal issue. [note: 55] Corrine herself was aware that Lim was not happy with the change. [note: 56]

30 For the above reasons, I preferred Lim's assertion that Tiong and Corrine's true motive in adopting a different accounting method was to reduce the pay-out that should have gone to Lim. [note: 57] To be clear, I am not saying that the defendants were wrong from an accounting perspective to change the accounting treatment, and I express no view on the correct accounting treatment. All I am saying is that the real aim of the changes was to ensure that Lim got less under the 6 December 2011 Agreement than what the parties had initially contemplated.

The FY 2011 Annual General Meeting

31 The 6 December 2011 Agreement was to be effected at the Company's FY 2011 Annual General Meeting ("FY 2011 AGM"). The Notice of AGM was dated 15 May 2012. Interestingly, although the 6 December 2011 Agreement stipulated that the distribution of the Retained Earnings would take place before the transfer of Lim's shares, the agenda was arranged such that the distribution would only be effected subsequent to the transfer. [note: 58]

32 In the past, all of the Company's previous AGMs had been "paper" AGMs, in the sense that the minutes of the AGMs were pre-prepared, and the signing of the AGM papers were just a formality, as the matters within were already pre-agreed. [note: 59] The FY 2011 AGM would be the Company's *first* "physical" AGM, as opposed to a "paper" AGM. [note: 60] However, Lim decided he would not attend

the FY 2011 AGM. Instead, he asked his sister-in-law, Kuek Chiew Hia ("Kuek"), to go as his proxy because he was feeling down and she had much corporate experience, so he hoped that she could settle the issues with the Company. [note: 61] This was the first time any shareholder had appointed a proxy to attend an AGM. [note: 62]

33 Like in previous years, a set of pre-prepared minutes for the AGM and the relevant documents to be executed to the AGM was sent to all shareholders, including Lim. [note: 63] However, Kuek (who was not familiar with the Company's practice at the time) was concerned about signing such pre-prepared documents before the meeting and informed Lim that they should not sign such pre-prepared documents in advance of the physical AGM. [note: 64] In any case, whether or not Lim's insistence on the physical AGM and sending Kuek as a proxy was because of Kuek's advice or not, his going by the book clearly indicated that the trust between Lim and Tiong was breaking down.

34 The FY 2011 AGM was held on 29 May 2012. Besides Lim, Kong was also absent. [note: 65] After the adoption of the FY 2011 financial statements and certain miscellaneous matters, the next key issue raised at the FY 2011 AGM was Lim's transfer of shares to Tiong. [note: 66] In an email dated 30 April 2012 to Tiong and Corrine, Lim had asked for the payment for the shares to be by cash or by online transfer. Tiong replied on 11 May 2012 saying that he would only pay by cheque. [note: 67]

35 Nevertheless, Lim instructed Kuek to only accept payment for the share transfer in cash or through online bank transfer. [note: 68] Tiong, however, wanted to pay with a cheque of $45,000, for the reason that he had already told Lim he would not be able to pay by cash, and his bank imposed a $5,000 limit for online transfers. [note: 69]

36 As neither party would relent, it was mutually agreed that the 6 December 2011 Agreement would be voided. [note: 70] Tiong alleged that the share transfer form had not been signed by Lim, indicating that Lim had no intention of going through the share transaction at FY 2011 AGM. There was no concrete evidence of the share transfer form being unsigned. Nevertheless, it seemed to me that Lim clearly did not want to carry out the 6 December 2011 Agreement any more, after the unilateral changes Tiong and Corrine had made to the Company's accounting practice. Since the 6 December 2011 Agreement was voided, Kuek also stated that Lim was not resigning as a director.

37 The next item on the agenda involved the re-election of retired directors, pursuant to the rotation system under Arts 74 and 75 of the Company's Articles of Association ("the Articles"). [note: 71] In the past, such a re-election was merely a formality, because there was a long-standing expectation that when a director retired, he would be re-elected. [note: 72]

38 Tiong was retired and put up for re-election first. Lim had given Kuek no instructions as to whether she should vote for or against Tiong's re-election. Kuek (as Lim's proxy) chose to vote against, basically because she did not think Tiong had been acting properly. [note: 73] In other words, Lim and Kuek's trust in Tiong was broken. Nevertheless, Tiong was re-elected because Tiong and Corrine both voted in his favour, and their combined 50% vote prevailed over Lim's 45%.

39 What happened next was controversial. Unlike Tiong, Lim was *not* due for retirement according to the Articles. During cross-examination, Tiong said it was Kuek, as Lim's proxy, who tabled Lim's retirement. However, Corrine's evidence during cross-examination was that the person who retired all the directors was the Chairman of the meeting (namely, Tiong [note: 74]). She clarified during re-

examination she was merely under such an *impression* because Kuek had said Lim was not resigning and she wanted to put him up for re-election. The defendants' submission was therefore that Kuek had *impliedly* retired Lim by putting Lim up for re-election. [note: 75]

40 It seemed to me that during the FY 2011 AGM, no one knew who was supposed to retire. In fact, the Articles provide for directors to take turns to retire, so that Tiong and Lim would not have been required to retire at the same AGM. However, no one referred to the Articles, or to previous AGMs, in order to determine who was supposed to retire. I think they must have assumed (wrongly, it now transpires) that all directors were to retire and face re-election. The fact that Lim was wrongly retired was not uncovered until Tiong was cross-examined on this point.

41 It is unclear what really occurred at the FY 2011 AGM, although there is some indication it was Tiong who first raised the issue of retiring Lim. [note: 76] Whatever the case, I do not think it can be said that it was Kuek who retired Lim. Kuek's request for a re-election must have been predicated on the fact that she already believed that Lim was due for retirement. If Lim did not want to resign, why would Kuek go out of her way to retire him? As it turned out, unsurprisingly, Lim was not re-elected as Tiong and Corrine voted against him. [note: 77] With their 50% vote, Tiong and Corrine also appointed Corrine as a new director despite Kuek's opposition [note: 78] and the result was that the Tiong and Corrine became the only directors of the Company. I also note that although Lim had not resigned as a director, he nevertheless lost that position at the FY 2011 AGM.

42 The next item on the agenda was the distribution of the Retained Earnings. Kuek voted for the distribution but Tiong and Corrine's combined vote against the motion again prevailed. Tiong said he voted against the dividend payout despite the prior agreement because the money was to be used to expand the Company's business ("the Business Expansion Plan"). This was the first time that the shareholders, including Corrine, had heard of such a plan. [note: 79] Kuek then requested an EGM on 12 June 2012 ("the 12 June 2012 EGM") to discuss the Business Expansion Plan. [note: 80]

The 12 June 2012 EGM

43 The 12 June 2012 EGM took place as agreed. Lim sent a friend, Ng Kin Yuen ("Ng"), as his proxy. [note: 81] There was active discussion regarding the Business Expansion Plan, although Ng felt that the answers to his queries were "not sufficient". [note: 82]

44 The parties disagreed on what actually occurred at the 12 June 2012 EGM, as well as Lim's motives. Tiong's position was that Ng kept asking questions about the Company's non-payment of the Company's retained earnings, among other things. The defendants averred that Lim and Ng's real aim was to pressure the Company into releasing the Retained Earnings. [note: 83] In contrast, Lim asserted that any discussion in that respect was only a small portion of the overall meeting, and that was relevant to the Business Expansion Plan. [note: 84] In the end, Ng (as Lim's proxy) voted against the Business Expansion Plan, but Tiong and Corrine's combined votes pushed through the Business Expansion Plan. [note: 85]

Subsequent events

45 On 20 June 2012, Kuek and Ng went to the Company's office to hand over to the defendants two email printouts requesting for the minutes of the 12 June 2012 EGM. Some unpleasantness occurred (although it did not result in a fight) and there was some finger pointing as to who was the

cause. In any event, it was not disputed that, after giving them the printouts and acknowledging receipt of those, Tiong told Kuek and Ng to leave. Tiong also told his staff not to open the door to the office to them, before he left. [note: 86]

46 In any event, the defendants' solicitors only sent the minutes in a letter dated 22 August 2012. [note: 87] This was only done after repeated requests sent by Kuek's solicitors, and only after the defendant's solicitors had asked for payment of $13 for a copy of the minutes (at $1 per page). [note: 88] This was a departure from past practice when shareholders were sent the minutes free of charge not long after the meeting. [note: 89] It was evident to me that Lim felt humiliated that he had to pay $13 and it was a loss of status and pride for him.

47 On 26 September 2012, Kuek's solicitors wrote to the defendants' solicitors with some comments and notes made on behalf of Lim. The defendants' solicitors replied on 3 October 2012 dismissing the comments, stating, *inter alia*, that the Plaintiff was not entitled to the alteration of the Company's minutes of meetings. [note: 90] By this time, it was known that Lim had granted Kuek a Power of Attorney to Kuek over all matters relating to Lim's shareholding in the Company, as Kuek's solicitors had communicated this to the defendants on 5 July 2012. [note: 91]

48 While this was going on, Tiong bought Kong's 5% stake in the company on 21 June 2012. [note: 92] This brought Tiong's shareholding to 50%, with Corrine holding 5% and Lim with 45%. As directors, Tiong and Corrine approved the transfer. Under Art 24 of the Articles, the Company's directors may decline to register any transfer of shares to a person they do not approve. [note: 93] Neither Lim nor Kuek were informed of the transfer. [note: 94] Tiong's reason was that there was no need for Lim to approve the transfer since he was no longer a director. [note: 95]

49 There were two other key decisions made, essentially without the Plaintiff's input or knowledge: the appointment of one Andrew Cheong as a director of the Company on or about November 2012; [note: 96] as well as an apparent increase in the remuneration and bonuses for the Company's directors for the year 2012. [note: 97]

Oppression

50 The first issue was whether there was "oppression" under s 216 of the Companies Act, which states:

> 216. —(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground —
>
> (*a*) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
>
> (*b*) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

51 As stated by the Court of Appeal in *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [81], "the touchstone by which the court determines whether to grant relief under s 216 of the Companies Act" was *commercial unfairness*. The question is whether there was "a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect" (*Over & Over* at [77], quoting *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227).

Whether there was a quasi-partnership

52 Before I decided on oppression, I first considered whether the company was a quasi-partnership. In *Over & Over* at [83], it was noted that courts have "consistently applied a stricter yardstick of scrutiny because of the peculiar vulnerability of minority shareholders" in such a context. The reasons for this are:

> … First, those who enter into a corporate structure often do not always spell out their rights and obligations in their entirety, in part because they are unable to anticipate all the eventualities that may arise, but also because it would be disproportionately expensive and time-consuming to do so even if they could. Naturally, this problem is particularly acute in respect of those who set up business with others essentially on the basis of mutual trust and confidence - they would have operated on the belief that the majority would take their interests into account and that any such problems would be readily and civilly ironed out. Ironically, often these understandings are not documented, let alone spelt out in legal terms, as it might be perceived that the very documentation of the understanding might betray a lack of trust. This might seem naïve but unfortunately this behaviour is not infrequent, even today, in commercial dealings; *relationships thin in words but thick in trust underpinned by the implicit belief that each will do right by the other without the need to spell out in embarrassing detail what is expected or needed*. Second, the reality of the nature of a closed company makes it susceptible to exploitative conduct by the majority simply because the minority has no obvious legal remedies spelt out in the memorandum and articles of association. At the risk of stating the obvious, it bears mention that minority shares in private companies are often difficult to dispose of, and even if there was a market for them they would often have to be sold at a substantial discount. [Emphasis added]

53 The defendants have raised several factors to rebut the proposition, which are summarised as follows:

> (a) The shareholders were not family members, and, the defendants argued, there was no evidence that they were even close friends. The Company was originally formed to enter into a joint venture (which later folded up). [note: 98]
>
> (b) The Company had a clear corporate structure where the respective roles of the persons involved were clearly demarcated. For example, Lim had regarded Corrine, a fellow shareholder, as a subordinate. [note: 99]
>
> (c) The shareholders had changed several times over the years, which indicated that the Company's structure at inception had never held much significance. [note: 100]
>
> (d) Lim and Tiong later divided the Company's business into two divisions, with one party running each division, with the bonus/commission of each division to be determined by reference to the sales revenue generated by each division. This division more closely resembled two sole

proprietors coming together to operate under a shared costs centre, as opposed to a partnership where profits and liabilities are shared between parties. [note: 101]

(e) Even if there was a quasi-partnership between Lim and Tiong, to the exclusion of the other Members of the Company, it would be erroneous to apply this to the whole of the Company, and therefore, it was unlikely that the Company had been intended, *at incorporation*, to operate *solely* in accordance with the alleged quasi-partnership relationship between Lim and Tiong. [note: 102]

54 In support of their above contentions, the defendants submitted that it is essential for the court to ascertain whether the relationship *at the time of incorporation* was one based on mutual trust and confidence. [note: 103] The defendants cited *Woon's Corporations Law* (Lexis Nexis, 2013) ("*Woon's*") in reliance. The relevant passage is found at para 152 of Chapter J of *Woon's*:

> The single most important factor in establishing the existence of a quasi-partnership company is that **it should be an association formed or continued on the basis of a personal relationship, involving mutual confidence**.
>
> …
>
> Although the term 'quasi-partnership' has acquired a certain degree of legal meaning, what is essential for the court is still to ascertain **whether the relationship of the parties at the time of incorporation was one based on mutual trust and confidence**. Therefore, courts have used terms like 'company akin/analogous to quasi-partnership' (*Chow Kwok Chuen v Chow Kwok Chi* [2008] 4 SLR(R) 362) or 'moral partnership' (*Wallington v Kokotovich Constructions Pty Ltd* [1993] 11 ACLC 1207) to signify the close and personal relationship of the parties and the use of these terms does not necessarily mean that different approaches have been taken in these cases.
>
> Lord Wilberforce in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 379F has said that the condition would often be fulfilled "where a pre-existing partnership has been converted into a limited company". **However, the presence of some prior relationship between the parties before incorporation is not always necessary to hold that a company is a quasi-partnership**. To determine whether a company has been formed on mutual trust and confidence, the recent case of *Over & Over Ltd v Bonvest Holdings Ltd* [2010] 2 SLR 776 shows that **our courts are willing to take a holistic and broad-based approach and not confine themselves to only looking at the evidence at the inception of the association**. This is justified in that it is generally difficult for the plaintiff to prove the existence of some oral or informal understanding at the point of incorporation of the company but the conduct of the parties subsequently and the manner in which the company is being run will often throw light on what has transpired between the parties when the company was first started. The common fear is that judges engaging in a post-hoc analysis may read too much into the evidence before them and impose a relationship which might not have been intended *a priori* by the parties. …
>
> [Emphasis added in bold]

55 As shown in the passage of *Woon* above, whether or not the Initial Shareholders were close personal friends or otherwise is not dispositive in the determination of whether the Company was a quasi-partnership on incorporation. It is also clear that the court may legitimately take into account evidence of matters taking place beyond the time of the Company's inception, although the court

should not impose a relationship that the parties had not intended. With the above statements in mind, I find that the Company was a quasi-partnership at incorporation, for the reasons stated below.

The relationship of the Initial Shareholders at the time of incorporation

56 Tiong and Lim had known each other for three years before their business association and Tiong had known Han since 1984 through work connections. I agreed with Lim that the fact that the four of them decided to continue to stick together even after the failure of the joint venture for which the Company was formed was also indicative of the mutual trust and confidence the Initial Shareholders had at the material time. [note: 104]

A quasi-partnership can have structure and hierarchy

57 The fact that the Company had a clear corporate structure and hierarchy would not in itself prevent the finding that the Company was a quasi-partnership. Lim rightly conceded that if the Company was governed *solely* by corporate rules, structures and hierarchy, a quasi-partnership was highly unlikely to be found. [note: 105] On the other hand, just as real life partnerships do not have to be (and probably should not be) run in a chaotic or ad-hoc manner, a quasi-partnership can operate in its day-to-day affairs and deal with matters of remuneration in an appropriately structured manner. For the same reasons, the fact that the Company was divided into two divisions was also non-conclusive. In a "true" partnership, partners may have their own specialties, areas of responsibility and their own spheres of autonomy within a firm.

58 In a quasi-partnership, what was crucial was the nature of the relationship between the shareholders. The question is whether the shareholders have spelled out their full rights and obligations in the articles of association and any shareholder agreements they may have, and if they did not do so, whether that failure to do was their "implicit belief that each will do right by the other without the need to spell out in embarrassing detail what is expected or needed" (see *Over & Over* at [83]). Such mutual confidence did not have to extend to the relationships between employees and as between the shareholders and employees.

59 Notwithstanding the corporate structure, mutual confidence underlined the relationship between Tiong and Lim. For example, from 2005 to 2011, the bonuses allocated to each business division was determined using figures prepared and set out in a worksheet prepared by Tiong (because he held the Additional Role) and *not* the figures set out in the Company's audited statements. I doubt that this practice could survive in the absence of a high degree of mutual trust and confidence. [note: 106] Moreover, the AGMs and board meetings of the Company up until 2012 were really no more than mere formalities. The minutes were pre-prepared, and the retirement and re-election of directors pursuant to the Articles were essentially a pre-determined affair.

60 Tiong himself admitted that he only become very careful about following the Company's Articles of Association after the FY 2011 AGM, and that he was not "very careful" about following the articles before then. [note: 107] He only went strictly by the book after mutual trust and confidence had completely broken down on 29 May 2012. [note: 108]

61 In summary, while the Company was not a classic case of a quasi-partnership, the factors raised by the defendants did not preclude the existence of a quasi-partnership, since all these events could also happen in a real partnership.

Whether the quasi-partnership was only between Lim and Tiong

62 The defendants had another sting in their tail. They argued that Lim had only submitted that there was a quasi-partnership between Lim and Tiong, which was different from the Company itself being a quasi-partnership *vis-à-vis* all shareholders. There were other directors and other shareholders (with more shareholdings than Lim and Tiong, like Low). Therefore, it was unlikely that the Company had been intended, at incorporation, to operate solely in accordance with the alleged quasi-partnership relationship between Lim and Tiong (to the exclusion of all other shareholders). [note: 109]

63 It seemed to me that there was an understanding that all the Initial Shareholders would have the right to participate in the business of the Company from the outset, and this understanding was not only between Lim and Tiong (at least not to the exclusion of the Initial Shareholders). The defendants themselves were under the impression that such an understanding existed. It was Tiong's and Corrine's own evidence they had assumed that both Corrine and Kong would be appointed directors when they became shareholders because all previous shareholders of the Company had also been directors. [note: 110] If Tiong and Corrine had assumed that a 5% shareholder should automatically have a say, surely it cannot be disputed that the same assumption would extend to a 45% shareholder like Lim. Where the parties differed was the *scope* of this expectation. Lim's refusal to agree to Corrine and Kong's appointments as directors showed that he did not think this understanding extended to them.

64 It seemed to me that the implied understanding as of 2004 was that Tiong and Lim would have a say in the management of the Company, but not necessarily minor shareholders like Corrine and Kong. Moreover, the fact that Lim treated Corrine (a fellow shareholder) as a subordinate did not show that the Company was not a quasi-partnership. Even in a real partnership, some partners may be regarded as being more important than others, whether by reason of seniority, competence or otherwise. One might think of a traditional family business where the family patriarch calls the shots. Corrine was not one of the Initial Shareholders, and the understandings that were in place between the founders of the Company at the time of incorporation or after the end of the joint venture might not automatically also apply to her.

65 Such a situation was already contemplated in the classic House of Lords case of *Ebrahimi v Westbourne Galleries Ltd and others* [1973] AC 360 ("*Ebrahimi*"), where Lord Wilberforce stated at 361 that a quasi-partnership is likely to include one or more of the following elements:

(a) an association formed or continued on the basis of a personal relationship, involving mutual confidence;

(b) an agreement, or understanding, that all, *or some*, of the shareholders shall participate in the conduct of the business; or

(c) a restriction upon the transfer of the members' interests in the company.

66 Therefore, the implied understanding was justifiable on the basis that the Lim-Tiong "partnership" was the backbone of the Company. Although the Company was incorporated in 1996, it was only after the dissolution of the joint venture in late 1999 when the Initial Shareholders began devoting their full efforts to building up the business of the Company in earnest. While the Company was more than just an afterthought before that, as there was evidence that the Initial Shareholders did put in efforts to grow the Company, [note: 111] it was not the focus of the Initial Shareholders' efforts until then.

67 Of the Initial Shareholders, only Tiong and Lim stuck it out through the toughest years of the

Company. Between 30 April 2000 (when Han quit) and 1 March 2002 (when Low joined as an employee), Tiong and Lim were the only shareholder-director-employees in the Company and after 2004, they were the only shareholder-directors. They were the key men in building up the Company to where it is today. Therefore, although Corrine, Kong and Tiong had the majority of the votes required to push through the appointments which they all desired, they did not do so in the face of Lim's objections, whose views were important. [note: 112]

Whether a company that was not a quasi-partnership at inception can subsequently acquire that character

68 The defendants had asserted that in order for the Company to be a quasi-partnership, it was "essential" for the court to find that the relationship of mutual trust and confidence existed at the time of incorporation. As I have already found that such a relationship among the Initial Shareholders existed at the time of incorporation, there is strictly no need for me to deal with it. But I would make a few comments.

69 Reading the passage in *Woon* cited at [54] above in totality, I do not think that it stands for the proposition that a company that was not a quasi-partnership at the time of incorporation may never become a quasi-partnership. Indeed, in *Ebrahimi* (see [65] above), it was contemplated that a quasi-partnership may be an association *continued* on the basis of mutual confidence.

70 Even though it would be quite unusual for a Company that did not start life as a quasi-partnership to subsequently become one, it was not impossible. This may occur, for example, when the original objects and purposes for which the Company was incorporated had disappeared, and the remaining shareholders decide instead to carry on instead based on new understandings and agreements (in response to the radically changed circumstances), which were never formalised because of the now existing mutual trust and confidence between the shareholders.

71 The UK case of *Martin Shepherd v Michael Roy Williamson, Phoenix Contracts (Leicester) Limited* [2010] EWHC 2375 (Ch) ("*Phoenix Contracts*"), which was not cited to me by counsel, is an example of where a court has found that a quasi-partnership arose *after* the time of inception of the company. I will not go into the facts except to note that it was a case where the plaintiff ("Shepherd") sued for a fellow shareholder ("Williamson") to buy out his shares at a fair value under s 994 of the UK Companies Act 2006 (Cap 46) (UK). The company in that case had four founder members, including Shepherd and Williamson. One of the four founders, Coley, retired in 1995 and his shares were repurchased by the company for nominal value. The other founder, Walker, was made redundant and resigned as director and his shares were transferred to Shepherd and Williamson for a fixed price as per the company's articles of association, with Williamson getting an extra share (because Walker had an odd number of shares). The result was that Williamson had one more share than Shepherd. Shepherd did not allege that there was a quasi-partnership *prior* to Walker's departure. The learned judge in that case found that, in the circumstances of the case, that there was a quasi-partnership at latest when Williamson and Shepherd became the sole directors and shareholders (at [89] of *Phoenix Contracts*).

72 Therefore, even if there was no quasi-partnership at the incorporation of the Company, the Company had likely become one between 2000 and 2004 when Lim and Tiong chose to continue their association after the collapse of the joint venture. The latest time this would have occurred would be after the buyout of Low's shares in 2004, when it was apparent that the company was run based on what Lim and Tiong agreed between themselves. It was not a case where the directors had to resort to formal rules to resolve issues that would crop up.

Summary of the quasi-partnership issue

73 On balance, I find that the Company was a quasi-partnership. However, this was not an essential finding in this case. What is crucial was that the key, unwritten understanding between the parties was that the main shareholders (namely, Lim and Tiong) would always have a say in management. Lim had submitted that he had an implied veto over all key decisions. It was unclear whether the implied understanding went that far, but it was clear that he should at least have a say.

Whether there was oppression

74 By unjustifiably removing Lim from the board of directors and excluding him from management and decision making altogether, Tiong and Corrine had acted in breach of the implied understanding that Lim would be allowed to participate in such management. To clarify, there was nothing commercially unfair about Tiong wanting Lim to leave because Tiong thought Lim was no longer pulling his weight in the Company *per se*. However, it was clear to me that the actual exclusion was done in such a way that was commercially unfair.

75 It is trite law that "unfairness does not lie in the exclusion alone but in exclusion without a reasonable offer" (see *O'Neill and another v Phillips and others* [1999] 1 WLR 1092 ("*O'Neill v Phillips*") at 1107). In the present case, a reasonable offer had been made and an agreement reached, *ie*, the 6 December 2011 Agreement.

76 However, in breach of Lim's legitimate expectation that past practices would be adhered to when computing the value of the Company, [note: 113] Tiong and Corrine drastically and *deliberately* reduced the actual value of the buyout by making a unilateral change to the Company's longstanding accounting practice. This was no better than excluding Lim without an offer of a buyout, and arguably worse. In any event, it was clearly commercially unfair.

77 Notwithstanding the above, the defendants have tried to justify the removal of Lim on the grounds that it was Kuek (as Lim's proxy), who first voted against Tiong's first re-election. Despite the expectation that directors who retire would be re-elected, they argued that Lim had not instructed Kuek to vote for Tiong, which meant that it was *Lim* who first breached the implied understanding. Tiong and Corrine had "legitimate reasons" for voting against Lim. Therefore, there was no want of probity on their part. [note: 114]

78 This did not justify Tiong and Corrine's actions. First, while it was true that Kuek did vote against Lim, this was more or less symbolic – it must have been apparent to all that Lim's 45% vote could not defeat Tiong and Corrine's combined 50%, as Kong's 5% vote was out of the picture.

79 Second, the 6 December 2011 Agreement had stipulated that Lim's sale of shares would only take place after the distribution of the Retained Earnings, and only after that would Lim resign. However, Tiong and Corrine arranged it so that the distribution of the Retained Earnings would only take place after Lim had sold his shares and resigned. [note: 115] By arranging the agenda in this way, Tiong and Corrine were acting contrary to the 6 December 2011 Agreement, and the fact that Kuek had not expressly objected to the agenda did not change that. More importantly, it was clearly prejudicial since Lim would have been left high and dry if he had sold his shares and resigned *before* the retained earnings were paid out. I also noted that Tiong's stated reason (regardless of what he thought) for actually rejecting the distribution of the Retained Earnings was not that the FY 2011 Agreement had been voided, but that the money should be set aside for the Business Expansion Plan.

[note: 116] After what had happened with the change to the Company's accounting practice, it seemed to me that any fears Lim may have had of another bait-and-switch were well justified.

80 Third, I do not think Tiong and Corrine's stated reasons for voting Lim out were entirely legitimate. Tiong said the reason he voted against Lim was because Kuek had voted against him first. It was an action against Lim straight from Tiong's heart. [note: 117] Corrine said she voted against Lim because she felt that Lim "doesn't honour his word" and that if Lim had attended the FY 2011 AGM personally, everything might have been settled then. [note: 118] Considering the unexpected and unilateral change to the Company's accounting practice was what actually led to the breakdown of mutual trust and confidence, it was not fair for the defendants to insinuate that it was Lim, *via* Kuek, who fired the first shot. If the 6 December 2011 Agreement had been properly adhered to, Lim should have exited the Company *before* the issues of retirement and re-election would have arisen.

81 Finally, we should also not lose sight of the fact that *Lim should not have been retired as a director in the first place*.

82 To be clear, I did not find that the defendants have acted unlawfully in the sense that they may have been within their legal rights to exclude Lim from having a say in certain matters after the FY 2011 AGM, because Lim was not a director and not part of the Company's management. That did not mean that their actions were not commercially unfair. As stated in *Over & Over* at [85], "a majority shareholder may be within his strict legal rights but the manner in which he exploits his legal rights may call for the court's intervention".

Other buyout offers

83 As stated above, even if Lim was unfairly excluded from the management of the Company, a finding of oppression would not stand in the face of a reasonable buyout offer (see *Lim Chee Twang v Chan Shuk Kuen Helina and others* [2010] 2 SLR 209 at [138] and *O'Neill v Phillips*).

84 The defendants had made three buyout offers to Lim in 2013, and Lim had made two counter-offers. [note: 119] The defendants even made an offer to wind up the Company. I do not propose to go into the details of each and every buyout offer, except to say that all three buyout offers involved a payment that would be *less* than what Lim would have received under the 6 December 2011 Agreement had the Company not changed the accounting practice to exclude the Deferred Income of $396,312. [note: 120]

85 In *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2005] 4 SLR(R) 141 at [97], Judith Prakash J summarised the guidelines set out by Lord Hoffmann in *O'Neill v Phillips* in determining what would be a reasonable offer as follows:

> Lord Hoffmann then set out the guidelines to assist shareholders in determining what would be a reasonable offer. There were five points. First, the offer must be to purchase the shares at a fair value. Second, the value if not agreed, should be determined by a competent expert. Third, the offer should be to have the value determined by the expert as an expert. Fourth, the offer should provide for equality of arms between the parties. Fifth, the question of costs would have to be considered. The offer should take into account the plaintiffs' costs although this need not always be payable by the defendants as in cases where the defendants have not been given a chance to make an offer before the action was launched.

86 The defendants' offers in 2013 were not reasonable when the context and circumstances of the

case were taken into account. It may well be that in a vacuum the defendants' offers may satisfy Lord Hoffmann's first criterion, which was an offer at fair value. But taking into account the events leading up to the FY 2011 AGM, I do not think the offers can be regarded as fair. In any event, even if the offers were for fair value, that would only satisfy the first of Lord Hoffmann's five points.

87 Therefore, I find that there was oppression.

Remedy for oppression

88 All parties were in agreement that a buyout was the most appropriate remedy for oppression, if that was found. The real issue was the price.

89 The defendants' submission was that, if a buyout were ordered, the valuation should be based on the terms of the 6 December 2011 Agreement, *ie*, it should be based on the net tangible assets of the Company as at 31 December 2011 (as reflected in the audited financial statements for FY 2011). The Deferred Income and the Company's goodwill would not be included in the exercise. [note: 121]

90 Lim, on the other hand, submitted that the valuation date should be 29 May 2012, *ie*, the date on which Lim was removed as director and excluded from the Company. This was the date that the oppressive acts first took place. [note: 122] The valuation of Lim's shares should take into account, amongst other things, the fees, remuneration and bonuses Lim would have earned had he remained as a director of the Company, [note: 123] any deferred income which has accrued and the moneys set aside for the Business Expansion Plan (should it turn out to be a phantom) should also be credited for the purpose of calculating the value of Lim's shares. [note: 124] Although it was submitted that the methodology to be applied is something best left to the expert, Lim argued that that the "net tangible asset" basis of valuing Lim's shares should be excluded from the very start. [note: 125]

91 It was stated in *Yeo Hung Khiang v Dickson Investment (Singapore) Pte Ltd and others* [1999] 1 SLR(R) 773 ("*Yeo Hung Khiang*") at [72]:

> … the determination of share value need not be in accordance with strict accounting principles. The role of the court was merely to determine a price that is fair and just in the particular circumstances of the case. …

92 Rather than try to determine a market value on Lim's shares based on an abstract willing seller and willing buyer, as a matter of fairness, we should go back to the implied understanding of the parties. There had been various share transfers over the years, such as when Low and Han exited the Company. It appeared to me that the pricing methodology has not been consistent, so there is no consistent practice to follow. But in each case, the price has been negotiated and an agreement has been reached.

93 In this case, there was an agreement reached, before it was voided at the 11th hour. I accepted the defendants' submission that going back to the 6 December 2011 Agreement was the fairest way of valuing Lim's shares. After all, it was Lim who came up with the proposed formula himself. [note: 126]

94 I, however, made a few adjustments from the defendants' proposal. The main adjustment was that the Deferred Income (*ie*, the deferred income for FY 2011 and not FY 2012) should be included, because it was part of the agreement. Similarly, there will be no money set aside for the Business Expansion Plan, as this was also not part of the 6 December 2011 Agreement.

95 Another adjustment was needed because the buyout only occurred at the time of judgment, not in 2012. Lim should get the price that he would have got in 2012, and I will add another 10% to reflect the fact that he would only be getting paid in 2014. It was not appropriate to award interest, since this was not an award of damages (see *Yeo Hung Khiang* at [41]). But I would exercise my discretion to make an enhancement to the share value to reflect a return that Lim should receive on his investment. As the 6 December 2011 Agreement was intended to be completed in 2012, Lim would effectively participate in the profits up to 2011 only. So he will not participate in the 2012 and 2013 profits, and in any case he contributed nothing towards them. There will be no goodwill, nor will we look at future earning potential, as this was never part of the 6 December 2011 Agreement. So a 10% uplift to reflect two years of investment returns would be fair to the parties.

96 I spelled out the above methodology to the parties' solicitors at the hearing on 7 April 2013. I highlighted to them there were still some issues to be worked out, such as the calculation of the actual price, using this methodology. In addition, I directed counsel to work out the detailed structure of the transaction. For example, the parties could go straight to the buyout, or they could first declare a dividend from retained earnings, followed by a buyout. Essentially, Lim would still get the same amount, but it could be done in different ways, and that was something that I was happy to allow parties to work out. I also asked the parties to consider if they needed the court to appoint an expert to calculate the appropriate figure for them, or whether they could work it out by themselves. Unfortunately, they were unable to agree.

97 At a subsequent hearing on 21 July 2014, the parties informed me that they could not agree on a final figure because in 2013, the Company paid a dividend of $30,000. Lim received 45% of that. The defendants wanted Lim to pay back that dividend, for the purposes of calculating the buyout price and the 10% uplift. It was argued that, under the 6 December 2011 Agreement, Lim would have been bought out in May 2012. He would not have received the 2013 dividend. The reason for the 10% uplift is to compensate for the delay in payment. So if Plaintiff can also keep the 2013 dividend, he will be compensated twice over.

98 In response, Lim's position was that, in that case, he should have been paid director's fees for the period from 1 January to 29 May 2012, as he was only to resign at the FY2011 AGM.

99 After considering the parties' arguments, I am of the view that the 2013 dividend should be put back for the purposes of calculating the buyout price. I also did not include the directors' fees for 2012 as part of the buyout price, as it was not part of the 6 December 2011 Agreement. Accordingly, I order that Tiong is to purchase Lim's shares in the Company at the price of $292,000, which is the defendants' figure.

Breach of directors' duties and just and equitable winding up

100 Lim also claimed against Tiong and Corrine for breach of directors' duties. However, even though this was a head of claim, Lim made no submissions on this point save for one line in para 118 of the Plaintiff's Reply Submissions. I deal with it quite briefly. First, Lim had no standing to bring this claim, and second, even if he did, he has not provided any evidence that Tiong and Corrine were in breach. I would therefore dismiss this part of his claim.

101 Lim had also asked for a declaration that it is just and equitable to wind up the Company. This was pleaded in the alternative, and since I have already granted Lim a remedy for oppression, there was no need for me to make such a declaration, and I decline to do so.

Conclusion

Conclusion

102 The main issue was the price of the buyout. While Lim succeeded on the oppression claim, he failed on many of his demands with respect to the terms of the buyout. In addition, the legal costs incurred in this case were disproportionate to the amount at issue. I think parties could have made more efforts to settle, and if they had been more reasonable, the chances of settlement would have been higher. I thus award Lim 70% of his costs.

[note: 1] Statement of Claim ("SOC"), paras 21, 23 and 27.

[note: 2] SOC, para 27.

[note: 3] Defendants' Closing Submissions ("DCS"), para 45; Defendants' Bundle of AEIC, p 3 at paras 10-11.

[note: 4] DCS, para 44.

[note: 5] Lim's AEIC, para 6.

[note: 6] Lim's AEIC, para 9; DCS, para 47.

[note: 7] Tiong's AEIC, para 17.

[note: 8] Lim's AEIC, paras 15-21.

[note: 9] NE, 16 Dec 2013, p 21 at line 7 to p 22 at line 2.

[note: 10] Lim's AEIC, para 15.

[note: 11] Lim's AEIC, para 24(a).

[note: 12] Lim's AEIC, para 24.

[note: 13] DCS, para 57.

[note: 14] Lim's AEIC, para 24(b).

[note: 15] Lim's AEIC, para 24(b).

[note: 16] Tiong's AEIC, para 34; Corrine's AEIC, para 16.

[note: 17] NE, 18 Dec 2013, p 132 line 30 to p 134 line 2.

[note: 18] Lim's AEIC, pp 98-99.

[note: 19] Tiong's AEIC, para 42.

[note: 20] DCS, para 68; see Lim's AEIC, para 45.

[note: 21] DCS, para 71; see Lim's AEIC, paras 27-30.

[note: 22] SOC, para 15; Defence, para 15.

[note: 23] Plaintiff's Reply Submissions ("PRS"), para 19; DCS, para 73.

[note: 24] Lim's AEIC, para 47.

[note: 25] DCS, para 81; Tiong's AEIC, para 54.

[note: 26] Lim's AEIC, para 48.

[note: 27] DCS, paras 85-88 and p 59.

[note: 28] NE, 16 Dec 2013, p 51 line 9 to p 52 line 6; p 56 line 28 to p 57 line 4.

[note: 29] NE, 16 Dec 2013, p 49 at lines 1-11.

[note: 30] Tiong's AEIC, p 61; DCS, para 89.

[note: 31] Tiong's AEIC, pp 63-65.

[note: 32] NE, 16 Dec 2013, p 84 lines 7-28.

[note: 33] NE, 16 Dec 2013, p 76 line 22 to p 77 line 22

[note: 34] Lim's AEIC, pp 110-115.

[note: 35] DCS, paras 97-100.

[note: 36] SOC, para 18; see also DCS para 106.

[note: 37] Lim's AEIC, para 72.

[note: 38] Tiong's AEIC, para 86.

[note: 39] Lim's AEIC, para 78.

[note: 40] NE, 19 Dec 2013, p 35, lines 6-8.

[note: 41] Lim's AEIC paras 78-85.

[note: 42] 1AB (Pt 1) p 62.

[note: 43] Corrine's AEIC, para 31.

[note: 44] DCS, para 118.

[note: 45] DCS, paras 245-246.

[note: 46] NE, 19 Dec 2013, p 119 at lines 7-32; NE, 19 Dec 2013, p 122 at lines 4-7; Corrine's AEIC, paras 31-34.

[note: 47] Tiong's AEIC, para 88.

[note: 48] Lim's AEIC, p 59-74.

[note: 49] NE, 19 Dec 2013, p 93, at lines 3-16.

[note: 50] DCS, para 119.

[note: 51] Plaintiff's Closing Submissions ("PCS"), para 44.

[note: 52] PRS, para 67.

[note: 53] DCS, paras 76-79; see also DCS, para 128(b).

[note: 54] NE, 17 Dec 2013, p 8, at lines 18-26.

[note: 55] NE, 17 Dec 2013, p 21, at lines 16-32.

[note: 56] NE, 19 Dec 2013, p 139, at lines 1-5.

[note: 57] PRS, para 54.

[note: 58] 3AB (Pt 2), p 129.

[note: 59] Kuek's AEIC, para 3; see also DCS, para 144; Lim's AEIC, para 108.

[note: 60] NE, 17 Dec 2013, p 47, at lines 18-22; p 48, at lines 28-31.

[note: 61] NE, 17 Dec 2013, p 49 line 27 to p 50 line 13.

[note: 62] Tiong's AEIC, para 110.

[note: 63] DCS, para 144; Kuek's AEIC, para 3.

[note: 64] NE, 17 Dec 2013, p 51 line 29 to p 52 line 31.

[note: 65] NE, 19 Dec 2013, p 144, lines 12-15.

[note: 66] Lim's AEIC, para 93; see also 1AB (Pt 1) 94-96.

[note: 67] Tiong's AEIC, pp 112-114.

[note: 68] NE, 17 Dec 2013, p 50 lines 14-21.

[note: 69] DCS, paras 149 to 150.

[note: 70] DCS, para 154(c); see also 1AB (Pt 1) 94; see also Kuek's AEIC, para 10.

[note: 71] PCS, para 47; DCS, para 156.

[note: 72] NE, 18 Dec 2013, p 99, lines 4-6.

[note: 73] NE, 18 Dec 2013, p 57, lines 5-9.

[note: 74] 1AB (Pt 1), p 94.

[note: 75] DCS, para 156(d).

[note: 76] NE, 19 Dec 2013, p 143, line 15 to p 144, line 1.

[note: 77] 1AB (Pt 1), p 94.

[note: 78] 1AB (Pt 1), p 95.

[note: 79] NE, 19 Dec 2013, p 41, lines 1-8.

[note: 80] Kuek's AEIC, paras 11-12; 1AB (Pt 1), p 95.

[note: 81] Lim's AEIC, para 88.

[note: 82] NE, 18 Dec 2013, p 71, line 21 to p 72, line 11.

[note: 83] DCS, para 168.

[note: 84] NE, 17 Dec 2013, p 94, line 3 to p 96, line 20.

[note: 85] DCS, para 169.

[note: 86] DCS, para 176(i); Kuek's AEIC, para 15; Ng's AEIC, para 8.

[note: 87] Kuek's AEIC, p 84.

[note: 88] Kuek's AEIC, paras 19-21.

[note: 89] PCS, para 49; NE, 19 Dec 2013, p 61, lines 27-30 to p 62, lines 1-13.

[note: 90] Kuek's AEIC, p 113.

[note: 91] 1AB (Pt 2) p 128; Kuek's AEIC, pp 28-30.

[note: 92] Tiong's AEIC, para 146.

[note: 93] Lim's AEIC, p 187.

[note: 94] Kuek's AEIC, para 37; see also NE, 18 Dec 2013, p 85, at lines 28-32.

[note: 95] NE, 18 Dec 2013, p 89, at lines 25-31.

[note: 96] Kuek's AEIC, para 39.

[note: 97] Kuek's AEIC, para 45.

[note: 98] DCS, para 219.

[note: 99] DCS, paras 220-222.

[note: 100] DCS, paras 223-227.

[note: 101] DCS, paras 228-231.

[note: 102] Defendants' Reply Submissions ("DRS"), paras 6-9.

[note: 103] DCS, para 213(c).

[note: 104] PRS, paras 10-11.

[note: 105] PRS, para 16.

[note: 106] PRS, paras 22-24.

[note: 107] NE, 18 Dec 2013, p 103, lines 5 to 25.

[note: 108] PRS, para 33.

[note: 109] PRS, paras 6-9.

[note: 110] Tiong's AEIC, para 34; Corrine's AEIC, para 16.

[note: 111] Lim's AEIC, paras 10-12.

[note: 112] NE, 19 Dec 2013, pp 106-108.

[note: 113] PRS, para 58.

[note: 114] DCS, paras 286-290.

[note: 115] 3AB (Pt 2), p 129.

[note: 116] Tiong's AEIC, para 127.

[note: 117] NE, 18 Dec 2013, p 123, lines 27-31; NE, 18 Dec 2013, p 124, lines 16-17.

[note: 118] NE, 19 Dec 2013, p 145, lines 6-12.

[note: 119] DW5.

[note: 120] See DW5.

[note: 121] DCS, paras 351 and 354.

[note: 122] PCS, para 91.

[note: 123] PCS, para 88.

[note: 124] PCS, paras 97-98.

[note: 125] PCS, para 83-88.

[note: 126] DCS, para 184.