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

[2022] SGHC 144

Suit No 294 of 2017 (Summons No 4101 of 2017)

Between

Viking Engineering Pte Ltd

… *Plaintiff*

And

(1) Bjornar Feen
also known as Bjoernar Feen
(2) Feen Marine Pte Ltd
(3) Viking Inert Gas Pte Ltd
(4) Scanjet Feen IGS Pte Ltd
(5) Feen Marine Scrubbers Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Summary judgment]
[Companies — Oppression — Minority shareholders]

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v
Feen, Bjornar and others

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Valerie Thean J
24 November 2017, 14 February, 9 April 2018

29 June 2022

Valerie Thean J:

Introduction

1 The plaintiff, Viking Engineering Pte Ltd ("Viking Engineering") and the first defendant, Mr Bjornar Feen ("Mr Feen") were joint venture partners in the third defendant, Viking Inert Gas Pte Ltd ("VIG"). Mr Feen was its majority shareholder and sole director. He was also the sole director of the three remaining defendants. On 14 February and 9 April 2018, on Viking Engineering's application for summary judgment, I granted an injunction against the defendants and ordered Mr Feen to purchase Viking Engineering's minority shareholding with brief oral reasons. No appeal was filed against this decision; parties followed on to appoint a valuer by consent. These grounds for the 2018 summary judgment decision are in response to Viking Engineering's request arising out of its enforcement proceedings abroad.

Background

2 Viking Engineering is a Singapore company engaged in the business of manufacturing and repairing marine engine and ship parts, as well as providing process and industrial plant engineering services.[1] When VIG was first set up through an agreement of 1 April 2011, Viking Engineering was the 51% majority shareholder of VIG, and Mr Feen the owner of the remainder of the shares.

3 By a share purchase agreement on 10 September 2013 ("the SPA") between the two parties, Viking Engineering sold 21% of its shareholding to Mr Feen, thereby giving Mr Feen a 70% shareholding in VIG. This resulted in Viking Engineering becoming a minority shareholder with a 30% shareholding in VIG. The SPA obliged Mr Feen to abide by various undertakings. In particular, clause 5.1 of the SPA ("Clause 5.1") provided that Mr Feen was to change VIG's name to "Feen Marine Pte Ltd" or some other name agreed between the parties ("the Name-change Obligation"). The same clause also provided that Mr Feen was not to use the "Viking" name in any manner which may compete with the business of Viking Engineering, or be associated with or perceived to be associated with Viking Engineering ("the Non-use Obligation"). Under Clause 5.3, Viking Engineering and Mr Feen were to use their best endeavours to procure a contract for a new inert gas system ("IGS") and exhaust gas cleaning project for VIG.

4 On 4 April 2017, Viking Engineering commenced Suit No 294 of 2017 ("S 294/2017"), as minority shareholder of VIG, seeking various injunctions and remedies for minority oppression under s 216 of the Companies Act (Cap

[1] Statement of Claim at para 1.

50, 2006 Rev Ed) ("CA") against the first to fourth defendants. Viking Engineering contended that, contrary to the SPA, Mr Feen failed to change the name of VIG to "Feen Marine Pte Ltd". Instead, he incorporated a new company of the same name, being the second defendant ("Feen Marine"). Mr Feen thereafter transferred his entire shareholding in VIG to Feen Marine without first giving Viking Engineering the option of buying his shares. Viking Engineering contended that this action contravened Article 28 of VIG's articles of association. The business and corporate opportunities of VIG were alleged to have subsequently been diverted to Feen Marine; the fourth defendant, Scanjet Feen IGS Pte Ltd ("Scanjet Feen"); and the fifth defendant, Feen Marine Scrubbers Pte Ltd ("Feen Marine Scrubbers"). Mr Feen was the sole director of each of these companies, collectively referred to as "the Feen Companies". Various claims were also made in relation to loans made to VIG and items said to have been taken from Viking Engineering's premises by VIG.

5 Viking Engineering then followed on with Summons No 4101 of 2017 seeking summary judgment in S 294/2017. On 24 November 2017, leave was given to Viking Engineering to amend its summons to include a prayer (as prayed for in its Statement of Claim) for a buy-out of its shares in VIG by Mr Feen.

6 On 14 February 2018, I granted an injunction to restrain Mr Feen and his agents from using the name "Viking" in any manner which may compete with the business of Viking Engineering or be associated with or perceived to be associated with Viking Engineering or the business of Viking Engineering. I also ordered Mr Feen to purchase Viking Engineering's entire shareholding in VIG, with an independent valuer to be appointed to ascertain the fair value of the shares by agreement within 14 days of final judgment. Counsel for the

defendants asked for time to submit on whether a discount ought to be applied by the valuer to Viking Engineering's minority holding in VIG.[2] At the same time, after Viking Engineering contended that there was also evidence of diversion of business opportunities from VIG to Feen Marine Scrubbers, the latter was added by consent as the fifth defendant.

7 On 9 April 2018, after hearing parties on the question of whether a discount for Viking Engineering's minority shareholding should apply, I held that no discount should be applied. I also ordered that the valuer make adjustments, as part of his valuation, for the diversion of opportunities to the Feen Companies. On the same date, in the course of finalising the form of the final orders, parties agreed that the cost of the valuation exercise would be borne by Mr Feen.

8 The orders arising out of the summary judgment application were therefore the following:

> 1. [Mr Feen] and his agents (whether through [Feen Marine] or [Scanjet Feen IGS Pte Ltd] or otherwise) shall be restrained from using the name "Viking" in any manner which may compete with the business of [Viking Engineering] or be associated with or perceived to be associated with [Viking Engineering] or the business of [Viking Engineering]; and
>
> 2. [Mr Feen] shall purchase [Viking Engineering]'s entire shareholding in [VIG] on the following basis:
>
> (a) An independent valuer is appointed by agreement within 14 days of final judgment.
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> (b) The valuer shall ascertain the fair value of the shares as at the date of the final judgment and on the basis that [VIG] is a going concern.

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2 Notes of Argument 14 February 2018, p 12 ln 20–21.

(c) The valuer shall not apply any discount to the purchase price to account for the fact that the shares represent a minority shareholding in [VIG].

(d) The valuer shall have regard to any and all financial information and records of [VIG] from the time of its [in]corporation until the valuer completes the exercise contemplated by the Order as the valuer may deem necessary, relevant or desirable for the purposes [of] ascertaining the purchase price or otherwise for carrying out the termination of this order.

(e) The valuer shall adjust the purchase price to reflect the value of the shares on the assumption that [VIG] had undertaken all of the business which was diverted away from it to any one or more of the following companies or individuals from the date on which such company was incorporated until the date on which the valuer completes the exercise contemplated by this order:

(i) Feen Marine Pte Ltd

(ii) Scanjet Feen IGS Pte Ltd

(iii) Bjornar Feen

(iv) Feen Marine Scrubbers Pte Ltd

(f) The valuer shall make adjustments referred to at (e) above on the following bases:

(i) The valuer shall only take into account the business of inert gas systems (including inert gas generators, flue gas system, nitrogen generators) and exhaust gas cleaners.

(ii) All the goodwill and revenue earned by the companies or individuals identified at (e) above in relation to the business defined in (f)(i) are to be attributed to [VIG] unless the goodwill or revenue arose from a contract which would have been physically impossible for [VIG] to have earned.

(iii) That regard be given to the financial information and records of the companies and individual identified at (e) above from the respective dates of incorporation until the time the valuer completes the exercise contemplated by this order as the valuer may deem necessary, relevant or desirable for the purposes of

> ascertaining the purchase price or otherwise for carrying out the terms of this order.
>
> (g) By agreement, the costs of the valuation exercise are to be borne by [Mr Feen].
>
> (h) There be liberty to apply.
>
> 3. The costs of the application be paid by the Defendants to [Viking Engineering], fixed at S$24,005.53 inclusive of disbursements.

9 To complete the background on the summary judgment application, I should mention that whilst I granted summary judgment on 14 February 2018 as described above, unconditional leave to defend was given on the same date in respect of the remainder of the claims; these claims were not related to my finding of minority oppression, and remedies for these claims were not related to the remedies arising out of the minority oppression. These included claims that Mr Feen, as sole director of VIG, failed to cause VIG to repay loans made by Viking Engineering to VIG and sums that Viking Engineering had paid on VIG's behalf; and that VIG unlawfully took items from Viking Engineering's premises.[3] These claims (and a related counterclaim by VIG) were subsequently settled by parties on 6 July 2018,[4] and VIG's name was changed to Stokke Engineering Pte Ltd on 24 July 2018.[5]

10 Matters subsequent were less harmonious and have been detailed in *Viking Engineering Pte Ltd v Feen, Bjornar and others* [2019] SGHC 158, *Viking Engineering Pte Ltd v Feen, Bjornar and others and another matter* [2020] SGHC 78 and *Feen, Bjornar and others v Viking Engineering Pte Ltd*

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3 Statement of Claim (Amendment No 3) at paras 43 to 51.

4 Bjornar Feen's 1st Affidavit (OS 1324/2019) at para 14: Plainiff's Bundle of Cause Papers (OS 1324/2019) ("PBCP"), Vol 1, p [12].

5 Moh Liang Teng Evelyn's 1st Affidavit (OS 1324/2019) at p 281.

and another appeal and another matter [2021] 1 SLR 497.

Legal context

Summary judgment

11 Order 14 rule 3(2) of the Rules of Court (2014 Rev Ed) directs that the Court may give summary judgement for the plaintiff unless the defendant is able to raise an issue or question which "ought to be tried". In this regard, the first consideration in a summons under O 14 is whether the plaintiff has established a *prima facie* case. Where the plaintiff fails to do so, his application is dismissed. Otherwise, the burden shifts to the defendant who must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence: *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 at [17].

Prohibitory injunction

12 In the present case it was contended that Mr Feen had used the Viking name to divert business to the Feen Companies. Clause 5.1 of the SPA contained an undertaking by Mr Feen that he would not use the Viking name in a manner associated with the business of Viking Engineering.

13 The right to a prohibitory injunction arises where there has been, or is going to be, a breach of a negative covenant in a contract. In *RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997, the Court of Appeal set out the principles as follows at [32]:

> (a) A prohibitory injunction to restrain the breach of a negative stipulation in a contract is normally granted as a matter of course.

(b) The court is not concerned with the balance of convenience. That damages would be an adequate remedy is not generally a relevant consideration.

(c) As the remedy is an equitable one, it is in principle discretionary, and it may be refused on the ground that it would cause particular hardship as to be oppressive to the defendant. But the burden caused by having to observe the contract does not qualify as hardship.

(d) These principles apply equally to interim and final injunctions.

Minority Oppression

14 An action for minority oppression under s 216(1) of the CA provides four alternative bases for relief: oppression, disregard of a member's interest, unfair discrimination or prejudicial conduct. These bases are not to be read disjunctively; instead, "commercial unfairness" is the touchstone of the inquiry: *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [70] and [81]. The unfairness of a party's conduct is to be objectively ascertained against the context of the parties' commercial relationship: *Leong Chee Kin (on behalf of himself and as a minority shareholder of Ideal Design Studio Pte Ltd) v Ideal Design Studio Pte Ltd and others* [2018] 4 SLR 331 ("*Leong Chee Kin*") at [47]. Absent equitable considerations such as the "quasi-partnership" status of a company, the unfairness of a party's conduct is measured against legitimate expectations arising from the members' legal rights and the company constitution: *Leong Chee Kin* at [51].

Decision

15 Viking Engineering essentially made the following assertions about Mr Feen's actions:

(a) First, he did not change VIG's name to "Feen Marine Pte Ltd" as agreed under the SPA. Instead, he incorporated Feen Marine as a new company.

(b) He then misused VIG's name to divert business to Feen Marine.

(c) He transferred his shareholding in VIG to Feen Marine. In so doing, Feen Marine became the majority shareholder of VIG.

(d) He set up additional Feen Companies in conflict of interest as a director of VIG and diverted opportunities to them.

(e) He did not answer requests for information about VIG from Viking Engineering.

16 Viking Engineering's contentions may be summarised into two strands. The first, arising from his actions in (a) and (b) above, was Mr Feen's failure to protect the "Viking" name, premised on Clause 5.1 of the SPA. These were made out, and I granted the injunction to restrain his further misuse of the "Viking" name. The second related to the diversion of business away from the joint venture company that the two shareholders had devised in the SPA, to the Feen Companies. This involved the plan as carried out in (a) to (e) above. These allegations, too, were made out. I ordered Mr Feen to buy out Viking Engineering's minority interest, with the business diverted to be factored into the valuation.

Misuse of the "Viking" name

17 Breach of Clause 5.1 of the SPA was central to this issue. This read as follows:

> **5.1 Change of Name**
>
> [Mr Feen] shall as soon as practicable and in any event no later than 30 Business Days after [10 September 2013] procure that the name of [VIG] be changed to "Feen Marine Pte Ltd" or such other name as may be agreed between the Parties. [Mr Feen] further agrees that it shall not use or cause or (so far as it is able) permit the use of the name "Viking" in any manner which may compete with the business of [Viking Engineering] or be associated with or perceived to be associated with [Viking Engineering] or the business of [Viking Engineering].

18 Clause 5.1 was two-pronged. Its first sentence contained the Name-change Obligation. It was not disputed that Mr Feen failed to change VIG's name. A minute sheet of an annual general meeting ("AGM") of VIG dated 1 August 2016 reflected that the name was not yet changed even three years later.[6] Mr Feen stated in his affidavit that this was "an omission out of neglect and not a wilful act".[7] Subsequent events, which I will return to, reflect otherwise.

19 Further, it was not disputed that rather than changing VIG's name to "Feen Marine Pte Ltd" as the SPA envisaged, Mr Feen incorporated a new company of the same name, in which he was the sole director and Viking Engineering had no share.

20 It is in this context that the second sentence of Clause 5.1, which contains the Non-use Obligation, should be considered. Viking Engineering

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6 Moh Liang Teng Evelyn's 4th Affidavit at Tab 21.

7 Bjornar Feen's 3rd Affidavit at para 17.

showed various instances where it was represented that VIG's name had been changed to that of Feen Marine and/or the related entities in the Feen Companies. If it had truly been the case that VIG's name was changed to that of Feen Marine, those representations would not have contravened Clause 5.1. But because the Feen Companies were in fact new companies, the representations served to divert business to Feen Marine, and to compete with Viking Engineering. The representations also falsely associated the business of Viking Engineering with new companies which it had no part in. These representations were as follows:

(a) Representations made to Dragon Marine Engineering Co Ltd ("Dragon Marine"). VIG signed a contract (dated 13 October 2014) with Dragon Marine for the supply of oil discharge monitors still using the "Viking" name ("the Dragon Marine contract"). In an email dated 22 November 2016,[8] a representative of Dragon Marine informed Viking Engineering that an inert gas company called "Viking" was previously supplying equipment for one of the ships which Dragon Marine was building. In their communications, it appeared that Dragon Marine understood that the "Viking" company had its name changed to "Scanjet Feen", the name of the fourth defendant.

(b) Representations made by a representative of VIG to an employee of Prime Gas Management at an international shipping exhibition in Greece in June 2016. In an email dated 9 June 2016, an employee of Viking Engineering communicated his discovery that a representative of VIG had told Prime Gas Management that VIG's name was changed to

8 Moh Liang Teng Evelyn's 3rd Affidavit at Tab 2.

that of Feen Marine, and that, moving forward, it was Feen Marine that would deliver inert gas system parts to Prime Gas Management.[9] While this was an internal document, in context, it served as a contemporaneous record of Viking Engineering's discovery.

(c) Linked-in profiles of employees of Feen Marine representing themselves also as employees of VIG.[10]

(d) An unfinished website of Feen Marine, which used the name "Viking Inert Gas" in apparent reference to Feen Marine.[11]

21 Mr Feen's responses were not persuasive. First, it was alleged that Viking was seeking to frame its case under the tort of passing off.[12] This was incorrect as Viking Engineering relied on Clause 5.1 of the SPA. Second, he contended that Clause 5.1 did not preclude the incorporation of Feen Marine.[13] To the contrary, Clause 5.1 envisaged that the new joint venture entity would be called Feen Marine. Mr Feen's incorporation of a new company by the same name in which Viking Engineering had no share was not envisaged by Clause 5.1. And to thereafter represent that VIG had become Feen Marine, a wholly unrelated company, was a breach of the Non-Use Obligation of Clause 5.1. There was, thirdly, a bare assertion that the "Viking" name was not used, which was contradicted by the affidavit evidence. The Dragon Marine contract was a good example of how the failure to abide by both obligations of Clause 5.1

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9 Moh Liang Teng Evelyn's 2nd Affidavit at Tab 10.

10 Moh Liang Teng Evelyn's 2nd Affidavit at Tab 12.

11 Moh Liang Teng Evelyn's 2nd Affidavit at Tab 13.

12 Defendants' Written Submission at paras 26 to 35.

13 Defence and Counterclaim (Amendment No. 2) at para 19(b). See also Notes of Argument dated 24 November 2017 at p 7, ln 4 to 9.

allowed business to be diverted from VIG to the Feen Companies. It was signed on 13 October 2014 between "Viking Inert Gas Systems" and Dragon Marine for the supply of IGS,[14] about a year after the SPA was signed; later, Dragon Marine employees were told to deal with one of the Feen Companies instead of VIG.

Remedy for breach of Clause 5.1

22 In this context, Mr Feen's use of the Viking name was in contravention of the Non-Use Obligation within Clause 5.1. In line with the principles in *RGA Holdings*, an injunction restraining his use of the name was therefore granted.

Diversion of business

23 As explained above, breach of Clause 5.1 was an aspect of how business was diverted. I deal with the other facets below.

Breach of Article 28

24 It was not disputed that Mr Feen transferred his 70% shareholding in VIG to Feen Marine. Feen Marine therefore became the 70% majority shareholder of VIG. It was not disputed that Viking Engineering was not informed of the transfer, until 14 December 2014, when Mr Feen informed it by email that he had transferred his shares to a holding company that he owned together with two Norwegians to ensure that VIG's "technical engineering capability is in house".[15]

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14 Moh Liang Teng Evelyn's 3rd Affidavit at Tab 1.

15 Moh Liang Teng Evelyn's 2nd Affidavit at Tab 4.

25 Viking Engineering contends that this transfer without a first option to it contravened Article 28 of VIG's articles of association, which reads:

> Shares may be freely transferred by a member or other person entitled to transfer *to any existing member* selected by the transferor; ***but save as aforesaid****, no share shall be transferred to a person who is not a member* so long as any member or any person selected by the directors as one whom it is desirable in the interest of [VIG] to admit to membership is willing to purchase the same at the fair value.
>
> [emphasis added in italics and bold italics]

26 It further relied on *Ting Shwu Ping (administrator of the estate of Chng Koon Seng, deceased) v Scanone Pte Ltd and another appeal* [2017] 1 SLR 95 ("*Ting Shwu Ping*"), where the Court of Appeal read a clause substantially *in pari materia* (in *Ting Shwu Ping* the words "and save as provided by Article 33" appear after "save as aforesaid" and nothing turned on this) to Article 28 to state that "remaining members have a right of pre-emption if an existing shareholder wishes to transfer his shares" (at [9]).

27 The defendants did not challenge nor raise any authority to rebut Viking Engineering's reliance on *Ting Shwu Ping.* They contended that Article 28 did not provide a pre-emption right in favour of Viking Engineering, but that the section of Article 28 that provided that "any person selected by the directors as one whom it is desirable in the interest of [VIG] to admit to membership" gave the director, Mr Feen, a discretion to decide who the shares would be transferred to.[16]

28 This specific argument was not engaged in *Ting Shwu Ping*. However, the defendants' reading of the clause ignored the opening frame of Article 28.

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16 Defendant's Written Submissions at paras 19 to 23.

Article 28 first provides that shares may be freely transferred to existing members ("the opening frame"). Because what follows immediately after is "but save as aforesaid, no share shall be transferred to a person who is not a member…", the opening frame, in effect, became mandatory: shares *may only be transferred to members*. Article 28 thereafter provides (from "so long as…") that shares may not be transferred to non–members where there is either: (a) a member willing to purchase the shares at fair value, or (b) "any person selected by the director…" willing to purchase the shares at fair value. It may be said that this reading renders the alternative of "any person selected by the directors as one whom it is desirable in the interest of [VIG] to admit to membership" otiose as these persons are also, strictly speaking, non–members. On balance, however, reading the first line as mandatory does less violence to the clause as a whole. Reading Article 28 as giving members a pre–emption right would also be consistent with the Court of Appeal's characterisation in *Ting Shwu Ping* of such a clause as one granting pre-emption rights. Lastly, such a reading makes sensible commercial sense because VIG was a company with two members.

29 In any event, breach of the clause *per se* was not the main point. I did not order any remedies specific to the pre-emption rights. What was important, in my view, was the commercial unfairness in Mr Feen's conduct. In this context, the transfer of Mr Feen's shares in VIG to Feen Marine was a step in Mr Feen's diversionary scheme (see [15] above). In this regard, I note that Mr Feen does not deny that notice of his intention to transfer the shares was not given to VIG as required in Article 29 of VIG's articles of association.[17] Nor

[17] Notes of Argument dated 24 November 2017 at p 6. See also Moh Liang Teng Evelyn's 2nd Affidavit at para 11.

was any evidence adduced that fair value was paid as required by the limb of Article 28 that the defendants relied upon.

Breach of director's duties

30 Viking Engineering's claim for oppressive conduct was also premised on various alleged breaches of Mr Feen's fiduciary duties as a director of VIG. Mr Feen had breached his duty not to place himself in a position of conflict with respect to his role as a director in the Feen Companies while acting as director of VIG at the same time. In addition, Mr Feen went on to divert commercial opportunities from VIG to each of the Feen Companies. It was a breach of his fiduciary duties to take advantage of such business opportunities without proper disclosure: *Regal (Hastings) Ltd v Gulliver* [1942] 1 All ER 378, applied by the Singapore Court of Appeal in *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others and other appeals* [2013] 1 SLR 374 at [41]. The following examples were adduced:

> (a) Feen Marine was in substantially the same business as VIG. Documentary evidence included Feen Marine's brochures and website which suggested that it dealt with the sale of IGS and spare IGS parts as well as the servicing of IGS. It pointed to representations purportedly made to Dragon Marine and Prime Management (see [20] above) as instances of diversion of corporate opportunities from VIG to the Feen Companies.[18]

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18 Statement of Claim (Amendment No 3) at paras 34 to 36.

(b) Scanjet Feen was also in the business of selling IGS since April 2017, and was also in the business of manufacturing IGS.[19]

(c) Feen Marine Scrubbers was incorporated by Mr Feen on 29 November 2016, and engaged in the business of exhaust gas cleaning.[20] In this regard, Viking Engineering rely on Clause 5.3, which provided that both parties were to use their best endeavours to procure contracts for exhaust gas cleaning projects for VIG. Mr Feen's directorship in Feen Marine Scrubbers placed in him in a conflict of interest, and exhaust gas cleaning contracts obtained by Feen Marine were at the expense of VIG.

31 The defendants did not deny that Mr Feen was a director of the Feen Companies, nor that he set them up; however, they disputed that Mr Feen acted in breach of his duties. The defendants first argued that Feen Marine and Scanjet Feen were not in competition with the VIG, contending that VIG's business was in the manufacture and sale of flue gas systems, which was otherwise referred to in the industry as IGS.[21] Feen Marine, on the other hand, sold "Inert Gas Generator" ("IGG") systems, which the defendants saw as distinct from IGS in terms of the type of ships it was installed in, and the cleanliness of the inert gas generated. In relation to Scanjet Feen, the defendants asserted that it was the sales and marketing arm of Feen Marine and was thus not in the same business

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19 Plaintiff's Supplemental Submissions at para 12(a). See also Moh Liang Teng Evelyn's 4th Affidavit at Tab 22.

20 Statement of Claim (Amendment No 3) at paras 25 to 30.

21 Defence and Counterclaim (Amendment No 2) at para 6.

as VIG. The Defendants also asserted that there was a triable issue as to whether VIG was in a position to have entered into or fulfilled IGS contracts.[22]

32 The fine distinctions the defendants sought to draw between VIG's and Feen Marine's scope of business, and between IGS and IGG, were not made out on the documentary evidence. A brochure advertising Feen Marine's services stated that "Feen Marine is a Manufacturer of Inert Gas systems for the marine & offshore Industry".[23] The Feen Marine website also listed, as part of its "wide range of products", services related to "inert gas generator[s]" and "flue gas system[s]". Further, the defendants did not produce evidence to support their otherwise bare assertion that Feen Marine dealt exclusively with the sale of IGG systems.[24] That the bare assertion was a tenuous one was reflected in their own difficulty in navigating their technical distinctions: their written submissions contended that flue gas systems and IGG systems were *types of IGS,* contrary to their Defence.[25]

33 Viewed in this light, the defendants' assertion that there was a triable issue as to whether VIG was in a position to have entered into or fulfilled IGS contracts was untenable. Whatever arrangements Mr Feen made for the competing Feen Companies, he ought to have done for VIG, or at least made proper disclosure. In any event, that a company could not take up a corporate opportunity, or that the opportunity was not within the company's scope of business, did not absolve the director from a breach of his duty not to place

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22 Defence and Counterclaim at para 21.

23 Moh Liang Teng Evelyn's 2nd Affidavit at Tab 16.

24 Bjornar Feen's 2nd Affidavit at para 25.

25 Defendant's Written Submissions at paras 5 to 7.

himself in a position of conflict: *Nordic International Ltd v Morten Innhaug* [2017] 3 SLR 957 ("*Nordic International*") at [79].

Withholding of information

34 Mr Feen's conduct was exacerbated by his lack of response to repeated inquiries from Viking Engineering into VIG's state of affairs. Mr Feen had not called for annual general meetings ("AGMs") in relation to VIG from 2013 to 2015, nor had he laid out the financial statements of VIG for the years 2014 to 2016 (the "Annual Reports"). Viking Engineering exhibited multiple emails and letters between itself and Mr Feen spanning 14 January 2015 to 13 July 2016[26] where the repeated calls were made for Mr Feen to hold an AGM in order lay out the Annual Reports from the years 2013 to 2016. Within this period, Viking Engineering also sought the quarterly reports of VIG[27] so that it could understand the state of VIG's affairs. In reply, Mr Feen repeatedly pointed to the incompetency of VIG's auditors for the delays. But the quarterly reports sought did not require auditing. Mr Feen eventually sent the 2013 Annual Report sometime in May 2016. He also held an AGM on 1 August 2016, shortly after a letter of demand was sent by Viking Engineering's lawyers demanding an explanation for Mr Feen's current and previous failures to hold AGMs for VIG.[28] It was resolved in this AGM that the outstanding Annual Reports would be ready as soon as possible; however, these reports were not furnished by the time S 294/2017 was filed.

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26 Moh Liang Teng Evelyn's 4th Affidavit at Tabs 2 to 20.

27 Moh Liang Teng Evelyn's 4th Affidavt at Tab 15.

28 Moh Liang Teng Evelyn's 4th Affidavit at Tab 20.

35 The defendants did not deny that Mr Feen did not call for AGMs from 2013 to 2015, nor that he did not furnish the Annual Reports of 2014 and 2015. The defendants raised instead that they were unable to do so due to a lack of resources, the fact that the accountants of VIG were unable to complete the reports in a timely fashion, and further the fact that the accounts of VIG were left in disarray by Viking Engineering directors.[29] No evidence was adduced in respect of any of these allegations.

Reliefs arising from minority oppression

36 In light of the foregoing, I was satisfied that the defendants had failed to raise any triable issues in respect of the claim in minority oppression. Mr Feen had breached Clause 5.1 of the SPA, which was intended to protect the use of "Viking", a component of Viking Engineering's name, in the changed joint venture that undergirded the SPA. This went to the foundation of the understanding between parties. Mr Feen then set up new corporate entities, using for the first the very name that was to have been the name of the renamed joint venture. He diverted business opportunities and customers to these companies when the opportunities should have been directed to the renamed joint venture. Viking Engineering was entitled, on the other hand, to a legitimate expectation that Mr Feen would act in accordance with his fiduciary duty to act in the best interests of VIG: *Leong Chee Kin* at [65]. In the present case, the diversion of business opportunities to the Feen Companies amounted to egregious commercial unfairness and oppression of minority interest. Such behaviour undermined the basis of the joint effort, as the joint venture partner could no longer participate in any resulting business. Lastly, Mr Feen's refusal

[29] Defence and Counterclaim (Amendment No 2) at para 28.

to give Viking Engineering any information on VIG's financial affairs was further oppression. It kept Viking Engineering in the dark regarding his harmful conduct against VIG and Viking Engineering.

37 Section 216(2) of the CA permits the court to make any order that it deems fit. In the present case, in view of Mr Feen's conduct, the only solution that would properly bring the oppression to an end was for Mr Feen to purchase Viking Engineering's shares. I therefore ordered, pursuant to section 216(2)(*d*) of the CA, Mr Feen to purchase Viking Engineering's entire shareholding in VIG at fair value, to be assessed by an independent valuer to be appointed by agreement within 14 days of final judgment.

38 Three other matters were relevant to the valuation. First, VIG was a going concern at the time of the order, and therefore the valuation was on the basis that it was a going concern.

39 Second, Viking Engineering had asked for an account of all benefits received by Mr Feen and the Feen Companies at the expense of VIG, on the footing that a valuation of VIG would not include the value of the diverted opportunities.[30] In *Kumagai Gumi Co Ltd v Zenecon Pte Ltd* [1995] 2 SLR(R) 304 at [77], the Court of Appeal held that s 216 was wide enough to cover an order to make good loss suffered by the company. Rather than to order an account, which involved another step in the process, I decided a more practicable remedy would be to direct the valuer to adjust the valuation of the shares on the assumption that VIG had undertaken the business and earned the profits that were diverted away from it to the Feen Companies. These would have been profits that VIG would rightly have earned, and the intent of the

[30] Plaintiff's Supplementary Submissions at paras 16 to 24.

venture was for the partners to share such profits in proportion to their shareholding. The order was limited to the business of VIG, being insert gas systems and exhaust gas cleaners.

40 Thirdly, I directed that the valuer should not apply any discount to the purchase price to account for the fact that Viking Engineering's shares represented a minority shareholding in VIG. In *Over & Over* (at [132]), the Court of Appeal declined to apply a discount where the irreversible breakdown of the parties' commercial relationship was largely precipitated by the majority shareholder. In the present case, Viking Engineering was initially the majority shareholder. It sold 21% of its shareholding to Mr Feen, entrusting him with the majority shareholding on terms which he intentionally breached, using VIG as a platform while denuding its value by diverting its business and customers. Mr Feen, on the buy-out, would gain full control of the assets of VIG, which was what he sought by his various plans to achieve prior to the suit, in any event.

Conclusion

41 For these reasons, I granted the injunction and buy-out order as explained. Costs were awarded to Viking Engineering, fixed at $20,000 excluding reasonable disbursements (which parties later agreed at $4,005.53).

Valerie Thean
Judge of the High Court

Mahesh Rai s/o Vedprakash Rai, Jeremy Yeap Wei Ming and Yong Wei Jun Jonathan (Drew & Napier LLC) for the plaintiff and defendant in counterclaim;
Kelvin Tan and Sara Ng (Vicki Heng Law Corporation) (instructed) and Byron Nicholas Xavier (Xavier & Associates LLC) for the first to fifth defendants and plaintiff in counterclaim.
