IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 54

Suit No 490 of 2013

Between

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

… *Plaintiffs*

And

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

… *Defendants*

JUDGMENT`

[Companies] — [Oppression] — [Minority shareholders]
[Companies] — [Shares] — [Valuation] — [Discount on minority shares]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Thio Syn Kym Wendy and others
v
Thio Syn Pyn and another

[2018] SGHC 54

High Court — Suit No 490 of 2013
Judith Prakash JA
12 January 2018

13 March 2018 Judgment reserved.

Judith Prakash JA:

Introduction

1 In this action, I granted the plaintiffs judgment on their minority oppression claim against the first and second defendants, and ordered a buyout of the plaintiffs' shares in the company Malaysia Dairy Industries Pte Ltd ("MDI") on the basis of a share price to be determined by an independent valuer. I further ordered that the parties be at liberty to apply for directions in case any were needed in regard to the valuation and sale of the shares. It turns out that the parties are indeed unable to agree on whether a discount should be applied in the valuation of the plaintiffs' minority shares, and they now seek a court determination of this issue.

Background

Events leading to this action

2 The full facts underlying this action can be found in my earlier judgment, *Thio Syn Kym Wendy and others v Thio Syn Pyn and others* [2017] SGHC 169 ("the Judgment"). Here, I will only outline the broad factual background and set out the facts that are relevant to the outstanding issue of share valuation.

3 Mr Thio Keng Poon ("Mr Thio") was a businessman who, in the 1960s, procured the incorporation of three companies: United Realty Ltd ("URL"), a property investment holding company, MDI, a manufacturer and distributor of dairy products and beverages, and Thio Holdings Pte Ltd ("THPL"), an investment holding company. These three companies are the corporate defendants in this action. Together with their subsidiaries and a Hong Kong company, they form the Thio family's group of businesses ("the Group").

4 Mr Thio and his wife, Mdm Kwik Poh Leng ("Mdm Kwik"), have six children. They are, in order of birth:

(a) Thio Syn Luan Vicki ("Vicki");

(b) Thio Syn Pyn ("Ernest");

(c) Thio Syn Kym Wendy ("Wendy");

(d) Thio Syn Ghee ("Michael");

(e) Thio Syn San Serene ("Serene"); and

(f) Thio Syn Wee ("Patrick").

All of the children, save Vicki, are parties in this litigation, and I will refer to them by their western personal names as I did in the Judgment.

5 The plaintiffs are Wendy, Michael and Serene. They are minority shareholders in each of the three corporate defendants. Collectively, they hold 20% of the shareholding in MDI and lower percentages of the share capital of URL and THPL.

6 The three individual defendants are Mdm Kwik, Ernest and Patrick. Together, they hold 30% of the shareholding in URL, 38.5% of the shareholding in MDI and 77.25% of the shareholding in THPL. All of them are directors of all three companies. Ernest and Patrick are, respectively, the managing director and deputy managing director of MDI.

7 Over the years, Mr Thio passed down the family wealth to his sons by allotting shares in URL, MDI and THPL to them. Each of his sons initially held the same number of shares but Michael's shares were transferred to Ernest and Patrick in 1991. By the year 2000, Mr Thio, Mdm Kwik, Ernest and Patrick were the only family members who held shares in the Group. They were also directors of the Group companies.

8 In 2002, Mdm Kwik expressed a wish that some financial provision be made for the daughters. Mr Thio then decided that Michael, Vicki, Wendy and Serene should receive shares in the Group companies by way of bonus issues. These shares were allotted in March and April 2002.

9 On 23 December 2005, following a dispute in the family regarding certain proposed changes to the shareholdings in the Group, the members of the family, THPL and MDI entered into a Deed of Settlement ("the Deed of Settlement") which provided for an adjustment of shareholdings in the Group. After the Deed of Settlement, Ernest and Patrick retained majority control of MDI through the combination of their shareholdings in MDI and their control

of THPL. Around the same time as the Deed of Settlement, Michael and the three sisters were appointed directors of each of the Group companies.

10 Despite the Deed of Settlement, friction between Mr Thio, on the one hand, and Ernest and Patrick, on the other, increased. Mr Thio sued his wife and children and several companies in the Group for, amongst other things, oppression. Ultimately, he succeeded on part of his claims but, in 2010, the shareholders of MDI voted to remove Mr Thio as a director.

11 From 2011, discussions took place between Wendy, Serene and Vicki on the one hand, and Ernest and Patrick on the other, regarding a possible purchase by Ernest and Patrick of their sisters' shares. Without informing their brothers, Michael and the sisters appointed Ernst & Young LLP ("E&Y") to prepare valuations of URL, MDI and THPL. According to Michael, their only instruction to E&Y was to provide the indicative value of 100% equity stake in each company and the indicative value of the siblings' respective equity stakes in each of the companies as of December 2010. E&Y provided its indicative valuation results in a presentation dated 9 September 2011 which was revised on 11 November 2011. E&Y valued MDI's equity as being between $1,197.6m and $1,295.2m.

12 The family met twice in November 2011 and February 2012 to discuss the proposed buyout. Several proposals were made but most of the siblings were unable to reach an agreement. Ernest and Patrick suggested that the valuation of shares be conducted on a net tangible asset basis using reports produced by the companies' auditor. Wendy and Serene proposed a joint appointment of an independent valuer. Ernest and Patrick then counter-proposed that Wendy appoint another valuer at her own cost. Michael later presented the figures derived from E&Y's valuations, but Ernest and Patrick disagreed with them and

offered to purchase each of the sisters' shareholding for $31.98m and Michael's for $70.64m. Although Vicki sold out to Ernest and Patrick in May 2013, the plaintiffs considered that the offers made to them were grossly inadequate. Discussions on the proposed buyout eventually broke down.

My findings in the Judgment

13 In 2013, the plaintiffs brought a minority oppression action against the defendants. After a trial, I made the following findings:

(a) Although the companies in the Group were "family companies" in the sense that most of the directors in the relevant companies were members of the Thio family, the Thios did not operate on the basis of a relationship of mutual trust and confidence in relation to how the companies were run. I therefore concluded that URL, MDI and THPL were neither quasi-partnerships nor companies akin to quasi-partnerships.

(b) There was no common understanding among the parties that the plaintiffs were entitled to participate in the management of the Group as directors.

(c) Only the claim of minority oppression against Ernest and Patrick in respect of the affairs of MDI was made out and only in the following respects:

(i) their use of MDI to further their personal pursuit of Mr Thio when the matter could have been settled by accepting Serene's offer to make compensation for the sums claimed from Mr Thio;

(ii) their conduct in selectively using the results of an independent report prepared by a consultancy firm to justify increasing their remuneration, drastically reducing Michael's remuneration and taking away long established benefits for non-executive directors, while simultaneously refusing to implement comments that would have taken away their own benefits; and

(iii) perhaps to a lesser extent, their engineering of a situation where they would have received unjustifiable backdated emoluments from MDI's Malaysian subsidiaries had they not renounced the payments at the last minute.

14 I granted the plaintiffs judgment against Ernest and Patrick in respect of their claim in relation to MDI. Considering the breakdown of goodwill and trust among the parties and that the relationships between them had unravelled irretrievably, I ordered Ernest and Patrick to buy out the plaintiffs' respective shares in MDI on the basis of a share price to be determined by an independent valuer who was to value the company as of the date of the Judgment, 17 July 2017, as a going concern. I further ordered that the parties be at liberty to apply for directions in case any were needed in regard to the valuation and the sale.

Events following the Judgment

15 The parties jointly appointed Mr Richard Hayler ("Mr Hayler") as the independent valuer. In the course of finalising Mr Hayler's terms of reference, Ernest and Patrick sought to include a term stating that the plaintiffs' shares in MDI were to be valued on the basis of "fair market value", which would allow for a discount to be applied to the valuation of the shares. The plaintiffs disagreed and the parties were unable to reach a compromise.

16 On 20 November 2017, the parties jointly wrote to the court requesting a hearing to seek directions on the issue of whether a discount should be applied to the valuation of the plaintiffs' shares in MDI. The parties were in agreement that no formal application needed to be filed.

The parties' cases

17 The sole issue before the court is whether any discount should be applied to the plaintiffs' shares.

The plaintiffs' case

18 The plaintiffs submit that the general rule is that no discount should be applied when a buyout is ordered by the court under s 216(2)(*d*) of the Companies Act (Cap 50, 2006 Rev Ed) as a remedy in minority oppression cases. In support of this proposition, they rely on several High Court cases such as *Low Janie v Low Peng Boon and others* [1998] 2 SLR(R) 154 ("*Low Janie*") and *Poh Fu Teck and others v Lee Shung Guan and others* [2017] SGHC 212 ("*Poh Fu Teck*"), which in turn cited the English decision of *In re Bird Precision Bellows Ltd* [1984] 1 Ch 419 ("*In re Bird*"). These cases explain that it would ordinarily be unfair for oppressed minority shareholders to be bought out at a discount, as they should not be treated as having elected freely to sell their shares (*Low Janie* at [63]–[64]; *Poh Fu Teck* at [38]; *In re Bird* at 430). The plaintiffs further argue, on the basis of several decisions of the High Court such as *Tan Eck Hong v Maxz Universal Development Group Pte Ltd and others* [2017] SGHC 309 ("*Tan Eck Hong*") at [223(a)] and *Leong Chee Kin v Ideal Design Studio Pte Ltd and others* [2017] SGHC 192 ("*Leong Chee Kin*") at [56] and [96], that this general rule ought to apply regardless of whether the company in question is a quasi-partnership.

19 On the facts of this case, the plaintiffs submit that no discount should be applied and that their shares should be valued *pro rata* according to the value of all the shares in MDI as a whole. They point out that Ernest and Patrick are in fact consolidating their existing majority positions in MDI by purchasing the plaintiffs' shares, and thus there is no basis for applying a discount to reflect the lower marketability of minority shares arising from the disadvantage of not having control of the company. Although the plaintiffs accept that the court may order a discount in circumstances where the minority acted in such a way as to deserve their exclusion from the company, they contend that there was no such finding here.

The defendants' case

20 Ernest and Patrick made separate submissions through their respective counsel but their positions are consonant. For convenience, I will henceforth refer to them as "the defendants", and I note for the avoidance of doubt that the other named defendants in the action are not involved in the buyout of the plaintiffs' shares.

21 The defendants' submissions begin by emphasising the distinction between a discount for lack of control and that for lack of marketability. The former refers to a discount that accounts for a minority shareholder's lack of control over the management of the company, while the latter reflects the difficulty in selling the shares of a private company in general due to share transfer restrictions and the narrowness of the market. Nonetheless, they adopt the same stance as to both types of discounts as they argue that discounts for lack of control and marketability should generally be applied when the company in question is not a quasi-partnership.

22 The defendants disagree with the "general rule" characterised by the plaintiffs and contend that *In re Bird* makes clear (at 431) that there is "no universal or even a general rule in a case where the company had never been a quasi-partnership". The defendants then go further to cite other authorities such as the English case of *Irvine and another v Irvine and another (No 2)* [2007] 1 BCLC 445 ("*Irvine*"), which states that a minority shareholding "is to be valued for what it is, a minority shareholding … [s]hort of a quasi-partnership or some other exceptional circumstance" (at [11]). The defendants read this to mean that there is a presumption or default position that a discount should be applied if the company is not a quasi-partnership.

23 On the present facts, the defendants submit that a discount should indeed be applied as MDI is not a quasi-partnership and no special circumstances exist. They point out that the plaintiffs are not unwilling sellers as they had entered into negotiations in 2011 to sell their shares to the defendants, and that the acts which were found to be oppressive were not motivated by a desire to buy out or worsen the plaintiffs' positions. Moreover, the defendants contend that a valuation of the shares without applying any discount would result in a windfall for the plaintiffs. This windfall would be unfair as the plaintiffs had received their shares as a gift from their father and contributed minimally to the business and management of MDI. According to the defendants, it would be just, fair and equitable for the court to order that discounts be applied.

The law on the application of minority discounts

24 The different positions enunciated in the cases cited in the parties' submissions indicate that the legal principles on the applicability of minority discounts are not fully settled.

25 Where the company in question is a quasi-partnership, the legal position is more certain. In such cases, there is a strong presumption that no discount should be applied: *In re Bird* at 430; *Strahan v Wilcock* [2006] 2 BCLC 555 ("*Strahan*") at [1]; Robin Hollington, *Hollington on Shareholders' Rights* (Sweet & Maxwell, 7th Ed, 2013) ("*Hollington*") at para 8-152. This presumption may be displaced in special circumstances (*O'Neill and Another v Phillips and Others* [1999] 1 WLR 1092 at 1107), such as when the minority shareholder has acted in such a manner as to deserve his exclusion from the company or has contributed to the oppressive conduct of the majority: see *In re Bird* at 430–431; *Hollington* at para 8-152.

26 The distinction between quasi-partnerships and other companies is a principled one. As Lord Millett explained in *CVC/Opportunity Equity Partners Ltd and another v Demarco Almeida* [2002] 2 BCLC 108 at [41], the rationale for denying a discount in the context of a quasi-partnership "lies in the analogy between a quasi-partnership company and a true partnership". The valuation of shares in a quasi-partnership is based on a notional sale of the company *as a whole* to an outside purchaser, rather than a direct sale of the outgoing partner's share to the continuing partners. The majority shareholder must buy the whole of the company, partly from themselves and partly from the minority, "[i]n order to be free to manage the company's business without regard to the relationship of trust and confidence which formerly existed between them" (at [42]).

27 While it is clear that a presumption of no discount exists where the company is a quasi-partnership, the legal position is far less certain as to whether the converse is true such that there would be a presumption of a discount for shares in companies that are not quasi-partnerships. The defendants rely on the *obiter dicta* of Arden LJ in *Strahan* at [17] that it would be "difficult to conceive of circumstances in which a non-discounted basis of valuation

would be appropriate" where the company in question is not a quasi-partnership, as well as the remarks of Blackburne J in *Irvine* at [11] that "[s]hort of a quasi-partnership or some other exceptional circumstance", there is no reason to attribute a *pro rata* share of the overall value of the company to minority shares.

28 On the other hand, in *Poh Fu Teck* at [38] and *Sharikat Logistics Pte Ltd v Ong Boon Chuan and others* [2014] SGHC 224 ("*Sharikat*") at [246], the High Court stated that the "general rule" or "ordinary position" is that no discount is to be applied in court-ordered buyouts under s 216(2) of the Companies Act, without purporting to distinguish between quasi-partnerships and other companies. The plaintiffs also cite several recent High Court decisions such as *Tan Eck Hong* at [223(a)] and *Leong Chee Kin* at [56] and [96], where no discount was applied even though the companies in question were not quasi-partnerships. Similarly, in the English case of *Re Blue Index Ltd* [2014] EWHC 2680 (Ch) at [51], Mr R Hollington QC, sitting as a Deputy Judge of the English High Court, articulated "the general rule … that there should be no discount for a minority shareholding unless [the minority shareholder had] acquired his shares at a discounted price in the first place". Curiously, Mr Hollington QC does not take quite the same position in his own treatise, where he comments that "where a petitioner has acquired his shares as an investment without any entitlement to participation in the running of the company, as a general rule it will be appropriate to apply a discount, especially if the petitioner originally acquired the shares at a price which was discounted to reflect their minority status": *Hollington* at para 8-153. It appears to me that the law on this area is in need of clarification.

29 Any rule I articulate on this issue must take into account two competing considerations. The first is that, in general, an oppressed minority shareholder should not be treated as having elected freely to sell his shares (see *Poh Fu Teck*

at [38]) and the court should ensure that the oppressor does not profit from his wrongful behaviour: *Low Janie* at [63]; *Hollington* at para 8-149. In my view, this logically applies to all buyouts ordered under s 216(2) of the Companies Act regardless of whether the company in question is a quasi-partnership or not. The second consideration is that minority shareholding may be relatively harder to dispose of, due to the lack of control that a minority shareholder has over the management of the company.

30 Having considered all of the cases cited to me by counsel, I find a coherent and principled reading of the authorities to be as follows. The starting point is that there is no general rule in cases involving companies that are not quasi-partnerships. This was the position taken by Nourse J in the seminal case of *In re Bird* at 431 (affirmed on appeal in *In re Bird Precision Bellows Ltd* [1986] 1 Ch 658) upon which subsequent local and English decisions such as *Low Janie*, *Strahan* and *Irvine* were based, although it seems to me that the findings and *dicta* in some subsequent cases have strayed somewhat from this original position while purporting to endorse it. I think that this view adequately takes into account the balance of competing considerations I have referred to at [29] above. Likewise, I decline to recognise the existence of any presumption or "baseline" which has been suggested to me by counsel.

31 Instead, the court must look at all the facts and circumstances when determining whether a discount should be applied in any case. For instance, the court will be more inclined to order no discount where the majority's oppressive conduct was directed at worsening the position of the minority as shareholders so as to compel them to sell out (see *Re Sunrise Radio Ltd* [2009] EWHC 2893 (Ch) at [305]), or entirely responsible for precipitating the breakdown in the parties' relationship: *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776. As with cases involving quasi-partnerships (see [25] above),

the court is likely to order a discount where the conduct of the minority contributed to their exclusion from the company or the oppressive conduct complained of: *Sharikat* at [246]. The court will also consider relevant background facts such as whether the minority had originally purchased their shares at a discounted price to reflect their minority status, or for full value: *Hollington* at para 8-153; *Re Blue Index Ltd* at [51]. Ultimately, the broad task for the courts is to ensure that the forced buyout is fair, just and equitable for the parties in all the circumstances.

32 Last, but not least, I must clarify that the above principles relate only to the question of whether the court should order a minority discount for lack of control, and not in respect of a discount for *non-marketability*. I acknowledge the point that the concern of preventing unfairness to a minority shareholder who otherwise would not have sold out applies with equal force even where the question of a discount for non-marketability is concerned, but the countervailing considerations are different. Such a discount, as the defendants point out, arises from the difficulty of selling shares due to share transfer restrictions and the narrowness of the market, regardless of whether the shares are majority or minority shares. The factors to be weighed are also distinct. For instance, the defendants contend here that MDI's shares are less marketable because MDI is not a listed company and there are share transfer restrictions which stipulate that the shares may only be sold to Singaporeans. It seems to me that these are considerations that would be more appropriately evaluated by the expert valuer when assessing the value of MDI and its shares as a whole, rather than by the court. This may perhaps be why it has been observed by counsel that the existing case law does not provide much guidance on when a discount for non-marketability should apply as a matter of law. In my judgment, the question of whether to apply a discount for non-marketability should ordinarily be left to be

determined by the independent valuer in his expertise. With that said, I do not foreclose the possibility that in an exceptional case, the circumstances may warrant an order by the court that no discount be applied in order to remedy the unfairness to the minority that would otherwise result.

Application to the present facts

33 Considering that I have found that MDI is not a quasi-partnership and that there was no common understanding among the parties that the plaintiffs were entitled to participate in MDI's management, the starting point is that there is no default position or presumption as to whether a discount should apply. Instead, I will simply weigh the facts in coming to a decision on this issue.

34 The circumstances of this case make it a close one in my view. None of the parties had behaved in a manner that would militate strongly in favour of either outcome. Although I found oppressive conduct on the part of the defendants, their actions had not been specifically directed at worsening the plaintiffs' positions as shareholders to compel them to sell their shares, although the defendants' actions in pursuit of their vendetta against Mr Thio had used MDI in a manner that was commercially unfair on the plaintiffs. Further, that the defendants had improperly worsened the plaintiffs' positions as *directors* by reducing Michael's remuneration and taking away the benefits of the non-executive directors does not impact the value of their respective shareholdings. I do not ascribe to the defendants *sole* responsibility for causing the breakdown in the parties' relationship. In the context of family-run companies, I would be slow to make such a finding against the majority shareholders when the breakdown in relationship will most often be attributable to a multitude of contributing factors that are unrelated to the parties' relationship as shareholders. Indeed in this case it appeared to me that the crisis was

precipitated by differing attitudes towards Mr Thio and the different relationship which each sibling had with him. As for the plaintiffs' conduct, while Ernest and Patrick complained about annoying questioning and attitudes, there was no serious action on the plaintiffs' part which justified their exclusion from MDI or the oppressive conduct complained of. In particular, I note that Serene had offered to pay compensation on behalf of Mr Thio in order to keep the peace, but this goodwill gesture was roundly rejected by the defendants in their crusade against Mr Thio.

35 The parties rely on different factual aspects of this case to support their respective positions as to whether a discount should be applied, but I am not convinced that much weight should be placed on most of these facts. The plaintiffs submit that a minority discount should not be applied as the defendants would in fact be consolidating their existing majority positions in MDI. Ernest and Patrick currently hold 26% of MDI's shareholding in their own names and 30% through THPL which they control. After the buyout, they would hold 46% in their own names and 30% through THPL. I do not see why this is a factor that would weigh in the plaintiffs' favour. Indeed, in many cases of buyouts ordered under s 216(2)(*d*) of the Companies Act, the minority would be selling their shares to an existing majority. This is also not a situation where the sale of the minority shares would give an oppressor (say, with a plurality of the shareholding) an absolute majority of over 50% which he did not have before. There is no added justification to order no discount to be applied on this basis.

36 As for the defendants, they argue that the plaintiffs should not be treated as unwilling sellers as the plaintiffs had expressed a willingness to sell the shares to the defendants in 2011, and the sale only fell through because the parties were unable to agree on a price. I do not think that the plaintiffs' willingness to sell at what they considered a reasonable price should be held against them. If

anything, their refusal to accept the net tangible asset method of valuation that was proposed by the defendants shows that they were not desperate to sell at any price. Now the plaintiffs will have to sell at the price set by the valuer and they cannot withdraw as they did previously if they are not happy with the price so fixed. To me, therefore, the 2011 negotiations are not a significant factor in deciding the basis of the valuation.

37 The defendants also submit that a discount is justified because the plaintiffs received their shares by way of a gift. I disagree with the defendants' attempt to draw an analogy between a gift and a purchase of shares at a discounted price, which would ordinarily point in favour of a discount being applied: *Hollington* at para 8-153. This is because the gift was intended by Mr Thio and Mdm Kwik to benefit the plaintiffs, and the fact that the plaintiffs gave no consideration does not in any way reflect the reduced value of their minority shareholdings. I note that the defendants, too, had received their original shareholdings by way of gift from their parents. The High Court's decision in *Lim Chee Twang v Chan Shuk Kuen Helina and others* [2010] 2 SLR 209, which the defendants rely on to show that there ought to be a minority discount where the shares had been received as a gift, is distinguishable as the minority shares in that case had been gifted by the oppressor rather than a third party: at [78] and [150(a)].

38 Finally, I see little relevance in the fact that the defendants were largely responsible for the financial success of MDI in recent decades whereas the plaintiffs were not involved in the day-to-day management of the company. The cases that the defendants cite do not support their argument that a lack of contribution by the minority shareholders *per se* is a reason to apply a discount; the minority shareholders in the Nova Scotian case of *Mathers v Mathers* [1992] NSJ No 266 and the Saskatchewanian case of *Derdall v Derdall Irrigation*

Farms Ltd [2010] SJ No 513 had respectively acted in ways that were *detrimental* to the companies. This is plainly not the case here. Moreover, it was accepted by the entire Thio family that the defendants would be responsible for running the Group companies. Just as I found at [68] of the Judgment that "the plaintiffs including Michael were happy to leave management of the Group in Ernest's and Patrick's hands", the defendants, too, were happy to have management and control of the Group and should not be allowed to complain now about the plaintiffs' inaction.

39 On the balance, while I acknowledge that it is a close case in the absence of strong factors that clearly point in either direction, I hold that no minority discount should apply to the sale of the plaintiffs' shares in MDI. I reach this decision on the basis that the Group was family-run and family-owned, even if it did not amount to a quasi-partnership or import any obligations of mutual trust and confidence between the shareholders. The family-run nature of the Group and the way in which the various parties had come into their shareholdings suggest that the defendants were always meant to ensure that the interests of MDI and their siblings would be protected or at least not harmed. It is not a strong factor, but it is nonetheless one that deserves consideration as part of the overall circumstances of the case. In my judgment, a valuation of the plaintiff's shares with no minority discount applied would be an outcome that is fair and equitable to all of the parties, especially in light of the defendants' commercially unfair and oppressive actions and the plaintiffs' lack of culpability as minority shareholders in causing the breakdown of the relationship between the parties.

Conclusion

40 For the above reasons, I order that no minority discount be applied to the sale of the plaintiffs' shares in MDI. However, I leave it to Mr Hayler to

consider whether it would be appropriate to apply any discount for a lack of marketability of MDI's shares.

41 The defendants are to bear the costs of these proceedings. I will hear the parties if they are unable to agree on the quantum of costs payable.

Judith Prakash
Judge of Appeal

Joy Tan, Jeremy Tan and Rich Seet (WongPartnership LLP) for the plaintiffs;
Cavinder Bull SC, Kong Man Er and Fiona Chew (Drew & Napier LLC) for the first defendant;
Ang Cheng Hock SC, Jason Chan, Melissa Mak and Afzal Ali (Allen & Gledhill LLP) for the second defendant.