

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 54

Originating Summons No 1010 of 2016

Between

- (1) Lim Beng Nga
- (2) Lim Beng Huan

... Plaintiffs

And

- (1) Yat Guan Private Limited
- (2) Estate of Lim Beng Qui
(Deceased)
- (3) Yeo Gee Kin
- (4) Lim Er Lin
- (5) Lim Er Yang
- (6) Lim Ni Eng (Lim Errong)
- (7) Lim Er Luen
- (8) Lim Keng Suan

... Defendants

GROUND OF DECISION

[Companies] — [Shares] — [Transfer]

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**Lim Beng Nga and another
v
Yat Guan Pte Ltd and others**

[2020] SGHC 54

High Court — Originating Summons No 1010 of 2016
Aedit Abdullah J
12 November 2019, 21 November 2019

23 March 2020

Aedit Abdullah J:

Introduction

1 This case concerned a family dispute over the shares of the 1st Defendant, Yat Guan Private Limited (“the Company”). The Plaintiffs, Mr Lim Beng Nga and Mr Lim Beng Huan, brothers, sued their other siblings and nephews to challenge the validity of certain share transfers on grounds that they were in breach of a pre-emption clause in the Company’s Memorandum and Articles of Association (“M&AA”). The Plaintiffs also challenged the resolutions for such transfers as being void for lack of proper notice. I dismissed the Plaintiff’s applications; the Plaintiffs have now appealed.

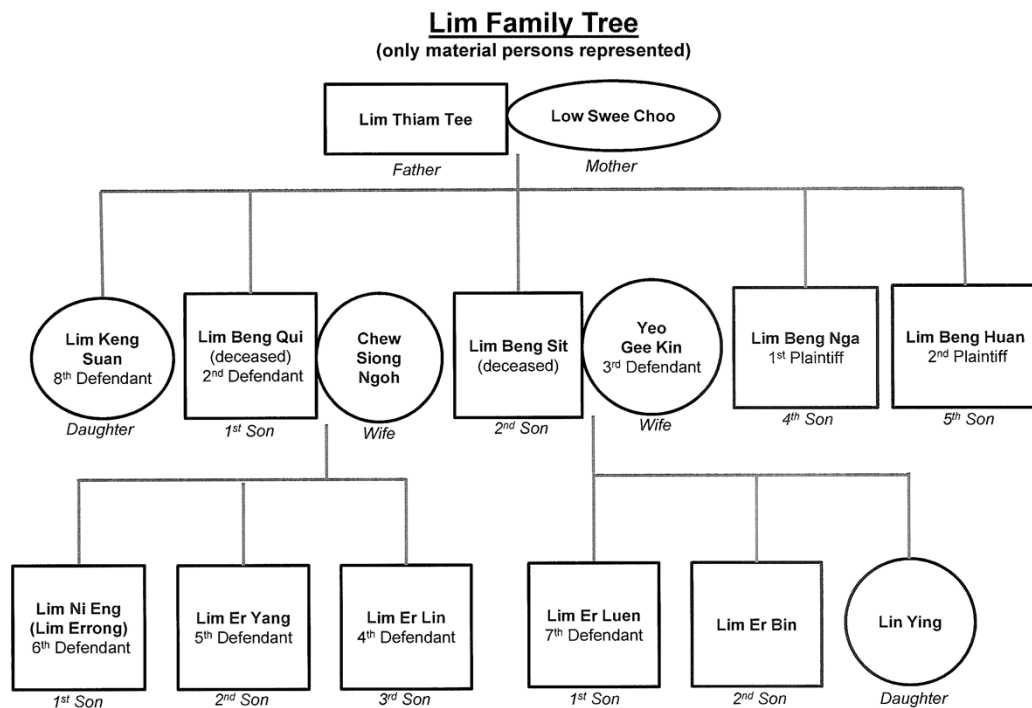
Background

The parties

2 The original shareholders of the Company were the Plaintiffs’ late father, Mr Lim Thiam Tee (“father”), and their late eldest brother, Mr Lim Beng Qui (“eldest brother”).¹ The eldest brother helped the father run the Company whilst the Plaintiffs and other siblings were still studying.² Their father worked hard his entire life for the Company and for the family until he collapsed at the age of 78.³ Following the father’s demise, his shares were split equally amongst his five children.⁴

3 The following diagram sets out the familial relations between the Plaintiffs and 2nd to 8th Defendants:⁵

¹ Lim Beng Nga’s affidavit at para 5
² Lim Keng Suan’s affidavit at para 4
³ Lim Keng Suan’s affidavit at para 3
⁴ Lim Keng Suan’s affidavit at para 4
⁵ Lim Beng Nga’s affidavit at Annex A



The 17 November 2014 transfer

4 Prior to 17 November 2014, the eldest brother and the 2nd Plaintiff, Mr Lim Beng Huan, were the only two directors of the Company.⁶ On 17 November 2014, a meeting of the Board of Directors of the Company was held which was attended by the eldest brother, the 2nd Plaintiff, the Company secretary Mr Chiang See Thong (“Mr Chiang”) and the 4th Defendant, Mr Lim Er Lin (“Lin”), who is the son of the eldest brother.⁷ The purpose of the meeting was to appoint

⁶ Lim Keng Suan’s affidavit at para 11

⁷ Lim Keng Suan’s affidavit at para 12

Lin as a director of the Company, and to allow the 2nd Plaintiff to step down.⁸ However, under Article 65 of the M&AA, a director was required to hold at least one share in the Company.⁹ Hence, at the meeting, the Board of Directors comprising the eldest brother and the 2nd Plaintiff resolved and approved the transfer of one share from the eldest brother to Lin.¹⁰ No payment was made by Lin for the one share.¹¹ The transfer of the one share was later lodged on 22 May 2015.¹²

5 At the same meeting, it was resolved that Lin be appointed as an additional director of the company with effect from 17 November 2014.¹³ The 2nd Plaintiff also resigned as a director of the company with immediate effect, which was approved by the new Board of Directors comprising the eldest son and Lin.¹⁴

The 14 September 2016 dispositions

6 The Plaintiffs' second eldest brother, Mr Lim Beng Sit ("second eldest brother"), subsequently passed away intestate¹⁵ on 7 January 2012¹⁶ and his wife, the 3rd Defendant, was appointed Administratrix over his Estate.¹⁷ The 3rd

⁸ Lim Keng Suan's affidavit at para 12 and p 10

⁹ Lim Keng Suan's affidavit at para 14; Lim Beng Nga's affidavit at p 64

¹⁰ Lim Keng Suan's affidavit at para 12 and p 10

¹¹ Lim Keng Suan's affidavit at para 14

¹² Lim Beng Nga's affidavit at para 38

¹³ Lim Keng Suan's affidavit at para 12 and p 10

¹⁴ Lim Keng Suan's affidavit at para 12 and p 10

¹⁵ Lim Beng Nga's affidavit at para 9

¹⁶ Lim Beng Nga's affidavit at para 9

¹⁷ Lim Beng Nga's affidavit at para 9 and p 74

Defendant and her three children, namely, the 7th Defendant Mr Lim Er Luen, Mr Lim Erbin and Ms Lin Ying, were the beneficiaries to the estate.¹⁸ The late second eldest brother held 670 shares in the Company.¹⁹ On 15 August 2016, the 3rd Defendant, Mr Lim Erbin and Ms Lin Ying signed a Deed of Disclaimer stating that they were relinquishing all claims to these 670 shares in the Company.²⁰ Thus, the 7th Defendant was the sole remaining beneficiary to these 670 shares.²¹

7 Shortly after, on 16 September 2015, the eldest brother passed away.²² With his passing, Lin became the sole director of the Company.²³ The eldest brother had made a will to transfer all his shares in the Company entirely to Lin.²⁴ The eldest brother's other son, Mr Lim Ni Eng, who is the 6th Defendant, is the sole executor of the eldest brother's estate.²⁵

8 On 30 August 2016, a Notice of Extraordinary General Meeting ("EGM") was sent to the Plaintiffs by Mr Chiang. The relevant portion of the EGM Notice is quoted as follows:²⁶

¹⁸ Yeo Gee Kin's affidavit dated 19 September 2019 ("Yeo Gee Kin's affidavit") at para 8

¹⁹ Yeo Gee Kin's affidavit at para 8

²⁰ Yeo Gee Kin's affidavit at para 9 and p 8

²¹ Yeo Gee Kin's affidavit at para 9

²² Lim Beng Nga's affidavit at para 10

²³ Lim Er Lin's affidavit dated 19 September 2019 ("Lim Er Lin's affidavit") at para 8

²⁴ Lim Ni Eng's affidavit dated 19 September 2019 ("Lim Ni Eng's affidavit") at para 5 and p 98

²⁵ Lim Ni Eng's affidavit at para 2

²⁶ Lim Beng Nga's affidavit at p 76

I am hereby instructed by the director, [Lin] to call for an Extraordinary General Meeting of the Company to be held at 20 Sungei Kadut Street 3 Sungei Kadut Industrial Estate Singapore 729150 on 14 September 2016 (Wednesday) at 4.00 p.m. for the following purposes:-

1. To approve the transfer of 1,021 shares from the Estate of [the eldest brother], in accordance with the Grant of Probate, Last Will and Testament of [the eldest brother], deceased.
2. To approve the transfer of 670 shares from the Estate of [the second eldest brother], in accordance with the Grant of Letters of Administration.
3. To appoint the following persons as Directors of the Company –
 - a. [the 6th Defendant]
 - b. [the 5th Defendant]
4. To appoint and authorise an officer of the Company to attend to IRAS Summons Notice No. IRAS0033512016. A copy of the summons is attached herewith.
5. To fix a date to convene the Annual General Meeting of the Company.

9 Subsequently, on 8 September 2016, the Plaintiffs wrote to Mr Chiang and Lin as follows:²⁷

On the topic of items (1) and (2)... I think there is not enough information provided in the EGM Notice. The EGM Notice should have stated who the shares will be transferred to, and how many shares to each person receiving the shares. Without knowing this information, the shareholders cannot consider whether to vote for or against the proposal and the EGM Notice is defective.

...

A new EGM Notice should be sent stating for items (1) and (2) who the shares will be transferred to, and how many shares to each person receiving the shares. The Grant of Probate for the

²⁷ Lim Beng Nga's affidavit at paras 15 and 16, p 80 and 81

Estate of [eldest brother] and the Letters of Administration for the Estate of [second oldest brother] should also be given to all the shareholders with the parts not related to the share transfer redacted. The EGM will therefore have to be postponed to at least 14 days after the new EGM Notice is sent out...

10 Mr Chiang replied the next day, stating:²⁸

1. The transfer of shares from the Estate of [the oldest brother] is to be transferred to [Lin] (1,019 shares), [the 5th Defendant] (1 share) and [the 6th Defendant] (1 share)

2. The transfer of 670 shares from the Estate of [second oldest brother] is to be transferred to [the 7th Defendant] (670 shares)

3. We do not see the necessity to re-send or to re-schedule another date for the EGM to be convened. Hence, the EGM scheduled on 14th September 2016 per notice of meeting remained unchanged.

[emphasis in original]

11 The EGM proceeded on 14 September 2016 and it was attended by Lin, the 3rd Defendant, the 8th Defendant and Mr Chiang.²⁹ The meeting resolved to approve the following transactions:

(a) The transfer of the 670 shares from the second eldest brother's Estate to the 7th Defendant;³⁰

(b) Out of the 1,021 shares held by the eldest brother's Estate³¹ –

(i) The transfer of 1,019 shares to Lin;

(ii) The transfer of one share to the 5th Defendant; and

²⁸ Lim Beng Nga's affidavit at para 17 and p 80

²⁹ Yeo Gee Kin's affidavit at p 13

³⁰ Yeo Gee Kin's affidavit at pp 10–11

³¹ Yeo Gee Kin's affidavit at pp 10–11

- (iii) The transfer of one share to the 6th Defendant.

12 The meeting also resolved and approved the appointment of the 5th and 6th Defendants as directors of the Company.³²

The parties' cases

Plaintiffs' submissions

13 The Plaintiffs filed HC/OS 1010/2016 and sought:³³

- (a) A declaration that the resolutions passed at the EGM on 14 September 2016 are void;
- (b) A declaration that the transfer of one share of the Company from the eldest brother to Lin is void;
- (c) A declaration that the Plaintiffs are entitled to purchase the 1,021 shares of the Company registered in the name of the eldest brother, the 670 shares registered in the name of the Estate of the second eldest brother and the one share listed in (b);
- (d) Any registration of the shares in (c) in the names of the 4th–7th Defendants to be deemed void;
- (e) An order that any lodgement made to the Registrar of Companies effecting the transfer of the shares referred to in (c) to the 4th, 5th, 6th and/or 7th Defendants be cancelled; and

³² Yeo Gee Kin's affidavit at pp 10–11

³³ HC/OS 1010/2016

(f) An order that any votes cast at any General Meeting after 14 September 2016 by any person claiming to be vested with the shares referred to in (c), save for the Executor of the Estate of the [eldest brother], and the 3rd Defendant, should not be taken into consideration for the purpose of passing any resolution.

14 The Plaintiffs argued that all dispositions of shares made pursuant to resolutions passed at the EGM on 14 September 2016 are null and void as the EGM Notice was improper, given that it did not specify the identity of the transferee of shares,³⁴ did not specify the desire of the Estates of the eldest brother or second eldest brother to transfer or sell the shares they had,³⁵ and the Plaintiffs could not verify the authenticity of the purported transfers as they did not have a copy of the will of the eldest brother.³⁶

15 The Plaintiff argued in the alternative that the dispositions breached the pre-emption clause in the M&AA as the shares had not been offered for sale to the Plaintiffs.³⁷ The dispositions made pursuant to the EGM were subject to the M&AA pre-emption clause as they were transfers and not transmissions.³⁸ A transmission refers only to a disposition in favour of the personal representative or administrator, and any subsequent dispositions in favour of the beneficiaries constitutes a transfer.³⁹ The dispositions here were made in favour of the

³⁴ Plaintiffs' written submissions dated 5 November 2019 ("Plaintiffs' submissions") at para 12

³⁵ Plaintiffs' submissions at para 13

³⁶ Plaintiffs' submissions at para 14

³⁷ Plaintiffs' submissions at para 13

³⁸ Plaintiffs' submissions at para 25

³⁹ Plaintiffs' submissions at para 25

beneficiaries, and hence constituted transfers. Further, the grant of letter of administration for the Estate of the second eldest brother did not mandate any transfer of shares.⁴⁰

16 The Plaintiffs also argued that the transfer of one share by the late eldest brother to Lin was void as it breached the pre-emption clause in the M&AA.⁴¹ The fact that no consideration was given does not change the fact that it was a transfer.⁴² Further, there was no General Meeting of shareholders to approve the said transfer, and there was no notice of the share transfer.⁴³

Defendants' submissions

17 The 3rd and 7th Defendants were separately represented from the other Defendants, but will be included with the other Defendants since they adopt the same legal position.⁴⁴

18 The Defendants submitted that the EGM Notice was valid as it met the requirements set out in the M&AA and in Singapore law.⁴⁵ Even if the EGM Notice contained a procedural irregularity, there was no substantial injustice as Mr Chiang's subsequent email to the Plaintiffs on 9 September 2019 had set out sufficient details.⁴⁶ The court can hence cure any such procedural irregularity

⁴⁰ Plaintiffs' submissions at para 15

⁴¹ Plaintiffs' submissions at para 34

⁴² Plaintiffs' submissions at para 38

⁴³ Plaintiffs' submissions at para 21

⁴⁴ 3rd and 7th Defendants' submissions dated 6 November 2019 ("3rd Defendant's submissions") at para 4

⁴⁵ 3rd Defendant's submissions at paras 13–27

⁴⁶ 3rd Defendant's submissions at paras 29–32

pursuant to s 392 of the Companies Act (Cap 50, Rev Ed 2006) (“Companies Act”).⁴⁷

19 As for the disposition of the 670 shares from the 3rd Defendant to the 7th Defendant, this was a transmission and not a transfer as it was done by operation of law, and not a voluntary disposition.⁴⁸ Hence, the M&AA does not apply.⁴⁹ The disposition of 1,019 shares from the late eldest brother’s estate to Lin pursuant to the late eldest brother’s will was similarly a transmission done by operation of law, and not subject to the M&AA.⁵⁰

20 Finally, the transfers of one share from the late eldest brother to the 5th Defendant and one share to the 6th Defendant did not breach the M&AA as they were approved by the Board of Directors.⁵¹ Similarly, the transfer of one share from the late eldest brother to Lin in November 2014 was not in breach of the M&AA as it was approved by the Board of Directors, and not subject to the pre-emption clause.⁵²

The Decision

21 The Plaintiff did not seriously pursue their claims about the procedural irregularities in the EGM Notice. I nevertheless found that there was sufficient notice, and in any case, would have allowed the cure of any irregularity under

⁴⁷ 3rd Defendant’s submissions at paras 29–32

⁴⁸ 3rd Defendant’s submissions at paras 35–49

⁴⁹ 3rd Defendant’s submissions at paras 35–49

⁵⁰ 1st, 2nd, 4th, 5th, 6th and 8th Defendant’s submissions dated 7 November 2019 (“1st Defendant’s submissions”) at para 27

⁵¹ 1st Defendant’s submissions at para 19

⁵² 1st Defendant’s submissions at para 15

s 392 of the Companies Act as there was no prejudice or substantial injustice arising from the notice.

22 In my view, the various dispositions that were challenged were not subject to pre-emption as they were either not transfers within the meaning of the M&AA, or had otherwise been authorised by the Board of Directors.

Analysis

23 The issues arising were:

- (a) Whether the EGM Notice was valid, and if not, whether the irregularity could be cured;
- (b) Whether the dispositions made pursuant to the resolutions passed at the EGM on 14 September 2016 were void as being in breach of the pre-emption clause, and if not, whether they can be registered; and
- (c) Whether the transfer of one share from the late eldest brother to Lin on 17 November 2014, and its registration on 22 May 2015, were void for being in breach of the pre-emption clause.

EGM Notice

24 The Plaintiffs argued in their written submissions that the contents of the EGM Notice did not contain sufficient particulars. These arguments were not seriously pursued by the Plaintiffs during the hearing before me on 12 November 2019.

25 The Defendants argued that the EGM Notice was valid, and alternatively, any defect was cured (*supra* at [17]).

26 The law is clear that notices need to give sufficient particularity on the matters to be discussed and resolved at the meetings (*Lau Ah Lang v Chan Huang Seng* [2001] 2 SLR(R) (“*Lau Ah Lang*”) at [21]). It was further stated in *Lau Ah Lang* at [28] that:

Whether a notice is sufficient must be decided on the facts of each case. A crucial test is whether it contains enough information to enable the recipient to decide for himself whether he should attend, or appoint a proxy on his behalf, or whether he is content to let matters take their course at the meeting...

27 In the present case, the notice had made clear to the Plaintiffs that the EGM on 14 September 2016 was being convened:⁵³

1. To approve the transfer of 1,021 shares from the Estate of [the eldest brother], in accordance with the Grant of Probate, Last Will and Testament of [the eldest brother], deceased.
2. To approve the transfer of 670 shares from the Estate of [the second eldest brother], in accordance with the Grant of Letters of Administration.

28 It was not necessary for the Plaintiffs to know the recipients of the shares as the notification that shares were being transferred contained sufficient particulars to notify them of a potential occasion for the exercise of their pre-emption rights. They could attend the meeting if they so wished. Further, since the shares were being transferred according to the will of the late eldest brother and the Letters of Administration pertaining to the second eldest brother’s estate, the Plaintiffs must eminently have contemplated that these shares could be transferred to Lin and the 7th Defendant respectively, who are the children of the deceased. I hence find that there was no defect in the EGM Notice.

⁵³ Lim Beng Nga’s affidavit at p 76

29 It is noted that there was a slight inaccuracy in the EGM Notice. Two out of the 1,021 shares were not transferred in accordance with the will of the eldest brother. The eldest brother had willed all of his shares to Lin; however, two shares were instead transferred to the 5th and 6th Defendants.

30 Nevertheless, this minor inaccuracy, and the other alleged inaccuracies, did not affect the validity of the proceedings as they could be cured. Section 392 of the Companies Act provides:

392.—(1) In this section, unless the contrary intention appears a reference to a procedural irregularity includes a reference to —

(a) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and

(b) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

31 A defect of notice is a procedural irregularity as defined by s 392(1)(b). Pursuant to s 392(2), this will not invalidate the proceedings unless it may cause substantial injustice. Substantial injustice is defined in *Chang Benety and others v Tang Kin Fei and others* [2012] 1 SLR 274 as being subject to three requirements (at [45]):

First, it is axiomatic that there must be a direct link between the procedural irregularity in question and the injustice suffered... Secondly, the injustice must be of a ‘substantial’ nature. In essence, what this means is that the injustice must be real, rather than theoretical or fanciful... There must, therefore, be some basis or indication on the face of the evidence before the court that the aggrieved party had suffered injustice or would suffer injustice as a result of the procedural irregularity occurring. *Thirdly, the aggrieved party must show*

that there may or could have been a different result, if not for the occurrence of the procedural irregularity...

[emphasis in original]

32 In the present case, any minor inaccuracy would have had been rectified when Mr Chiang informed the Plaintiffs of the specific recipients of the shares on 9 September 2016. If this had been material to the Plaintiffs, they could have chosen to attend the meeting. In any case, the Plaintiffs' presence at the meeting would not have changed the outcome as it was the Board of Directors' approval that was conclusive, and the shareholder's votes were not required. There was no substantial injustice and the proceedings in relation to the disposition of shares were valid.

Dispositions on 14 September 2016

Dispositions to Lin and the 7th Defendant

33 The Plaintiffs did not dispute that the shares were validly transmitted from the eldest brother to Lin in his capacity as the executor of the eldest brother, and from the second eldest brother to the 3rd Defendant in her capacity as the Administratrix of his Estate.⁵⁴ The contested issue was whether the disposition from a personal representative to the beneficiary of the Estate constituted a transfer that would be caught by the pre-emption clause.

34 The Plaintiffs argued that a disposition from a personal representative to the beneficiary constitutes a transfer and not a transmission, and would be caught by the pre-emption clause (*supra* at [15]). They cited *Guan Soon Development Pte Ltd v Yeo Gek Lang Susie (administratrix of the estate of Teo*

⁵⁴ Plaintiffs' submissions at para 34

Lay Swee, deceased) and others [2006] 3 SLR(R) 387 (“*Guan Soon*”), *Lee Chee Ngor Moreta v Prudential Enterprise Ltd* [1991] 2 HKC 499 (“*Moreta*”) and *Moodie and another v W. & J. Shepherd (Bookbinders), Ltd. and others* [1949] 2 All ER 1044 (“*Moodie*”) as authorities for this proposition.⁵⁵

35 Conversely, the Defendants argued that a disposition from a personal representative to the beneficiary is a transmission and not a transfer (*supra* at [19]). They relied on *JX Holdings Inc and another v Singapore Airlines Ltd* [2016] 5 SLR 988 which in turn cited *Seah Teong Kang v Seah Yong Chwan* [2015] 5 SLR 792 (“*Seah Teong Kang*”) and *Re Kenzler* (1982-1983) 7 ACLR 767 for this proposition. Absent clear language, the pre-emption clause should be interpreted as only applying to transfers, and not transmissions.⁵⁶ This is in line with the fundamental purpose of pre-emption, to keep outsiders excluded from the affairs of the Company.⁵⁷

36 The issues that arose were: (1) the proper characterisation of a disposition of shares from a personal representative to a beneficiary; (2) the general principles in interpreting pre-emption clauses; (3) the interpretation of Article 28 of the present M&AA; and (4) whether the dispositions on 14 September 2016 breach Article 28 of the M&AA.

⁵⁵ Plaintiffs’ submissions at paras 28–31

⁵⁶ Defendants’ submissions at para 46

⁵⁷ Defendants’ submissions at para 47

- (1) Characterisation of a disposition by a personal representative to a beneficiary

37 A disposition of shares by a personal representative to a beneficiary should properly be characterised as a transmission of the equitable interest in the shares. A transfer involves an act of the member of the company, while a transmission does not as it occurs through the operation of law (*Guan Soon* at [13]).

38 In the Court of Appeal decision in *Seah Teong Kang*, it was held that a disposition of shares from an executor to a legatee was not a transfer but a transmission, as it occurred by operation of law (at [40]–[44]). However, such a transmission only transmits the equitable interest in the shares, and not the legal interest. *Seah Teong Kang* at [52]–[53] stated that:

...the equitable interest in the Shares devolved from the [executor] to the [legatee] by way of “transmission”... [but] *if* the [legatee] had sought to *register* herself as the legal owner of the Shares... she would have had to seek an order from the court under s 259 approving such a transfer affecting the status of the Company’s register...

...so long as the transfer of the Shares is not approved by the court pursuant to s 259, the [legatee] would – *despite* her entitlement to the *equitable interest* in the Shares – *not* be entitled to the *legal* title in the shares...

[emphasis in original]

39 *Seah Teong Kang* thus stands for the general proposition that the disposition by the executor to a beneficiary only transmitted the beneficial interest, and not the legal interest. In order to obtain the legal interest, the shares had to be registered by the company, transferring the legal title.

40 The Plaintiffs’ reliance on *Guan Soon* and *Moreta* ([34] *supra*) were misplaced. Neither case laid down a general proposition that a disposition by a

personal representative to a beneficiary constitutes a transfer instead of a transmission (see *Guan Soon* at [17]–[18]). Instead, in both cases, there was no need to decide this issue generally because there was a unique clause in the M&AA (Art 36(g) in *Moreta* and Art 31A in *Guan Soon*) which clearly indicated that a disposition by a deceased’s estate to a beneficiary would *prima facie* fall within the ambit of the particular pre-emption clause in those cases, subject to certain exceptions. The findings in those cases hence have to be restricted to the particular M&AAs in issue and does not assist the present case.

41 I also do not accept the Plaintiffs’ reliance on *Moodie* ([34] *supra*). The issue in *Moodie* was whether the executor of the estate could register the shares in his name without being subject to the pre-emption clause. Any discussion of a disposition by the executor to the beneficiary was hence *obiter*. In any event, this court is bound by the Court of Appeal in *Seah Teong Kang* and will not follow *Moodie*, which is a foreign case.

(2) Legal framework on the interpretation of pre-emption clauses

42 The above raises the issue of whether a bare transfer of legal interest falls under a pre-emption clause, even though the beneficial interest was transmitted and not transferred.

43 Pre-emption clauses should be interpreted on a case-by-case basis to determine what kind of transfers would fall under the clause, as it is a matter of construction in the context of the articles as a whole (*Guan Soon* at [16]). In general, similarly worded clauses should be interpreted in the same way, unless the context points otherwise. This approach was applied in *Khoh Chen Yeh Shane (administrator of the estate of Ching Kwong Kuen, deceased) v Seng Realty & Development Pte Ltd and another* [2012] 3 SLR 1 (“*Seng Realty*”) at

[18] where the High Court found itself bound to interpret the M&AA in the same way as the earlier Court of Appeal case of *Sing Eng (Pte) Ltd v PIC Property Ltd* [1990] 1 SLR(R) 792 (“*Sing Eng*”), as the M&AAs were near-identical in both cases:

...[c]onsidering the near-identical phraseology of the pre-emption clauses in *Sing Eng*... and the [present] pre-emption clauses, I could not find any reason for construing the [present] pre-emption clauses in a different manner. I found that the word ‘transfer’ in the [present] pre-emption clauses referred to transfers of legal title in the [present] shares...

44 In most cases, the pre-emption clause is intended to refer to a bare legal transfer (“ordinary rule”). This was accepted by the Court of Appeal in *Sing Eng* at [25], affirming the holding in *Safeguard Industrial Investments Ltd v National Westminster Bank* [1980] 3 All ER 849 (“*Safeguard*”) at 858:

A ‘transfer of a share’ in the ordinary sense of that expression is a transfer of the legal title to the share with the rights and liabilities attaching to it; on registration of the transfer the transferor ceases to be, and the transferee becomes, a member of the company in rights of that share... To treat the references to the transfer of a share as comprehending a transfer or disposition of a beneficial interest in a share is to give the expression ‘transfer’ of a share a meaning wider than it would ordinarily bear.

45 However, this ordinary rule may not apply in situations where the phraseology of the M&AA makes clear that it was only intended to pre-empt sales of shares (*Seng Realty* at [19]–[27]). It may also not apply in other M&AAs where the context makes clear that it does not apply.

46 A clause in the M&AA which excludes recognition of trusts (“Non-Recognition clause”) supports the application of the ordinary rule, as it shows that the company does not recognise beneficial interest in the shares and hence would not be concerned with beneficial transfers, but only legal transfers. An example of such a clause can be seen in *Seng Realty* at [18]:

...[The Company] shall not be bound by or recognise any... interest in the nature of a trust... in any share... except an absolute right thereto in the person for the time being registered as the owners thereof...

47 *Seng Realty* held that the Non-Recognition clause supports the ordinary rule as it showed that:

... [the Company] was not concerned as to whether or not the beneficial interest in the ... Shares was being transferred (and, consequently, whether or not the transfer was of *both legal and beneficial interest*). Indeed, it was obliged to take notice of only persons 'registered' as having legal title to the ... Shares. Therefore, once there was a transfer or intended transfer of legal title in the ... Shares, the ... pre-emption clauses would apply ...

(3) Interpretation of Article 28

48 Applying the above principles, Article 28 of the present M&AA should be read to only pre-empt legal transfers.

49 Article 28 is the pre-emption clause which reads:⁵⁸

28. A share may be transferred by a member or other person entitled to transfer to any member or any person approved by the Board of Directors, but save as aforesaid and save as provided by Articles 31 and 32 hereof, no share shall be transferred to a person, who is not a member, so long as any member is willing to purchase the same at fair value.

50 Article 29 requires the giving of notice of a transfer, specifying a fair value for the shares to be transferred:

29. Except where the transfer is made pursuant to Articles 28 or 31 hereof, the person proposing to transfer any share (hereinafter called the proposing transferor) shall give notice in writing (hereinafter called the transfer notice) to the Company that he desires to transfer the same. Such notice shall specify

⁵⁸ Lim Beng Nga's affidavit at pp 58–59

the sum he fixes as the fair value, and shall constitute the Company his agent for the sale of the share at the prices so fixed, or at the option of the purchaser, at the fair value to be fixed by the Auditor who shall be acting as an expert and not as an arbitrator.

The transfer notice shall not be revocable except with the sanction of the Directors.

51 Article 30 follows up with the obligation of the company on being given such notice to find a member to purchase the shares, for such fair value; Article 31 provides that if no such member is found, the shares may be sold to anyone at any price.

52 The proper interpretation of the pre-emption clause in Article 28 is that it includes bare transfers of legal title. This can be seen from the context of Article 28. There is nothing in the present M&AA which suggests that it only applies when there is transfer of beneficial title, or that it applies only to sales. Tellingly, Article 29 requires the transferor to specify a fair value for the shares, and not the sale price of the shares, while Article 31 provides that the proposing transferor can choose to either sell or transfer the shares.

53 Second, the ordinary rule applied in *Sing Eng* ([43] *supra*), *Seng Realty* ([43] *supra*), and *Safeguard* ([44] *supra*) should be applied here as Articles 28 to 31 of the present M&AA are *in pari materia*, if not nearly identical, to the Articles in those cases:

(a) In *Sing Eng* (at [20]):

33 A share may be transferred by a member or other person entitled to transfer (hereinafter called ‘the transferor’) to any member selected by the transferor; but 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 interests of the company to admit to membership) is willing to purchase the same at the fair value.

34 Except where the transfer is made pursuant to arts 33, 36 and 43 hereof, a person proposing to transfer any share (hereinafter called the proposing transferor) shall give notice in writing (hereinafter called the transfer notice) to the company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the company his agent for the sale of the share to any member of the company at the price so fixed or at the option of the purchaser, at the fair value to be fixed by the auditors of the company. The transfer notice shall not be revocable except with the sanction of the directors.

(b) *In Seng Realty* (at [8]):

30. A share may be transferred by a member or other person entitled to transfer to any member, but save as aforesaid and save as provided by articles 33 and 34 hereof, no share shall be transferred to a person, who is not a member, so long as any member is willing to purchase the same at fair value.

31. Except where the transfer is made to a member or pursuant to articles 33 and 34 hereof, the persons proposing to transfer any share (hereinafter called the proposing transferor) shall give notice in writing (hereinafter called the transfer notice) to the Company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the Company his agent for the sale of the share to any member of the Company at the price so fixed, or at the option of the purchaser, at the fair value to be fixed by two arbitrators, both of whom shall be members of the Company, one to be appointed by each of the parties in difference.

The transfer notice shall not be revocable except with the sanction of the Directors.

32. If the Company shall within the space of 14 days after being served with such notice find a member (hereinafter called the purchasing member) willing to purchase the share and shall give notice to the proposing transferor, he shall be bound upon payment of fair value, to transfer to the purchasing member.

33. If the Company shall not within the space of 14 days aforesaid find a member willing to purchase the share and give notice in manner aforesaid, the proposing transferor shall at any time within 2 months afterwards

be at liberty to sell and transfer the share to any person at any price.

(c) In *Safeguard* (at 290–291):

(a) An ordinary share may be transferred by a member or other person entitled to transfer to the other members in the proportions between them (if more than one) as nearly as may be to the number of ordinary shares held by them respectively, but no ordinary share shall be transferred to a person who is not a member as long as any member is willing to purchase the same at the fair value.

(b) Except where the transfer is made pursuant to article 8 hereof, in order to ascertain whether any member is willing to purchase any ordinary share, the proposing transferor shall give notice in writing (hereinafter called the transfer notice) to the company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the company his agent for the sale of the share to any member of the company at the price so fixed or at the option of the purchaser, at the fair value to be fixed by the auditors of the company. The transfer notice shall not be revocable except with the sanction of the directors.

54 Since the interpretation of the M&AA is a matter of construction of its context, given the close similarity of the M&AA in these cases, the same interpretation should be adopted (see above at [43]).

55 Third, there is a Non-Recognition clause in Article 6 of the present M&AA which provides that the Company is to disregard equitable interests, showing that the Company is not concerned with beneficial transfers:

Subject to the provisions of these presents the Company shall not be bound by or recognise any contingent, future, partial or equitable interest in the nature of a trust or otherwise in any share or any interest in any fractional part of a share, or any other right in respect of any share, except an absolute right thereto in the person for the time being registered as the owner thereof.

56 This reinforces the interpretation that Article 28 is not concerned with transfers of beneficial interest.

57 The above is sufficient to interpret Article 28 and it is not necessary for me to deal with the Defendants' argument that Article 28 has to be construed in a way to preserve the shares within the family. The court in *Guan Soon* ([34] *supra*) similarly chose not to deal with this issue (at [15]).

(4) Application to the present facts

58 On the facts, the disposition of 670 shares from the 3rd Defendant, as Administratrix of the second eldest brother, to the 7th Defendant, and the disposition of 1,019 shares from the eldest brother's Estate to Lin, both of which constituted dispositions from a personal representative to a beneficiary, occurring by operation of law and were therefore transmissions of the equitable interest in these shares. Such transmissions did not amount to transfers and were not caught by the pre-emption clause.

59 The Plaintiffs argued that the disposition of shares from the 3rd Defendant to the 7th Defendant was a transfer, as the 7th Defendant was not the original sole beneficiary of the late second eldest brother's estate. Instead, the 7th Defendant was only a co-beneficiary, along with the 3rd Defendant, Mr Lim Erbin and Ms Lin Ying. The Plaintiffs submitted that these co-beneficiaries had transferred their interest to the 7th Defendant by relinquishing their interests.

60 I did not accept this argument. A renouncement by a beneficiary passes the benefit to the other beneficiaries by way of operation of law (*Ch'ng Cheng Siew (suing as administrator of estate of Wong See Yan, deceased) v Pemungut*

Duti Setem [2016] 7 MLJ 758 at [24]).⁵⁹ Thus, when the other co-beneficiaries relinquished their interests in the estate, the 7th Defendant obtained the benefit by operation of law and this was a transmission, not a transfer.

61 The Plaintiffs also sought a declaration that to the extent that these shares have been registered, the registration should be declared void for being a legal transfer in breach of the pre-emption clause. The legal transfer of these shares were approved by the Board of Directors at the EGM on 14 September 2016, and were hence not caught by Article 28, which will be elaborated below.

Dispositions approved by the Board of Directors

62 A plain reading of the pre-emption clause in Article 28 shows that it does not apply where the shares are transferred to a person approved by the Board of Directors.

63 The Defendants conceded that the disposition of one share from the late eldest brother to each the 5th Defendant and the 6th Defendant constituted transfers of beneficial title.⁶⁰ Registration of these shares constitutes a legal transfer caught by Article 28. In addition, the registration of 1,019 shares by Lin and 670 shares by the 7th Defendant would also constitute transfers of legal title. Such transfers of legal title would also be caught by Article 28.

⁵⁹ 3rd Defendant's submissions at para 40

⁶⁰ 1st Defendant's submissions at paras 17–19

64 However, all of these legal transfers were approved by the Board of Directors on 14 September 2016.⁶¹ Hence, the pre-emption clause does not apply to these transfers and they do not breach the M&AA.

65 I note that Lin was the sole director of the Company at the time of the 14 September 2016 EGM. This appeared to breach Article 64 of the M&AA which provided for not fewer than two directors unless decided otherwise in a General Meeting.⁶² However, Article 64 did not arise for consideration as the Plaintiffs did not make any submissions concerning this. In any case, such breach flowed from the death of the eldest brother, and it seems that the only way it could be remedied was to appoint new directors, which was what was done in the present case.

Transfer on 17 November 2014

66 The Defendants also conceded that the disposition of one share from the late eldest brother to Lin on 17 November 2014 was a transfer.⁶³ However, it was similarly not a breach of the pre-emption clause.

67 As stated in the facts above, there was a meeting of the Board of Directors held on 17 November 2014. This is evidenced from the minutes of the meeting and the attendance sheet attached.⁶⁴ The then Board of Directors comprising the 2nd Plaintiff and the late eldest brother had approved of the

⁶¹ Yeo Gee Kin's affidavit at pp 10–11

⁶² Lim Beng Nga's affidavit at p 64

⁶³ 1st Defendant's submissions at paras 13–15

⁶⁴ Lim Keng Suan's affidavit at pp 10–12

transfer of one share to Lin. The transfer was not subject to the pre-emption clause and did not breach it.

68 The Plaintiffs contended that there was no General Meeting of shareholders to approve this transfer, and there was no notice of the share transfer. However, the 2nd Plaintiff was present at the very Board meeting in which the transfer was approved.⁶⁵ In fact, the very purpose of the transfer seemed to have been to appoint Lin as a director, to meet the requirement that the Company should always have two directors,⁶⁶ so that the 2nd Plaintiff could step down. In any case, Article 28 made clear that such transfers only required the approval of the Board of Directors and mentions nothing about shareholder approval. There was no need to have a General Meeting of shareholders.

Conclusion

69 Following from the findings above, none of the declarations and orders sought by the Plaintiff were granted, and accordingly the application was dismissed in its entirety.

70 The following cost orders were also made: (1) S\$8,500 to be paid by the Plaintiffs to the 1st Defendant; and (2) S\$7,000 to be paid by the Plaintiffs to the 3rd Defendant. These sums were inclusive of all disbursements.

⁶⁵ Lim Keng Suan's affidavit at pp 10–12

⁶⁶ Lim Beng Nga's affidavit at p 64, Article 64

Aedit Abdullah
Judge

Ng Ka Luon Eddee and Siew Guo Wei (Tan Kok Quan Partnership)
for the plaintiffs;
Chey Cheng Chwen Anthony (Chey LLC) for the first, second,
fourth, fifth, sixth and eighth defendants;
Tan Jin Yong, Vanessa Claire Koh Yuet Feng and Yang Yung Chong
(Lee & Lee) for the third and seventh defendants.