Tan Yong San *v* Neo Kok Eng and others
[2011] SGHC 30

Case Number : Suit No 241 of 2007

Decision Date : 07 February 2011

Tribunal/Court : High Court

Coram : Quentin Loh JC

Counsel Name(s) : Chiah Kok Khun, Tan Hsuan Boon and Lim Zhi Zhen (Wee Swee Teow & Co) for the plaintiff; Molly Lim SC, Sannie Sng and Hwa Hoong Luan (Wong Tan & Molly Lim LLC) for the defendants.

Parties : Tan Yong San — Neo Kok Eng and others

Companies

Equity

7 February 2011 Judgment reserved.

Quentin Loh J:

Introduction

1 This suit is but another chapter in the legal saga involving the Chip Hup group of companies. The parties had asked that this action be heard by the same judge hearing Suit 779 of 2006 ("Suit 779") but subsequent thereto as Suit 779 was perceived as the main action between the protagonists, Mr Lim Leong Huat ("Lim") and Mr Neo Kok Eng ("Neo"). This is encapsulated in the order of court dated 4 September 2008. There have been and still are a number of related actions arising from the disputes between the protagonists: see *Lim Leong Huat v Chip Hup Hup Kee Construction Pte Ltd* [2010] SGHC 170 ("*Lim Leong Huat*") at [19].

2 The first defendant in this suit, Neo, is the main character in the entire saga. Neo is a director and the registered holder of 99.11% of the shares in the second defendant, Chip Hup Holding Pte Ltd ("CHH"). Neo is also the husband of the third defendant, Mdm Sun Seow Eng, whom I shall refer to as "Mrs Neo". The plaintiff, Mr Tan Yong San ("Tan"), is the registered holder of the remaining 0.89% of the shares in CHH. Tan was also formerly a director of CHH until his removal by Neo in December 2006.

3 In the present action, Tan is suing all three defendants under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) on the basis that Neo had been running the affairs of CHH in a manner oppressive to him. Although Mrs Neo is not a shareholder of CHH and had no role in its management, she has also been named as a defendant because Tan is seeking certain reliefs against her pursuant to his claim under s 216. Tan alleges further or in the alternative that Neo and Mrs Neo had unlawfully conspired to injure him as a shareholder of CHH.

The facts

Background

4 Neo was originally in the business of timber trading. His late father started the business as a sole proprietorship in the 1950s and was assisted by Neo and his three brothers, Neo Kok Ching ("NKC"), Neo Kok Hua and Neo Kok Khuan. In 1979, Neo's family incorporated a company called Chip Hup Timber Pte Ltd ("CH Timber") to take over the business. Neo and his brothers were made shareholders of CH Timber. I note that Neo had testified in Suit 779 that CH Timber was incorporated in 1982 but this discrepancy is not material.

5 After CH Timber was formed, Neo went on to incorporate the following companies, either by himself or with his brothers:

(a) Chip Hup Hup Kee Trading Pte Ltd, a building and construction company incorporated in 1983, which was subsequently renamed as Chip Hup Hup Kee Construction Pte Ltd ("CHKC");

(b) CHH, which was incorporated in 1989 to complement CH Timber's business;

(c) Chippel Overseas Supplies Pte Ltd ("COS"), a general import and export company incorporated in 1989; and

(d) Chippel Construction Pte Ltd ("CCPL"), a building and construction company incorporated in 1997.

I will refer to CH Timber, CHKC, CHH, COS and CCPL collectively as "the Chip Hup Group". At all times until the restructuring of the Chip Hup Group in 1999 (see [10] below), Neo owned 100% of the shares in COS and CCPL either directly or indirectly through his nominees Peter Tan, Sun Bee Choo and Wendy Loh.

6 From the early 90s onwards, Neo's brothers began to leave the family businesses one by one and transferred any shares they held in CH Timber, CHH and CHKC to Neo. Neo's father passed away in 1993 although his estate continued to retain some shares in CH Timber. By 1996, only NKC and Neo remained in the family business. In time, NKC wanted to leave as well and accordingly transferred his shares in CH Timber to Neo. NKC had also intended to transfer his shares in CHH and CHKC to Neo around that time but was unable to do so. This was because under the law as it stood then, every company had to have at least two shareholders and two directors, in accordance with ss 42 and 145(1) of the Companies Act (Cap 50, 1994 Rev Ed) respectively. Since Neo and NKC were the only two shareholders and directors of CHH and CHKC at the time, NKC was unable to transfer his shares and directorships in those companies until Neo found a replacement. At this point, NKC held one share in CHH and 247,000 shares in CHKC.

Tan's acquisition of shares in CHH and CHKC

7 Lim is someone who played a very important role in the events leading up to this suit. He was the general manager of CHKC from 1994 until 2006. He is also Tan's brother-in-law. Sometime in 1998, Lim had recommended to Neo that Tan was a suitable candidate to take over NKC's shares and directorships in CHH and CHKC. At that time, Tan was working with a company called Oceanwell Shipping Pte Ltd (which was owned by his brother) and drawing a salary of about $1,300 a month. He had no other income, owned no real property and he was staying with his parents in their HDB flat at

Eunos Cresecent. Neo agreed with Lim's recommendation. Thus in 1998, NKC transferred his one share in CHH and 50,000 shares in CHKC to Tan. NKC's remaining 197,000 shares in CHKC were transferred to Neo. Tan was also made a director of CHH and CHKC. It is not disputed that Tan did not pay for the shares he received. His share certificates were left with CHH.

8 After Tan became a director and shareholder of CHH and CHKC, he was paid a monthly fee of $1,200 by CHKC. This fee was increased to $2,000 from 2000. Tan was also made a director of COS in 1999, and of CH Timber and CCPL in 2002. He received additional director's fees from COS beginning 1999 and from CH Timber beginning 2005. Thus, from 2005, Tan was being paid approximately $4,000 per month for his various directorships in the Chip Hup Group. He did not acquire any shares in COS, CH Timber or CCPL.

9 By the end of 1998, the shareholding of the Chip Hup Group was as follows:

Company	**Shareholders and number of shares**
CHH	Neo – 2 shares (66.7%) Tan – 1 share (33.3%)
CHKC	Neo – 4,950,000 shares (99%) Tan – 50,000 shares (1%)
CH Timber	Neo – 703,363 shares (89.0768%) Sun Bee Choo – 1 share (0.0001%) Neo's father's estate – 86,250 shares (10.9231%)
COS	Neo – 450,000 shares (99.9998%) Wendy Loh – 1 share (0.0002%)
CCPL	Neo – 619,999 shares (99.9998%) Sun Bee Choo – 1 share (0.0002%)

Restructuring of the Chip Hup Group

10 In 1999, the Chip Hup Group was restructured. CHH became the holding company, holding 100% of the shares in CHKC, COS and CCPL, and 89% in CH Timber. As part of the restructuring, a share swap was carried out whereby Neo's and Tan's shares in CHH's subsidiaries were transferred to CHH in consideration for CHH issuing them new shares. These new shares issued by CHH to Neo and Tan were equivalent to the cash value of the shares they had transferred to CHH as part of the share swap. Thus, Neo was issued 18,422,350 shares, while Tan was issued 169,250 shares. CHH also issued additional shares to Neo on two subsequent occasions:

(a) In the year ending 31 May 2001, Neo subscribed and paid for 350,000 more shares in CHH.

(b) Sometime in May 2002, the remaining shares of CH Timber which were previously held by Neo's father's estate were given to Neo by the beneficiaries of the estate. Neo then transferred those shares to CHH in exchange for CHH issuing 115,211 additional shares to Neo. As a result, CH Timber also became 100% owned by CHH.

11 Thus, from the end of 2002 until the time of this action, Neo had a total of 18,887,563 shares or 99.11% of the share capital of CHH. Tan had a total of 169,251 shares or 0.89% of the share capital of CHH. Tan signed all the necessary documents authorising the restructuring of the Chip Hup Group and the allotment of additional shares to Neo by CHH.

The management of CHH and CHKC

12 From the time that Tan became a director and shareholder of CHH and CHKC, he did not

participate in the management of either company. Most of the revenue in the Chip Hup Group was in fact coming from its construction arm, CHKC, whose daily operations were being run by Lim and Neo. Under Lim's management, CHKC's business grew rapidly. Its annual revenue increased from $6.6m in 1994 (the year Lim joined) to $78.8m in 1998 at the height of the construction boom. Although its business slowed down from 2000 onwards, its revenue was still consistently around the $40m mark. Tan's role in all this was to come to the office once in a while to sign documents in his capacity as a director. He also signed the audited accounts of CHH and CHKC every year. If there were any documents that needed signing urgently, Lim would bring them to Tan when they met for lunch.

13 Most of the documents which Tan was required to sign were counter-indemnities for various insurance companies. CHKC employed many foreign workers in its construction business and, as such, was required to furnish a security bond of $5,000 per worker to the Controller of Immigration. These security bonds were provided in the form of insurance guarantees by the insurance companies, who in turn required CHKC and its directors (*ie* Neo and Tan) to indemnify them for any liability under the guarantees. Aside from these counter-indemnities, Neo and Tan also signed personal guarantees for credit facilities granted to CHKC.

Tan's ouster from the Chip Hup Group

14 Lim's and Neo's 12-year cosy relationship came to an end in late 2006. Both Lim and Neo had differing versions as to why they had a big fall out in late 2006 (see *Lim Leong Huat* at [8]). It is clear, and I so found in Suit 779, that they fell out over money. Things came to a head in late October 2006 when Neo and Lim had a major and very public quarrel in the office over the amount of loans CHKC allegedly owed Lim. Neo suspended Lim from employment and eventually dismissed him in November 2006. Lim then brought a claim against CHKC and Neo to enforce repayment of his loans (totalling $7.205m), causing CHKC to respond with a massive counterclaim of $55m (later reduced to $40m). That action became Suit 779 which was also heard and decided by me.

15 Unsurprisingly, the relationship between Tan and Neo also deteriorated soon after Lim and Neo fell out. Both parties dispute the exact reasons leading to Tan's ouster from the Chip Hup Group but it was clear at least, and I so find, that Neo no longer trusted Tan as he believed Tan was aligned with Lim. By a letter dated 7 December 2006, Neo wrote to Tan requesting and requiring him to resign as a director of CHH and CHKC. Tan was also removed as a director of CH Timber, COS and CCPL shortly thereafter.

Tan's claim

16 Tan filed this present action in April 2007. He accused Neo of oppressive conduct by removing him as a director of all the companies in the Chip Hup Group for no good reason. Tan also alleged that even before his removal from the Chip Hup Group, Neo had been guilty of several improper and oppressive acts in his management of CHH, which Tan only discovered after his ouster. Tan's pleaded complaints against Neo are as follows:

(a) Removing Tan as a director in all five companies in the Chip Hup Group for no good reason;

(b) Depriving Tan of access to CHH's subsidiaries' accounts;

(c) Diluting Tan's shareholding in CHH from 33.3% to 0.89%;

(d) Misappropriation by Neo of commissions which CHKC's foreign workers were supposed to pay to CHKC;

(e) Artificially inflating the amounts which Neo and Mrs Neo charged CHKC for the purchase of groceries used in the provision of meals to CHKC's workers, thereby misappropriating CHKC's monies for their personal benefit;

(f) Misappropriation of funds from CHKC in the guise of reimbursements due to Neo for paying the salaries of non-existent workers;

(g) Artificially increasing the share capital of CHKC;

(h) Misuse of CHKC's funds for Neo's own purposes;

(i) Failure to maintain proper accounts and records of CHH and CHKC; and

(j) Refusing to share profits with Tan.

17 In light of the above complaints, Tan is asking for CHH to be wound up, for Neo and Mrs Neo to account for the monies they allegedly misappropriated or misused, and for the various improper transactions listed above to be rectified or cancelled. Tan is also claiming in the alternative that Neo and Mrs Neo had unlawfully conspired to injure him by arranging for CHKC to pay them inflated amounts as reimbursement for groceries purchased for CHKC's foreign workers. It should be noted that Tan's complaint against Mrs Neo only relates to the groceries issue (at [16(e)] above).

Defence and counterclaim

18 Neo has raised a number of defences to Tan's claim. First, he contends that Tan was only holding his shares in CHH and CHKC as his nominee. Consequently, Tan is not entitled to complain of any oppressive conduct on his part. Secondly, Neo claims that the acts complained of at [16] above were either carried out legitimately or not carried out at all. As such, there was no oppression to speak of in any event. Lastly, Neo contends that Tan is barred from bringing this claim now due to limitation, laches and acquiescence. Following his allegation that Tan was only a nominee shareholder, Neo has also counterclaimed for an order compelling Tan to transfer his 169,251 shares in CHH to Neo. As for Mrs Neo, she has adopted Neo's defence against Tan and also raises one additional point – that her role was limited to helping Neo purchase groceries for CHKC and that it was only Neo who made reimbursement claims from CHKC.

Issues arising in this action

19 Therefore, there are four issues to be resolved in this action:

(a) Whether Tan was a nominee shareholder in CHH;

(b) Whether Neo and/or Mrs Neo had committed any of the acts complained of by Tan;

(c) Whether Tan is barred from complaining about any of the alleged oppressive acts on the grounds of limitation, laches or acquiescence; and

(d) Whether, in the circumstances, Tan has made out a case of oppression justifying relief under s 216(2) of the Companies Act.

My findings in Suit 779 of 2006

20 Before I deal with the various issues here, it is crucial to first reiterate certain findings I made in Suit 779, which was heard by me just before the trial of this action. This is because there are certain factual issues common to both proceedings. In fact, counsel for both sides agreed, in chambers before the start of this trial, that the evidence used in Suit 779 could be used as evidence here. It was on this basis that a lot of the documents used in Suit 779, including a manual cash book, (using the same annotation "3.EAB.11" as in Suit 779), were put into the evidence in this action.

21 As noted above, Suit 779 was concerned with Lim's claim against CHKC and Neo for the return of his loans. CHKC responded with a counterclaim against Lim, his wife, and a company owned by Lim called AZ Associates Pte Ltd ("AZ"). CHKC's (and Neo's) case was that during his employment with CHKC, Lim had full control over its accounts, finances and operations and abused his position by misappropriating CHKC's funds, wrongfully manipulating its accounts, overpaying himself salaries without authority and unlawfully retaining profits from certain construction projects. All this wrongdoing was purportedly discovered only after Lim and Neo fell out and Neo began to investigate Lim's claim that CHKC owed him millions. Lim denied these acts of wrongdoing and pointed the finger right back at Neo, saying that Neo was the one in control of CHKC and had in fact been treating CHKC as his personal cash register by unlawfully siphoning monies out of it, in addition to other nefarious activities. After a six-week trial and three days of closing submissions, I granted judgment mainly in favour of Lim on 8 June 2010 while dismissing most of CHKC's counterclaims. Both parties' appeals against my decision were dismissed by the Court of Appeal in November 2010. My pertinent findings in Suit 779 are summarised below at [22]–[26].

22 I found that *both* Lim and Neo were engaged in a host of unlawful and unsavoury practices at CHKC, each with the knowledge and connivance of the other. Examples of such practices included:

(a) The issuance of fictitious invoices by CHKC for work which was not done in order to artificially inflate CHKC's pre-tax profits with a view to listing CHH on the Singapore Exchange;

(b) The withdrawal of monies from CHKC in the form of cheques which were recorded as payments to fictitious subcontractors; and

(c) The creation of "Salary Accruals" accounts to siphon off tax-free income from CHKC.

23 I must elaborate more on the Salary Accruals accounts as this forms one of Tan's alleged acts

of oppression (see [16(f)] above). I found that for a long time, Lim and Neo had implemented a system in CHKC where it pretended to pay the salaries of non-existent local workers. These phantom workers, euphemistically called "Proxies", were real persons complete with identity card numbers and Central Provident Fund ("CPF") accounts. They were put on CHKC's payroll but did not do any actual work for the company nor were they paid a salary as such. CHKC only paid the CPF components of their notional salaries. The purpose of these Proxies was to create the false impression that CHKC had more local workers on its payroll than there actually were, enabling it to circumvent foreign worker quotas set by the Ministry of Manpower. As a result, CHKC was able to hire significantly more foreign workers than it otherwise could have.

24 I also found that although CHKC did not pay the non-CPF component of the Proxies' salaries, Neo (with Lim's assistance) had falsified CHKC's accounts to reflect these salaries as having been paid personally by Neo. These were the Salary Accruals accounts. Neo would then draw monies from CHKC out of these accounts as purported reimbursement of the salaries he "paid" on behalf of CHKC. The Salary Accruals thus allowed Neo to evade income tax as the monies from such accounts could be appropriated directly without forming part of CHKC's taxable income. Lim initially helped Neo to maintain the Salary Accruals accounts, but was later given a share of the spoils from 2001 onwards. Neo admitted in cross-examination during the trial of Suit 779 that he had drawn more than $10m from Salary Accruals over the years. Lim, on his part, claimed that he was entitled to $6m from the Salary Accruals accounts as Neo had allegedly promised him a 40% share of the Salary Accruals. While I did not make a finding on the exact amounts drawn out from CHKC, it was obvious that both Lim and Neo were up to their necks in this scheme and had between them siphoned off millions of dollars from the company before their falling out in 2006.

25 My next two findings relate to Tan's complaints at [16(d)] and [16(e)] above. Neo's reliance on foreign workers for CHKC's business was not merely due to the fact that foreign workers were cheaper and more productive. They were also quite literally a source of his wealth. Each foreign worker had to pay a yearly commission of about $2,000 to $3,000 to their Singapore employer, which was used to defray various expenses connected to their employment. I found that Neo had misappropriated the commissions paid by CHKC's Chinese foreign workers which were meant for CHKC. I also found that Neo had been submitting inflated claims to CHKC for grocery expenses purportedly incurred by him and Mrs Neo for CHKC's foreign workers. Unlike the system of Salary Accruals mentioned earlier, there was no evidence of Lim's involvement in these activities. Indeed, I found that Neo had kept tight control over CHKC's Chinese foreign workers and that the management team of these Chinese workers (which I will refer to as the "China Team") reported to Neo, not Lim.

26 Lastly, I made certain findings on the general credibility of Neo and his key witnesses. It became apparent during the trial of Suit 779 that Neo was prepared to and did lie at the drop of a hat. Despite being caught out on his evidence repeatedly during cross-examination by Lim's counsel, Neo stubbornly continued to insist that he left complete control of CHKC to Lim and was unaware of the various nefarious activities going on in the company, in the face of overwhelming proof to the contrary. Aside from fabricating evidence at trial, I found that Neo had been guilty of swearing false affidavits, misleading the court in prior proceedings, and withholding discovery of important documents. I also made adverse findings against two of Neo's key witnesses, Aileen Khoo Choon Yean ("Aileen") and Juliet Siah Jui Gek ("Juliet"). Aileen and Juliet were accounts executives in CHKC and gave evidence for Neo in both Suit 779 and this action. Like her boss Neo, I found that Aileen was fabricating evidence during the trial of Suit 779. She remained evasive and uncooperative in cross-examination even as her lies were exposed one by one. She, like Neo, had also sworn false affidavits in prior proceedings, and she even resorted to forging documents to support CHKC in its counterclaim. Juliet was not as evasive as Aileen but she was a very non-committal witness and seemed to be just confirming what the other witnesses were saying. She, like Aileen, had also given false evidence in

prior proceedings before the trial of Suit 779 and was unable to explain why she did so when pressed in cross-examination. The unreliability of CHKC's key witnesses was one major reason why I found most of its counterclaims to be totally false.

27 Having said all this, I was constantly alive to the danger of pre-judging the issues in the present action based on my knowledge of matters in Suit 779 alone. As the present case ultimately involves different parties, different issues and fresh evidence, my findings in Suit 779 were only relevant to, but not conclusive of, the issues in this case. With this caveat in mind, I now turn to the issues proper.

First issue – Whether Tan was a nominee shareholder in CHH

Neo's case

28 Neo's case is that by 1996, NKC had already become a nominee shareholder and director of CHH and CHKC after he decided that he wanted to leave the management of both companies. Accordingly, NKC signed blank transfer forms for the transfer of his shares and passed them to Neo. [note: 1] Subsequently in 1998, Lim advised Neo to appoint Tan as his nominee in NKC's stead so that they did not have to keep troubling NKC to sign documents. Although Neo had never met Tan before, he agreed to Lim's proposal because he trusted Lim, and left it to him to make the necessary arrangements. Neo then got NKC to sign the share transfer forms transferring one share in CHH and 50,000 shares in CHKC to Tan. [note: 2] In consideration of Tan agreeing to become a nominee shareholder and director, and assume personal liability for the various documents he signed (referred to at [13] above), Neo got CHKC to pay Tan a monthly fee.

29 Neo contends that Tan's conduct since joining CHH and CHKC has always been consistent with that of a nominee shareholder. Tan did not display any interest in the companies' businesses. Tan admitted in his own Affidavit of Evidence in Chief ("AEIC") and in cross-examination that he would simply sign documents when he was required to without raising much query. [note: 3] Furthermore, Tan did not exercise any rights of ownership over his shares. He had left his share certificates with CHH and did not ask for them until the commencement of this suit. [note: 4] Despite his evidence that the main reason for his becoming a director in the Chip Hup Group was the expected increase in value of the shares when CHH was listed, [note: 5] he admitted in cross-examination that he did not know when this would happen. [note: 6] Although he assumed that listing would take place in about four to five years, he did not ask Lim or Neo what became of their listing ambitions even after 2003, five years from the date he joined. [note: 7]

30 Neo, on his part, did not regard Tan as a true shareholder of CHH. He did not arrange to inform Tan of any matters other than when his signature or input as a director was required. [note: 8] In fact, Neo claimed in cross-examination that he had never even met or spoken to Tan. [note: 9] Tan also confirmed that he had only been to one of CHKC's annual dinner and dance functions in 1999, where he was not even seated at the main table alongside Lim and Neo. [note: 10]

Tan's case

31 Tan's case, on the other hand, is that Lim had offered him the opportunity to replace NKC as a director of CHH and CHKC in return for him signing the various counter-indemnities and personal guarantees he was required to sign as a director of CHKC. As I noted above (at [12]), CHKC's business grew rapidly after Lim joined it in 1994 and this naturally meant that the number of foreign

workers it hired similarly increased. Indeed, from 1998 onwards, CHKC was hiring close to 1,000 foreign workers a year on average. With a security bond of $5,000 per foreign worker, the cumulative liability Tan was required to assume was enormous. In return for him taking up this burden, Tan would be given 50,000 shares in CHKC and 1 share in CHH. Lim also informed Tan that there were plans to list CHH and if they were successful, his shares would be worth a lot of money. [note: 11]

32 Tan submits that CHH's contemporary documents did not evince the existence of a nominee arrangement between him and Neo. On the contrary, they supported his case that he was the beneficial owner of the shares. First, there was a letter dated 18 December 1999 from CHH to the Commissioner of Stamp Duties informing it about the restructuring of the Chip Hup Group and requesting for exemption from payment of stamp duty. [note: 12] This letter was signed by Neo and part of it is set out below:

> ...Miss Sun Bee Choo and Miss Wendy Loh Chen Yi who are nominee shareholders for [Neo], each holding one share in the following companies shall not be given shares in [CHH]:
>
> Chippel Construction Pte Ltd
>
> Chippel Overseas Supplies Pte Ltd
>
> Chip Hup Timber Pte Ltd
>
> ...
>
> ...Before restructuring [Neo] is the major beneficial owner of all the four companies which are being acquired by [CHH]. After restructuring [Neo] is till [*sic*] the beneficial owner of these same four companies by way of his 99% shareholding in [CHH].
>
> Mr Tan Yong San hold [*sic*] 1% of the issued and paid-up share capital of Chip Hup Hup Kee Construction Pte Ltd before restructuring. After restructuring he still has the same interest by way of his 1% shareholding in [CHH].

The 18 December 1999 letter also contained two annexures [note: 13] which listed all the shareholders in the Chip Hup Group at that time. Sun Bee Choo and Wendy Loh had an asterisk next to their names expressly identifying them as nominee shareholders of Neo. There was no asterisk next to Tan's name.

33 Secondly, the minutes of CHH's directors' meeting on 18 December 1999 [note: 14] (which related to the restructuring of the Chip Hup Group and the consequent allocation of shares by CHH) did not give any indication that Tan would be holding his shares in CHH as a nominee shareholder of Neo. Neo admitted in cross-examination that these minutes would have been an opportune time to record the existence of such a nominee arrangement. [note: 15]

34 Thirdly, there was a letter dated 28 April 2000 from JNL Secretarial & Management Services (which provided secretarial services for CHH) to the Commissioner of Stamp Duties. [note: 16] The letter enclosed a draft statutory declaration for Neo's signature, which stated:

> 2. Before restructuring the *beneficial* owners of these companies are:-

	[CCPL]	COS	[CH Timber]	[CHKC]	[CHH]
Neo Kok Eng	100%	100%	89.076%	99	66.66
Tan Yong San	-	-	-	1	33.34
Total Percentage Held	100%	100%	89.076%	100%	100%

...

4. On 18 December 1999 resolutions were passed by the shareholders of all these companies sanctioning:-

4.1 The restructuring by which [CHH] shall own 100% of [CCPL], COS and [CHKC] and 89.076% of CH Timber and the same *beneficial* owners hold shares in [CHH] as follows:-

Neo Kok Eng - 99%

Tan Yong San - 1%

...

8. Both Neo Kok Eng and Tan Yong San will not ceased [*sic*] to be the *beneficial owners of the 18,591,600 shares* in the capital of [CHH] within two years from 18 December 1999, being the date of allotment of these [CHH's] shares.

[emphasis added]

My findings

35 Unfortunately, a significant piece of the evidence on this issue was missing. The most important ground of dispute between the parties on this issue was what Lim said to Tan and Neo when Tan first agreed to join CHH and CHKC in 1998. Lim was the crucial middleman who brokered the arrangement between Tan and Neo. In this regard I accepted Neo's evidence that he did not deal with Tan directly in the negotiations leading to Tan's acquisition of the shares. [note: 17] Tan tried to allege at trial that he had met Neo personally in September 1998 before taking over NKC as a director and shareholder and that Neo had told him that 50,000 shares in CHKC would be given to him as a gift. [note: 18] I did not believe his claim. This fact was obviously a very crucial one, yet Tan had failed to mention it in his AEIC. In fact, his AEIC goes on to state at paragraph 23:

There was never any discussion between myself and Neo (whether directly or through Lim), whereby it was agreed that I would be Neo's nominee shareholder and director. In fact, no such arrangement was ever proposed to me, whether directly or indirectly. There is therefore no basis for the Defendants' allegation that I was Neo's nominee.

I find it very difficult to accept that Tan would have included such a statement in his AEIC without mentioning also that Neo had, on the contrary, promised to give him 50,000 shares in CHKC at the alleged September 1998 meeting. His allegation at trial was an afterthought.

36 Despite the fact that Lim was best placed to give evidence on the actual arrangement between Tan and Neo, both sides have chosen not to call him as a witness. Ironically, both sides in their closing submissions have also pointed the finger at each other for failing to call Lim to give evidence. Instead, Neo attempted to rely on the evidence of his former nominees Peter Tan, Sun Bee Choo and Wendy Loh to prove that Tan was also his nominee. I gave little weight to their evidence. None of these witnesses had any personal knowledge of the circumstances concerning the transfer of shares from NKC to Tan. Just because they were nominees did not prove that Tan was also a nominee. None of these witnesses had direct knowledge and they were either speculating or relying on what Neo himself had told them.

37 In my view, since Tan and Neo have given diametrically opposing versions of what Lim had said to them, I am unable to favour one version over the other when Lim was not even in court to be cross-examined. As such, I placed little weight on what Lim had purportedly said to either of them. Before reviewing the remaining evidence, it is apposite to note that Neo bears the burden of proof here since he is the party alleging the existence of the nominee arrangement.

38 I found much of the remaining evidence quite equivocal. On one hand, I agree with Neo that Tan did not seem too concerned about his shares in CHH, despite saying that he only agreed to become a director because of the potential increase in their value following a public listing. He never once asked Lim or Neo about how CHH's plans to list were coming along, even after his estimated waiting period of four to five years had elapsed. He also admitted in cross-examination that he was not even aware of the value of his shares when he first took over as a shareholder from NKC. [note: 19] I found it odd that Tan would be interested in the value of his shares following a listing, but not take the trouble to even ask about their initial worth or when the listing would take place. On the whole, my impression of Tan was that he was simply content to collect his directors' fees every month while signing off on documents without question.

39 On the other hand, I also agree with Tan that the objective facts were not very consistent with him being a nominee. Prior to the restructuring of the Chip Hup Group in 1999, Neo's nominees Sun Bee Choo and Wendy Loh held only one share in CH Timber, COS and CCPL (see the table displaying the Chip Hup Group's shareholding above at [9]). Tan, in contrast, held 50,000 shares in CHKC. If Neo had really intended to make Tan his nominee, there was no need to give him so many shares. Neo claimed in cross-examination that Lim had asked him to transfer 50,000 shares to Tan instead in order to "give him some face". [note: 20] For the reasons given above at [37], I gave little weight to this explanation. In fact, I note that prior to transferring his 50,000 shares in CHKC to Tan, NKC held 247,000 shares in CHKC which were split into six blocks. These blocks of shares were captured in share certificates of one share, 70,000 shares, 29,999 shares, 20,000 shares, 42,500 shares and 84,500 shares. [note: 21] If Tan was just a nominee, it would have been much easier to give him one of the existing share certificates for 42,500 shares or 70,000 shares since there would be no difference in substance. Instead, the share certificate for 84,500 shares was split into 50,000 shares which were transferred to Tan, and 34,500 shares which were transferred to Neo. When Neo was confronted with this fact in cross-examination, he said (unsurprisingly) that he just agreed with whatever Lim had proposed at that time. [note: 22] I did not believe this at all. I find that it was Neo who made this decision to split the 84,500 block of shares and allot 50,000 shares to Tan.

40 Furthermore, the outcome of the restructuring of the Chip Hup Group was also inconsistent with Neo's allegation that Tan is a nominee shareholder. As noted above at [10], CHH issued 169,250 new shares to Tan as part of the share swap following the restructuring. Neo admitted at trial that this was done with his full knowledge and consent. [note: 23] If Tan was merely a nominee, Neo could have

simply got CHH to issue him a token round number of shares like 10,000 or 50,000. The fact that Tan was issued 169,250 shares shows that his and Neo's respective shareholdings in CHH were carefully calibrated, since the number of shares issued by CHH was equivalent to the cash value of the shares he and Neo had transferred to CHH pursuant to the share swap. This exercise only made sense if Tan was to be the beneficial owner of the new shares issued by CHH. The contemporaneous documentary evidence, some of which as noted above were signed by Neo, supported Tan's ownership of the shares in his own right, see [32]-[34] above. Additionally, I have found as a fact in Suit 779 that the idea to restructure the Chip Hup Group and to list CHH was Neo's idea. Nothing I heard from the witnesses or the documents in this action has caused me to change my mind.

41 Tan was cross-examined at length. Save for his attempt to claim that he had met Neo prior to his being appointed as a director and shareholder of CHKC and CHH, I found him to be a straightforward and truthful witness. His answers were consistent and his story did not waver. I therefore preferred Tan's evidence over that of Neo, who told the same lies as he did in Suit 779. Tan struck me, and I so find, that he was someone without any great drive or ambition. He seemed content and never seemed to strive very hard in his daily endeavours. What rang true, which he consistently maintained, was that he had to sign numerous guarantees and counter-indemnities as a director of CHKC. That liability was considerable compared to what he was paid as a director. The shares were therefore as much an incentive for Tan assuming this liability as the director's fees he received. Tan's ambivalent interest in the value of his shares is but a reflection of his character – if the reward came, he would happily take it; if it was delayed he was not one to chase after it. I also find that he was confident that between Lim and Neo and the apparent financial strength of CHKC, Tan thought the possibility of being called upon to satisfy the guarantees or counter-indemnities he signed was not high.

42 Having reviewed the evidence, I find that Tan was the beneficial owner of his shares in CHH, and that no nominee arrangement existed between him and Neo. Although I disbelieved his story that the shares were his main reason for agreeing to become a director of CHH and CHKC, the objective facts and contemporary documents relied on by him strongly supported his case. I find that the monthly payments and to a lesser extent the ownership of these shares were the principal reasons for Tan agreeing to be a director in CHH and CHKC. Tan's lack of any real interest in the shares or participation in the companies as a director did not preclude him from asserting that Neo had intended to give them to him beneficially. Not for the first time, Neo tried to brush aside all this adverse evidence by saying that it was all Lim's doing, that he trusted Lim completely, and that Lim misled him into signing documents in the belief Tan was just a nominee. However, he was unable to explain in cross-examination why Lim would have wanted to deceive him in this way long before their quarrel took place: [note: 24]

> Q. Can you suggest to the court the reason why, in December 1999, ten years ago, seven years before this set of litigation started, why Mr Lim would want to hide anything from you?
>
> A. I don't know why he would want to hide things from me. I trusted him at that time. As long as he showed me something, I would sign. I left everything to him and I would just sign because this is for a smoother process, as I usually do not go to the construction sites.

43 Neo had adopted this same strategy here as he did at the trial of Suit 779. He kept insisting that he blindly trusted Lim and left Lim in control of CHKC's affairs, while he remained blissfully unaware of all the wrongdoing Lim was perpetrating in CHKC. I found this to be an utter lie and what he said here only reinforced my initial view. Neo is a shrewd and careful businessman who was very familiar with CHKC's accounts, finances and operations. He was not one to trust people blindly and nothing he said in this trial changed my impression of him or the unreliability of his evidence. There

was no way he could have been misled by Lim into thinking that Tan was a nominee shareholder when the surrounding evidence, including documents he signed, suggested otherwise. Therefore, I find in favour of Tan on this issue. It follows that Neo's counterclaim against Tan must be dismissed.

Second issue – Whether Neo and/or Mrs Neo had committed any of the acts complained of by Tan

Removing Tan as a director from all five companies in the Chip Hup Group for no good reason

Tan's case

44 Tan's case is that in November 2006, after Lim and Neo had fallen out, he received a fax from ELS Corporate Services Pte Ltd ("ELS"), which provided corporate secretarial services to CHH, dated 14 November 2006 enclosing two letters of resignation (from CHH and CHKC) for him to sign. Shortly thereafter, he received a telephone call from Neo asking him to resign from the companies. Neo told him that CHKC owed money to Lim and other creditors, and that he should resign to avoid any potential liability. When Tan checked with Lim for details, Lim said that he was claiming for the return of his loans from CHKC, and that Neo had suspended him from work as a response. Tan accordingly refused to sign the letters of resignation as he felt that the dispute between Lim and Neo had nothing to do with him. [note: 25] Neo then wrote to him in a letter dated 7 December 2006 [note: 26] removing him as a director of CHH and CHKC in accordance with art 82(g) of both companies' Articles of Association which read:

> 82. The office of director shall become vacant if the director–
>
> ...
>
> (g) be requested in writing by all his Co-Directors to resign.

45 Subsequently in late December 2006, Tan received notices of three extraordinary general meetings ("EGMs") scheduled on 26 January 2007 at 9am, 10am and 11am to remove him as a director of CH Timber, COS and CCPL. No reason was given for these proposals. When he showed up at CHH's registered office (the venue for all three EGMs) on the scheduled date to demand an explanation for the proposals to remove him as a director, he was told that there was no need to attend the meetings and was asked to leave. Later that day, he received a telephone call from a representative of ELS informing him that he was not entitled to attend the EGMs as Neo was CHH's sole corporate representative in CH Timber, COS and CCPL. [note: 27]

Neo's case

46 Neo's case is that shortly after Lim had commenced Suit 779 against CHKC in November 2006, he had asked Tan to sign CHKC's audited accounts for 2006 ("the 2006 audited accounts"). Tan refused, saying that he had to check with Lim first. Because of this, Neo realised that Tan was on Lim's side and could not be trusted to act in the interests of CHKC. Neo thus asked Tan to resign as a director of CHH and CHKC. When Tan refused, Neo decided to remove him anyway by his letter of 7 December 2006. [note: 28] Neo has not given any independent reason for later removing Tan as a director of CH Timber, COS and CCPL.

My findings

47 The main dispute between the parties here is whether Tan had refused to sign the 2006 audited

accounts. Tan vigorously denies this allegation, and in fact wrote to ELS [note: 29] and Neo [note: 30] after his removal from CHH and CHKC making his position known. Tan's letters to ELS and Neo were dated 12 and 19 December 2006 respectively. I found these letters persuasive because they were written by Tan only a few days after he was ousted from CHH and CHKC. In contrast, there were no documents alleging that Tan had refused to sign the 2006 audited accounts, or had otherwise acted against the interests of CHKC, prior to Neo's letter of 7 December 2006 removing him as a director.

48 More importantly, I find that Neo was lying in his AEIC. Neo stated that he had asked Tan to sign the 2006 audited accounts after Lim had commenced Suit 779 against CHKC. After Tan refused, Neo asked him to resign as a director of CHH and CHKC. However, Lim only filed his writ of summons in Suit 779 on 21 November 2006. The fax from ELS to Tan enclosing the letters of resignation was dated 14 November 2006. Therefore, it was clear that Neo had already intended to remove Tan as a director even before Suit 779 was commenced.

49 In fact, Neo even admitted during cross-examination that he would normally sign CHKC's accounts before Tan did, but Neo himself had refused to sign the 2006 audited accounts because Lim had told him they were all false. [note: 31] How then, could he expect Tan to sign them? Neo amazingly claimed at trial that he had asked Tan to sign the 2006 audited accounts first "to see if he had the guts to sign them." I did not believe this and find this to be yet another one of Neo's lies. On the evidence available, I find that when Tan was removed as a director of CHH and CHKC, he had not done anything to suggest that he was acting against the interests of both companies. Neo simply wanted him out because Neo believed he was aligned with Lim. Whether that suspicion was subsequently justified did not change the fact that there was no good reason for removing Tan at the time. Moreover I find that Tan received his Director's remuneration in consideration of inter alia, his personal liabilities under the numerous counter-indemnities that he signed. So long as any of these counter-indemnities remained alive, he would have been entitled to his Director's remuneration. It naturally follows that there was also, to a lesser extent, no good reason for subsequently ousting Tan as a director of CH Timber, COS and CCPL although there was no evidence of Tan signing similar counter-indemnities in the respect of these companies.

Depriving Tan of access to CHH's subsidiaries' accounts

50 It is not disputed that Tan, through his solicitors, had requested to see the accounts of CH Timber, COS and CCPL in January 2007, shortly before the EGMs to remove him as a director from those three companies were held. Tan's request was denied. Neo's and CHH's position is simply that Tan was not entitled to inspect the accounts. [note: 32]

51 Tan also alleged in his AEIC that in May and September 2009, he attended two of CHH's annual general meetings ("AGMs") convened to adopt CHH's accounts for 2006 and 2007 respectively. Tan had objected to approving these accounts (which were stated to be compiled without audit or review) because of several concerns he had with them, but was outvoted. CHH apparently took the position that Tan's concerns mostly pertained to its subsidiary, CHKC. However, Tan was never given a copy of CHKC's audited accounts, either before or after the AGMs. [note: 33] When his solicitors wrote to CHH's solicitors to request for a copy of CHKC's audited accounts, the response was that Tan was not entitled to them. [note: 34]

52 Although Tan has only pleaded that he was deprived of access to the accounts of CH Timber, COS and CCPL, [note: 35] I do not think Neo and CHH can seriously dispute that Tan was also deprived of access to CHKC's audited accounts. Their position that Tan was not entitled to the accounts of

CHH's subsidiaries has clearly been stated in their pleadings and their solicitors' correspondence.

Diluting Tan's shareholding in CHH from 33.3% to 0.89%

53 Tan clearly has no case on his allegation of share dilution. He signed all the necessary documents dealing with the restructuring of the Chip Hup Group and the further allotment of shares to Neo. In fact, his AEIC does not even cover this issue. Neo had also stated in his AEIC that Tan had never complained about the share swap in CHH or the allotment of shares to Neo. [note: 36] He was not cross-examined on this point at trial. Thus, I find that Tan had consented to the share dilution.

Misappropriation by Neo of commissions which CHKC's foreign workers were supposed to pay to it

Tan's case

54 As I mentioned in *Lim Leong Huat* and at [25] above, CHKC employed many foreign construction workers for its operations and it was customary for these workers to pay a yearly commission of $2,000–$3,000 to their employers to defray expenses connected to their hiring and employment. According to Neo's evidence, approximately 95% of CHKC's foreign workers were from China. [note: 37] Tan's case is that Neo had pocketed the commissions which these Chinese workers were supposed to pay to CHKC. While Tan himself has no personal knowledge of what he alleges, he has relied on the evidence of one Zhang Guilin ("Zhang"), who was formerly part of CHKC's China Team. Tan has also relied on the forensic evidence of his expert witness, Mr Aw Eng Hai ("Mr Aw"), who is a certified public accountant.

55 Zhang had appeared as a witness in Suit 779. He was formerly the number two man in CHKC's China Team and was responsible for managing and running all aspects of employment for CHKC's Chinese foreign workers. Zhang testified in Suit 779 and in this trial that CHKC's Chinese workers each made a yearly payment of about $2,000 as commissions. These commissions were collected by Zhang to pay to CHKC. [note: 38] Mr Aw also testified in his expert report that CHKC's documents do not show that these commissions were received by it. [note: 39] Tan alleges that the commissions must therefore have been misappropriated by Neo.

56 Mr Aw has also provided an estimate of the value of the commissions Neo allegedly took. By calculating the average number of foreign workers hired by CHKC from its financial years 1999 to 2008 and multiplying it by $2,000–$3,000, the total value of commissions allegedly misappropriated is between $13,420,833 (using the figure of $2,000) and $20,131,250 (using the figure of $3,000). [note: 40] The figures arrived at by Mr Aw are not rounded sums because he was only given a part of the data for financial years 1999 and 2008 and had pro-rated the commissions accordingly.

Neo's case

57 Neo's case is one of plain denial. He states that he was unaware of any practice in CHKC where commissions were paid, and reiterated his position that CHKC's employees were all under Lim's control. [note: 41] Neo also relied on the evidence of his own accounting expert, Mr Bob Yap Cheng Ghee ("Mr Yap"), to rebut the findings in Mr Aw's expert report. In his report, [note: 42] Mr Yap states that it was unclear whether all of CHKC's foreign workers paid a yearly commission to CHKC or just the China workers. The report also notes that Mr Aw's estimate of $13.4m to $20.1m taken in commissions was merely the result of a mathematical exercise and might not be supported by the

documents themselves.

My findings

58 Both Mr Aw and Mr Yap were unable to trace from CHKC's documents whether the foreign worker commissions were paid or misappropriated. What is only known is that there were no records of CHKC having received such commissions. Nevertheless, I accept Zhang's evidence that commissions were paid by the Chinese workers and that he had collected some of these monies to pay to CHKC. Zhang's story is corroborated by an admission given by Aileen in cross-examination. Aileen had been asked about an incident where the Inland Revenue Authority of Singapore ("IRAS") had raided Zhang's office and found over $100,000 in a safe, which they directed be paid to CHKC. Aileen admitted that Neo had given her the money to bank into CHKC's account and, more crucially, that Neo had informed her that the monies were commissions collected from the Chinese workers by Zhang. [note: 43]

59 Although Zhang admitted in cross-examination that he had not passed the commissions to CHKC directly (he instead handed the monies to one Su Ji, who was in charge of the China Team's accounts), [note: 44] I have no hesitation in concluding that the monies eventually found their way into Neo's hands. As I mentioned above at [25], I found in Suit 779 that it was Neo, not Lim, who worked closely with the China Team and who kept tight control over CHKC's China workers. Neo did not introduce any new evidence in this suit to convince me otherwise; he simply stuck to his usual mantra that Lim was in charge of everything. On the evidence given by Zhang and Aileen above, I find that Neo must have known of the existence of the foreign worker commissions. His attempt to deny such knowledge in his AEIC suggests to me that he was trying to hide something, which most likely is the fact that he had kept such commissions for himself.

60 Neo in fact tried to change his evidence during the trial. He claimed in cross-examination that the China workers actually paid a $2,000 "administrative fee" to CHKC in return for them being paid an increased salary. [note: 45] I did not believe him. Neo had denied outright in his AEIC that any commissions were paid at all without even clarifying that these so-called administrative fees were collected. His belated story in fact contradicted his own pleadings which stated that the only sum deducted from the foreign workers' wages was a monthly sum of $75 which was meant to cover the costs of their meals, and that they did not make any yearly payment of $2,000–$3,000 at all. [note: 46] Even if I accept his story that the alleged commissions were, in fact administrative fees to offset the foreign workers' higher salaries, the fact remains that nowhere in the accounts of CHKC was it recorded that such payments of $2,000 per worker were being made. When this was pointed out to Neo in cross-examination, he incredibly changed his evidence yet again and said that CHKC did not collect these monies. [note: 47]

61 Having heard the evidence, I see no reason to depart from my earlier findings in Suit 779 that CHKC's China workers had paid yearly commissions to it and that these commissions were all pocketed by Neo. Although it is not known for sure exactly how much was taken (since Neo had cleverly kept no records of such matters), I accept that Mr Aw's method of multiplying the average number of foreign workers by the amount of the commission (which I find to be $2,000) is the most reliable method for arriving at a total figure. However, it must also be noted that Zhang only gave evidence of commissions paid by CHKC's China workers, not all its foreign workers. Since Neo had earlier testified that CHKC's China workers made up about 95% of its foreign workforce, I multiplied the figure of $13,420,833 given by Mr Aw in his expert report by 95% to arrive at a figure of $12,749,791.35. I therefore find that Neo had, from 1999 to 2008, misappropriated around $12.75m from CHKC in

commissions.

Artificially inflating the amounts which Neo and Mrs Neo charged CHKC for the purchase of groceries

Tan's case

62 CHKC provided meals for its construction workers. From 1999 to 2006, Mrs Neo purchased groceries on behalf of CHKC which were then delivered to its various construction sites for the preparation of meals. CHKC would then reimburse either Neo or Mrs Neo. From February 2006 onwards, CHKC purchased groceries directly from the suppliers. Tan's case is that from 1999 to February 2006, Neo and Mrs Neo charged CHKC $4.50–$5.50 per worker per day in respect of the groceries purchased, and that this price was inflated. [note: 48] As Tan has no first-hand knowledge of this allegation, he has relied solely on the expert evidence of Mr Aw to prove his case.

63 Mr Aw, in his expert report, relies on two methods to show that the amounts claimed by Neo and Mrs Neo were inflated. The first method simply involves comparing the value of grocery invoices for the period from June 2001 to February 2006 against the corresponding amounts claimed by Neo and Mrs Neo (Mr Aw was not provided any grocery invoices from 1999 to May 2001). [note: 49] Mr Aw's comparison shows that on average, 64% of the total reimbursement claimed from June 2001 to February 2006 was not supported by invoices and therefore presumed to be inflated. Mr Aw then multiplied this 64% with the total reimbursement claimed from 1999 to February 2006 and estimated that Neo and Mrs Neo had inflated their total grocery claims by about $7,465,700.

64 Mr Aw's second method involves calculating the average monthly cost of meals per worker, based on CHKC's expenses incurred after February 2006 (when it started purchasing directly from the suppliers). [note: 50] Based on CHKC's accounts, Mr Aw estimated the average monthly cost of meals per worker as $48. Thus, if Neo and Mrs Neo previously charged $4.50 per worker per day (which amounted to $135 per worker per month), they had inflated their expenses by $87 per worker per month. Multiplying this figure of $87 with the total number of CHKC's foreign workers from 1999 to 2006, Mr Aw estimated that Neo and Mrs Neo had inflated their total grocery claims by $5,584,356.

65 Tan also alleges that Neo and Mrs Neo might actually have inflated their groceries claims by 100% because they have not produced any evidence of their personal accounts to show that they actually paid for the groceries.

Neo's case

66 Neo does not dispute that he charged CHKC $4.50 per worker per day for groceries expenses. His position is that this was a reasonable sum and in fact, it was the arrangement between him and CHKC to claim reimbursements on a "per head" basis instead of invoices because invoices were not always collected from the groceries suppliers. Mrs Neo, who gave evidence for Neo, testified in cross-examination that she did not always ask for invoices when purchasing groceries because some of the suppliers which were registered for Goods and Services Tax ("GST") told her that she would not be required to pay GST if she did not ask for an invoice. [note: 51]

67 Neo next argues that if the figures used by Mr Aw were adopted, it would mean that the average daily cost of all three meals for a foreign worker was around $1.56–$1.57, which was an unreasonably low figure. This is echoed by his expert, Mr Yap. [note: 52] Mr Yap added that the figures used by Mr Aw in computing CHKC's groceries expenses after February 2006 did not take into account

associated expenses like transport costs and GST.

Mrs Neo's case

68 Mrs Neo's separate defence was that she was involved only in the purchase of groceries. She would pay for these groceries by cash or cheque (both drawn on her joint bank account with Neo). She would then hand over any invoices she received from the suppliers to Neo, who would make the necessary claims for reimbursements. She also states that she was not paid anything by Neo or CHKC for her assistance. [note: 53] She further testified in cross-examination that she left the reimbursement process entirely to Neo and denied receiving any reimbursement monies. [note: 54]

My findings

69 On the evidence available, I find that Neo had been knowingly submitting inflated claims to CHKC for groceries expenses. The most striking factor leading to this finding was the fact that both methods of calculation employed by Mr Aw yielded very similar results. Based on his first method, Mr Aw arrived at an inflation percentage of 64%, which when subtracted from $4.50 (which was the figure used by Neo) meant that the average daily cost of feeding one worker was $1.62. Based on his second method, which involved calculating CHKC's expenses after it started buying directly from the suppliers, the average daily cost of feeding one worker was $1.56.

70 The proximity of these figures is quite telling because it implies that the cost of feeding workers after CHKC started buying direct from the suppliers was more or less the same as Neo's claims which were supported by invoices. This suggests that the portion of the claims not supported by invoices must have been inflated. Neo has not given any compelling explanation why CHKC's expenses on groceries should be so radically different after it started buying from the suppliers in February 2006. Although I agree that rather low sums were spent on feeding the workers, there was no other empirical evidence placed before me to show that it was impossible to feed a foreign worker on $1.56–$1.62 per day, even when buying groceries in bulk. I do note, however, that Lim had testified in Suit 779 that CHKC's workers had complained about the quality of the food whenever he visited the construction sites. [note: 55]

71 I disbelieved Mrs Neo's evidence that she did not ask for groceries invoices in order to avoid paying GST. Her evidence completely went against Neo's and Aileen's testimony that the invoices were used for claiming GST input credits instead of substantiating Neo's reimbursement claims. [note: 56] I also note that Neo has not given any evidence of his own to justify his position that it was reasonable to charge $4.50 per worker per day. No explanation was given at trial or in his AEIC as to how this figure was arrived at and why it was more appropriate to claim on a per head basis rather than on invoices. Even his expert witness, Mr Yap, did not provide any independent calculations to justify the figure of $4.50. His instructions were merely to comment on the figures in Mr Aw's report and not provide calculations on his own. My conclusion was that Neo had simply arrived at an arbitrary figure of $4.50 when he knew that the amounts spent on groceries were much less.

72 I also find that Mrs Neo, on her part, was fully aware that Neo had been submitting inflated claims to CHKC and had knowingly assisted him in such a scheme. First of all, CHKC's manual cash book, which was an important piece of evidence used in Suit 779, showed many entries where reimbursements in cash were recorded as being made to Mrs Neo over a period from 2001 to 2004. The sums involved were not insignificant and averaged around $100,000 each time.

73 Secondly, Mrs Neo's answers and demeanour in cross-examination strongly indicated not only

that she had always been aware of Neo's inflation of grocery claims she was, in addition, a more than willing accomplice. She admitted that she knew Neo had been charging CHKC for groceries on a per head basis instead of on invoices, despite the fact that the suppliers she purchased groceries from all provided invoices. [note: 57] As I mentioned above at [71], I disbelieved her evidence that she did not request for invoices to avoid paying GST. In my view, this was simply an excuse concocted to support Neo's case that the computation of groceries claims on a per head basis was fully justified. When Tan's counsel pointed out to Mrs Neo that her reasons for not requesting invoices completely went against Neo's own case, she dramatically proclaimed that she was only interested in the welfare of CHKC's workers at the time and had tried to avoid paying GST in order to buy more food for the workers: [note: 58]

> Q. Do you see now that your evidence is wholly contradictory to Mr Neo's case for not having the complete set of invoices?
>
> A. As far as I'm concerned, I'm only interested in my workers' benefits... GST, to me, it is just a small matter. I am only concerned in feeding my workers well, feeding them sufficiently, ensuring that they can work for the company. This is my contribution to Mr Neo and our company. As long as our workers are fed well, my projects could be completed on time and on schedule. I would have fulfilled my role, and facts have proven that my workers are the best and they were able to finish the projects on time.
>
> Q. Very honourable of you, madam, but you have just further contradicted Mr Neo's case. You have just told us that GST is a small matter to you, but do you not see that, as far as Mr Neo is concerned, by his evidence, invoices would be collected if and only if, they could be used to claim GST from the government?
>
> A. I'm not interested in Mr Neo's position. As far as I'm concerned, I'm only interested in feeding my workers well and giving them good food. As long as they have the energy to work and finish the projects on time, I'm not concerned about anything else and I don't wish to know about anything else... Even though we have a budget and five meals are to be provided, sometimes if we did their work well, we would even give them supper, and many a times, whatever I bought is actually in excess of the $4.50 to $5 per worker, but it doesn't matter. As long as they work well and we could finish our projects on time, I am willing to come up with the extra money and feed them well.

74 The above passage was quite representative of Mrs Neo's general performance in cross-examination. She would give long-winded and irrelevant answers in response to simple questions from both counsel and the court. Her demeanour was also very theatrical and left me with the clear impression that she was not being honest in her evidence. Indeed, she seemed to be simply acting out a rehearsed script to support Neo's case. This can be seen in many of her responses to counsel's questions, an example of which is set out as follows: [note: 59]

> Q. Did you know that Mr Neo did not use those invoices to claim for reimbursements?
>
> A. I'm not aware of that.
>
> Q. Are you saying that, as far as you are concerned, the reimbursements were claimed, based on the invoices issued by the grocers?
>
> A. Okay, to me, I'll take instructions from the kitchen staff as to the quantity and the quality of

food to buy. I would also bring the kitchen staff down to the wet market and let them have a feel of the prices of vegetables per kilogram. And as for the invoices for the meet and other dried foodstuff and grains, they would also know the prices of these things on a per kilo basis. Actually, I bought whatever – I bought things according to the instructions given by the kitchen.

Q. I'm sure of that, Mrs Neo.

Another example of Mrs Neo's rehearsed evidence in response to questions from the court is set out below: [note: 60]

COURT: What you meant by you would take instructions from the kitchen staff of each work site, actually only goes through the head chef?

A. Yes, but he represented, or he was the head chef for all the kitchens.

COURT: Correct. So he would tell you how much they would need. For example, in a particular vegetable, they would need so many kilos; correct?

A. Yes.

...

COURT: I have a few follow-up questions. Suppose the man says we need so many kilos of this vegetable, so many kilos of that vegetable, how does he tell you this? Does he telephone you?

A. I would actually bring him down to the market and show him the price of vegetables, of meat and grains, and he would be shown the invoices as to the prices of these vegetables. Our China team is very capable. They would have a table set out and, based on the number of workers, we would know how many kilograms of meat, of vegetables and grains to be given per worker. They would have worked out a formula. And then for staples such as flour, because they bake buns, we usually don't give them a fixed quantity. They could take as much as they can, and sometimes they would just call and we would send 50 sacks of flour down immediately.

COURT: Mrs Neo, we'll be here until Chinese New Year if you don't listen to my question. What was the question I asked you, can you remember?

A. The quantity.

75 I find, on the whole, that Mrs Neo knew there was no justification for charging CHKC $4.50 per worker per day for groceries.

76 I did accept, however, that Neo and Mrs Neo at least paid the sums reflected in CHKC's groceries invoices. Although Tan submitted that the groceries were not even paid for by them, there was no record of any other person paying for groceries, or claiming reimbursement thereof. The question then is how much were the grocery claims inflated by. In this regard, I accept Mr Aw's figure of 64% as the inflation percentage. Using the figures provided in his expert report, [note: 61] I find that Neo had claimed a total of $11,665,157 from 1999 to 2006. From this, I subtracted $1,772,207 and $1,174,335 because CHKC's accounts showed that these sums were actually not paid out. I was

thus left with a balance of $8,718,615.

77 Although CHKC was the one which paid for Neo's claims, some of the groceries Mrs Neo purchased were actually meant for two related companies, CCPL and AZ. As I mentioned above at [21], AZ is a company owned by Lim and is not part of the Chip Hup Group. It used to work closely with CHKC when Lim was still the latter's general manager and also employed foreign workers. CHKC would reimburse Neo for groceries bought on behalf of CCPL and AZ and would in turn claim reimbursement from those two companies. The figures show that CHKC charged CCPL and AZ a total of $1,100,571 and $2,915,255 respectively as reimbursement from 1999 to 2006. Although the amounts paid by CCPL for groceries could also have been taken into account for the purposes of the present action (since Tan's complaint is that he has been oppressed as a member of CHH), Tan has only chosen to plead that the amounts CHKC paid for groceries were inflated. Thus, I subtracted $1,100,571 and $2,915,255 from the sum of $8,718,615 to arrive at a balance of $4,702,789. Multiplying this figure with the inflation percentage of 64% gave me a final figure of $3,009,784.96. I thus find that Neo had inflated his groceries reimbursement claims by $3.01m to CHKC's detriment.

Misappropriation of funds from CHKC in the guise of reimbursements due to Neo for paying the salaries of non-existent workers

78 This particular complaint of Tan's deals with the Salary Accruals issue mentioned at [23]–[24] above. Tan's case is basically what Lim alleged in Suit 779; that Neo had unlawfully siphoned off money from CHKC through the Salary Accruals accounts by pretending to pay the non-CPF salaries of its Proxies. Tan has no first-hand knowledge of this matter and his expert witness, Mr Aw, was only able to show that monies from Salary Accruals were credited into Neo's running account with CHKC and drawn out. Tan is thus relying primarily on the evidence used in Suit 779 to show that Neo was the mastermind who came up with the Salary Accruals system and used it to siphon profits out of CHKC to CHH's (and therefore Tan's) detriment.

79 Neo, for his part, has not introduced any significant new evidence here beyond his evidence in Suit 779. His position, unsurprisingly, is that Lim had created the Salary Accruals in CHKC as Lim was in charge of everything including the accounts staff. As such, my findings on the Salary Accruals would largely be dependent on the evidence adduced in Suit 779. However, one important point must be dealt with first. Neo admitted in Suit 779 that he had withdrawn more than $10m in Salary Accruals from 1997 to 2003. However, he claimed in this trial that he "realised", after the trial of Suit 779 and after engaging professional accountants, that he did not take the $10m at all. [note: 62]

80 The Salary Accruals matter was in fact a major issue in Suit 779 and both Lim and Neo adduced extensive evidence on it. Since the parties here have also relied on that evidence to a large extent, I have no hesitation repeating my findings in Suit 779 that both Lim and Neo were responsible for creating the Salary Accruals accounts and that Neo had knowingly drawn monies from these accounts for his own benefit.

81 Neo called Aileen and Juliet as witnesses in this trial to give evidence that Lim, not Neo, was the one in charge of CHKC's accounts and therefore, Lim must have been the person responsible for the Salary Accruals. However, just like Neo, they both displayed the same lack of credibility as they did in Suit 779. Juliet was able to answer very little questions in her examination-in-chief and cross-examination. Most of the time, she would either reply that she was not sure or that she could not remember. She did admit, however, both in Suit 779 and in this trial that she had given false evidence for Neo in previous proceedings, including a criminal prosecution. [note: 63] Yet, when counsel asked why she had chosen to give false evidence, she kept saying that she did not know. I find that Juliet had given false evidence for Neo in previous proceedings and in this suit because she was afraid of

being sued by him or CHKC. Neo on behalf of CHKC had commenced proceedings against several of CHKC's former employees such as Yeow Chern Lean, Jean Khoo and Lim Lian Choon (who was Lim's brother) after Lim had launched Suit 779 against Neo and CHKC. It was out of this fear of being included as a target that Juliet felt pressured to ally herself with Neo and lie on his behalf.

82 Aileen was an even less credible witness than Juliet. While Juliet remained mostly non-committal during cross-examination, Aileen was openly hostile and evasive. Like her boss Neo, she would continue to stubbornly cling to her position even when the objective evidence was overwhelmingly against her. One example relates to Neo's story that Tan had refused to sign the 2006 audited accounts. Aileen first testified in cross-examination that Neo had asked Tan to sign the accounts and Tan refused. She later admitted that the accounts were inaccurate at the time Tan was required to sign them. Despite this admission, she insisted that the accounts were nevertheless ready to be signed by Tan. It took many questions before Tan's counsel could finally get her to concede that Tan was right in not signing the accounts since they were inaccurate: [note: 64]

Q. I'll ask you again, Ms Khoo: did you or did you not say that KK Lim's accounts were not accurate as in November 2006?

A. It is wrong, as told by Lim.

Q. So they were inaccurate and they were wrong; is that your evidence now?

A. Yes.

Q. Can directors sign accounts that are wrong and inaccurate, Ms Khoo?

COURT: It is a very simple question, Ms Khoo. Can you please answer that?

A. No.

MR CHIAH: Thank you. Why did you take so long to answer a question like that? Doesn't it follow, Ms Khoo, that there was no way that Mr Tan could have been asked to sign the accounts of 2006 in November; am I correct?

A. But the accounts were completed by November 2006 and directors had to sign.

Q. Do you know that it's Mr Neo's evidence that in November 2006 that he, himself, refused to sign this set of accounts?

A. Yes, I was told.

Q. Do you or do you not agree now that in November 2006, this set of accounts, this set of Mr KK Lim's accounts, were not in a position to be signed by any directors?

A. The accounts were ready and waiting for the directors' signature, but as to whether the directors signed, I wouldn't know.

Q. I repeat my question, Ms Khoo. I did not ask you whether the directors signed or not. My question was: in November 2006, this set of accounts were not in a position to be signed by any directors; isn't that correct?

A. No, they were ready.

...

Q. ...You have told us, and I repeat your evidence, that in November 2006, your evidence is that these accounts were wrong. You used the word "wrong", am I not correct?

A. Yes.

Q. So if the accounts were not wrong and accurate in November 2006, can they or can they not be signed by the directors of the company, Ms Khoo?

A. No.

Q. Thank you. Therefore, these accounts were not ready for signature by Mr Tan in November 2006; am I not right?

A. He could sign them. Why not? The accounts were ready.

Q. All right. Didn't you just agree with me that the accounts could not be signed by the directors of the company?

A. I'm saying that if the accounts were wrong and inaccurate, the directors shouldn't sign them, but for this set of accounts, they were ready at that time.

Q. ...So the directors should not sign the accounts because they were inaccurate and they were wrong; yes?

A. They should not sign.

Q. Was Mr Tan a director of the company?

A. Yes.

Q. So, therefore, does it not follow that Mr Tan should not sign these accounts?

A. That's right.

83 It was perhaps unsurprising that Aileen was so loyal to Neo to the extent that she would fearlessly lie on his behalf, both in this trial and in related proceedings. As I found in Suit 779 (see *Lim Leong Huat* at [176]), Aileen had been dipping her hands into CHKC's till by paying herself an additional salary every month when she was administering its accounts. She had also put her sister's name on CHKC's payroll as a Proxy and arranged to pay her sister an actual salary (*ie*, non-CPF component), of $750 per month. Much like Juliet, I find that Aileen had very good reasons for giving false evidence for Neo in his various lawsuits because she could be sued by him. Rather than face that very real threat, she chose to throw in her lot to Neo. Furthermore, while it is unclear whether there was any basis for Neo or CHKC to sue Juliet (there being no evidence before me on this point), it was clear that Aileen was in real danger of being sued since she had been misappropriating monies from CHKC. When Tan's counsel pressed Aileen on this point in cross-examination, she admitted that she had been paying herself an extra salary each month but added, quite incredibly and disingenuously, that this was done on Lim's instructions. [note: 65] I did not believe this at all. Like her

boss Neo, I find that Aileen was simply trying to push the blame to Lim as a desperate attempt to cover up her misdeeds.

84 The question that remains is how much Neo drew out of CHKC in Salary Accruals. CHKC's independent auditors' report for the financial year 2006 stated that the sum of $10,574,632 in respect of "wages" was erroneously credited to a director's account in previous years. [note: 66] Since Tan did not have an account with CHKC, the only person whom the auditors' report could have referred to was Neo. Furthermore, Mr Aw's report (which was corroborated by the evidence in Suit 779) stated that Neo only drew out Salary Accruals from 1997 to May 2003, [note: 67] and that by 31 May 2003, Neo's account with CHKC showed a nil balance. [note: 68] The logical conclusion is that Neo had drawn a total of $10,574,632 in Salary Accruals from CHKC by 2003. Although Neo submits that his account with CHKC has since been rectified, the fact that he had previously siphoned money from CHKC through the Salary Accruals accounts would still be a relevant factor in determining whether Tan has been oppressed as a shareholder of CHH.

Artificially increasing the share capital of CHKC

85 Tan's case is that in 2001 and 2002, Neo procured CHKC to issue 1.6 million and 2 million new shares respectively to CHH, and that these share issuances were partly funded by setting off monies owed to Neo under the Salary Accruals accounts. Since the Salary Accruals were false, Neo had therefore artificially increased CHKC's share capital. Neo admits that the Salary Accruals were used to partly fund the issuance of shares to CHH, [note: 69] but claimed that he was unaware of this fact at the time because he had left the arrangements for the share capital increase to Lim and did not know how the additional shares were paid for. I did not believe him. Following from my finding that Neo (together with Lim) had created the Salary Accruals accounts for his own benefit, he must have been aware of how the Salary Accruals were utilised. It is not necessary for me to make an exact finding on how much Salary Accruals were used to artificially capitalise CHKC as these sums are part of the total of $10.57m drawn out by Neo in Salary Accruals and have therefore already been accounted for.

Misuse of CHKC's funds for Neo's own purposes

Tan's case

86 Tan's case is that Neo had treated CHKC as a vehicle for his own personal dealings by procuring it to make payments to various third parties without any legitimate basis. For example:

(a) Neo got CHKC to pay the sums of $638,856.50 and $607,299 to a China-based company called Beijing Residential Development & Construction Group Co ("BRDC") in December 1998 and November 1999 respectively but has failed to show any legitimate reason or such payments.

(b) Neo got CHKC to make monthly payments of $600 to his brother, Neo Kok Khuan, from June 1999 to September 2003 purportedly as salary. However, Neo Kok Khuan did not perform any work for CHKC during this period. Similarly, Neo got CHKC to pay a monthly salary to Zhang Wen Xin, a member of its China Team, from January 2004 to November 2007. Zhang Wen Xin was actually working in Dubai during this period and did not perform any work for CHKC.

(c) Neo got CHKC to make dubious loans totalling $194,312.38 to Wu Xue Feng, who was the head of the China Team. The loans have not been repaid.

Neo's case

87 Neo's case is that:

(a) The payments of $638,856.50 and $607,299 were made to BRDC pursuant to an agreement between CHKC and BRDC for the supply of China workers. The said sums were actually administrative charges for eight construction projects that CHKC had sub-contracted to BRDC as provided for under the agreement.

(b) Neo Kok Khuan was paid a monthly salary for helping out at CHKC's store at Jalan Besut. As for Zhang Wen Xin, he was posted to Dubai to work on a project for BRDC, and the arrangement was that BRDC would reimburse CHKC for any costs incurred, including the monthly salary paid by CHKC.

(c) Neo admitted in cross-examination that the loans made to Wu Xue Feng were for his personal expenses and had nothing to do with CHKC's business. He also admitted that there were no loan documents and that CHKC had yet to take any steps to recover the loans. [note: 70]

My findings

88 I found the evidence on the payments from CHKC to BRDC quite equivocal because there was no direct evidence to show that Neo intended CHKC to benefit BRDC without any genuine commercial motive. Instead, Tan has resorted to poking holes in Neo's explanation that the payments were administrative charges for certain projects. I did not think that this was sufficient to prove Tan's case because BRDC and CHKC already had an established commercial relationship then. BRDC was the company which supplied CHKC with China workers and the managers in CHKC's China Team were in fact seconded from BRDC. Thus, I could not find on a balance of probabilities that the payments to BRDC were made for Neo's own personal purposes. Similarly, the evidence of the monthly payments of $600 to Neo Kok Khuan was too scant to prove that they were personal gifts instead of salaries.

89 However, I was satisfied that the payments to Zhang Wen Xin and Wu Xue Feng were not made for any legitimate commercial interest. Zhang Wen Xin was paid from January 2004 to November 2007 but even by the time of the trial, Neo admitted that CHKC had yet to chase for repayment on the pretext that he had no time. [note: 71] I did not believe him. Mr Aw had calculated that the total salary paid to Zhang Wen Xin was $244,000 [note: 72] and this figure was not disputed by Neo in cross-examination. This was not a small sum and I did not accept that a businessman as shrewd as Neo would not have sought repayment of this sum for so long simply because there was no time. The more likely explanation was that Neo had intended for CHKC to make under the table payments to Zhang Wen Xin. This was similarly the case for Wu Xue Feng as Neo himself had admitted above at [87(c)].

90 My findings on this matter are corroborated by the evidence in Suit 779. I noted in that case (see *Lim Leong Huat* at [110(a)]) that CHKC's manual cashbook showed a lot of unexplained cash payments from it to Su Ji, who was in charge of finance in CHKC's China Team. I find that the reason why Neo got CHKC to make all these payments to these members of the China Team is because they were helping him to skim money off the China workers through the collection of commissions. It was thus clear that the payments made to them by CHKC had no legitimate business purpose. On the whole, I find that Neo had been misusing CHKC's funds for his own purposes.

Failure to maintain proper accounts and records of CHH and CHKC

91 I have no trouble finding that Neo had, to put it lightly, failed to maintain proper accounts and

records of CHH and CHKC. The evidence both in this suit and in Suit 779 showed conclusively that Neo had been engaged in a multitude of nefarious activities in CHKC which, not least, involved the wrongful manipulation of its accounts. It naturally follows that the accounts of CHH, being the holding company of CHKC, would similarly be distorted.

Refusing to share profits with Tan

92 Tan's case is that he did not receive any dividends from CHH from 2000 till date. This was despite the fact that the accumulated after-tax profits of CHKC (which as mentioned above at [12] was the main revenue generator in the Chip Hup Group) for the financial years 2000–2005 amounted to about $4.5m. [note: 73] Neo accepted the figure of $4.5m and also admitted that CHH did not declare dividends. [note: 74] His case is that he himself did not receive any dividends and thus he did not see how Tan could claim that he was entitled to dividends. [note: 75] In view of my above findings on the commissions, groceries and Salary Accruals, it is clear that Neo had been liberally helping himself to CHKC's profits without including Tan. Thus, by not getting CHH to declare dividends, Neo had totally excluded Tan from any profit sharing whatsoever.

Summary of findings

93 In summary, I find that Tan has proven the following allegations against Neo on the evidence:

(a) Removing Tan as a director of all five companies in the Chip Hup Group for no good reason;

(b) Depriving Tan of access to CHH's subsidiaries' accounts;

(c) Misappropriation by Neo of commissions which CHKC's foreign workers were supposed to pay to it;

(d) Artificially inflating the amounts which Neo and Mrs Neo charged CHKC for the purchase of groceries used in the provision of meals to CHKC's workers;

(e) Misappropriation of funds from CHKC in the guise of reimbursements due to Neo for paying the salaries of non-existent workers;

(f) Artificially increasing the share capital of CHKC;

(g) Misuse of CHKC's funds for Neo's own purposes;

(h) Failure to maintain proper accounts and records of CHH and CHKC; and

(i) Refusing to share profits with Tan.

I also find that with regard to allegation (d), Mrs Neo had knowingly assisted Neo in inflating reimbursement claims for groceries. It remains to consider whether Neo and Mrs Neo have any defences against Tan's complaints.

Third issue – Whether Tan is barred from complaining about any of the alleged oppressive acts on the grounds of limitation, laches or acquiescence

94 Neo and Mrs Neo submit that in any event, Tan cannot complain about being oppressed as a minority shareholder of CHH. They have three alternative arguments. First, most of Tan's complaints are time-barred under s 6 of the Limitation Act (Cap 163, 1996 Rev Ed). Secondly, he is barred from complaining by the equitable doctrine of laches. Lastly, Tan had acquiesced in the matters complained of and is estopped from raising them now.

Applicability of the Limitation Act

95 Section 6 of the Limitation Act is not applicable to the present case. Tan's cause of action is based on the right of a member of a company to apply to court for relief under s 216 of the Companies Act. This action is statutory in nature and not founded on a contract, or on tort, or on any other limb under s 6 of the Limitation Act in particular. Moreover, a plain reading of s 216(1)(a) of the Companies Act shows that a course of conduct taken over a period of time could amount to oppression. The Court of Appeal recently noted in *Over & Over Ltd v Bonvests Holdings Ltd* [2010] 2 SLR 776 ("*Over & Over*") at [74] that the majority of cases in s 216 applications pertained to this type of scenario as opposed to a single, isolated act being done. Since the court, in such situations, will have to look at how the affairs of the company have been conducted as a whole over the entire period (*In re H R Harmer Ltd* [1959] 1 WLR 62 at 86), it would defeat the purpose of s 216(1)(a) if the Limitation Act barred minority shareholders from complaining about earlier acts forming part of the overall conduct.

Laches

96 The equitable principle of laches requires that a plaintiff seeking an equitable remedy must come to court quickly once he knows that his rights are being infringed. In *Syed Ali Redha Alsagoff v Syed Salim Alhadad bin Syed Ahmad Alhadad* [1996] 2 SLR(R) 470, Warren Khoo J held at [47] that the doctrine of laches was an equitable defence in answer to a claim in *equity*. In other words, it had no place where a plaintiff was asserting *legal* rights against a defendant. Khoo J's judgment was fully endorsed on appeal to the Court of Appeal: see *Scan Electronics (S) Pte Ltd v Syed Ali Redha Alsagoff* [1997] 1 SLR(R) 970 ("*Scan Electronics*") at [19]. However, the court immediately went on to state, at [20]:

> Suffice it to say that the defence of laches may operate where the plaintiff has "by his conduct or neglect ... put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted"... Thus, unreasonable delay or negligence in pursuing a right or claim, *particularly an equitable one*, may be held to disentitle the plaintiff to relief.
>
> [emphasis added]

97 The Court of Appeal thus seemed to be contradicting itself because the above passage implies that laches may still operate to bar a legal right or claim, contrary to its earlier, unequivocal

endorsement of Khoo J's decision in the court below. The decision in *Scan Electronics* was considered by Andrew Ang J in *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769. The learned judge interpreted the Court of Appeal's above statement in *Scan Electronics* to mean that the doctrine of laches could also bar entitlement to equitable remedies in aid of a legal right or claim. However, insofar as a plaintiff was seeking a legal remedy to enforce a legal right, the doctrine of laches had no application. Thus, the defendant in that case was unable to invoke laches to resist the plaintiff's claim to recover a debt.

98 I respectfully agree with Ang J's judgment. The general principle is that laches would operate to bar the grant of equitable *relief*, whether or not the underlying claim originated in common law or equity. In *Smith v Clay* (1767) 29 ER 743, Lord Camden LC held at 744:

> A court of equity, which is never active in relief against conscience, or public convenience, has always refused its aid to stale demands, where the party has slept upon his right and acquiesced for a great length of time.
>
> Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the Court is passive, and does nothing.
>
> Laches and neglect are always discountenanced; and therefore from the beginning of this jurisdiction, there was always a limitation to suits in this court.

99 Lord Camden LC's statement was made at a time when the common law courts were separate from the courts of equity. Under the common law, there was no limitation period and a plaintiff could bring a claim decades after the cause of action arose. However, because common law remedies were very limited, the courts of equity developed a wide and flexible range of remedies to supplement the remedies awarded at common law. Unlike their common law counterparts, the courts of equity acted on conscience and retained the discretion to refuse relief to an undeserving claimant. The distinction between common law remedies and equitable remedies is explained more fully in John McGhee QC, *Snell's Equity* (Sweet & Maxwell, 31st Ed, 2005) at para 12-04:

> ...equitable remedies are in general discretionary. At law, a claimant who proved his case was entitled as of right not only to his judgment but also to enforce it by the forms of execution available at law, however little his conduct appealed to the court, however dilatory he had been, and however unfair the result. Equity, on the other hand, exercised a discretion in granting its remedies, looking to the conduct not merely of the defendant but also of the claimant. Thus it would usually refuse relief to those who had unclean hands, or who were not willing to do equity, or who slept on their rights, or whose claim would produce unfair results. Claimants such as these would be left to whatever remedy they might have at law; and if a claimant had an adequate remedy at law, that of itself was a ground for refusing equitable relief.

100 Thus, historically, the defence of laches only operated against a claimant who sought relief in a court of equity, whether or not the underlying claim was legal or equitable. For example, an action for breach of contract was a common law action and a successful plaintiff would always be entitled to claim damages as of right at common law. However, the remedy of specific performance was an equitable remedy and could be barred by laches. Although the common law courts and courts of equity were subsequently fused through the UK Supreme Court of Judicature Acts 1873 and 1875, the historical distinction between common law remedies and equitable remedies remains even today. The principle that laches is not an available defence to a plaintiff who was not seeking equitable relief is well established in other jurisdictions: see *eg Lester v Woodgate* [2010] EWCA Civ 199; *Orr v Ford* (1989) 167 CLR 316; *Rhyolite Resources Inc v Canquest Resource Corp* (1999) 64 BCLR (3d) 80.

101 In the present case, Tan's claim is founded on s 216 of the Companies Act, which also makes available a range of remedies to an aggrieved complainant. Since the remedies Tan is seeking are derived from statute and not from equity, the *prima facie* position is that laches, or other equitable defences for that matter, do not bar his right to claim for relief under s 216. However, such a view in my opinion would be too simplistic. Although a claim under s 216 is statutory in nature, the principles on what constitutes oppressive or unfairly prejudicial conduct are heavily influenced by considerations of fairness and equity. In *O'Neill v Phillips* [1999] 1 WLR 1092, Lord Hoffmann considered the principles on what constituted unfair prejudice under s 459 of the UK Companies Act 1985 (c 6) and held, at 1098–1099:

> ...company law has developed seamlessly from the law of partnership, which was treated by equity, like the Roman societas, as a contract of good faith. *One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law*.
>
> ...there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith.
>
> [emphasis added]

102 Lord Hoffmann's speech was unequivocally endorsed in two subsequent Court of Appeal cases, *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 and *Lim Swee Khiang v Borden Co (Pte) Ltd* [2006] 4 SLR(R) 745, where it was held that s 459 of the UK Companies Act 1985 corresponded materially to our s 216 of the Companies Act. More recently in *Over & Over* (*supra*), the Court of Appeal reiterated at [81] that commercial fairness was the touchstone by which the court determines whether to grant relief under s 216, and that whether a course of conduct may be characterised as unfair was a "multifaceted inquiry".

103 Since considerations of fairness and equity play a crucial role in an action under s 216, a court should rightly be able to take into account the conduct of all the parties in determining whether there has been unfairness as a whole warranting the grant of relief under s 216(2). After all, fairness is a relative concept. Furthermore, because the court has a very wide discretion in granting such relief, it would only be natural to consider the relative equities of both the minority and majority shareholders in determining the appropriate form of relief. I find support for this view in Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 2nd Ed, 2007) at pp 224–225:

> Under section 216 of the Companies Act, the courts have to decide the standards of fair play and the conditions of fair dealing as between the parties, to ascertain whether one party has acted unfairly vis-à-vis the other or others. Fairness is the enclave of equity and it could be said that section 216 imports equity into determining the limits of its application. The courts are empowered by statute to exercise an equitable jurisdiction. As such, the principles of equity are relevant...
>
> ...
>
> ...It is submitted that the courts have a wide remedial or curial discretion under section 216 of the Companies Act and may customise remedies to suit the equities of the case.

104 This view is also echoed in Robin Hollington QC, *Shareholders' Rights* (Sweet & Maxwell, 5th Ed, 2007) at para 7-123 where the learned author discusses the application of the "clean hands" doctrine in equity to the UK equivalent of our s 216:

> Where the petitioner is relying upon traditional equitable principles to establish unfair prejudice, then it appears that the court will apply the general equitable principle that those seeking equitable relief must come to the court with "clean hands". ... Any misconduct on the part of the petitioner, in so far as it relates to the grounds of unfair prejudice relief, must of course be material to the court's assessment of the unfairness of the treatment of the minority by the majority and of the relief that ought to be granted to redress any wrong done.

105 In my judgment, therefore, the court in an action under s 216 of the Companies Act can take into account equitable defences such as laches and the "clean hands" doctrine in determining whether there has been oppressive conduct and in awarding any consequential relief. With regard to laches in particular, the English High Court in *Re a company (No 005134 of 1986), ex parte Harries* [1989] BCLC 383 has also held that laches may bar relief on a petition under s 459 of the UK Companies Act 1985.

106 I must clarify though, that equitable defences in an action under s 216 are not meant to operate in an all-or-nothing fashion. It is not the case where inordinate delay or the absence of clean hands on the part of a plaintiff would automatically disentitle him to relief. Rather, any inequity on his part would simply be a relevant factor in the court's overall assessment of whether there has been unfairness warranting relief under s 216(2), and what type of relief is just and equitable in the circumstances. For example, in *Richardson v Blackmore* [2006] BCC 276, the petitioner had run a company as a quasi-partnership with the two respondents. All three held equal shares in the company. The two respondents wanted to quit the business and sold their shares to a third party for £300,000 each without the knowledge or consent of the petitioner. This relegated the petitioner from the position of an equal shareholder with two others to that of being a true minority shareholder. The petitioner brought an action under s 459 of the UK Companies Act 1985 alleging that he had been unfairly prejudiced.

107 It subsequently emerged during the trial that the petitioner had, prior to the sale, forged a letter from another party containing a purported offer to buy out the two respondents at £200,000 each (*ie* a lower price). That purported offer was of no interest to the respondents and it did not affect subsequent events. The respondents sought to argue, *inter alia*, that the conduct of the petitioner in forging the fake letter of offer disentitled him to relief, by analogy with the "clean hands" doctrine. The English Court of Appeal rejected this argument. Lloyd LJ, whom the rest of the court agreed with, held at [52]–[53]:

> 52 It seems to me that the judge was plainly right that the forgery did not automatically discharge the obligations of good faith which he had found to be imposed on the former partners towards each other. If [the two respondents] had found out about the forgery at or soon after the date of the letter, they would no doubt have reacted strongly in one way or another. But it does not follow that they would have regarded any obligations of good faith between the former partners as terminated. They might have wished to reinforce them and insist that they be properly observed. There is certainly no basis for a finding that the good faith obligations were in some way discharged without any of the parties having had any choice in the matter.
>
> 53 There is more to be said for the contention that the petitioner's conduct was relevant to the court's discretion whether or not to grant relief under s 461 if the conditions under s 459 were satisfied. The judge dealt with this rather briefly in para 112, quoted above (para 37). He

> cited the decision of Nourse J in *Re London School of Electronics Ltd* (1985) 1 BCC 99, 394 at pp 99, 399–400; [1986] Ch 211 at pp 221–222 as authority for the proposition that there is no requirement that the petitioner under s 459 should come to the court with clean hands. It is authority for that proposition, but it also shows that conduct which in another context might be used to invoke the clean hands doctrine can be relevant on a s 459 petition, in that it "may nevertheless affect the relief which the court thinks fit to grant": see p 99, 400; 222B–C. Nourse J did not say so in terms, but it seems to me clear that, depending on the seriousness of the matter and the degree of its relevance, such conduct would be capable of leading a court to deny the petitioner any relief at all, even though the conditions under s 459 are made out.

On the facts, Lloyd LJ agreed with the trial judge that the forged letter had no immediate or necessary relation to the circumstances which the petitioner's claim to relief depended upon. At best it was an episode in the background history. As such, the petitioner's conduct was neither sufficiently serious nor sufficiently closely related to the respondents' unfairly prejudicial conduct for the court, in its discretion, to refuse to grant him a remedy.

108 It thus seems clear that while the court will take into account any equitable defences a defendant might have in an application under s 216 of the Companies Act, the extent to which these defences would disentitle a plaintiff to relief under s 216(2) must be decided on the facts of each case. Ultimately, "the courts have a wide discretion to do what is just and equitable in the circumstance": see *Eng Gee Seng v Quek Choon Teck* [2010] 1 SLR 241 ("*Eng Gee Seng*") at [8].

109 On the facts of the present case, I do not think that Neo or Mrs Neo can place much reliance on the defence of laches to oppose Tan's claim. In *Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418, the Court of Appeal held that there were two elements to consider when raising the defence of laches: (1) the length of the delay and (2) whether such delay has caused any prejudice or injustice. With regard to the first limb, Neville J stated in *Beale v Kyte* [1907] 1 Ch 564 at 566:

> ...in order that laches or acquiescence may be a defence there must be notice of the error, and time runs from the date of the notice and not from the time when the error is committed; and it is inconceivable to my mind that on a question of laches time can run from the time the mistake was committed. It seems to me it must run from the time when the plaintiff's attention is first called to the error.

110 Similarly in *Genelabs Diagnostics Pte Ltd v Institut Pasteur* [2000] 3 SLR(R) 530 ("*Genelabs*"), the Court of Appeal held that the plaintiffs were not barred by laches from commencing an action for patent infringement against the defendant. In computing the length of delay, the court only took into account the period starting from when the plaintiffs first became aware of the infringing acts.

111 Having heard the evidence, I am satisfied that Tan only became aware of Neo's various acts of oppression after he was unceremoniously removed from the Chip Hup Group in late 2006. As the present suit was filed in April 2007, there was no inordinate delay on Tan's part.

Acquiescence

112 The defence of acquiescence is described in the following manner in *Halsbury's Laws of England* vol 16 (4th Ed Reissue) at para 924, which was cited by the Court of Appeal in *Genelabs* (*supra*) at [76]:

> The term acquiescence is... properly used where a person having a right and seeing another

person about to commit, or in the course of committing an act infringing that right, stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe that he consents to its being committed; a person so standing-by cannot afterwards be heard to complain of the act. In that sense the doctrine of acquiescence may be defined as quisence under such circumstances that assent may reasonably inferred from it and is no more than an instance of the law of estoppel by words or conduct...

113 Acquiescence is frequently pleaded together with the defence of laches because both defences are based on the inaction of the party against whom the defence is invoked. As a result, some cases have tended to conflate both concepts. However, they are separate and distinct defences with different consequences. This is explained more fully by Patten LJ in *Lester v Woodgate* (*supra*) at [21]–[22]:

> 21 The word laches is also sometimes used to denote the type of passive conduct which can amount to acquiescence and so found an estoppel when it can be shown that the party standing by has induced the would-be defendant to believe that his rights will not be enforced and that other party has, as a consequence, acted in a way which would make the subsequent enforcement of those rights unconscionable.
>
> 22 But where the conduct relied on consists of no more than undue delay, it operates only to bar the grant of equitable relief such as an injunction. It does not extinguish the claimants' legal right or bar its enforcement by, for example, the award of common law damages.

114 Thus, laches in its strict sense refers only to delay on the part of the plaintiff coupled with prejudice to the defendant. As explained above at [96]–[100], laches can only be used as a defence against a claim for equitable relief. Acquiescence on the other hand is premised not on delay, but on the fact that the plaintiff has, by standing by and doing nothing, made certain representations to the defendant in circumstances to found an estoppel, waiver, or abandonment of rights: see *Orr v Ford* (*supra*) at 337–338. Unlike laches, the defence of acquiescence is not limited to resisting claims for equitable relief.

115 There have in fact been cases on minority oppression where the courts have refused to grant relief due to the minority shareholder's acquiescence in the affairs complained of. In *Re Grandactual Ltd* [2006] BCC 73, some members of a particular class of shareholders brought a petition under s 459 of the UK Companies Act 1985 in 2004, alleging that the conduct of the company's affairs was unfairly prejudicial to them. The petitioners' complaint was that their shares had been diluted due to a directors' resolution in 1995 increasing the number of authorised shares without calling a meeting of that class of shareholders. The court struck out the petition on the basis that the petitioners had participated in the company's affairs without protest for nine years before the petition was presented.

116 Similarly in *Lim Chee Twang v Chan Shuk Kuen Helina* [2010] 2 SLR 209, the minority shareholder in a group of companies brought an action under s 216 of the Companies Act. One of his complaints was that the majority shareholder had arbitrarily allocated expenses and profits across various companies in the group. However, as he had acquiesced in the majority shareholder's conduct by signing the audited accounts year after year while knowing what was being done, the court held that he could not be heard to complain about the state of the companies' accounts.

117 It is an obvious requirement that to succeed on a defence of acquiescence, the acquiescing party must have been aware of the acts he now seeks to complain of because one cannot acquiesce to something he does not know: *LS Investment Pte Ltd v Majlis Ugama Islam Singapura* [1998] 3 SLR(R) 369 at [40]; *Keppel Tatlee Bank Ltd v Teck Koon Investment Pte Ltd* [2000] 1 SLR(R) 355 at

[27]. In the present case, Tan was not aware of Neo's and Mrs Neo's acts of oppression until after he was ousted from the Chip Hup Group and cannot be said to have acquiesced to them. The one exception relates to Neo's refusal to get CHH to declare dividends from 2000 and I have accordingly taken Tan's acquiescence into account on this particular matter. As regards his other complaints, the defence of acquiescence fails.

Fourth issue – Whether, in the circumstances, Tan has made out a case of oppression justifying relief under s 216(2) of the Companies Act

118 Although Neo and Mrs Neo have not succeeded in either of their pleaded defences, this does not bring the matter to an end. As I mentioned above at [103], the court in a s 216 action can take into account the conduct of all the parties in determining whether there has been any unfairness justifying the grant of relief. While Tan has neither delayed nor acquiesced in the matters complained of, I find that there are two factors present in this case weighing against him: (1) the implicit understanding he had with Neo in relation to the running of CHH and (2) his collateral purpose in pursuing the present action to assist Lim in the ongoing legal war between Lim and Neo.

Tan's understanding with Neo

119 Tan was not a typical minority shareholder. He did not run the business of CHH or CHKC with Neo as a quasi-partnership on the basis of mutual trust and confidence, nor was he a passive investor who expected Neo to at least put the interests of those companies over Neo's own. He was brought into CHH and CHKC by Lim for the sole purpose of rubber-stamping the companies' documents and taking on the various liabilities from the counter-indemnities and personal guarantees he signed. There was absolutely no other reason for Neo to have made Tan a director and shareholder of CHH and CHKC; Neo did not know Tan at all and Tan himself had no experience in the construction industry. Tan's own evidence was that he left the management of CHH and CHKC completely up to Neo while he simply showed up once in a while to sign documents. In consideration for assuming the liabilities as a director of CHH and CHKC, he was paid monthly directors' fees (which were higher than his previous salary) and given shares in CHH and CHKC; the latter were converted into shares in CHH after the restructuring and share swap in 1999.

120 Although I find that Neo had intended to give beneficial ownership of the abovementioned shares to Tan, I also find that Tan was never really concerned about his rights as a shareholder. As I mentioned earlier at [38], I disbelieved Tan's evidence that he was primarily interested in the value of the shares he received when he first agreed to join CHH and CHKC and was simply content to receive his monthly directors' fees. Moreover, Tan never displayed any interest on how the business of the Chip Hup Group was being run all this while since he became a director and shareholder of CHH and CHKC in 1998. This was why Tan only became aware of what Neo had been up to after he was ousted in 2006. Even when CHH did not declare any dividends since 2000, Tan did not bother raising any queries to Neo. I find that the circumstances in which Tan became a shareholder of CHH and CHKC, coupled with his sheer passiveness and subservience in relation to the running of the Chip Hup Group throughout this period, was indicative of an implicit understanding between him and Neo – that Tan would dutifully sign whatever documents needed to be signed and let Neo run the Chip Hup Group as he saw fit as long as Tan was able to collect his directors' fees every month. Although Tan was paid a dividend of $10,000 in 1999, I find that this payment was entirely gratuitous and did not evidence an understanding that Tan was entitled to profit-sharing in CHH or its subsidiaries.

121 It is clear from the authorities that what constitutes unfair conduct may be assessed with reference to the legitimate expectations of minority shareholders, which may in turn arise from informal or implied understandings *vis-à-vis* the majority shareholders: *Ng Sing King v PSA International*

Pte Ltd [2005] 2 SLR(R) 56 at [95]; *Eng Gee Seng* at [11]; *Over & Over* at [84]. While such informal or implied understandings are usually relied on to subject the actions of the majority to greater scrutiny, they can conversely also be used to prevent the minority from complaining about matters in which they had given the majority *carte blanche*. The present case is one such example. Since the understanding between Tan and Neo was that Neo could run the Chip Hup Group as his personal fiefdom, Tan cannot be heard to complain now that Neo had been manipulating CHH and its subsidiaries for his own personal gain. It did not matter that Tan was unaware of and could not acquiesce to the *specific* acts Neo had done throughout this period.

Collateral purpose

122 I also find, having heard the evidence, that Tan had more than one purpose in bringing the present action against Neo and Mrs Neo. While I believe that Tan is genuinely aggrieved at being ousted from the Chip Hup Group, I am of the view that Tan is also using the present suit to assist Lim in his ongoing legal war with Neo. It is very clear from the surrounding circumstances that Tan had been working closely with Lim in this litigation. There are three factors pointing to this conclusion.

123 First, Tan must have known from the start of this action that Lim had worked hand-in-glove with Neo in running CHKC. That was certainly one of his avowed bases for confidence in signing the numerous counter-indemnities thereby incurring personal liability. At some point in time, probably around the time of his removal from the Chip Hup Group or soon thereafter, he must have held discussions with Lim and saw the bitter contest that was about to unfold between the two camps and therefore the facts relating to the disputes. Lim had disclosed in his own pleadings in Suit 779 that he had assisted Neo in generating fictitious invoices to inflate CHKC's profits, in recording all manner of payments to fictitious subcontractors to hide their true nature, and that he had received monies from the Salary Accruals accounts as a means of "profit sharing" with Neo. Despite Lim's close involvement in many of the alleged acts of oppression, Tan had chosen not to add Lim as a defendant in this suit. Instead, he has targeted only Neo and Mrs Neo when the latter's involvement in the oppressive conduct was far more insignificant compared to Lim's.

124 Secondly, when Tan first commenced this action, he was able to complain about various oppressive acts by Neo such as the misappropriation of commissions and inflation of groceries claims in his pleadings, before any discovery was given. Since, on Tan's own evidence, he had been unaware of these matters until after he was kicked out of the Chip Hup Group, his information could only have come from someone else who knew about these matters *i.e*. Lim.

125 Lastly, Tan's own witnesses, Mr Aw and Zhang, had also given evidence for Lim in Suit 779. In fact, Zhang's AEIC in Suit 779 was substantially identical to his AEIC in this action; the only differences between the two AEICs were superficial in nature. Zhang also testified in cross-examination in this trial that he met with Lim's instead of Tan's solicitors for the purposes of making his present AEIC. [note: 76]

126 As Tan had been co-operating with Lim in this action instead of trying to hold Lim accountable for his involvement in the oppressive conduct, I am extremely doubtful that Tan truly felt prejudiced by Neo's actions prior to his ouster from the Chip Hup Group. I find that the only other reason Tan could have raised these issues anyway was to assist Lim in his bitter war against Neo. As I noted in *Lim Leong Huat* at [19], the dispute between Neo and Lim has had a longer history than most actions. Aside from the massive litigation in Suit 779, Neo had also commenced related proceedings in CHKC's name against Lim's brother and former colleagues in CHKC who had refused to testify on Neo's side against Lim. Both Lim and Neo seem bent on bringing each other to ruin and this present action was as much a way for Lim to get back at Neo as it was for Tan to seek relief.

Was there oppression justifying relief?

127 Considering all the circumstances, I am satisfied that Tan has made out a case of oppression justifying relief under s 216(2) of the Companies Act, but only on the grounds that he had been wrongfully ousted as a director of all five companies in the Chip Hup Group and subsequently denied access to their accounts. Tan cannot complain of the other acts of oppression prior to his ouster because he had an implicit understanding with Neo that the latter was entitled to run the Chip Hup Group as he saw fit, and also because he was not genuinely aggrieved at these prior acts of oppression. This understanding with Neo came to an end after Tan was abruptly ousted from the Chip Hup Group in 2006 (and deprived of his directors' fees). Because Tan remains a beneficial shareholder of CHH, I find that his expulsion and continued exclusion from CHH's affairs is oppressive to him.

Relief

128 The most obvious form of relief in response to being excluded from the affairs of CHH is to simply order Neo to buy out Tan's shares. I am not minded to grant any other form of relief on account of Tan's own conduct and the fact that he only holds 0.89% of the shares in CHH. On the issue of valuation, since Tan left the running of the Chip Hup Group to Neo without any expectation of profit-sharing, the fairest price for Tan's shares should be their initial capitalised value of $169,251 (after the restructuring and share swap). Tan would thus be getting what he started off with – no more, no less.

Conspiracy to injure

129 I have found that Mrs Neo was an accomplice and knowingly assisted Neo in illegally siphoning money out of CHKC through inflated grocery claims. Tan has made out his alternative claim in the tort of conspiracy against Neo and Mrs Neo. However the real injury caused by Neo and Mrs Neo in relation to the inflation of groceries claims was done to CHKC. Whilst it is true that such an injury will also affect the value of a shareholder's shares, in view of the relief granted to Tan, it does not arise in this case. Although the authorities show that the court in an action under s 216 can order a malfeasor to compensate the company directly for any injury done to it, subject to [131] below, I have already given my reasons above for restricting any relief granted under s 216 to a share buyout.

Conclusion

130 For the foregoing reasons, I order that Neo is to purchase Tan's 0.89% shareholding in CHH for the price of $169,251. Tan's remaining prayers for relief are dismissed. Neo's counterclaim is similarly dismissed. Although Tan has succeeded in establishing oppression under s 216, the rest of his complaints about Neo's conduct, which took up a substantial amount of the trial, were unsuccessful. In the circumstances of the case I therefore order Tan, Neo and CHH to each bear their own costs of this action. As for Mrs Neo, given her culpability in knowingly assisting Neo in claiming inflated sums for groceries, and because she was not separately represented, she has to bear her own costs.

131 I should add, for the avoidance of doubt, that my findings in this case have been made solely on the evidence placed before me by the parties (and the evidence in Suit 779). They should not be taken as a constraint on future proceedings of a different nature or involving different parties (for example, proceedings taken by a liquidator appointed by creditors or by the authorities).

[note: 1] AEIC of Neo Kok Ching at para 6.

[note: 2] AEIC of Neo Kok Eng at paras 18–27.

[note: 3] AEIC of Tan Yong San at para 26; Notes of Evidence (21 January 2010) at p 73.

[note: 4] Notes of Evidence (20 January 2010) at p 85.

[note: 5] AEIC of Tan Yong San at para 22.

[note: 6] Notes of Evidence (20 January 2010) at p 31.

[note: 7] Notes of Evidence (20 January 2010) at pp 96–97.

[note: 8] AEIC of Neo Kok Eng at para 42.

[note: 9] Notes of Evidence (1 February 2010) at p 23.

[note: 10] Notes of Evidence (21 January 2010) at pp 40–41.

[note: 11] AEIC of Tan Yong San at paras 8–11.

[note: 12] Plaintiff's Core Bundle at pp 14–15.

[note: 13] Plaintiff's Core Bundle at pp 16–17.

[note: 14] Plaintiff's Core Bundle at pp 24–26.

[note: 15] Notes of Evidence (28 January 2010) at p 105.

[note: 16] Plaintiff's Core Bundle at pp 18–20.

[note: 17] AEIC of Neo Kok Eng at paras 19, 22–26.

[note: 18] Notes of Evidence (20 January 2010) at p 41.

[note: 19] Notes of Evidence (20 January 2010) at p 33.

[note: 20] Notes of Evidence (28 January 2010) at p 43.

[note: 21] Defendants' Core Bundle at p 60.

[note: 22] Notes of Evidence (28 January 2010) at pp 81–82.

[note: 23] Notes of Evidence (28 January 2010) at p 64.

[note: 24] Notes of Evidence (28 January 2010) at p 86.

[note: 25] AEIC of Tan Yong San at paras 44–47.

[note: 26] Plaintiff's Core Bundle at p 194.

[note: 27] AEIC of Tan Yong San at paras 66–73.

[note: 28] AEIC of Neo Kok Eng at paras 52–55.

[note: 29] Plaintiff's Core Bundle at pp 195–196.

[note: 30] Plaintiff's Core Bundle at pp 199–200.

[note: 31] Notes of Evidence (29 January 2010) at p 113.

[note: 32] Defence and Counterclaim of the 1st and 2nd Defendants (Amendment No 2) at para 42.

[note: 33] AEIC of Tan Yong San at paras 76–79.

[note: 34] Exhibit TYS-23, AEIC of Tan Yong San at p 607.

[note: 35] Statement of Claim (Amendment No 3) at paras 42–45.

[note: 36] AEIC of Neo Kok Eng at para 40.

[note: 37] Notes of Evidence (29 January 2010) at p 66.

[note: 38] AEIC of Zhang Guilin at paras 20–21.

[note: 39] Exhibit AEH-2, AEIC of Aw Eng Hai at p 22.

[note: 40] Exhibit AEH-2, AEIC of Aw Eng Hai at p 24.

[note: 41] AEIC of Neo Kok Eng at paras 62–63.

[note: 42] Exhibit BYCG/02, AEIC of Bob Yap Cheng Ghee at p 13.

[note: 43] Notes of Evidence (4 February 2010) at p 29.

[note: 44] Notes of Evidence (25 January 2010) at pp 10–11.

[note: 45] Notes of Evidence (29 January 2010) at pp 66–68.

[note: 46] Defence and Counterclaim of the 1st and 2nd Defendants (Amendment No 2) at paras 50, 52.

[note: 47] Notes of Evidence (29 January 2010) at p 73.

[note: 48] Statement of Claim (Amendment No 3) at para 65.

[note: 49] Exhibit AEH-2, AEIC of Aw Eng Hai at p 42–43.

[note: 50] Exhibit AEH-2, AEIC of Aw Eng Hai at p 43–44.

[note: 51] Notes of Evidence (2 February 2010) at p 42.

[note: 52] Exhibit BYCG/02, AEIC of Bob Yap Cheng Ghee at p 16.

[note: 53] AEIC of Sun Seow Eng at paras 9–12.

[note: 54] Notes of Evidence (2 February 2010) at pp 65–70.

[note: 55] Notes of Evidence in Suit 779 (22 October 2009) at p 32.

[note: 56] AEIC of Neo Kok Eng at para 66; AEIC of Khoo Choon Yean at para 27(c).

[note: 57] Notes of Evidence (2 February 2010) at pp 33–34.

[note: 58] Notes of Evidence (2 February 2010) at pp 60–61.

[note: 59] Notes of Evidence (2 February 2010) at pp 35–36.

[note: 60] Notes of Evidence (2 February 2010) at pp 37–38.

[note: 61] DD5.

[note: 62] Notes of Evidence (29 January 2010) at p 53.

[note: 63] Notes of Evidence (3 February 2010) at pp 49–52.

[note: 64] Notes of Evidence (4 February 2010) at pp 6–10.

[note: 65] Notes of Evidence (3 February 2010) at p 77.

[note: 66] Plaintiff's Core Bundle at p 311.

[note: 67] Exhibit AEH-2, AEIC of Aw Eng Hai at p 53.

[note: 68] Exhibit AEH-2, AEIC of Aw Eng Hai at p 55.

[note: 69] AEIC of Neo Kok Eng at para 81(c); Notes of Evidence (29 January 2010) at p 60.

[note: 70] Notes of Evidence (1 February 2010) at pp 77–80.

[note: 71] Notes of Evidence (29 January 2010) at p 93.

[note: 72] Exhibit AEH-2, AEIC of Aw Eng Hai at p 64.

[note: 73] Statement of Claim (Amendment No 3) at para 86.

[note: 74] Defence and Counterclaim of the 1st and 2nd Defendants (Amendment No 2) at paras 83–84.

[note: 75] AEIC of Neo Kok Eng at para 87.

[note: 76] Notes of Evidence (25 January 2010) at p 3.