Tam Tak Chuen v Khairul bin Abdul Rahman and Others
[2008] SGHC 242

Case Number : Suit 706/2007

Decision Date : 30 December 2008

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Ang Cheng Hock and Tham Wei Chern (Allen & Gledhill LLP) for the plaintiff; Harish Kumar and Goh Seow Hui (Rajah & Tann LLP) for the defendants

Parties : Tam Tak Chuen — Khairul bin Abdul Rahman; Ashraff Shamsuddin Eilyaas; Eden Family Clinic Pte Ltd; Eden Aesthetics Pte Ltd; Eden Healthcare Pte Ltd; Eden Medical Aesthetics Pte Ltd

Contract – Duress – Illegitimate pressure – Role of manifest disadvantage in determining illegitimacy of pressure – Other factors relevant in assessing whether pressure exerted illegitimate – Factors relevant in assessing vitiation of victim's consent – Judicial discretion to award damages in lieu of rescission

30 December 2008 Judgment reserved

Judith Prakash J:

1 The chief protagonists in this multi-party action are the plaintiff, Dr Tam Tak Chuen, and the first defendant, Dr Khairul bin Abdul Rahman. The plaintiff's claim against the second and sixth defendants was settled shortly after the trial commenced and the trial therefore proceeded only against the remaining four defendants. The third, fourth and fifth defendants are corporate entities and basically were joined as nominal defendants as the reliefs that the plaintiff is seeking include prayers for declarations that would affect the shareholdings in these companies.

Background

2 The plaintiff, Dr Tam, and the first defendant, Dr Khairul, are both medical practitioners. In January 1998, they started practising in partnership under the name and style of Eden Family Clinic (the "Jurong Clinic") from premises located in Jurong West Street 41. In 1999, the parties decided to corporatise their practice and, on 5 July 1999, the fifth defendant, Eden Healthcare Pte Ltd, was incorporated to carry on the business of the Jurong Clinic. Subsequently the two men procured the incorporation of two more companies: in the third defendant, Eden Family Clinic Pte Ltd, in September 2006. From its establishment, the fourth defendant provided aesthetic medical services at the Jurong Clinic but the third defendant was not activated. As at 3 March 2007, the day before the events that gave rise to this action took place, Dr Tam and Dr Khairul each held an equal number of ordinary shares in the capital of all three companies (collectively the "J Companies") and were the directors of the J Companies.

3 The plaintiff, the first defendant and Dr Ashraff Shamsuddin Eilyaas, the third defendant, also practiced at a clinic in Kembangan known as Eden Medical Aesthetics ("the Kembangan Clinic"). The Kembangan Clinic was operated by the sixth defendant, Eden Medical Aesthetics Pte Ltd, and the three men were the directors of and equal shareholders in the sixth defendant.

4 The hitherto friendly and trusting relationship between Dr Tam and Dr Khairul began to break down in 2004. Dr Khairul had for some time been hearing rumours that Dr Tam, who was married, was

having an affair with one Ms Joanne Chew, an employee working in the Jurong Clinic. In August 2004, he asked Dr Tam about these rumours. Dr Tam emphatically denied them. Dr Khairul, who had been considering ending his partnership with Dr Tam, said he was persuaded to carry on the relationship by Dr Tam's assurances in relation to Ms Chew.

5 In October 2006, however, Dr Khairul's suspicions about Dr Tam's behaviour were aroused again. He decided to obtain evidence of the affair and installed a closed circuit camera in the consultation room and treatment room of the Jurong Clinic. Needless to say, this was done without Dr Tam's knowledge. In December 2006, Dr Khairul obtained video footage from the closed circuit camera of Dr Tam having sexual relations with Ms Chew in the clinic's consultation room. He did not, however, confront Dr Tam with that evidence at that time. His explanation was that he was not sure what he should do. He was upset at having been duped into continuing in partnership with Dr Tam in August 2004. He was deeply hurt by Dr Tam's betrayal of his trust and wanted to end the partnership but was not sure how to go about it.

6 In the end, according to Dr Khairul, he settled on the following options:

(a) he would offer to buy out Dr Tam's half share in each of the J Companies for $50,000 and ask Dr Tam to resign from all his directorships; or

(b) Dr Tam could buy out his half share in the J Companies for an agreed price and Dr Khairul would resign from all his directorships; or

(c) he would apply to court for the J Companies to be wound up on the "just and equitable ground" and, if necessary, the video recording made on 5 December 2007 would be tendered to court as evidence.

7 On 4 March 2007, Dr Khairul sent Dr Tam an SMS message telling him that there would be a meeting of the three partners (*ie* including Dr Ashraff) at the Kembangan Clinic that evening at 9 pm. The three doctors met as scheduled and the first issue they discussed was the rental for the Kembangan clinic. When that discussion was completed, Dr Khairul asked Dr Ashraff to leave the meeting room.

8 Dr Khairul then told Dr Tam that he was going to end their partnership. When pressed for a reason, Dr Khairul asked Dr Tam again whether he was having an affair with Ms Chew. Dr Tam denied it. When Dr Tam continued to deny the relationship despite various matters that Dr Khairul brought to his attention, Dr Khairul took out and showed Dr Tam several photographic stills taken from the video footage of Dr Tam having sexual relations with Ms Chew. He then indicated to Dr Tam that their partnership was at an end.

9 The parties' accounts of what happened next varied slightly. According to Dr Khairul, Dr Tam was calm when confronted with the still photos and asked Dr Khairul what he wanted. Dr Khairul then put forward the three options listed in [6] above. He told Dr Tam that the last option was the least desirable because the matter would then become public and this was not something that Dr Tam would want. It was also not something that Dr Khairul wanted. Dr Tam did not say anything in response to what Dr Khairul had said but asked whether he was being blackmailed to which Dr Khairul replied: "No, I am not blackmailing you".

10 Dr Tam said that he was stunned and that Dr Khairul demanded that Dr Tam choose one of two options:

(a) to sell his shares in the J Companies to Dr Khairul for $50,000 and resign as a director of the companies; or

(b) buy Dr Khairul's shares in those companies for an undisclosed amount and Dr Khairul would resign his directorships.

Dr Khairul threatened that if Dr Tam refused to accept either of the two options, he would apply to wind up the companies. Dr Khairul said that he would tender the "requisite evidence" in support of such winding-up application. Dr Tam understood this to mean that Dr Khairul would tender the photographs and the video footage as evidence in court and make them public. He also stated that Dr Khairul warned him that, if they went to court, Dr Tam would stand to lose more.

11 Both parties agreed that Dr Tam then suggested that he buy Dr Khairul's shares in the J Companies for $50,000. Dr Khairul rejected this offer. Dr Tam also suggested that they both sell their shares to a third party. Dr Khairul replied that he was not prepared to work for some one else after all the effort of building up the practice. Dr Tam asserted that Dr Khairul told him that he was in no position to negotiate.

12 Subsequently, Dr Tam agreed to sell his shares in the J Companies to Dr Khairul for $50,000. Dr Khairul then took out share transfer forms, minutes of meeting and letters of resignation as director in respect of each of the J Companies. These documents had been prepared in advance of the meeting on Dr Khairul's instructions. Dr Tam signed the documents and Dr Khairul then asked Dr Ashraff to come back into the room. Dr Ashraff signed the documents as witness. After that, Dr Khairul wrote out and handed to Dr Tam a cheque for $50,000.

13 Next there was a discussion between the three men regarding the position of the sixth defendant. Dr Ashraff produced two sets of documents for Dr Tam's execution: (1) the share transfer forms in relation to the sixth defendant, a resignation letter and minutes of an extraordinary meeting; and (2) a Liability Transfer Agreement. Dr Tam was told that the sixth defendant was both cash-flow and balance sheet insolvent at the time. It was proposed that he should transfer his one third interest in the sixth defendant to Dr Khairul and that he should take over a third of the sixth defendant's liability in respect of the hire purchase of several machines that were located at the Kembangan Clinic. Dr Khairul and Dr Ashraff proposed that he should take over the "Smartlipo" and "Radarshape" machines by way of the Liability Transfer Agreement and consequently the liabilities connected to them.

14 The total sum outstanding under the hire purchase agreements concluded by the sixth defendant was approximately $286,877. One third of this was, therefore, about $95,959. However, the total liability for the Smartlipo and Radarshape machines that Dr Tam would be assuming amounted to approximately $98,269. Dr Khairul therefore told Dr Tam that he would write a cheque in Dr Tam's favour to cover the "excess" liability he would be assuming. Dr Tam then executed transfer documents for the sixth defendant and the Liability Transfer Agreement. He also accepted Dr Khairul's cheque for $2,644 which Dr Khairul calculated would cover the "excess liability".

15 At the end of the meeting, Dr Tam apologised profusely to Dr Khairul and asked him to destroy the video-recording and stills. Dr Khairul assured Dr Tam that these would be safe with him and that he would retain them to ensure the personal safety of his family.

16 When Dr Tam arrived home later that night, he discovered that his wife knew all about the affair because that same evening, Dr Khairul's wife had visited her and showed her the video footage.

17 On 6 March 2007, Dr Tam lodged a police report against Dr Khairul. On 7 March 2007, the police arrested Dr Khairul and told him that he was under arrest for extortion, blackmail and criminal intimidation. The police searched the Kembangan clinic and Dr Khairul's home and sized the video recording and stills and the audio recordings made of the 4 March 2007 meeting. Dr Khairul was detained for questioning for about 28 hours and released on 8 March 2007. Although the police questioned him two more times, no prosecution resulted from the affair. In August 2007, the police informed Dr Khairul that no action would be taken against him.

18 In the meantime, also on 6 March 2007, Dr Tam had sent facsimile messages to the company secretary of the third to sixth defendants instructing him not to file the various transfer documents with ACRA. The said documents had, however, already been electronically filed with ACRA, on 5 March 2007.

19 On 23 March 2007, Dr Tam's lawyers wrote to Dr Khairul alleging that Dr Tam had been "forced" to resign and execute the various documents on 4 March 2007 and demanding that all the documents be rescinded and that Dr Tam be reinstated as director of the third to sixth defendants. Dr Khairul denied these allegations and, on 7 November 2007, Dr Tam commenced this action.

The Action

20 By this suit, Dr Tam seeks a declaration that his agreement to sell his shares in the four companies to Dr Khairul and resign as a director of the companies, and the documents that he executed pursuant there ought to be set aside as having procured by the exercise of duress on him. In the alternative, he seeks damages against Dr Khairul. In addition, Dr Tam seeks an order that 49 shares in the third defendant be transferred back to him.

21 The first, third, fourth and fifth defendants allege that the actions of Dr Khairul on 4 March 2007 did not amount to duress and Dr Tam is not entitled to any of the reliefs that he is seeking. In addition these defendants are counterclaiming for damages arising out of Dr Tam's alleged breach of his duties as a director of the J Companies.

The Elements of Duress

22 All parties agree that, as explained by Lord Scarman in *Universe Tankships Inc of Morovia v International Transport Workers Federation* [1983] 1 AC 366 at 400, there are two elements in the wrong of duress:

(a) pressure amounting to compulsion of the will of the victim, and

(b) the illegitimacy of the pressure exerted.

In regard to the second element, that of illegitimate pressure, a threat has been described as illegitimate where the:

> terms secured as a result of the threat of lawful action are so "manifestly disadvantageous" to the complainant as to make it unconscionable for the defendant to retain the benefit of them. (See p 34 of *Duress, Undue Influence and Unconscionable Dealing* by Nelson Enonchong (London, Sweet & Maxwell 2006) ("*Enonchong*"))

23 The defendants described the issue of manifest disadvantage as being foundational to the plaintiff's claim. Their submission was that the plaintiff had failed to show that the transactions

concluded on 4 March 2007 were manifestly disadvantageous to him and therefore his case failed at the threshold. I will consider this aspect of the case first.

Value of the companies

24 Both sides employed accountants to carry out valuations of the four corporate defendants. The plaintiff's expert was Mr Tan Chee Chang ("TCC") while the defendants' was Mr Lim Yeong Seng ("LYS").

25 In his report, LYS gave his estimates of the values of the Jurong Clinic and the Kembangan clinic. He noted that the revenue of the Jurong Clinic was attributed to two companies namely the fourth defendant and the fifth defendant and stated that because of this he would combine those companies into one for the purpose of valuation. The third defendant's position was not considered nor included in the report on the basis that it had been dormant since incorporation.

26 In LYS's opinion, three methods of valuation were appropriate in the circumstances of the case where the companies involved ran medical clinics and the valuation was as a result of legal disputes among the shareholders. These were:

(a) the liquidation method which would apply when a decision was made to wind up the clinics in which event the assets of the clinic would be sold to the highest bidder and monies received used to pay the creditors;

(b) replacement cost method which in this case meant estimating the cost of setting up a brand new clinic; and

(c) percentage of revenue method which is a method of estimating the realisable sale price of a professional business based on the assumption of the existence of a willing buyer and a willing seller. A further assumption made in this case was that the most likely interested buyer for the Jurong and Kembangan Clinics would be an individual doctor who wished to start his own business in them rather than a chain clinic that would require the sellers to continue to operate the clinics.

27 Using these three methods, LYS calculated that the various values would be as follows:

Method	**Jurong clinic**	**Kembangan clinic**
Liquidation value	$ (90,901.00)	$(191,296.80)
Replacement cost	$175,720.23	$382,363.48
Percentage of revenue	$424,772.40	$(nil)

It should be noted that for the third method, in respect of the Jurong Clinic, the calculations were made on the basis of 30% of the revenue for 2007. The revenue that year of the fifth defendant was $551,373, whilst the revenue of the fourth defendant was $864,535. For the Kembangan Clinic, the accounts of the sixth defendant reflected a profit before directors' fees of $54,456. The cost of medical practitioners was not taken into account however and imputing that cost would cause the sixth defendant to make a loss. Since no one would want to buy a loss making clinic, LYS valued the sixth defendant at nil using this method. He further opined that for the sixth defendant, the most

appropriate valuation method was the liquidation value. The percentage of revenue basis would be the most appropriate way of valuing the Jurong Clinic.

28 TCC opined that $50,000 was a significant undervalue of the third to sixth defendants taking into account that Dr Tam had left potential annual revenues of approximately $183,420 to these companies (derived from corporate accounts and a tattoo removal scheme) as well as the fact that the fourth and fifth defendants had the potential to generate a yearly revenue of $1.3m. TCC also relied on the fact that Dr Tam's pre-tax income from these companies was between $250,000 and $280,000 annually and Dr Khairul himself had drawn $29,578 in income from the companies in the two months after Dr Tam's departure.

29 TCC calculated a value of between $530,937 and $707,954 for a 50% share in the J Companies by using the valuation method suggested in the SMA Private Practice Handbook (the "SMA method") of either one year's collection or two years' profit.

The plaintiff's case on value

30 The plaintiff first submitted that Dr Khairul knew that $50,000 was not a fair value for the shares of the J Companies because:

(a) his own evidence was that Dr Tam received an annual income of between $200,000 and $250,000 from these defendants and that he himself was drawing roughly the same from them;

(b) Dr Khairul had practically admitted that he was only paying $50,000 to Dr Tam for his shares because Dr Tam was also getting the benefit of the photographs and the video not being made public;

(c) Dr Khairul flatly rejected Dr Tam's offer to buy his shares in these companies for $50,000 but he also testified that he might have sold his shares to Dr Tam (although he was not really interested in doing so) if Dr Tam had made a generous enough offer.

31 Secondly, the plaintiff submitted that the evidence of both the expert valuers was that $50,000 did not represent a fair value of the 50% shareholding in the J Companies. Apart from TCC's evidence that had been summarised above, LYS's evidence was that the fair value for these companies was $424,722. Based on this value, the value of plaintiff's 50% shares in the companies would be $212,361 which was more than four times the amount which Dr Khairul paid Dr Tam.

32 In fact, the plaintiff submitted the value of these companies was likely to be even higher than the amount than LYS had given because there had been certain flaws in his assumptions. LYS had derived the value of the companies by taking 30% of one year's revenue. Under cross examination, he had admitted that this 30% was an arbitrary number based on his own assumption and general knowledge that there would probably be a significant decrease in the revenue of a clinic if a third party bought the clinic and all the old doctors left. He indicated that in other countries the percentage used varied from 25% to 100%. He also admitted that he had carried out his valuation as if a third party was buying the companies which was a totally different situation. The plaintiff submitted that if the J Companies were being bought by one of the existing shareholders instead of by a third party, the drop in revenue would be insignificant, as had actually been the case here. Therefore, it logically followed that the 30% applied by LYS was too low and should be revised to a significantly higher percentage.

33 In relation to the Kembangan Clinic, the plaintiff submitted that there was clear evidence that it

was not insolvent. First there was TCC's testimony to this effect based on the sixth defendant's balance sheet for 31 December 2006, 28 February 2007 and 31 March 2007, as well as its financial performance in 2006 and 2007. Dr Khairul had also admitted that the sixth defendant was solvent. He agreed that his statement on 4 March 2007 that the sixth defendant was insolvent was not accurate but asserted that this had been his perception at that time. The plaintiff did not accept this excuse and submitted that Dr Khairul must have known the true state of affairs since as a director he had unfettered access to all financial statements of the sixth defendant. LYS had confirmed that the audited financial statements of the sixth defendant showed that it was solvent and it was only after he applied an adjustment to the company's income statements that the company appeared to be insolvent. TCC's evidence was that the sixth defendant continued to be profitable even after the plaintiff's departure and was in fact more profitable than the year before. This indicated to TCC that it was unlikely that there was no value in the sixth defendant on 4 March 2007.

34 The plaintiff submitted that the sixth defendant had significant value because:

(a) the total drawings of Dr Tam, Dr Khairul and Dr Ashraff in 2006 amounted to $169,835; and

(b) using the SMA method, TCC calculated a value of between $59,976 and $132,497 for Dr Tam's share of the goodwill in this company.

The defendants' case on value

35 The valuation exercise carried out by LYS presented the defendants with something of a problem. It would be recalled that his expert opinion was that the best method of valuing the fourth and fifth defendants was percentage of revenue method and this resulted in the value of the plaintiff's shares in these companies being very much higher than the price he was paid for them. Therefore in their closing submissions, the defendants took a different approach. The core point made by the defendants was that the plaintiff's case was premised on the assumption that when Dr Khairul purchased the shares of the J Companies and also obtained the plaintiff's shares in the sixth defendant, he bought the practice of the plaintiff at the Jurong and Kembangan Clinics. The defendants submitted that it was clear that Dr Khairul was not purchasing the plaintiff's practice at either clinic. This meant that the element of goodwill could not be used as part of the valuation.

36 The defendants submitted that the plaintiff's case was that the price he received did not factor in the goodwill which he believed he should have received. The plaintiff had relied on the evidence of TCC who for his part relied on the SMA method which was that in the case of a retiring doctor wanting to sell his clinic, he would want to be paid not only for the contents of the clinic but also for the goodwill. According to the SMA method, although there was no fixed formula for calculating the goodwill, it was usually based on one year's gross collection or two years profit. TCC had computed the goodwill that the plaintiff should have received to be in the region of $530,937 to $707,954. If goodwill was left out of the equation, TCC accepted that the value of the shares was to be derived by reference to the net asset value ("NAV"). On that basis, TCC agreed that the NAV of the fourth and fifth defendants was $12,302 and that the $50,000 paid to the plaintiff was about five times the value of the companies. The defendants submitted that, given that the plaintiff only sold 50% of the shares in the companies to Dr Khairul, the NAV of his shares only came to $6,151 and the consideration paid to him was more than eight times that NAV.

37 In relation to the sixth defendant, the defendants submitted that the plaintiff's entire case rested on showing that the sixth defendant was in fact solvent and not insolvent as claimed by the defendants. They submitted that the evidence showed that while in form the sixth defendant was solvent, in substance it was insolvent. Appearances were being kept up because the

owners/directors/doctors were curtailing their drawings. Once even a modest remuneration of $12,000 a month was attributed as a cost, it was clear that the sixth defendant was unprofitable and insolvent. TCC had accepted that to get a proper financial picture of the sixth defendant, one would have to attribute salaries to the doctors operating the clinic. He also accepted that $12,000 a month for doctors' remuneration was reasonable. Given these admissions, LYS's evidence that the liquidation value was the appropriate valuation methodology to adopt was unimpeachable.

Consideration of the arguments on value

38 The plaintiff objected to the defendants' argument that the sale of the shares in the various companies was a separate matter from the sale of the medical practice on the basis that the defendants had never pleaded such a case. In this respect, paragraph 12 of the plaintiff's statement of claim made the assertion that the transactions effected on 4 March 2007 were manifestly disadvantageous to the plaintiff. In the particulars supporting this assertion, the plaintiff, *inter alia*, made reference to the annual turnover of both clinics and averred that the value of his shares in both medical practices was much greater than $50,000. The defendants' response to these averments was a denial and a repetition of paragraphs 7 to 10 of their defence and counterclaim which contained the defendants' account of what had happened on 4 March 2007 and the reasons why they were justified in requesting the plaintiff to enter into the transactions in question. There was no express mention of the value of the medical practices or the value of the shares in the companies whether with or without goodwill. Nor was there any allegation that the plaintiff was free after the transactions had been effected to continue in medical practice servicing all the patients of the Kembangan and Jurong clinics from premises in the vicinity of these clinics. No distinction was drawn in the defendants' defence and counterclaim between the plaintiff's interest in the shares of the J Companies and the business of the Jurong Clinic. It appears to me therefore that, strictly speaking, the defendants were not entitled to draw a distinction between the companies and the practices conducted by them. However, I will deal with these arguments and consider whether in fact the sale of the shares necessarily included the sale of the plaintiff's practice or whether the plaintiff was incorrect in assuming that it did as such a finding might have an effect on damages if any are ordered to be paid to the plaintiff.

39 The defendants' argument was somewhat surprising because Dr Khairul himself did not, in his evidence, draw a strong distinction between the Jurong Clinic and the J Companies. He referred to the Jurong Clinic and the J Companies interchangeably in many places in his evidence. In paragraph 99 of his affidavit, his evidence was that when Dr Tam suggested selling their *shares* in the J Companies to a third party, he told Dr Tam that he was "not prepared to work for someone else after all the effort of building up the *practice*" (emphasis added). His indication that he was unwilling to work for someone else showed that he contemplated a sale of the practice of Jurong Clinic when Dr Tam brought up the sale of the shares to a third party. If Dr Khairul believed that a sale of the shares would not involve a sale of the practice, then he need not have worried about becoming an employee, since he could have simply sold the companies as shell companies and carried on with the practice himself. Further, when questioned in court, he referred to the Jurong Clinic when he intended to refer to J Companies and he also treated references to the Jurong Clinic as references to the J Companies.

40 Another telling point made by the plaintiff in this regard related to Dr Khairul's own view of the value of his shares in the companies. It would be recalled that Dr Tam had offered to buy Dr Khairul's shares for $50,000. Dr Khairul refused this offer because he wanted a higher price for his own shares. His evidence was he had derived the figure of $50,000 by taking the difference between the total assets and the total liabilities of the J Companies and dividing the resulting figure by two, without any consideration of the value of the goodwill. Since the J Companies without the goodwill of the Jurong Clinic were worth $50,000 to each shareholder, the extra value above $50,000 that Dr Khairul put on

his own shares in the J Companies must therefore have represented the goodwill in the practice of the Jurong Clinic that he would be giving up if he sold his shares to Dr Tam. Further, when Dr Khairul told Dr Tam that his options were for Dr Khairul to buy Dr Tam's shares or for Dr Tam to buy Dr Khairul's shares, he did not state that the first option was just the sale of Dr Tam's shares whereas the second option was a sale of both his shares and the practice. It does not seem that there was any difference between the two cases and I agree with the submission that, in both cases, Dr Khairul was intending a sale of both the shares in the J Companies and the practice of the Jurong Clinic.

41 After the transactions were completed, Dr Khairul did not make any arrangement to divide the patients of the Jurong Clinic with Dr Tam. Dr Tam asked for a list of his patients but he was not given the list. In fact, after he signed the documents, Dr Tam was told to pack up and leave the same day. Dr Khairul testified that there was some discussion as to the administrative arrangements and that he was prepared to direct Dr Tam's patients to him by providing them with the latter's contact details but he did not mention any discussion regarding transferring the patients' medical records to Dr Tam. Whilst a doctor can treat a patient without prior records, it is always in the patient's best interests if his doctor has a full history of his medical condition and many patients prefer to return to the clinic that has their records rather than see a new doctor. In any case for Dr Tam to carry on his part of the medical practice after leaving the J Companies, he would need to inform his patients about his new premises and location. If the practice was not sold, there would be no reason not to furnish the plaintiff with this information but Dr Khairul maintained that he was not obliged to provide the plaintiff with such a list. Although Dr Khairul had asserted that Dr Tam's patients would be given Dr Tam's contact details, there was no evidence that this was done. When two patients visited Jurong Clinic and asked for Dr Tam, Dr Khairul informed them that he was working at Vivocity but did not give them any information that would enable them to contact Dr Tam.

42 The defendants in meeting this point laid stress on Dr Khairul's evidence that during the meeting of 4 March 2007, he had specifically told Dr Tam "You could open next door for all I care". Dr Tam did not remember this statement but said that even if it had been made he could not see the significance of it. I agree that the statement would not have indicated to Dr Tam that Dr Khairul only intended to purchase his shares in the J Companies and not the practice of the Jurong Clinic. First, this remark was only made to Dr Tam as the cheque was handed to him, after he had agreed to sell his 50% shares in the J Companies. Second, the remark does not necessarily mean that Dr Khairul was not buying over the practice. It could just as easily be interpreted as meaning that Dr Khairul was not afraid of competition from Dr Tam.

43 The defendants asserted that the plaintiff should have made a distinction between the physical assets of the J Companies, the business or practice goodwill connected with the clinic (such as the "Eden" name and the location of the Jurong Clinic) and the personal or professional goodwill of the doctors. They noted that LYS had testified that a sale of the medical practice would typically have certain terms and conditions attached to it. In the case of a sale to an individual doctor, the purchaser would require the seller to leave the practice and restrain him from competing with the practice that he was selling. These are common conditions and, the defendants argued, had it truly been the case that the plaintiff was selling his practice at both the Jurong and Kembangan Clinics to Dr Khairul, such restraints would have been imposed on him. But, in fact, there were no such conditions.

44 By this argument, the defendants had recognised that there was goodwill independent of the individual doctors in a clinic. That recognition is, actually, more consistent with the plaintiff's position that it is impossible to separate the J Companies from the practice, rather than the defendants' stand that the practice and the companies are two different things. The presence of goodwill in a clinic independent of the doctors who practice in the clinic would mean that such goodwill will naturally

follow the shares in the clinic. Further, TCC testified that while it is possible to segregate the shares of a company from its business, this is rarely done, if at all. TCC could not remember a single instance in which a company carrying on a professional business had been sold without its business. He also said that in the case of a company carrying on a medical practice, it would be impossible to segregate the company from the practice because the company was the practice especially in a situation where the only shareholders in the company were at the same time the main doctors who were generating revenue for the company.

45 It was also clear from the evidence that the Jurong Clinic had a goodwill of its own that had nothing to do with the individual doctors who treated the patients. This goodwill was attached to the name of the clinic and could be seen from the audited financial statements of the fourth defendant for the year ended 30 April 2007. Those statements show that locums at the Jurong Clinic generated substantial annual revenues of $836,032 and $551,373 in 2006 and 2007 respectively. The fact that locums were able to generate revenues of this order indicated that patients went to the Jurong Clinic because of its longstanding presence and reputation in the neighbourhood. Even if Dr Tam were to establish another clinic in the vicinity of the Jurong Clinic, he would not be able to use the Eden name as this belongs to the fourth defendant and Dr Tam could not, therefore, enjoy the business connected with that name.

46 As regards the fact that there were no legal restraints preventing Dr Tam from competing with the Jurong Clinic, the steps taken by Dr Khairul had made it practically impossible for Dr Tam to set up a rival clinic in the same location. First, Dr Tam was in a difficult financial position. Having taken on the hire purchase payments for two machines from the Kembangan Clinic, he faced possible liabilities of $95,625 as against the $52,642 that he had been paid. Also, *vis à vis* the hire purchase company, he was still a guarantor for the remaining machines. Further LYS's evidence was that it would cost some $175,000 to set up a new clinic. Quite apart from the financial considerations, there was Dr Tam's fear of what Dr Khairul might do if he competed directly with him since Dr Khairul still had possession of the video footage and photographs. Dr Khairul admitted that he had held on to this evidence in the face of Dr Tam's request that it be released to him. Dr Khairul's reason for doing so was that he wanted to protect his family. Dr Tam's version was a little different: he said that Dr Khairul's response was that he had to retain these items in case Dr Tam tried to "get back" at him. Whatever the actual words used were, the impression the plaintiff would have got was that Dr Khairul had a use for all this evidence and wanted to retain it in case of need. The implied threat of public disclosure of such material was a very potent one and would quite probably have served to discourage the plaintiff from competing with the defendants.

47 I am satisfied on the evidence that the intention of Dr Khairul when he bought over the shares in the J Companies and the sixth defendant from Dr Tam was to purchase not only the physical assets of those companies but also Dr Tam's shares in the goodwill of the companies *ie* their medical practices. There was no distinction made between the practices and the companies.

48 As for the values of the various companies, it was clear even on the evidence of LYS that the price of $50,000 for a half share in the J Companies was manifestly inadequate. As for the sixth defendant, Dr Tam was paid only $2,642 which represented the difference between his share of the liabilities of the sixth defendant and the amount of the hire purchase payments that he had undertaken to make on its behalf. Effectively therefore he gave up his shares for nothing.

49 In respect of the sixth defendant, I do not accept the submission that it was insolvent and had no value. As noted above, LYS had accepted that the financial statements of the company show that it was solvent and the apparent insolvency arose only after he made an adjustment to the income statements. The defendants suggested to TCC that the sixth defendant was being kept afloat only

because the directors were curtailing their drawings. TCC's response was that it was normal for payments to directors to be curtailed, especially in a start-up clinic situation such as the Kembangan Clinic. He also noted that the sixth defendant continued to be profitable after the plaintiff's departure and was more profitable than it had been the previous year. Therefore there must have been a value in the company at the time of the plaintiff's departure. It is also noteworthy that Dr Tam, Dr Khairul and Dr Ashraff drew a total of $169,835 in drawings from the sixth defendant in 2006. On that basis, it is difficult to argue that the sixth defendant had a negative value in 2006. Rather, it had a significant value since the doctors operating it were able to draw good incomes from its practice even though it was just a start-up clinic.

Was illegitimate pressure exerted on the plaintiff?

50 Turning to the elements of duress, I first deal with the issue of whether illegitimate pressure was exerted on Dr Tam by Dr Khairul. *Enonchong* classifies the circumstances which, according to the authorities, indicate that when a threat of lawful action that is not unlawful is illegitimate. These categories are:

(a) where the threat is an abuse of legal process;

(b) where the demand is not made *bona fide*;

(c) where the demand is unreasonable; and

(d) where the threat is considered unconscionable in the light of all the circumstances.

After listing the categories, *Enonchong* goes on to warn:

> It should be noted that the general approach of the courts in this context is one of caution. Bearing in mind the need for certainty in the commercial bargaining process, the English courts will not lightly find that a threat of lawful action in a commercial context is unacceptable and therefore illegitimate so that the transaction is voidable for duress. As Steyn L.J. warned in the *CTN Cash and Carry* case, the law should not "set its sights too highly when the critical inquiry is not whether the conduct is lawful but whether it is morally or socially acceptable". Therefore cases where a threat of lawful action that is not unlawful in itself will be regarded as illegitimate so as to constitute duress will be "relatively rare". (para 3-022 at p 26)

51 The plaintiff's submission was that, based on the evidence before the court, it was clear that the threat made by Dr Khairul to apply to wind up the companies and tender the photographs and the video footage as evidence in support of such application was illegitimate because it was an abuse of legal process, made in support of an unreasonable and wrongful demand which Dr Khairul knew he could not obtain by way of such winding-up, and amounted to unconscionable conduct.

52 The first point to deal with here is whether Dr Khairul's threat to wind up the companies was an abuse of the legal process. The plaintiff pointed out that where a threat to enforce a legal right is made for a collateral purpose, this can amount to duress. He cited the case of *Grainger v Hill* (1838) 4 Bing (NC) 212, where the defendant obtained property from the plaintiff by arresting him, knowing that he could not provide bail, and keeping him in prison until the property was given up to the defendant. It was held that the conduct of the defendant was an abuse of the process of the law because it was done for the purpose of obtaining by duress property that the defendant had no right to.

53 In this case, the submission was Dr Khairul's threat to commence winding-up proceedings was not made simply because he wanted to end his business relationship with Dr Tam. In reality, Dr Khairul intended to use the winding-up proceedings as a cover under which to make public the photographs and video footage. It was argued that Dr Khairul was thereby using the winding-up process as a tool to pressure Dr Tam into giving up his shares in the companies at a gross undervalue.

54 I think that the starting point in analysing the situation must be the recognition that Dr Tam had behaved very badly and had repeatedly lied to Dr Khairul about his relationship with Ms Chew. One can therefore understand Dr Khairul's feelings of anger and betrayal when he discovered the true situation. One can also understand Dr Khairul wanting to end his partnership with a man whom he could no longer consider to be trustworthy. Dr Khairul was perfectly entitled to take all legal steps available to him to terminate the relationship, and to minimise the loss that he himself would suffer from such a termination. He was not however entitled to take advantage of the situation and unfairly profit from it.

55 It is material that once Dr Khairul's suspicions had been confirmed, he did not do anything for a period of three months. During that period, he discussed the situation with others and took legal advice. By the time he called Dr Tam and Dr Ashraff to the meeting on 4 March 2007, he had had the transfer documents and the Liability Transfer Agreement prepared and ready for execution. His actions that evening had therefore been very carefully orchestrated.

56 It was clear from the evidence that after Dr Khairul had shown Dr Tam the video footage, he laid out the various options for Dr Tam and said that if there was no buyout then he would have to tender the requisite evidence in support of the winding-up application. He also told Dr Tam that the latter would lose more if the companies were wound up. There was actually no need for Dr Khairul to tell Dr Tam that there were only three options available. There was a fourth possible option and that was that the companies would be wound up by the shareholders on a voluntary basis. When he was being cross-examined, Dr Khairul at first said that he was not aware of the possibility of a voluntary winding-up but subsequently he had to concede that in 2000, he and Dr Tam together with others had been involved in the voluntary winding-up of a company that ran a medical practice in Woodlands. Pursuing the option of a voluntary winding-up would not have required the production of "requisite evidence". It was also plain from Dr Khairul's evidence under cross-examination that he recognised at that time that it was more financially advantageous to him to purchase Dr Tam's shareholding in the J Companies for $50,000 than to wind up the companies. He knew that if the companies were wound up, he would be out of pocket because he would have to fork out part of the costs of winding-up the companies and pay up the rest of the hire purchase liabilities. He also admitted in court that by buying over Dr Tam's 50% shares in the J Companies, he obtained a fully operational business and this was more beneficial to him than having to spend $175,000 to set up a new clinic would have been. Dr Khairul was not really interested in selling his shares to the plaintiff. He refused the plaintiff's offer to buy the same at $50,000 out of hand but did not have a counterproposal to put to the plaintiff on the amount that he would be willing to accept. He knew his shares were worth more than that price but he was not prepared to indicate what he thought they were actually worth, probably because that would have resulted in the plaintiff demanding a similar amount for his own shareholding.

57 On the balance of probabilities, the evidence establishes that not only did Dr Khairul want to end his partnership with the plaintiff but that he also wanted to take over the plaintiff's shares at an undervalue. He might have felt justified in doing so because from his point of view, it was the plaintiff's deceitful behaviour that was jeopardising the medical practice that both of them had spent so many years building up. If that was his rationalisation for what he did however, it would not be sufficient to excuse him for threatening the plaintiff in the way that he did because whatever

personal differences there may have been and no matter how deeply he may have felt betrayed, he was not entitled to deprive the plaintiff of the fruit of the plaintiff's own labour in this way. The defendants argued that a voluntary winding-up would not have been possible because the parties would not have been on amicable terms after Dr Khairul disclosed his knowledge and his reactions. That may be so but the parties could still have gone their separate ways by arranging for a valuation and, if necessary, a mediator so that whoever bought out the other would buy him out on fair terms. For Dr Khairul to bring the business relationship to an end, it really was not necessary for him to say that unless one of them bought out the other, he would proceed with a compulsory winding-up and present the necessary evidence. I am satisfied that in making that threat, although it was a threat of a lawful action, Dr Khairul was acting with a collateral motive and the presence of that motive made the threat illegitimate.

58 The facts of this case also support the finding that Dr Khairul's threat to make the photographs and video footage public was made to support an unreasonable demand. As I have held, the true value of the plaintiff's shares in the J Companies was far more than the $50,000 that Dr Khairul offered Dr Tam for those shares. Even using LYS's valuation, the sum paid by Dr Khairul for the shares was not even 25% of their value of $212,361. As for the sixth defendant, I have agreed that it was not insolvent but had a value of at least $59,976. On this basis, the requirement that the plaintiff take over $95,625 in liabilities was highly unreasonable. As the demands made by Dr Khairul in respect of the consideration for the transfer of all the plaintiff's shares in all the companies were unreasonable, his threat was illegitimate on this basis as well.

59 Further, I think that the circumstances in which the demand was made made the demand unconscionable. For three months, Dr Khairul gave Dr Tam no hint of what he knew or what he was planning. He arranged a meeting late at night on the pretext of discussing an issue relating to the Kembangan Clinic and he then sprung his evidence on Dr Tam in a way that was calculated to unnerve the latter. He further underlined his point by telling Dr Tam that Dr Tam had more to lose if there was a compulsory winding-up and the evidence went before the court. Having ruled out that option, he refused Dr Tam's offer to buy his own shares for $50,000. In the result, the only option that Dr Khairul was willing to accept that would not have resulted in the video footage and photographs being made public was the sale of Dr Tam's shares at a price that was manifestly disadvantageous to Dr Tam.

Was there compulsion of the plaintiff's will?

60 The defendants submitted that Dr Tam's will was not overborne. They said that the fear factor was not present at a level sufficient to vitiate Dr Tam's consent. Barely two days after the meeting, he lodged a police complaint against Dr Khairul and Dr Ashraff. If this had resulted in a prosecution, publicity was certain which was far from the case in the event of winding-up proceedings. Then, Dr Tam brought this action which guaranteed publicity.

61 Turning to the events of the meeting itself, the defendants noted that the plaintiff was not passive during the meeting. He did not protest but he actually made a counter offer to Dr Khairul to purchase the latter's shares for $50,000. He also made a proposal that they consider a sale of their joint medical practice to a third party. He engaged both Dr Khairul and Dr Ashraff on the issue of the transfer of the two machines at the Kembangan Clinic to him and also asked for the list of his patients. These were not the actions of a person whose will was overborne but rather of one who was seeking to make the best bargain for himself in the circumstances. The defendants also submitted that Dr Tam had lied when he asserted in cross-examination that Dr Khairul had said to him "you are in no position to negotiate, do you understand?" and that at the same time had waved the photographs at him. The defendants said that this very significant embellishment in the course of

cross-examination gave the lie to the plaintiff's pretence that his will was overborne. They noted that this important fact, which he said he could recall because it made such an impression on him, had not been mentioned in his affidavit of evidence-in-chief. He was lying to bolster his case that he was intimidated by Dr Khairul to the point that his consent to various transactions was vitiated. This was untrue and Dr Khairul's evidence had shown that the plaintiff had, instead, been calm and deliberate in his approach.

62 The burden lies on the defendants to show that the illegitimate pressure exerted on the plaintiff did not induce the plaintiff to transfer his shares in the J Companies to Dr Khairul. This was settled by the case of *Barton v Armstrong* [1976] AC 104 where the Privy Council held that once the plaintiff had proven that illegitimate pressure had been exercised on him by the defendant, it was up to the defendant to prove that the pressure had contributed nothing to the plaintiff's decision to execute the decision. The Privy Council also, in *Pao On v Lau Yiu Long* [1980] AC 614, enumerated the factors that have to be considered to decide whether consent has been vitiated. These are:

(a) whether the person alleged to have been coerced did or did not protest;

(b) whether, at the time of the alleged coercion this person did or did not have an alternative course open to him;

(c) whether he was independently advised; and

(d) whether after entering into the contract he took steps to avoid it.

63 I will consider the factors in turn. The first factor deals with the presence or absence of protestation on the part of the person sought to be coerced. The plaintiff does not deny that he did not protest when he agree to transfer his shares in the companies to the first defendant and to resign as a director of the companies. The plaintiff submitted that whilst it was true that there was no express protest, this lack was not fatal to his case. The plaintiff relied on a comment by *Enonchong* at pages 50 to 51 which stated that if the evidence shows that the illegitimate pressure caused the complainant to enter into the transaction, the lack of protest would not defeat a claim of duress. In the case of *Universe Tankships Inc of Monrovia v ITF* [1983] AC 366, Lord Scarman stated at page 400 that:

> The victim's silence will not assist the bully, if the lack of any practicable choice but to submit is proved. The present case is an excellent illustration. There was no protest at the time, but only a determination to do what was needed as rapidly as possible to release the ship.

The plaintiff said that this dictum covered his situation because he had no real choice but to submit to the first defendant's demands.

64 Looking at the plaintiff's evidence, it is notable that what he said was that he was completely shocked when he saw the photographs. He was stunned and all he could think about was what would happen to his marriage if his wife saw the photographs. He wanted to make sure that she would not see them and he apologised repeatedly to the first defendant. He thought that the price offered for his shares in the J Companies was extremely low and offered to buy the first defendant's shares for the same amount. The first defendant flatly refused. The plaintiff then suggested that both parties sell their shares to a third party but this alternative was also rejected and he was told that he was in no position to negotiate. The plaintiff did not mention in his affidavit that the first defendant had waved the photographs at him at the same time as telling him that he was in no position to negotiate and it is possible that this was an embellishment as suggested by the defendants. However the

plaintiff was consistent on the main points of his evidence and he was not challenged on the assertion that throughout the meeting of 4 March 2007, the fear of public disclosure of the photographs and the video was weighing heavily on his mind. I accept the plaintiff's evidence in this respect. He had tried to put forward alternatives to the first defendant but both his suggestions had been rejected out of hand and the choices before him seemed stark: either to accept the first defendant's offer or to face the public disclosure of the video and the photographs. At the time, the plaintiff held the positions of council member in the Muslim Converts Association of Singapore, member of the Kampong Ubi Consultative Committee, and Vice-Chairman of the Yusof Ishak Secondary School Advisory Committee. Thus both his private and public life stood to be affected by public disclosure. In these circumstances, the fact that the plaintiff did not say flat out that he was not willing to sell his shares to the first defendant for $50,000 is not an indication that his consent was vitiated. From my point of view also, the fact that the plaintiff suggested other alternatives which were rejected showed that he was not happy with what had been asked of him and indicates that his eventual acceptance was a bowing to demands rather than a consensual agreement to them.

65 I also agree with the submissions made by the plaintiff that the first defendant did not give him any real practical alternative to the proposal that the shares be sold to the first defendant for $50,000. The defendants submitted that the plaintiff had three options to choose from. The first of these options was that he could have purchased the first defendant's shares in the J Companies. The first defendant himself however said in court that after he rejected the plaintiff's suggestion that they both sell their shares to a third party, he had told the plaintiff that the latter was in no position to negotiate. That was obviously an indication to the plaintiff that his only choice was to sell his J Companies shares to the first defendant. Whilst the first defendant asserted that the statement that the plaintiff was in no position to negotiate referred only to the fact that the first defendant did not want to sell the shares to a third party, it is difficult to accept such an interpretation. The first defendant's assertion was not limited to negotiations regarding sales to third parties or restricted in any other way. His assertion must have meant that there was no room for the plaintiff to negotiate any further with him and that the plaintiff could either take up his offer to buy the shares or he would apply for the winding-up of the J Companies using the photographs and video.

66 The second option which it was asserted the plaintiff had been given was to purchase the first defendant's shares in the J Companies. This option however was not really open to the plaintiff. It appeared from the first defendant's own evidence that he was not interested in selling his shares to the plaintiff. This can be inferred from his admission that he had no figure in mind at which he would have been willing to sell out. Moreover he admitted in cross-examination that he did not really want to sell the shares in the J Companies because if he did so, he would lose the clinic and the practice that he had worked to build up. He thought that he had not done anything wrong and he should not be the one to give up all that had been worked for over the years. Further, the first defendant had prepared documents for the transfer of the plaintiff's shares to him but he had not prepared any document for the transfer of his shares to the plaintiff. If the option of a purchase by the plaintiff was really open, the first defendant could easily have prepared for that eventuality by not filling in the names in the transfer forms until the plaintiff had made his choice. Also, when the plaintiff offered to buy the shares for $50,000, the first defendant refused and did not put forward any alternative price. On the evidence, I am satisfied that there was no real intention on the part of the first defendant to sell his shares to the plaintiff whether at $50,000 or even at their fair value.

67 The third option was the option of the court application for a winding up. That was not a real option either because the first defendant made it clear that the evidence to be presented in support of the application would be the evidence of the plaintiff's adultery and the plaintiff's main concern at that stage was to keep this evidence private.

68 When it came to the plaintiff's shares in the sixth defendant, there was no choice given to him. The first defendant's own evidence was that the plaintiff was simply given the option of selling those shares to the first defendant. He was not asked whether he wished to purchase the first and second defendants' shares.

69 In relation to the third factor, that relating to independent legal advice, there is no dispute that on the day in question whilst the first defendant had already had the benefit of consulting lawyers, the plaintiff did not obtain any advice before signing the various transfer documents. The defendants submitted, however, that the plaintiff was not entitled to rely on the lack of independent legal advice because he had never been asked to make a decision on the spot. Although the first defendant had had documents prepared in the hope that the plaintiff would make an immediate decision, he had not told the plaintiff that the latter had to choose the option immediately.

70 The plaintiff submitted that whether he had to make his decision immediately or could take more time to consider it was not a factor that was relevant in determining whether his consent had been vitiated. No legal authority had been cited to support the proposition. Secondly such a factor would be a poor indicator of whether consent was vitiated as one would not know whether the effect of the illegitimate pressure would be increased or decreased with the passing of time. In any event, it was objectionable to ask the court to speculate what might have occurred rather than to consider what actually occurred.

71 There is force in the plaintiff's submissions. The fact that the plaintiff was not told in express terms that he had to make up his mind immediately cannot by itself mean that his consent was not vitiated. If the plaintiff had asked for time and had been given time, the situation might have been different but that is not the case before me. I have to consider what happened on that day and what the plaintiff's true reaction was. I am satisfied on the evidence that there was, implicitly, pressure on the plaintiff to make up his mind immediately. The first defendant himself testified that in his view, the plaintiff did not need more time to make a decision on the three options, as they were not complicated, and therefore he had not given the plaintiff any advance notice that the breakup of the partnership would be discussed at the 4 March 2007 meeting. At the meeting itself, he told the plaintiff that the plaintiff was in no position to negotiate and when the plaintiff agreed to the sale of the shares immediately took out the prepared transfer forms for the plaintiff's signature. That behaviour was not the behaviour of someone who was prepared to give the plaintiff a lot of time to mull over his options.

72 In respect of the transfer of the plaintiff's shares in the sixth defendant, the same inference can be drawn. All the preparation work had been done in advance. The transfer documents and the Liability Transfer Agreement were ready for execution and the first and second defendants had not only calculated the amounts of liability that the plaintiff would have to assume, but they had also picked out the particular machines that they wanted the plaintiff to take over. This showed that they wanted him to complete the transactions on 4 March 2007.

73 I cannot lose sight of the fact that the defendants had carefully planned what would occur on 4 March 2007. They arranged for a personal confrontation followed by a personal demand followed by an immediate execution of documents. There are many ways of dissolving a business relationship which would not involve any taint of duress or unfairness. The defendants in this case did not choose any of these. The choices that the first and second defendants made show their intention to get the best advantage they could from the ending of their association with the plaintiff.

74 I also accept the plaintiff's submissions, that from a purely logical standpoint, the fact that he did not ask for more time to consider his options is a clear indication that his consent was vitiated

and his will was overborne. The logical inference from his failure to ask for more time is that the first defendant's threat had been so effective that the plaintiff thought he had no choice but to accede to the first defendant's demand.

75 The final factor is that the person claiming duress must take steps to set aside the impugned transaction. In this case, it is common ground that this factor had been satisfied.

76 In all the circumstances, I conclude that the element of vitiation of consent has been established.

Other matters

77 As part of their defence to the plaintiff's claim, the defendants raised issues concerning a scheme known as the Mudik ke Hulu scheme and payments made by him to one of the staff members at the Kembangan Clinic. These issues were not raised at the meeting on 4 March 2007 and therefore have no bearing on the allegations of duress made by the plaintiff or the defendants' response to the same. There is therefore no need for me to consider those issues in order to come to a conclusion on the claim. Whilst the defendants asserted that these issues had a bearing on the credibility of the plaintiff, my view is (without analysing or coming to any conclusion on the veracity of the evidence related to these issues) that even if criticisms could be made of the plaintiff's conduct in relation to the same, this would not have any effect on the main issues that had to be decided in this case as the latter principally involved the behaviour of the defendants and the valuation of the companies.

Conclusion and appropriate relief

78 For the reasons given above, there was duress exercised on the plaintiff by the first defendant and the plaintiff must succeed in his claim. The first defendant had put forward a counterclaim in relation to an allegation that the plaintiff breached his duty as a director by working at a clinic called Nu Concept Medical Aesthetics Centre. In the closing submission however, the first defendant indicated that he was no longer pursuing this counterclaim.

79 The next question that arises is as to the appropriate relief to be given to the plaintiff. The plaintiff's main claim was for the documents he signed to be set aside. He also pleaded an alternative claim for damages to be assessed. The defendants did not make any submissions on which form of relief would be more appropriate in the circumstances of this case. The plaintiff has been out of the J Companies and the sixth defendant for more than one and half years. To put him back into those companies now is going to lead to another set of problems. However, on the face of it, this is the relief to which he is entitled since he was forced to give up his shares in the companies at an undervalue. In the absence of compelling reasons provided by the defendants why I should award damages instead of the primary relief, I cannot choose the latter course.

80 There will therefore be judgment for the plaintiff against the first, third, fourth and fifth defendants and the following specific orders:

(a) that the documents executed by the plaintiff on 4 March 2007 collectively described in the statement of claim as the "Jurong West Transfer Documents", the "Kembangan Transfer Documents" and the "Liability Transfer Agreements" is hereby set aside;

(b) the transfer of the plaintiff's 49 shares in Eden Family Clinic Pte Ltd to the first defendant is hereby set aside;

(c) the defendants shall take all necessary steps to give effect to the setting aside of the documents enumerated above and to re-vest in the plaintiff his original shareholdings in the third, fourth, fifth and sixth defendants;

(d) the first defendant shall bear the plaintiff's costs of this action against the first, third, fourth and fifth defendants; and

(e) there shall be liberty to apply in respect of the implementation of orders (a) to (c) above if necessary.