Lin Choo Mee *v* Tat Leong Development (Pte) Ltd and Others and Other Matters
[2015] SGHC 99

Case Number	: Companies Winding Up Nos 226, 227 and 228 of 2014
Decision Date	: 13 April 2015
Tribunal/Court	: High Court
Coram	: Steven Chong J
Counsel Name(s)	: N Sreenivasan SC, Tan Kai Ning Claire, and Zhu Zhihao Daniel (Straits Law Practice LLC) for the plaintiff; Hui Choon Wai and Ho Si Hui (Wee Swee Teow & Co) for the third defendant in CWU No 226 of 2014 and the second defendant in CWU Nos 227 and 228 of 2014.
Parties	: Lin Choo Mee — Tat Leong Development (Pte) Ltd and Others and Other Matters

Companies – *Winding Up*

13 April 2015 Judgment reserved.

Steven Chong J:

Introduction

1 This case concerns three separate applications to wind up three companies owned and managed by a family ("the Tat Leong companies") on the ground that it is just and equitable to do so. In 1990, the patriarch of the family, Lin Whan Chiu ("LWC") was diagnosed with cancer. He expressed his wishes on the division of his personal wealth in a handwritten note addressed to his five sons. His dying wish, after stating his intention on the division, was simply this – "[a]ll my sons please remember, don't fight with one another, so that your father will rest in peace". He passed away in 1992. Alas, it would appear that his wish has not been fulfilled with the commencement of the present actions.

2 LWC had eight children. In order of birth, they are:

(a) Mr Lim Sze Eng ("LSE") – the eldest son and *de facto* defendant in this action.

(b) Ms Lim Lay Chin – the eldest daughter

(c) Mr Lin Choo Mee ("LCM" or "the plaintiff") – the plaintiff in these applications.

(d) Mr Lim Chu Leong ("LCL")

(e) Ms Lim Lek Choon

(f) Mr Lin Joo Hock ("LJH")

(g) Ms Lim Lay Hua

(h) Mr Lin Tze Kin ("LTK") [note: 1]

3 It will be observed that only the names of the sons are abbreviated. That is because LWC's daughters do not feature in this saga. LWC was – by any account – an extremely traditional man who, perhaps reflecting the mores of his day, organised his affairs with strict adherence to two principles: (a) patriarchal leadership; and (b) primogeniture, *ie*, that inheritance should be passed down to male descendants in order of seniority. [note: 2] These two themes shaped the fortunes of the Tat Leong companies and are central to the present applications.

4 The family business started in 1977 with the operation of a petrol kiosk before diversifying into properties. Unsurprisingly (given the two themes), the eldest son was the driving force in the business. Over time, the business in Singapore gradually became less active and the family's fortunes waned. Dividends have never been declared throughout the history of the group. [note: 3] Presently, its Singapore income comes primarily from the collection of rental from a single unit at Far East Plaza ("the Far East Plaza unit"). [note: 4] Although the business expanded into China through two subsidiaries, they have not generated any returns for the group to date. [note: 5] Two of the sons sold their stakes and exited from the group about a decade ago. Things came to a head when the plaintiff was not renewed as a director of the various companies in the group, a position he had occupied for three decades since the inception of the businesses. This was perhaps the catalyst for the present applications.

The facts

5 Before discussing the relevant legal issues, it is necessary to trace the history of the group of companies in some level of detail.

6 As a preface, I note that LWC had been involved in the petroleum business since the early 1970s through his company, Chip Chuan Trading Company Private Limited ("Chip Chuan"), of which he was a director and shareholder. [note: 6] Chip Chuan was in the business of supplying bunkers to ships in Singapore.

Early years – incorporation of the companies and the passing of LWC

Incorporation of Tat Leong Petroleum Company and Tat Leong Petroleum

7 In 1976, LSE, who was 23 years of age at the time, [note: 7] together with his then-girlfriend (now wife) Ms Tan Lay Hoon ("TLH"), founded a partnership, Tat Leong Petroleum Company ("TLPC"). [note: 8]

8 On 17 June 1977, LSE and TLH incorporated Tat Leong Petroleum Co (Pte) Ltd ("TLP"), which is the defendant in Companies Winding Up No 228 of 2014 ("CWU 228/2014"). [note: 9] At the time of TLP's incorporation, LSE and TLH were the only shareholders and directors of TLP. On 23 November 1977, one month after he turned 21, the plaintiff was appointed a director of TLP. [note: 10]

9 On 8 November 1978, the board of directors of TLP (consisting of LSE, TLH, and the plaintiff) passed two resolutions. [note: 11] In the first, it was resolved that LWC would be appointed a director of the company. In the second, it was announced that there would be a third allotment of shares wherein each of LWC's five sons and LWC's wife, Mdm Tan Ah Kar ("TAK"), was each given 10,000 shares. LWC was given 40,000 shares.

Incorporation of Tat Leong Development and Tat Leong Investment

10 On 5 January 1979, Tat Leong Development (Pte) Ltd ("TLD"), the defendant in Companies Winding Up No 226 of 2014 ("CWU 226/2014") was incorporated. LSE and the plaintiff were TLD's founding directors and they each held a single ordinary share in TLD. On 28 April 1983, the board of directors of TLD (consisting of LSE and the plaintiff) passed a resolution appointing LWC and LCL as directors of the company, taking the total number of directors in TLD to four: LWC and three of his sons. [note: 12]

11 On 8 August 1983, the board of directors of TLD passed two resolutions. In the first, it was resolved that LSE's single share would be transferred to Tat Leong Investment Pte Ltd ("TLI") (see [13] below). In the second, it was resolved that a further allotment of shares would be made to TLI, LWC, and all of LWC's sons except for LSE. [note: 13]

12 I pause to observe that, after this allotment of shares, LSE, through his majority shareholding in TLI, effectively became (and still remains) the main shareholder in TLD.

13 On 14 May 1983 – TLI, the defendant in Companies Winding Up No 227 of 2014 ("CWU 227/2014" – was incorporated. [note: 14] As in the case of TLD, LSE and the plaintiff were its founding directors and each held one of the two shares that were issued. [note: 15] It is common ground that TLI was set up as an investment holding company with its chief purpose being the holding of shares in TLD. [note: 16] On 20 May 1983, LWC and LCL were appointed directors of TLI. This move, which paralleled what took place in TLD, took the total number of directors in TLI to four: LWC and three of his sons. [note: 17] On 20 July 1983, TLI allotted shares to LSE, the plaintiff, LCL, LJH, and LTK (*ie*, all of LWC's sons), with the bulk of the shares going to LSE. [note: 18]

LWC's handwritten note and his passing

14 Before his death on 26 June 1992, [note: 19] LWC was diagnosed with cancer. After learning of his diagnosis, he transferred his shares in TLP and TLD to LSE. [note: 20] He also authored a handwritten note in Mandarin dated 28 November 1990 addressed to his five sons ("the handwritten note"). Given how pivotal this note is to the plaintiff's case, its translated contents are reproduced here in full:

> To my five sons (Ying, Ming, Liang, Fu, Qing)
>
> All the properties of the company and the personal wealth of me and your mother should be divided into seven equal portions.
>
> Ziying, as the eldest son, will receive two portions; Ziming, Ziliang, Zifu, Ziqing will receive one portion each.
>
> Your mother, ?Jin, also known as Chen Yajia, will receive one portion. She will make the decision on how to allocate her portion, none of you should have any objection.
>
> The three daughters will receive 15,000 dollars in cash each, no one else should have objections.
>
> If Ziliang has a son, he will receive the legacy *as stated above (- added by translator)* ; if he doesn't have a son, he will receive 300,000 dollars in cash. He will not be entitled to other legacy.

> Any son of Lin Hong Ru [LWC] that does not have a son will receive 300,000 in cash when getting old.
>
> Ziying, my eldest son, please ensure fair division of the properties according to my will. Anyone who does not have a son will receive 300,000 in cash when getting old, and will not be entitle to claim other properties. I hereby endorse this.
>
> Father
>
> Lin Hong Ru
>
> On Nov 28, 1990 (Oct 12 by Chinese calendar)
>
> All my sons please remember, don't fight with one another, so that your father will rest in peace.
>
> [emphasis in original]

15 As is clear from the above, the contents of the handwritten note demonstrate LWC's commitment to the two principles of patriarchal leadership and primogeniture (see [3] above): LWC's daughters do not have any share in LWC's companies, sons without male descendants would not be entitled to claim other properties but only $300,000 in cash, and LSE, the eldest son, gets a double-share of the inheritance and is charged with the responsibility of executing his father's wishes. It is also notable that "Ziliang's" (LCL) share in the property of the company was made contingent on him having a son (presumably to ensure that shares in the various companies remained in the hands of LWC's male descendants, consistent with the principle of primogeniture).

Growth years – investments and expansion

Bedok Petrol Station

16 On 1 March 1979, TLP purchased a piece of land in Bedok New Town on which it constructed a petrol station. The purchase of the land and the construction of the petrol station cost approximately $750,000. [note: 21] This sum was financed, in part, through an overdraft facility extended by the Development Bank of Singapore and a loan extended by the Housing and Development Board. At least $205,000 was provided by LWC. [note: 22] However, the parties disagree on whether LSE had also contributed a sum of money of $200,000 to this investment. The plaintiff was the station manager of the Bedok Petrol Station between 1981 and 1982. Thereafter he managed TLP's other petrol stations until 1999. Unlike the Bedok Petrol Station, these other stations were not owned by TLP. TLP was merely granted a licence by Singapore Petroleum Company to operate them. [note: 23] In 1985, the petrol station located at Bedok New Town was sold for about $4m. [note: 24]

Property investments

17 In 1986, LWC and TAK, who were the owners of a piece of property at No 5 Teo Kim Eng Road, decided to sub-divide the parcel of land in order that a portion of it may be redeveloped. [note: 25] On 24 December 1986, LWC and TAK executed a sale of a portion of No 5 Teo Kim Eng Road to TLD for a sum of $400,000. [note: 26] The existing property on No 5 Teo Kim Eng Road was redeveloped and two semi-detached houses (Nos 25 and 27 Jalan Rimau) were constructed on the parcel of land purchased by TLD. Construction was completed in September 1990. [note: 27] LCL moved into No 25 Jalan Rimau

in 1990 and moved out in 2000. [note: 28] After LCL left, LTK moved into No 25 Jalan Rimau and has been residing there since. [note: 29] The plaintiff moved into No 27 Jalan Rimau in 1991 and has been staying there since. [note: 30]

18 In 1990, TLD acquired four shophouses. The first shophouse was sold in 1994 while the other three were sold in 2000. Part of the proceeds was invested in two Chinese companies: Fujian Putian Minxin Building Coating Materials Co Ltd ("Fujian Putian") and Fujian Putian Yongda Construction Materials Co Ltd ("Yongda") (collectively, "the Chinese companies"). [note: 31] Sometime after 1991, TLP also purchased the Far East Plaza unit. [note: 32] This unit initially functioned as the headquarters of the Tat Leong companies but has been rented out since 2007. [note: 33]

19 In 1994, TLD purchased a plot of land at No 16 Jalan Rimau. This plot of land was divided into four plots and a house was built on each (Nos 16, 16A, 16B, and 16C Jalan Rimau respectively). Nos 16A and 16B Jalan Rimau were sold in 1999 [note: 34] while No 16 Jalan Rimau was sold in 2009. [note: 35] In 2002, No 16C Jalan Rimau was sold to LJH for $1.4m. [note: 36]

Overseas investments

20 TLD invested in the Chinese companies in 1987 and 1995 respectively. [note: 37] TLD started out as a minority shareholder but, after several acquisitions made in 1997 and 2001, is now the sole shareholder in both. [note: 38] In total, TLD invested or loaned at least $1.7m to the Chinese companies. [note: 39] To date, the Chinese companies have not remitted any profits to any of the Tat Leong companies. [note: 40] In 1988, TLD also invested in Lions Hong Kong (a company incorporated in Hong Kong), which has ceased to be a going concern. [note: 41]

Twilight years – exit of brothers

LCL and LJH's departure

21 In 2000, LCL, who was then a director of TLD, decided to sell his shares in the Tat Leong companies. He was paid a sum of $300,000 out of TLD's funds. [note: 42] Following the sale, LCL ceased to be a director of the Tat Leong companies on 11 April 2000. [note: 43] In his place, LTK was appointed as a director of TLD on 16 June 2000 [note: 44] and a director of TLP on 3 February 2004. [note: 45] Following his departure, LCL's 227,200 shares in TLD were transferred to LSE. [note: 46] An undated directors' resolution resolving to approve the share transfer as well as a document on the waiver of pre-emption rights signed by LSE, the plaintiff, and LJH were exhibited in evidence. It is common ground that LCL's shares in TLI and TLP were also transferred to LSE. [note: 47]

22 In 2002, LJH also decided to sell his stake in the Tat Leong companies. When he left, a total of $600,000 was paid to LJH out of TLD's funds: the first $300,000 for his shares while the remaining $300,000 was paid for his stake in No 5 Teo Kim Eng Road. [note: 48] On this occasion, LJH's shares in TLD and TLI were distributed equally between the plaintiff and LTK; LJH's shares in TLP were transferred to LSE. [note: 49]

LCM ceases to be director of the Tat Leong companies

23 On 23 March 2007, both the plaintiff and LTK ceased to be directors of TLP. TLH was appointed a director of TLP on the same day. [note: 50] The Change of Particulars notification filed with the Accounting and Corporate Regulatory Authority ("ACRA") states that the plaintiff and LTK had "resigned". TLH was a director of TLP at the time of its incorporation (see [7] above) but she resigned in 1999 and was not reappointed until this occasion. [note: 51]

24 On 7 March 2013, TLD held its annual general meeting ("AGM"). At this meeting, which was attended only by LSE (acting as the proxy for TLI, TLD's majority shareholder) and TLH (appearing as LSE's proxy), it was resolved that the plaintiff's term as a director would not be renewed. In his place, TLH was appointed as a director of TLD. [note: 52] The plaintiff was not in attendance at this AGM. On the same day, TLI also held its AGM wherein the plaintiff's term as director was not renewed and TLH was appointed in his place. [note: 53]

The present applications

25 By way of two letters dated 30 September 2014 (one to TLD [note: 54] and the other to TLI [note: 55]) and a third letter dated 28 October 2014 (to TLP), [note: 56] the plaintiff proposed that the Tat Leong companies be voluntarily wound up. In their response dated 21 October 2014, TLD and TLI indicated their disagreement with the proposal and instead demanded payment of a sum of $315,000 purportedly owed to LSE in respect of rental arrears. [note: 57] The plaintiff replied to propose that he be bought out at a price to be determined by a valuer appointed by both parties. On 5 November 2014, the defendants stated that any offer of a buy-out would not be considered pending the resolution of the issue of the rental arrears. [note: 58]

26 On 13 November 2014, the plaintiff filed the present applications to wind up the Tat Leong companies under s 254(1)(*i*) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") on the ground that it would be just and equitable to do so. Mr Sreenivasan, counsel for the plaintiff, advanced the following three submissions in favour of the plaintiff's applications. [note: 59]

(a) First, he argues that the Tat Leong companies are family companies set up by the late LWC and that there was a mutual understanding that all male descendants of LWC would participate in the running of the Tat Leong companies. He argues that this purpose has been frustrated by the deliberate exclusion of the plaintiff from the management of the companies.

(b) Second, he contends that the relationship of mutual trust and cooperation between LSE and the plaintiff has broken down such that they are no longer able to work in concert in the management and conduct of the Tat Leong companies.

(c) Third, he submits that the substrata of the Tat Leong companies have ceased to exist. Further, he submits that the companies have almost no operational businesses and are operating at a loss, despite the significant assets they own.

27 LSE opposes the winding up applications and Ms Hui, counsel for LSE, responded as follows. [note: 60]

(a) First, the Tat Leong companies are not "family companies". They were not set up at the behest of LWC but had instead been set up at the initiative of LSE, who was solely responsible for the management and control of the companies from the start. To the extent that shares and/or directorships were awarded to his brothers and his father, this was done solely out of his goodwill.

(b) Second, there is no legitimate expectation that the sons of LWC are to cooperate in the running of the Tat Leong companies. Thus, it was well within LSE's rights, as the majority shareholder, to vote against the renewal of the plaintiff's directorships in TLD and TLI. With respect to TLP, it is plain on the face of the Directors' Resolution dated 23 March 2007 (which was signed by the plaintiff) that the plaintiff's resignation was voluntary.

(c) Third, all the Tat Leong companies continue to be going concerns. TLI was always meant to be a holding company which exists solely for the purpose of holding shares in TLD. TLD has invested in the Chinese companies, which are profitable. TLP continues to own the Far East Plaza unit which has been rented out at a profit.

Issues in dispute

28 The following disputed issues lie at the heart of the present applications:

(a) Were the Tat Leong companies set-up as "family companies" in which (i) a relationship of mutual trust and confidence between the plaintiff and LSE is central; (ii) there is an expectation that the plaintiff would have a right to management participation?

(b) What were the circumstances that led to the cessation of the plaintiff's directorships in the Tat Leong companies and were the non-renewals of the plaintiff's directorships in TLD and TLI made in good faith?

(c) Have the substrata of the Tat Leong companies been lost?

(d) Are the Tat Leong companies a going concern?

Are the Tat Leong companies family companies?

The parties' arguments

29 Mr Sreenivasan submits that the changes in the profile of the shareholdings and directorships in the Tat Leong companies clearly show that they were set up for the purposes of enhancing the family fortune and perpetuating the family legacy. Apart from that general point, Mr Sreenivasan gives two further reasons for concluding that the Tat Leong companies are family companies.

(a) First, Mr Sreenivasan submits that LWC, having had experience in the petroleum business, directed LSE to set up TLPC and provided *all* the start-up capital for TLP with the intention that this company was to be for the benefit of all his male descendants. To that end, Mr Sreenivasan submits that LWC was the one who directed that shares and directorships in the Tat Leong companies be given to his sons. [note: 61]

(b) Second, Mr Sreenivasan points to the contents of the handwritten note. He argues that the scheme of distribution set out in the handwritten note affirms the fact that the Tat Leong companies are family companies in which the male descendants of LWC are to have an enduring stake. Mr Sreenivasan points out that when LCL and LJH divested themselves of the shares in the Tat Leong companies, they were each paid a sum of $300,000, which is consistent with the terms of the handwritten note. [note: 62]

30 In response, Ms Hui points out that LSE was always the founding director of each of the companies and their majority shareholder. She also notes that LWC had only been allocated shares or a directorship sometime *after* the incorporation of the companies. In rebuttal, Ms Hui also makes the following more specific points:

(a) First, Ms Hui submits that it was LSE, and not LWC, who initiated the incorporation of TLP. LSE deposed that he had provided at least $200,000 of the start-up capital for TLP's investment in the Bedok Petrol station. This money had purportedly been made through shrewd investments in six tanker trucks which LSE purchased at a cost of $50,000, five of which (after being transferred from TLPC to TLP) were re-sold for a total of $200,000. [note: 63] He explained that he had obtained the initial $50,000 required for the purchase of the trucks from the sale of his shares in a company named "Petrocon".

(b) Second, Ms Hui submits that the handwritten note did not refer to the Tat Leong companies but instead referred to LWC's shareholdings in other companies, most notably, Procarrier Pte Ltd ("Procarrier") and Lam Hin (1983) Co Ltd ("Lam Hin"). Ms Hui points out that LWC had transferred all his shares in TLP and TLD to LSE before his death and submits that LWC did so in recognition of the fact that the Tat Leong companies were really LSE's, and not that of the family. [note: 64]

(c) Third, Ms Hui points out that even the plaintiff admitted, during cross-examination, that it was LSE who spearheaded most of the investments described in paragraphs [16]–[20] above. [note: 65]

31 It is undisputed that LSE, as the eldest brother, bore the primary responsibility of running the Tat Leong companies and, to that end, took the lead in making many of their critical investment decisions. This is a fact that the plaintiff candidly admitted during cross-examination. [note: 66] However, that is of little moment. The question is not whether LSE is the driving force behind the Tat Leong companies. Rather, the disputed issue is the *purpose* for which the Tat Leong companies were set up: *viz*, whether they were set up with the *raison d'être* of promoting the family's private interests. I will first start by examining the changes in the shareholdings and directorships of the Tat Leong companies over the years before considering each of the parties' more specific points in greater detail.

History of shareholding and directorships

32 I will first set out the changes in the shareholding and directorships of the Tat Leong companies throughout the years. I begin with TLP.

Year	Shareholding	Directors
17 June 1977	LSE – 50% TLH – 50%	LSE TLH
23 November 1977	LSE – 50% TLH – 50%	LSE TLH plaintiff

8 November 1978	LWC – 14.81% LSE – 14.81% plaintiff – 14.81% TAK – 11.11% TLH – 11.11% LCL – 11.11% LJH – 11.11 % LTK – 11.11%	LSE TLH plaintiff LWC
1991 (after LWC learnt he had cancer)	LSE – 29.62% plaintiff – 14.81% TAK – 11.11% TLH – 11.11% LCL – 11.11% LJH – 11.11 % LTK – 11.11%	LSE TLH plaintiff LWC
16 June 2000 (after LCL's exit)	LSE – 40.73% plaintiff – 14.81% TAK – 11.11% TLH – 11.11% LJH – 11.11 % LTK – 11.11%	LSE plaintiff
2002 (after LJH's exit)	LSE – 51.84% plaintiff – 14.81% TAK – 11.11% TLH – 11.11% LTK – 11.11%	LSE plaintiff
3 February 2004	LSE – 51.84% plaintiff – 14.81% TAK – 11.11% TLH – 11.11% LTK – 11.11%	LSE plaintiff LTK

23 March 2007	LSE – 51.84% plaintiff – 14.81% TAK – 11.11% TLH – 11.11% LTK – 11.11%	LSE TLH

33 I now move on to TLD:

Year	Shareholding	Directors
5 January 1979	LSE – 50% plaintiff – 50%	LSE plaintiff
28 April 1983	LSE – 50% plaintiff – 50%	LSE plaintiff LWC LCL
8 August 1983	TLI – 50.35% plaintiff – 9.93% LWC – 9.93% LCL – 9.93% LJH – 9.93% LTK – 9.93%	LSE plaintiff LWC LCL
1991 (after LWC learnt he had cancer)	TLI – 50.35% plaintiff – 9.93% LSE – 9.93% LCL – 9.93% LJH – 9.93% LTK – 9.93%	LSE plaintiff LWC LCL
16 June 2000 (after LCL's exit)	TLI – 50.35% plaintiff – 9.93% LSE – 19.86% LJH – 9.93% LTK – 9.93%	LSE plaintiff LTK

2002 (after LJH's exit)	TLI – 50.35% plaintiff – 14.90% LSE – 19.86% LTK – 14.90%	LSE plaintiff LTK
7 March 2013	TLI – 50.35% plaintiff – 14.90% LSE – 19.86% LTK – 14.90%	LSE TLH LTK

34 Finally, I turn to TLI:

Year	Shareholding	Directors
14 May 1983	LSE – 50% plaintiff – 50%	LSE plaintiff
20 May 1983	LSE – 50% plaintiff – 50%	LSE plaintiff LWC LCL
20 July 1983	LSE – 54.75% plaintiff – 11.31% LCL – 11.31% LJH – 11.31% LTK – 11.31%	LSE plaintiff LWC LCL
2000 (after LCL's exit)	LSE – 66.1% plaintiff – 11.31% LJH – 11.31% LTK – 11.31%	LSE plaintiff
2002 (after LJH's exit)	LSE – 66.1% plaintiff – 16.96% LTK – 16.96%	LSE plaintiff
7 March 2013	LSE – 66.1% plaintiff – 16.96% LTK – 16.96%	LSE TLH

35 From the foregoing, three clear trends may be discerned. First, only members of LWC's family

ever held shares in the Tat Leong companies. [note: 67] Second, (save for the exception of TLH) *only* LWC and his male descendants ever held directorships in the Tat Leong companies and the plaintiff and LSE were the founding directors of both TLD and TLI. Third, LSE held onto the bulk of the shares in all the Tat Leong companies. From the foregoing, it appears, *prima facie*, that the Tat Leong companies do appear to be "family companies" in the sense that ownership and management are kept within the members of one family.

The role of LWC in the incorporation of the Tat Leong Companies

36 I now move on to deal with the first specific ground of contention: the circumstances surrounding the incorporation of the Tat Leong companies. I begin with TLP. Critical to the determination of this issue is the dispute over the provenance of the funding for TLP's investment in the Bedok Petrol Station. The plaintiff argues that LSE basically acted as LWC's proxy in setting up TLPC (and later converting it to TLP) and that it was LWC alone (with the assistance of loans taken out from DBS and HDB) who funded TLP's initial foray into the petroleum business – the investment in the Bedok Petrol Station. By contrast, the defendant argues that TLP was LSE's brainchild and, to that end, LSE had invested $200,000 of his own money (which he obtained from a profitable resale of several trucks) into the setting up of Bedok Petrol Station. On balance, I find the plaintiff's account of events to be more likely.

37 For a start, I find LSE's story about the trucks to be an afterthought. This story (the fact that he earned $50,000 from selling his shares in "Petrocon" which he used to purchase six trucks that were resold for a four-fold profit) is conspicuously absent from his affidavit of evidence-in-chief ("AEIC"). It was only raised belatedly during cross-examination after it was revealed that LSE (who was only 23 when TLPC was set up and had been drawing a monthly salary of $800) could not possibly have earned enough money to contribute $200,000 towards the investment in the Bedok Petrol Station. [note: 68]

38 In fact, LSE's evidence on the trucks contradicts his AEIC insofar as his AEIC states that he "transferred $200,000 from TLPC to TLP" (*ie*, $200,000 in funds) [note: 69] when his evidence on the stand was that he transferred *five trucks which were eventually sold for $200,000*. [note: 70] Furthermore, it is unsupported by documentary evidence. An ACRA search tendered by the plaintiff revealed that one "Petrocon Company", a sole proprietorship, was registered in 25 November 1975 and that the last owner Tan Geok Teck came into ownership on 1 March 1977. [note: 71] There is no mention that the plaintiff was ever a shareholder of Petrocon. Such gaps in evidence frequently occur when a last minute explanation is conjured up in an attempt to address shortcomings in one's evidence. This was one such case.

39 I should also mention that, during the hearing of the plaintiff's application to cross-examine LSE on his affidavits which I eventually granted on 23 February 2015, I expressed some reservation about the source of LSE's alleged initial capital investment of $200,000 in TLP given his relative youth and his modest monthly salary at the material time. The belated and contrived explanation about the trucks (which is unsupported by any objective evidence) appears to have been thought up as a direct response to my reservation.

40 Ms Hui submits that TLH's role as a director in TLP falsifies the hypothesis that the Tat Leong companies were meant to be family companies. She argues that if the Tat Leong companies were really meant to be "family companies" then TLH (who was then only LSE's girlfriend and was therefore an outsider) would never have been allowed to be a shareholder and director.

41 The plaintiff had addressed this by testifying that LWC had "income tax problem[s]" in 1976 and was therefore unable to incorporate TLP himself. [note: 72] Although the precise details of LWC's tax predicament are unknown, this point was not challenged by the defendants. [note: 73] The plaintiff also elaborated that LWC had always intended for him to have a role in the company. This could not be done in 1976 (when TLPC was first formed) because the plaintiff was then under-aged but it was swiftly rectified the moment he turned 21, when he was immediately appointed a director. This would explain why (a) TLP was unique in that it was the only company in the Tat Leong companies to have a female director (TLH); [note: 74] and (b) why the plaintiff was made a director immediately upon turning 21 and, thereafter, became the founding director of both TLD and TLI. This would also explain why LWC, who had undeniably provided at least $205,000 for the initial capital of TLP, was not listed as a founding shareholder of TLP.

42 On the whole, I accept the plaintiff's evidence that it was LWC – with his experience in the petroleum industry [note: 75] and the financial wherewithal to make the investments – who directed that LSE set up TLP and provided the seed capital for TLP's investment in the Bedok Petrol Station.

43 I move to TLD and TLI. I find it highly significant that the plaintiff and LSE were the founding directors of *both* TLD and TLI. Furthermore, I note that shares in both companies were distributed to all of LWC's sons in quick succession: 20 July 1983 (in the case of TLI), and 8 August 1983 (in the case of TLD) (see: [11] and [13] above). To me, this appears to be consistent with the plaintiff's submission that it was always intended that (a) the plaintiff and LSE work together in the running of the Tat Leong companies; and (b) that LWC's sons would have a stake in the Tat Leong companies.

44 LSE's explanation for "gifting" the shares to his brothers is unconvincing. His story, which, once again, only came out during cross-examination and did not feature in his AEIC, was a convoluted story about how – when TLPC was first founded in 1976 – his brothers had assisted him by replacing the (poisonous) anti-corrosive paint on the trucks he had purchased and that, being extremely grateful, he resolved to give his brothers shares in his companies. [note: 76] Aside for being far-fetched, this explanation fails to convince because it would not explain (a) why the grant of shares (and directorships) was the means through which LSE chose to demonstrate his gratitude; and (b) why he did this *consistently for each of the Tat Leong companies*, even into the mid-1980s, even though the incident concerning the trucks allegedly occurred in 1976.

45 On balance, I prefer the plaintiff's evidence that TLD and TLI, just like TLP before them, were set up at the behest of LWC, who continued to shape the future of the companies by directing that shares be allotted to the family members and that his sons be given directorships in both companies. [note: 77]

The handwritten note

46 The second specific ground of contention concerns the handwritten note. Ms Hui submits that the handwritten note, having been made in 1990, is not contemporaneous with the incorporation of the companies and is therefore of little value as it could not reflect LWC's intentions at the time the Tat Leong companies were incorporated. [note: 78] In my view, this submission misunderstands the nature of the present exercise. In trying to determine what the character of a company is, this court is not restricted to examining the parties' intentions at the time of incorporation, in a manner akin to determining the intentions of parties at the formation of a contract. Rather, the inquiry is more wide-ranging. It can and should take into account post-incorporation events if it is probative. On the facts, the handwritten note provides valuable insight into LWC's attitude *vis-à-vis* the Tat Leong companies

and may be useful for determining if he always saw the Tat Leong companies as family companies.

47 As a starting point, I accept Mr Sreenivasan's submission that LWC could only have been referring to the Tat Leong companies in his handwritten note. I note the following. First, at the time of its writing, LWC was a shareholder of Lam Hin and Procarrier but he was only actively involved in the Tat Leong companies (chiefly, TLP and TLD, where he remained a director). [note: 79] LWC's interests in Procarrier and Lam Hin pale in comparison to his interest in the Tat Leong companies. Second, the handwritten note referred to the "properties of the company". It is common ground that Tat Leong companies continue to own several properties. On the other hand, there is no evidence before the court that Lam Hin and/or Procarrier own any property. Third, the handwritten note also referred to the personal wealth of LWC and TAK. That clearly included their stakes in the Tat Leong companies.

48 With that in mind, I believe the handwritten note, while not strictly enforceable, is nonetheless useful for three reasons. First, it is clear that LWC believed he had the standing to make provisions for the future of the Tat Leong companies. The imperative tone of the note supports the plaintiff's case that LWC was the patriarch of the family and the controlling mind behind the Tat Leong companies who felt that he could shape the future of the Tat Leong companies in a manner which ensured that all members of the family would be provided for. This gives further reason to conclude that LWC was responsible for the incorporation of the companies.

49 Second, the note is useful because it explains why, before his death, LWC transferred his shares to LSE and not to his other sons. As it emerges from the handwritten note, LWC not only intended to give LSE, as his eldest son, a double-portion of the inheritance but also trusted LSE with executing the provisions of his testament. When viewed in this light, it is not unusual for LWC to have transferred his shares to LSE in order that the latter, as his eldest son, could ensure a "fair division". In fact, this is consistent with the testimony of the plaintiff who, when questioned on the purpose behind the incorporation of TLI, candidly admitted that LSE had been given a majority shareholding in TLI (and, by extension, a majority shareholding in TLD) because, as the eldest son, he was to step in should there be any conflict between the brothers. [note: 80]

50 Third, as submitted by Mr Sreenivasan, the provisions of the handwritten note continue to dictate the manner in which the affairs of the Tat Leong companies are conducted even after the death of LWC. This is an issue which has generated disagreement between the parties and I shall deal with it in the succeeding paragraphs.

The circumstances surrounding the exit of LCL and LJH

51 As a starting point, it is common ground that both LCL and LJH do not have sons and, when they sold their shares in the Tat Leong companies, they were paid $300,000 each. [note: 81] This pay-out appears consistent with the provisions of the handwritten note which, at the 7th paragraph, provides that "[a]nyone who does not have a son will receive 300,000 in cash when getting old, and *will not be entitle [sic] to claim other properties* " [emphasis added]. It was no coincidence that LCL's and LJH's shares were sold at different times but yet, the pay-outs to each matched the direction LWC left in the handwritten note. Furthermore, it is notable that, when LCL left the Tat Leong companies (being paid $300,000 for his shares), he also moved out of No 25 Jalan Rimau. This tracks the instructions in the handwritten note, which states that "[if] Ziliang [LCL] has a son, he will receive the legacy… if he doesn't have a son, he will receive 300,000 dollars in cash. *He will not be entitled to other legacy*." By contrast, the three remaining sons, LSE, the plaintiff and LTK, each having sons of their own, continue to be shareholders and directors of the Tat Leong companies

(save for the non-renewal of the plaintiff's directorships: see [23] and [24] above). This seems to mirror the provisions of the handwritten note, which provide that LWC's sons with male descendants are to have a stake in the properties of the Tat Leong companies. There are two disputed issues surrounding the exits of LCL and LJH. The first concerns the source of the funds used in the buy-out. The second concerns the question of valuation.

52 On the issue of the source of the funds to buy out LCL and LJH, it is common ground that the payment was paid out from TLD's funds. [note: 82] However, LSE avers that he was the ultimate source of the funds since he had been putting his personal monies into TLD for some time and that this was reflected in the company's books as an "amount owing to director". [note: 83] Mr Sreenivasan vigorously disputes this and submits that the company accounts do not support LSE's testimony. He pointed out that, in TLD's accounts for the year ending 30 June 2002, the amount reflected as being owed to a director is just $25,759 (rather than a sum of at least $600,000, as one would expect if the pay-outs had been funded by LSE). On this basis, he submits that LSE was not truthful when he said that he had provided TLD with the funds to pay LCL and LJH. [note: 84] When cross-examined on this discrepancy, LSE could not offer an explanation short of saying that he disagreed with Mr Sreenivasan. [note: 85] Further, Ms Hui neither re-examined LSE on this issue nor offered a contrary explanation.

53 In the circumstances, I accept Mr Sreenivasan's submission that the sum of $600,000 paid to LJH and LCL for their shares came from TLD and not from LSE, whether directly or indirectly. Effectively, TLD had used its funds to purchase both sets of shares, which were transferred to LSE, the plaintiff and LTK. This is significant for two reasons. First, it gives further reason to believe that the Tat Leong companies were still – at least until as recently as 2002 – operating according to principles set out by LWC. Second, it demonstrates that ownership of the Tat Leong companies was clearly meant to be kept within the family.

54 On the issue of valuation, LSE deposed that the quantum of $300,000 was arrived at by mutual agreement during a discussion the brothers had preceding the exit of LCL [note: 86] whereas the plaintiff avers that this sum of $300,000 was paid out pursuant to the provisions of the handwritten note. [note: 87] However, during cross-examination, LSE was unable to provide any details on when or where this meeting took place. [note: 88] On balance, I accept the plaintiff's evidence. The similarities between the provisions in the handwritten note and the events which took place are too obvious to ignore. First, the shares in the Tat Leong companies were clearly worth more than $300,000 but yet were sold at the *same price*, *two years apart*, in the absence of any external valuation. Second, these shares were *paid for by TLD but redistributed to the other brothers with male descendants*.

55 There is no suggestion by LSE that, following the exits of LCL and LJH the family character of the Tat Leong companies between 2002 and 2013 (when the plaintiff's directorships were not renewed) underwent significant changes. To my mind, it is clear that the affairs of the Tat Leong companies, *even after the death of LWC*, continue to be conducted in accordance with the wishes of the patriarch as set out in the handwritten note. I accept Mr Sreenivasan's submission that this is further evidence that the Tat Leong companies were, and still continue to be, family companies.

56 In conclusion, I accept Mr Sreenivasan's submission that it was LWC who initiated the incorporation of the Tat Leong companies as corporate vehicles for the furtherance of the family's private interests. While, I do not entirely agree with his submission (see [26(a)] above) that *all* of LWC's male descendants were meant to be involved in the management of the Tat Leong companies (given the evidence that LJH was never a director of any of the Tat Leong companies) it is clear that

there was an understanding that the sons with male descendants *including the plaintiff* would be involved in the management of the Tat Leong companies. This is made abundantly clear from the handwritten note and the fact that the plaintiff was made a director of TLP the moment he turned 21 and was the founding director of both TLD and TLI, which were positions he held until fairly recently.

Why did the plaintiff lose his position as a director?

57 With respect to TLP, I agree with Ms Hui that the evidence shows that the plaintiff had resigned his directorship. A Directors' Resolution dated 23 March 2007 (signed by the plaintiff) records the plaintiff as having resigned his position as director in TLP (see [27(b)] above). The plaintiff did not dispute that he had signed the Resolution. In my view, this Resolution is determinative. Not only did the plaintiff sign the resolution but he also acquiesced to this state of affairs for the next *eight years*. It does not lie in his mouth to now challenge his removal as being involuntary.

58 With respect to TLD and TLI, it is common ground that the plaintiff was not *removed* from his position as director *per se*. Rather, it was a case of non-renewal. In the case of TLD, a decision – made in the plaintiff's absence at an AGM attended only by LSE and TLH (see [24] above) – was taken not to renew his directorship for another term. With respect to TLI, it appears that he attended the AGM but did not have any say in the eventual decision as regards the non-renewal of his directorship. [note: 89] For present purposes, what is important is the *reason* why the plaintiff's directorships were not renewed:

(a) LSE avers that the plaintiff's directorship was not renewed because he had refused to act as a guarantor for an additional credit facility of $3.8m ($800,000 more than the previous facility) which TLD had sought from United Overseas Bank ("UOB"). [note: 90] At that time, UOB's letter of offer required all directors of TLD to stand as guarantors of the facility. LSE states that this facility was vital to the financial health of TLD because it would have enabled it to pay off a substantial portion of the arrears it had accrued on its overdraft account (on which interest was chargeable at a rate of 6% per annum as compared to the 1.75% interest rate on the credit facility). Consequently, he decided not to renew the plaintiff's directorship "out of necessity". [note: 91]

(b) The plaintiff, on the other hand, submits that LSE had deliberately intended to exclude him from the management of TLD. To that end, Mr Sreenivasan argues that the dispute over the credit facility was a ruse because TLD could still draw on an additional sum of approximately $800,000 on its existing credit facility of $3m so there was no need for another facility to be agreed. [note: 92] He points out that when the plaintiff questioned LSE on this, the latter did not have any satisfactory explanation. [note: 93]

59 To my mind, there is one fact that is critical to this issue which escaped the attention of the plaintiff. When the additional facility was eventually concluded on 31 January 2013, it was signed only by LSE and TLH (and not by LTK who, like the plaintiff, had refused to be a guarantor). [note: 94] However, LTK continues to remain a director of TLD. [note: 95]

60 I draw two inferences from this. First, it clearly shows that there was no necessity – based purely on the need to conclude the credit facility alone – for the plaintiff's directorship to have ceased. It appears that, between the time of the first letter of offer (which stipulated that all the directors – LSE, the plaintiff, and LTK – had to stand as guarantors) and the second, LSE managed to negotiate the terms of the facility to remove the requirement that all directors stand as guarantors.

Second, the fact that LTK continued to be a director even though both he and the plaintiff had refused to be guarantors suggests that the decision not to renew the plaintiff's directorship could not have been based on the refusal to sign the guarantee alone. To put this in context, I note that the 7 March 2013 AGM was the first one that was called in nearly two decades and there is no suggestion that directorships in TLD came up for renewal regularly. [note: 96] In the circumstances, I can only infer that the decision not to renew the plaintiff's directorship was deliberate and was not made in good faith.

61 In any case, it is clear that the outcome of this removal was that the plaintiff ceased to have any management role in TLD, as is clear from the fact that his request to inspect TLD's accounts was refused on the basis that he was no longer a director of the company and therefore did not have any right to inspection. [note: 97]

The substrata of the Tat Leong companies

62 In *Chua Kien How v Goodwealth Trading Pte Ltd and another* [1992] 1 SLR(R) 870 ("*Chua Kien How*") at [15], the Court of Appeal, quoting the decision of the lower court, observed that a "company's substratum is the main object which it was formed to achieve" and that if a company is no longer able to achieve the object for which it was formed, it may be wound up on the just and equitable ground.

63 The plaintiff submits that the substrata of the Tat Leong companies have been lost for the following reasons:

(a) TLP was formed for the purposes of the transportation of petroleum products and the operation of petrol stations, none of which it does today. [note: 98]

(b) TLD was formed for the purposes of property development and investment, but now only owns only two properties – Nos 25 and 27 Jalan Rimau (both of which are not generating any rental income) – and has not acquired any new property in nearly 20 years. [note: 99]

(c) TLI was formed as a holding company whose purpose is to hold shares in TLD. The plaintiff submits that if TLD were wound up, it should follow that TLI ought to be wound up as well. [note: 100]

64 In my view, the plaintiff's arguments in this area suffer from one critical defect: all the events of which the plaintiff now complains took place *while the plaintiff was still a director*. The Tat Leong companies have been functioning in their current state for at least the past 20 years. TLP has not been active in the petroleum industry since the Singapore Petroleum Company withdrew its petrol station operating licence in 1999 (after which it was content to subsist only on the rental income from the Far East Plaza unit). Similarly, TLD has not purchased a new property in nearly 20 years but has ploughed its money into the Chinese companies.

65 In *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 ("*Evenstar*"), the petitioner and his brother agreed to pool their shares in Sinwa Limited ("Sinwa") into a dormant company, Evenstar Investments Pte Ltd ("Evenstar"). Some years later, the petitioner applied for Evenstar to be wound up, *inter alia*, on the ground that the original object of Evenstar was to hold the brothers' shares in Sinwa but that it had departed from this purpose since it now made and held investments in a number of other assets. In rejecting this argument, the Court of Appeal noted that Evenstar had been making investments in other companies since its inception and that it did so with

the acquiescence, if not the explicit agreement, of the petitioner who was a director and shareholder of Evenstar. Thus, the petitioner could not now argue that Evenstar ought to be wound up on the basis that it had departed from the original object for which it had been set up.

66 In the instant case, TLP's dormancy in the petroleum business and TLD's investments in the Chinese companies were all matters which took place under the plaintiff's watch. Having not protested in the past, the plaintiff must be taken to have acquiesced, if not explicitly agreed, to a departure from the original object of the companies. He cannot now commence proceedings to wind up the company on the basis that the objects for which they had been formed have been abandoned.

Are the Tat Leong companies a going concern?

67 The financial statements speak for themselves. TLP has had no business operations since 1999 [note: 101] and, in 2013, only earned a small net profit of $248 from the rental of the Far East Plaza unit. [note: 102] TLD registered an accumulated loss of $3.3m as at June 2013. [note: 103] TLI is a holding company and has no business operations of its own.

68 The only dispute concerns the *future* profitability of TLD. LSE claims that the Chinese companies are profitable and that, by extension, TLD is still a going concern. [note: 104] The plaintiff focuses on the fact that the Chinese companies have yet to remit a cent to TLD, despite having operated for more than 20 years and should be discounted for the purpose of determining TLD's profitability.

69 However, in my view, the future profitability of the Tat Leong companies is not directly relevant to this dispute. The profitability of a company would be relevant if one were bringing an application for winding up on grounds of insolvency: *ie*, an application for winding up under s 254(1)(*e*) of the Companies Act that the "company is unable to pay its debts". However, the present applications were brought under s 254(1)(*i*) of the Companies Act.

70 In *Re Suburban Hotel Company* (1867) LR 2 Ch App 737 ("*Suburban Hotel*"), the English Court of Appeal had to consider an application for the winding up of a company on the basis that it was just and equitable to do so, *inter alia*, because the company's sole investment – a hotel at Hampstead – was running at a loss and that there was little possibility that it could turn a profit. In rejecting that argument, Lord Cairns LJ held that, short of insolvency (which was an entirely separate ground for winding up), a minority could not rely on the unprofitability of a company *per se* as a basis for invoking the court's jurisdiction to wind up a company on just and equitable grounds. In his speech at 750–751, his Lordship said:

> … the **winding-up process of the Court, cannot be used, and ought not to be used, as the means of evoking a judicial decision as to the probable success or non-success of a company as a commercial speculation**. … it is not for this Court now to pronounce, and, above all, **not for this Court to pronounce on opinion-evidence, that this is likely to be an unprofitable speculation; and that, therefore, at the wish of a minority of shareholders, against the will of a large majority, the company should be wound up** and put an end to. [emphasis added in bold]

71 I respectfully agree with Lord Cairn LJ's analysis. It is neither profitable nor necessary to engage in speculation over the future profitability of a company in an application for winding up based on the just and equitable ground. With that being said, however, I accept Mr Sreenivasan's submission that the viability and profitability of a company is no bar to it being wound up on just and

equitable grounds (see *Re Lee Tung Co (Pte) Ltd and other matters* [2008] 1 SLR(R) 800 at [57]). In view of the foregoing, the profitability or lack thereof of the Tat Leong companies is not, *per se*, decisive of the applications.

Would it be just and equitable for the Tat Leong companies to be wound up?

72 Given my analysis concerning the substrata of the companies and their profitability (see [62]–[71] above), it only remains for me to consider the plaintiff's two remaining arguments in favour of winding up: (a) the breakdown of a relationship of mutual trust and confidence; and (b) the plaintiff's exclusion from management participation in the Tat Leong companies. Each will be considered in turn.

73 As a preliminary point, I will first deal with Ms Hui's submission on the *bona fides* of the present applications. Ms Hui submits that the present applications were not made in good faith because the true reason for the present applications is that the plaintiff is no longer willing to accept the business risks associated with the operation of the business (as evinced by his refusal to sign the guarantees) and now wishes to exit the Tat Leong companies. [note: 105] With respect, I am not persuaded. I fail to see how the plaintiff's refusal to sign the guarantees in 2013 suggests that he lacks good faith in bringing the *present* applications. An allegation that the application is not made in good faith is a serious one and must be substantiated with clear evidence, which is lacking. While it is clear that the relationship between the plaintiff and LSE is very strained, that fact alone is not a sufficient basis for asserting that the present applications are not brought in good faith. Furthermore, as I have shown, it is clear that the plaintiff's grievances are genuine.

Has there been a breakdown of mutual trust and confidence?

74 Much has been made of the fact that we are dealing with "family companies". However, the expression "family company" is a protean one. If it were used broadly to refer only to the fact that the shareholders comprise members of the same family, then there is no reason why such a company would be any more susceptible to being wound up on a just and equitable basis than any other company. The expression "family company" carries significance only if it is understood in the narrow sense to mean that the company in question is akin to a "quasi-partnership" in which mutual trust and confidence between its members is central to the subsistence of the company. This comes through clearly in the following extract from *Chow Kwok Chuen v Chow Kwok Chi and another* [2008] 4 SLR(R) 362 ("*Chow Kwok Chuen*") at [33]:

> … **Only where the family interest is closely related to the *raison d'être* of the company, will mutual trust and confidence be as important as in a quasi-partnership.** For example, if three siblings decided to incorporate a company to start manufacturing toys, their family relationship would be incidental to the business of the company, and the court would have to consider how the business was being run to see if there existed partnership-type obligations of mutual trust and confidence, in order to begin the inquiry of whether there were just and equitable grounds to wind it up. But **where, as in the present case, the family interest is fundamental to the purpose of the company, then the inextricability of the family relations from the business relations amongst the directors may provide justification for equitable winding up of the company because in such a set-up mutual trust and confidence are paramount**. [emphasis added in bold]

75 On the facts, I find that the Tat Leong companies are "family companies" in the narrow sense of the term – *ie*, a relationship of mutual trust and confidence is central to the existence of the Tat Leong companies. This is so for at least the following three reasons: (a) the shares were and are closely held by family members; (b) the directors held their positions by virtue of blood ties rather

than commercial considerations; and (c) the shareholders and directors held their shares and directorships by virtue of inheritance instead of by voluntary subscription (see *Chow Kwok Chuen* at [34]).

76 It does not matter that the relationship between the brothers was never one of equals. In *Fisher v Cadman* [2005] EWHC 377 (Ch) ("*Fisher*"), the English High Court had to consider, *inter alia*, an application for the winding up of a family company under s 122(1)(*g*) of the Insolvency Act 1986 (c 45) (UK). The company was set up by the petitioner's father in 1961, and he ran it with the assistance of his two sons (the petitioner's brothers) who, after the death of their father in 1994, were in complete control of the company. At all material times, it was clear that the petitioner's role in the company was marginal: there was no agreement that she should have a management role, she did not provide any capital for the company, and she was involved in the company only because she was given or inherited her shareholding from her parents. Notwithstanding the above, the court found that the company was founded as a quasi-partnership (and continued to operate as one even after the death of the father) so the equitable constraints on the behaviour of the brothers operated not just between the controlling brothers but also as between them and the petitioner, the minority shareholder.

77 In the present case, the plaintiff's role in the Tat Leong companies is far more significant than that of the petitioner in *Fisher*. However, it is undeniable that he played second fiddle to LSE (see above at [31]). However, this is not the issue. The point is that the relationship between the members of the Tat Leong companies is one which is founded on a relationship of mutual trust and confidence and, on the facts, it is clear that this relationship of mutual trust and confidence between LSE and the plaintiff has disintegrated. If the filing of the present applications were not proof enough, the non-renewal of the plaintiff's directorships in TLD and TLI and LSE's subsequent refusal to allow inspection of TLD's accounts (see [61] above) are further reasons to believe that there is little love lost between the plaintiff and LSE.

78 I also note that there is a fractious disagreement over rental arrears purportedly owed by the plaintiff to LSE totalling $315,000 in respect of No 27 Jalan Rimau (a property in which the plaintiff has resided since 1991). Although this dispute is strictly not before me, the demand for the alleged rental arrears has some bearing on the breakdown of the relationship of mutual trust and confidence between LSE and the plaintiff. I am of the view that there is no legal basis upon which LSE can legitimately claim the sum of $315,000 he now demands. This is so for three reasons.

(a) First, throughout the duration of the plaintiff's occupation of No 27 Jalan Rimau, there was never any claim for rental nor is there any evidence that there was an agreement, from the outset, that rental would be payable or the monthly rate that would be payable. In fact, there is no evidence that there was any action taken by TLD to enforce the payment of any rental arrears owed to it by the plaintiff.

(b) Second, in TLD's Financial Statements for the year ending 30 June 2000, Nos 25 and 27 Jalan Rimau were both recorded as "non-income producing properties". Further, there were no rental receivables for TLD in its balance sheets for the years 1990–2002. However, there was an entry for $331,500 for the year 2003, which increased steadily at a rate of $36,000 every year thereafter. [note: 106] It seems to me that the sudden introduction of this sum in rental receivables in 2003 was to allow TLD to claim a tax deduction. This is borne out by an exchange of correspondence between TLD and the Inland Revenue Authority of Singapore ("IRAS") in 2010. In gist, TLD attempted to claim a tax deduction against the income purportedly generated, *inter alia*, from the rental of No 27 Jalan Rimau. However, IRAS refused to allow the deduction. In its reply, IRAS expressed the view that "[c]ommercially, no company would allow its rental income to remain receivable in the balance sheets indefinitely without taking recovery action or charging interest on the outstanding amount." IRAS concluded that the entries on rental receivables were merely "book-keeping entr[ies]" and that there was "no actual liability on the tenants to make payment and therefore no commercial reality in the transaction." [note: 107]

(c) Third, LSE had deposed that he had paid $500,000 to TLD on behalf of the plaintiff and LTK on 1 October 2009 in discharge of the debt they owed the company for rental of Nos 25 and 27 Jalan Rimau. [note: 108] In this connection, Ms Hui points out that, in the same year, the amount reflected as rental receivables was reduced by a corresponding sum of $500,000. [note: 109] This forms the crux of LSE's demand that $315,000 was paid by him *personally* in discharge of the plaintiff's rental debt to TLD. [note: 110] However, there are two flaws with this. First, there is no evidence that the plaintiff ever owed TLD any rental debt to begin with. As is clear from what I have set out in the preceding paragraphs, the sums recorded as rental receivables in TLD's books appear to have been introduced *expressly* for tax deduction purposes and do not represent a genuine record of any rental debt owed by the plaintiff to TLD. Second, there is no objective evidence that the plaintiff ever *asked* LSE to make payment of the alleged rental arrears on his behalf. LSE deposed that the plaintiff had approached him for help in reducing his tax liability "on the interest benefits". Although LSE purported to explain that the benefit was the interest-free loan extended by TLD to the plaintiff in respect of allegedly unpaid rental arrears [note: 111], there is simply no evidence before the court that the plaintiff had any such tax liability to begin with.

79 In my judgment, the demand for the rental arrears is retaliatory and a further sign of the breakdown of the relationship of trust and confidence between the plaintiff and LSE. It appears to me that it was always the intention that the plaintiff would stay at No 27 Jalan Rimau *gratis* and that the entries in TLD's balance sheets which record rental arrears in respect of No 27 Jalan Rimau were only added for tax purposes. I am fortified in my conclusion by the fact that LTK is still occupying the other property at No 25 Jalan Rimau but there is no evidence that he had similarly been served a letter of demand for any rental arrears.

Has the plaintiff been excluded from management of the Tat Leong companies?

80 It is clear that the deliberate exclusion of a person from management participation in a company in contravention of an understanding that he will have a management role can be a basis for the company to be wound up on just and equitable ground (see: *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 ("*Ebrahimi*"); *Re Iniaga Building Supplies (S) Pte Ltd* [1994] 2 SLR(R) 416).

81 As I have noted at [56] above, the plaintiff was always meant to have a management role in the Tat Leong companies. In the case of TLP, it is clear that the plaintiff had voluntarily resigned his directorship (in any case, even if the plaintiff had not resigned voluntarily, he must have acquiesced to his removal from TLP given that he had not protested since 2007 (see [57] above)). However, it is clear that the non-renewals of the plaintiff's directorships in TLD and TLI are breaches of the understanding that the plaintiff was to have a management role in both companies.

Is there unfairness warranting a winding up?

82 Under s 254(1)(*i*) of the Companies Act, the court is granted a broad equity to do what is "just and equitable" in all the circumstances of the case. Neither the mere fact of a breakdown in the relationship of mutual trust and confidence nor the exclusion of a member from management participation in breach of a prior agreement would invariably entail the winding up of a company. The

true inquiry, as stated by the Court of Appeal in *Chow Kwok Chuen* at [42], is whether there is "unfairness warranting a court-ordered winding up".

83 On balance, I think that there is. It appears to me that the relationship of mutual trust and confidence, which is the bedrock of the Tat Leong companies, has been lost. As a starting point, I am mindful of the context in which the present inquiry takes place. The balance of power in the Tat Leong companies has been tilted in favour of LSE from the start. This is a state of affairs that appears to be consistent with LWC's wishes and the plaintiff has always accepted this. However, the situation has deteriorated to the point of no return in recent times. A clear example of this is TLD's AGM on 7 March 2013 (see [24] above) where, in order to satisfy the quorum necessary for the meeting (and therefore to pass the resolution not to renew the plaintiff's directorship), LSE chose to appear in his capacity as TLI's representative whereas TLH, appeared as a proxy for LSE (who, ironically, was physically present). Presently, LSE (together with his wife, TLH) has effective control of the boards of the Tat Leong companies. The unfairness in this case is palpable – the plaintiff has been completely marginalised and his position in the Tat Leong companies is increasingly precarious.

84 Ms Hui submits that there is nothing wrong with this. As the majority shareholder, she argues, LSE is entitled to do as he pleases short of acting in a manner which is oppressive of the minority. Ms Hui's submission would be accurate if not for the intervention of equity. The very basis of the court's jurisdiction under s 254(1)(*i*) of the Companies Act, as noted by Lord Wilberforce in *Ebrahimi* at 379, is to "subject the exercise of legal rights to equitable considerations". These weigh particularly heavily in this case because of the familial context. In my view, it would be unfair for the plaintiff to be trapped in the Tat Leong companies when his presence and participation are clearly unwelcome.

85 Second, I am cognisant of the fact that the plaintiff has not derived much benefit from his positions in the Tat Leong companies over the years. It is common ground that the Tat Leong companies have never declared dividends and the plaintiff has not received any director's fees since 2002 (despite being a director of TLD and TLI until 2013). [note: 112]

86 Finally, I am mindful of the fact that the parties appear to be at an impasse. In response to the plaintiff's proposal of a buy-out, LSE made it clear that a buy-out would be conditional on the payment of $315,000 which he claims is owed to him personally in respect of rental arrears (see [26] above). Not only is there serious doubt as regards both the factual and legal basis for the demand of rental arrears, such a stance on the alleged rental arrears appear to be targeted *only* at the plaintiff since LTK is in exactly the same position as regards his occupation of No 25 Jalan Rimau but does not appear to have been served a similar letter of demand.

87 A finding of lack of probity or *mala fides* is not strictly necessary to warrant a winding up order on just and equitable ground: *see Chow Kwok Chuen* at [42]; *Ebrahimi* at 381. Neither is it essential to establish that one director was responsible for the other's loss of confidence: see *Chow Kwok Chuen* at [43]. Yet, it appears to me that the loss of mutual trust and confidence in this case was largely caused by LSE. This is exemplified by the non-renewals of the directorships which were clearly targeted at the plaintiff even though his other brother, LTK, stood in identical position but continued to be a director. Further, LSE's contrived claim for rental arrears was similarly targeted at the plaintiff since LTK (in identical position) was not asked to pay any such rental arrears. To me, this demonstrated a lack of probity on the part of LSE.

88 In summary, the relationship between LSE and the plaintiff appears to have been irreparably damaged and, with it, the very premise on which the brothers (under the direction of their late father) had become involved in the Tat Leong companies has been lost. This alone, in my view, is sufficient for a winding up to be ordered. As noted by the Court of Appeal in *Chow Kwok Chuen* at

[37], so important is the relationship of mutual trust and confidence in a family company that "when such trust is completely destroyed, it can only be just and equitable to wind up the company so the parties can go their separate ways".

89 Further, in the case of TLD and TLI, the deliberate exclusion of the plaintiff from management provides further reason for concluding that the unfairness has risen to a level warranting a winding up.

The objections of LTK and TLH

90 The final issue concerns the objections of LTK [note: 113] and TLH [note: 114] to the winding up. Ms Hui submitted that the opposition of the other shareholders should militate against the winding up of the companies. Regretfully, neither of them chose to file affidavits in this case to explain the basis for their opposition. Thus, little weight can be attached to their objection because there is simply no material before the court to form any view as regards the substance and merit of their objection.

91 However, I will venture to suggest that, even if affidavits were filed, I am not sure the opposition of TLH and LTK would have carried much (if any) weight. In *Evenstar*, the Court of Appeal stated (at [46]):

> Section 254(1)(*i*) of the CA calls for the application of equitable principles to determine whether a winding-up order should be made in the circumstances of each case. There are two aspects to this jurisdiction: first, whether there is sufficient cause to order a "just and equitable" winding up, and **second, whether the winding-up order resulting in the destruction of the company is just and equitable: in other words, whether the cure is worse than the illness**, as the winding up might result in loss for all parties. **Historically, it was the harsh consequences of a winding-up order on the "just and equitable" ground in many cases where many minority shareholders had been denied a remedy that led to the enactment of s 216.** [emphasis added in bold]

92 The metaphor "whether the cure is worse than the illness" is perhaps apt when we are considering merely the interests of the same entity (*ie*, all the shareholders in a company). In the usual run-of-the mill winding up cases, all shareholders have to share the burden of the cure (winding up) or the illness (*eg*, the preservation of the company in the face of malfeasance) equally. In deciding whether or not to wind up the company, the court applies a single yardstick – the welfare of the shareholders as a whole.

93 However, that is not the case with situations like the present (quasi-oppression type scenarios in which minority shareholders are seeking a winding up under s 254(1)(*i*)). In this case, there is a duality of interests. The burden of the cure (winding up) is shouldered by all. However, the illness is suffered only by one party: the aggrieved minority shareholder. Choosing between the cure and the illness is essentially a choice between the interests of the aggrieved shareholder and that of the other (innocent) shareholders. This is an invidious choice. If the court recognises that the plaintiff's cause, though just, ought to be barred because of the opposition of other shareholders then the court would essentially be advancing the interests of the other shareholders at the expense of the aggrieved one. It would be tantamount to saying that the minority creditor ought to bear with injustice for the greater good. It is not clear to me how the court can be guided in the process of arriving at such a conclusion.

94 A comparison with oppression cases under s 216 of the Companies Act is perhaps instructive. In applications under s 216, the inquiry typically proceeds in two stages. At the first stage, the court

must decide whether there is cause for intervention. At the second stage, the court will decide what remedy should be granted. It is clear that the interests of other shareholders may be taken into account by the court in deciding whether the *remedy* of winding up ought to be granted (see, *eg*, *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227 and *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745). However, the opposition of other shareholders is not directly relevant in the anterior question, which is whether there exists grounds for intervention (be it oppressive conduct – s 216(*a*) – or conduct which is unfairly discriminatory or prejudicial – s 216(*b*)). That must be correct. The question of whether there exists *cause* for intervention must be measured against the position which the applicant shareholder finds himself in *vis-à-vis* the majority. The opposition of other shareholders is strictly irrelevant to this inquiry. However, the opposition of other shareholders should feature into the inquiry of how best the injustice may be remedied (*ie* what remedy should be ordered).

95 In any event, LTK's objection is not unexpected. After all, although he was in the same position as the plaintiff as regards the refusal to sign the guarantee and the alleged rental arrears, he was "spared" of the same consequences by LSE. TLH's objection is self-evident. She is LSE's wife and had likewise voted against the renewal of the plaintiff's directorships.

96 At the end of the day, I think the difficulty lies with the inflexibility of the s 254(1)(*i*) regime since the court may not award any other remedy other than to order a winding up. I note that, in *Evenstar*, recognition of this "practical injustice" behoved the court to use its powers under s 257(1)(*i*) of the Companies Act to stay the winding up order for 30 days, in the hope that the prospect of winding up would provide an impetus for more constructive and productive negotiations.

97 As a postscript, I observe that, following the passage of the Companies (Amendment) Act 2014 (Act 36 of 2014) ("Amendment Act"), the court will soon be empowered to order a buy-out in lieu of winding up the company (see s 150 of the Amendment Act). To date, no commencement date has been scheduled. However, once it comes into force, the changes wrought by the Amendment Act, which aligns the regime under s 254(1)(*i*) of the Companies Act more closely with that under s 216 of the same, will go some way towards mitigating the problem I have highlighted above.

Conclusion

98 Taking all the facts and circumstances into account, I grant the applications and order that the defendant-companies be wound up. However, following the lead of the Court of Appeal in *Evenstar* and in *Chow Kwok Chuen*, I will exercise my powers under s 257(1) of the Companies Act to defer the order for 30 days to allow the parties to come to an amicable settlement. If no settlement is reached at the end of the 30-day period, the order is to take effect. Parties are at liberty to apply for directions or extension of time if so required. In the event that the parties are able to settle the dispute within the aforesaid 30 days or such time as may be extended by the court, the winding up order shall cease to have effect from the date of the settlement.

Costs

99 Costs should follow the event. Although these proceedings involve three applications, I will award only one set of costs given that they all concern the same facts and issues. As LSE is the *de facto* defendant in these proceedings, the value of the plaintiff's shares in the Tat Leong companies should not be diminished by the costs and disbursements arising from these proceedings. Taking into account the application for leave to cross-examine LSE and the legal and factual issues, I fix costs at $40,000 excluding disbursements, which are to be agreed if not taxed, to be paid to the plaintiff. In line with the cost order in *Evenstar*, such costs and disbursements as well as the costs incurred by

the Tat Leong companies in resisting the applications shall be reflected solely against the value of LSE's shares in the Tat Leong companies.

[note: 1] 1st Affidavit of Lim Choo Mee in CWU 226/2014 dated 13 November 2014 ("LCM's 1st CWU 226 Affidavit") at [8].

[note: 2] Notes of Evidence dated 27 February 2015 ("NE1") at page 46, line 22 to page 47, line 3.

[note: 3] NE1, page 41, line 15 to page 42, line 12.

[note: 4] LSE's written submissions at [54].

[note: 5] NE1, p 79, line 3–5.

[note: 6] NE1 at p 46, line 14–18; Affidavit of Lim Sze Eng in CWU 226 of 2014 dated 6 January 2015 ("LSE's CWU 226 Affidavit") at p 51.

[note: 7] NE1 at p 44, line 14–18.

[note: 8] LSE's CWU 226 Affidavit at [14].

[note: 9] LSE's CWU 226 Affidavit at p 52.

[note: 10] LCM's 1st CWU 228 Affidavit at [27] and p 51.

[note: 11] Defendant's Exhibit No. 1 ("D1")

[note: 12] Defendant's Exhibit No. 2 ("D2")

[note: 13] Defendant's Exhibit No. 2 ("D2")

[note: 14] 1st Affidavit of Lim Choo Mee in CWU 227/2014 ("LCM's 1st CWU 227 Affidavit") at p 16.

[note: 15] LCM's 1st CWU 227 Affidavit at [15].

[note: 16] LSE's 1st CWU 227 Affidavit at [34]; LCM's 1st CWU 227 Affidavit at [14].

[note: 17] LCM's 1st CWU 227 Affidavit at [17].

[note: 18] LCM's 1st CWU 227 Affidavit at [21] and p 50.

[note: 19] LCM's 1st CWU 226 Affidavit at [22], NE1, page 85, line 25.

[note: 20] LSE's Affidavit at [25].

[note: 21] NE1, p 51, line 29–31.

[note: 22] LSE's CWU 226 Affidavit at [15]; 2nd Affidavit of Lim Choo Mee in CWU 228/2014 dated 28 January 2015 ("LCM's 2nd CWU 228 Affidavit") at [16(b)].

[note: 23] 2nd Affidavit of Lin Choo Mee in CWU 226/2014 dated 28 January 2015 ("LCM's 2nd CWU 226 affidavit") at [39(c)].

[note: 24] LSE's CWU 226 Affidavit at [17].

[note: 25] LSE's CWU 226 Affidavit at [19].

[note: 26] LSE's CWU 226 Affidavit at pp 40–44.

[note: 27] NE1, p 66, lines 7–12.

[note: 28] LSE's CWU 226 Affidavit at [79].

[note: 29] LSE's CWU 227 Affidavit at [56].

[note: 30] LCM's 2nd CWU 226 Affidavit at [44(b)–(c)].

[note: 31] LSE's CWU 226 Affidavit at [45], Tabs 8 and 9.

[note: 32] NE1, p 14, line 26 to p 15, line 7.

[note: 33] LSE's CWU 226 Affidavit at [67].

[note: 34] LSE's CWU 226 Affidavit at [48].

[note: 35] LSE's CWU 226 Affidavit at [49].

[note: 36] LSE's CWU 226 Affidavit at [49].

[note: 37] LSE's CWU 226 Affidavit at [52]; LSE's CWU 227 Affidavit at Tab 6.

[note: 38] LSE's CWU 226 Affidavit at [53] and [54].

[note: 39] NE1, p 78, line 9–11.

[note: 40] NE1, p 79, line 3–5.

[note: 41] LSE's CWU 226 Affidavit at [61].

[note: 42] LSE's CWU 226 Affidavit at [29].

[note: 43] LCM's 2nd CWU 226 Affidavit at p 92.

[note: 44] LCM's 2nd CWU 226 Affidavit at p 92.

[note: 45] LCM's 1st CWU 228 Affidavit at p 55.

[note: 46] LSE's CWU 226 Affidavit at pp 59–61.

[note: 47] LSE's CWU 226 Affidavit at [31]; LCM's CWU 226 Affidavit at [24]–[26].

[note: 48] LSE's CWU 226 Affidavit at [32]–[34]; LCM's CWU 226 Affidavit at [27]; NE1, page 90, line 12–24.

[note: 49] LCM's 2nd CWU 228 Affidavit at pp 30–31.

[note: 50] LCM's 1st CWU 228 Affidavit at pp 61–65.

[note: 51] LCM's 1st CWU 228 Affidavit at [29].

[note: 52] LSE's CWU 226 Affidavit at pp 312–314.

[note: 53] LCM's 1st CWU 227 Affidavit at [32].

[note: 54] LSE's CWU 226 Affidavit at p 336–337.

[note: 55] LCM's 1st CWU 227 Affidavit at pp 52–54.

[note: 56] LCM's 1st CWU 228 Affidavit at pp 80–81.

[note: 57] LSE's CWU 226 Affidavit at p 339.

[note: 58] LSE's CWU 227 Affidavit at Tab 12.

[note: 59] Plaintiff's Closing Submissions at [57].

[note: 60] LSE's written submissions at [6], [34], and [51].

[note: 61] Plaintiff's written submissions at [82].

[note: 62] Plaintiff's written submissions at [83]–[84].

[note: 63] LSE's written submissions at [20].

[note: 64] LSE's written submissions at [7].

[note: 65] LSE's written submissions at [14] and [15].

[note: 66] LCM's 1st CWU 226 Affidavit at [31]; LSE's written submissions at [14].

[note: 67] Plaintiff's written submissions at [90].

[note: 68] NE1, p 44, line 16 to p 45, line 26.

[note: 69] LSE's 1st CWU 226 Affidavit at [15].

[note: 70] NE1, p 54, line 3 to page 55, line 7.

[note: 71] LCM's 3rd Affidavit dated 4 March 2015 at p 7.

[note: 72] NE1, p 7, line 3–17.

[note: 73] NE1, p 7, line 3–17.

[note: 74] NE1, p 6, line 16–20.

[note: 75] NE1, p 5, line 20–30.

[note: 76] NE1, p 48, line 3–13.

[note: 77] LSE's CWU 227 Affidavit at [34].

[note: 78] LSE's written submissions at [7].

[note: 79] Plaintiff's Core Bundle at Tab 9.

[note: 80] NE1, page 27, line 21–29.

[note: 81] Plaintiff's written submissions at [88]; LSE's 2nd CWU 226 Affidavit at [44(a)] and [44(b)].

[note: 82] LSE's 1st CWU 226 Affidavit at [30] and [33].

[note: 83] LSE's 1st CWU 226 Affidavit at [30].

[note: 84] Plaintiff's written submissions at [89].

[note: 85] NE1, page 87, line 10 to page 90, line 8.

[note: 86] LSE's 1st CWU 226 Affidavit at [29].

[note: 87] LCM's 2nd CWU 228 Affidavit at [27(a)] and [27(b)].

[note: 88] NE1, page 83, line 8 to page 84, line 1.

[note: 89] Defendant's written submissions at [35].

[note: 90] Defendant's written submissions at [34(b)]; LSE's 1st CWU 226 Affidavit at [94]–[96].

[note: 91] LSE's 1st CWU 226 Affidavit at [96]–[97].

[note: 92] Plaintiff's written submissions at [107]–[108].

[note: 93] NE1, p 28, line 22 to p 29, line 7; NE2, page 30, line 7 to p 31, line 15.

[note: 94] LSE's 1st CWU 226 Affidavit at [101].

[note: 95] LCM's 1st CWU 226 Affidavit at p 64.

[note: 96] LCM's 1st CWU 226 Affidavit at [45].

[note: 97] LSE's 1st CWU 226 Affidavit at [107] and [108].

[note: 98] Plaintiff's written submissions at [127] and [128].

[note: 99] Plaintiff's written submissions at [129] and [131].

[note: 100] Plaintiff's written submissions at [135].

[note: 101] LSE's written submissions at [51(b)].

[note: 102] Plaintiff's Core Bundle at Tab 11.

[note: 103] LSE's written submissions at [59].

[note: 104] LSE's written submissions at [60].

[note: 105] LSE's written submissions at [67].

[note: 106] Plaintiff's Core Bundle, Tab 1, p 2.

[note: 107] LSE's CWU 226 Affidavit at Tab 11.

[note: 108] LSE's CWU 226 Affidavit at [86].

[note: 109] NE2, page, 26, line 18–25.

[note: 110] LSE's CWU 226 Affidavit at [80].

[note: 111] LSE's CWU 226 Affidavit at [80].

[note: 112] NE1, page 41, line 15 to page 42, line 12.

[note: 113] NE1, page 1, line 4–13.

[note: 114] LSE's 1st CWU 228 Affidavit at p 170.