Tan Chin Hoon and others *v* Tan Choo Suan and others
[2010] SGHC 340

Case Number : Suit No 570 of 2010- Summonses Nos 3115, 3339, 3692 and 3693 of 2010

Decision Date : 18 November 2010

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Philip Ling and June Hong (Wong Tan and Molly Lim LLC)) for the plaintiffs; Lee Eng Beng SC, Lai Yew Fei, Lynette Koh and Lan Huishan (Rajah & Tann LLP) for the first defendant; Thio Shen Yi SC (as counsel) with Edwin Sim (Lexton Law Corporation) for second defendant.

Parties : Tan Chin Hoon and others — Tan Choo Suan and others

Companies

18 November 2010

Lai Siu Chiu J:

1 Tan Chin Hoon ("the first plaintiff"), Tan Choo Pin ("the second plaintiff"), Tan Yok Koon ("the third plaintiff") and Tan Choo Suan ("the first defendant") are siblings and are the children of the late Tan Kiam Toen ("TKT") and Mdm Ng Giok Oh ("the second defendant"). The plaintiffs and the first defendant have another brother Tan Cheng Gay ("Cheng Gay"). Afro-Asia Shipping Company (Private) Limited ("the company") which is the third defendant, is a company incorporated by TKT on 29 December 1961. The first defendant is the oldest of the siblings followed by Cheng Gay, the third plaintiff, the second plaintiff and the first plaintiff.

2 The suit began life as Originating Summons No 183 of 2010 ("the OS"). The plaintiffs commenced the OS for an application under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act"). After the OS was commenced, the plaintiffs applied (*ex parte*) against the first and second defendants in Summons No 675 of 2010 and obtained the following orders from this court on 12 February 2010 ("the interim injunction"):

(1) the first and second defendants be restrained until further order from passing any resolution(s) or otherwise taking any steps:

(a) to appoint the second defendant or any other person as a signatory to any of the bank accounts of the third defendant, without the written consent of the plaintiffs; and

(b) to remove the second plaintiff as a director of the third defendant;

(2) that, pending the conclusion and disposal of the trial of this action or until further Order, the first and second defendants take immediate steps to:

(a) reinstate the first plaintiff as a director of the third defendant;

(b) remove Timothy James Reid ("Reid") as a director of the third defendant;

(c) reinstate the second plaintiff as the company secretary of the third defendant;

(d) remove the first defendant as the company secretary of the third defendant.

3 The OS was converted into a writ of summons by order of court dated 21 July 2010, on an application made by the first defendant in Summons No 3092 of 2010. Subsequent to the conversion, the plaintiffs filed their statement of claim on 4 August 2010 while the first and second defendants filed their respective defences and counterclaims on 17 September 2010. The plaintiffs in turn filed their reply and defence to the counterclaim on 26 October 2010.

4 On 6 July 2010, the first defendant applied by Summons No 3115 of 2010 ("the first setting-aside application") to set aside the interim injunction pursuant to O 32 r 6 of the Rules of Court (Cap 322, R5 2006 Rev Ed ("the Rules").

5 On 19 July 2010, the second defendant similarly applied in Summons No 3339 of 2010 ("the second setting-aside application") to set aside the interim injunction. (Hereinafter both the first and second setting-aside applications will be referred to collectively as "the setting-aside applications").

6 On 6 August 2010, both the second and first defendants applied by way of Summons No 3692 of 2010 and No 3693 of 2010 respectively ("collectively the striking-out applications"), to strike out certain paragraphs in the plaintiffs' statement of claim.

7 Both the setting-aside as well as the striking-out applications came up for hearing before me on 11 August 2010. After hearing the parties' arguments, I granted both applications. As the plaintiffs have filed notices of appeals (in Civil Appeal No 151 of 2010 and in Civil Appeal No 152 of 2010 respectively) against my discharge of the interim injunction and my granting of the striking-out applications, I shall now set out the reasons for my decisions.

The facts

8 The facts set out hereinafter (save where indicated otherwise) were extracted from the affidavit of the first plaintiff filed in support of the application for interim injunction and from the affidavits filed by the first and second defendants in support of the setting-aside applications. The second and third plaintiffs (as well as Cheng Gay) also filed affidavits. As their affidavits were essentially to confirm and adopt the affidavit filed by the first plaintiff, it would not be necessary to refer to the same as they added nothing to the plaintiffs' case. References will be made to the specific affidavits of deponents where there are disputes on the facts.

9 As stated earlier at [1], the company was incorporated by the late TKT in 1961. The first subscribers to the memorandum and members of the company were the second defendant's cousins who held 10 shares each on behalf of TKT as his nominee. The second defendant was appointed a

nominee director of TKT. She was allotted 380 shares as TKT's nominee in January 1962 which shares she transferred back to TKT in November 1962. The second defendant deposed that because of his asthma, TKT was restricted from taking an active role in the company.

10 In 1965 TKT purchased Afro-Asia Building ("the Building") situated at No 63 Robinson Road. The business of the company was essentially to lease out the Building. By 1967, the only directors of the company were TKT and the second defendant as the second defendant's two cousins had by then relinquished their shareholdings and directorships in the company. TKT then held 380 while the second defendant held 20, shares in the company (as TKT's nominee). That shareholding structure remained until 1969 when TKT started making changes.

11 The second defendant deposed that she and TKT made every effort to ensure that their children were given a good education including tertiary education. They also brought up their children to observe filial piety and to show unquestioning respect to them as parents.

12 The first plaintiff deposed that TKT's objective was that the company would be a family-owned business and all his children would have a stake in it. Ultimately, if they so wished, all the children would have the right to participate in the running and management of the company. To that end, while the children were still studying, TKT arranged for the issuance of 500 new shares in the company in 1969. According to the first defendant, TKT then allocated to each of the five children 40 shares each while the balance 300 of the new shares were held by one Mdm Subha Asma Nilajati ("Subha"), who is the eldest daughter of TKT's friend and business partner Wahab Bajumi ("Bajumi") referred to in [18] below. The first defendant deposed that the new 500 shares were held by herself, her siblings and Subha as nominees for TKT.

13 The first defendant deposed that on or about 27 October 1973, TKT arranged for the company's issued shares of 900 to be increased six-fold to 5,400. The new shares were distributed to the existing shareholders (including Subha) in accordance with TKT's instructions, again to hold as his nominees.

14 Between September 1973 and March 1979, TKT appointed all five children as directors of the company and in the second plaintiff's case, as the company secretary as well.

15 On 1 April 1977 after his return from England in 1976, the first plaintiff was appointed the general manager of the company and subsequently, on 24 September 1997, the managing-director.

16 The second defendant deposed she always understood that the shares allocated to her and to the children by TKT were to be held by them as his nominees. The first plaintiff however disagreed. He (together with the second and third plaintiffs) contended that whatever shares transferred to the children by TKT were given to them absolutely. These included the 40 and additional 200 shares allocated to each of the five children in 1969 and 1973 respectively.

17 The first defendant stepped down as a director in 1984 (when she was overseas). She returned to live in Hong Kong (where she still resides) in 1995 to help the family in the dispute that arose with the Bajumi family in [18] below. Earlier, in 1981, the second defendant had stepped down as a director. She is presently 89 years of age. In 1985, TKT resigned as a director and transferred all his shares in the company totalling 19,710 to the first plaintiff. According to the first plaintiff, the transfer was a gift to him as TKT wanted him to be more involved in the running of the company and also because the first plaintiff's shareholding was lagging behind that of his two brothers.

18 According to the first and second defendants however, TKT's asthmatic condition worsened in

the mid-1970s leading him to travel extensively in search of cures. As a result, TKT transferred most of his shares to various nominees including Bajumi, his trusted friend (since 1935) and a businessman in Indonesia. (I should add that the first and second defendant's version of how the Bajumi family came to be shareholders in the company differed greatly from the version of the Bajumi family in their subsequent court proceedings at [21] below). TKT's giving up of his shares however did not mean that he no longer participated in the running of the company as the first plaintiff stated in his affidavit. The first and second defendants deposed that TKT's approval was still required for major decisions undertaken by the company.

19 By 1981, the Bajumi family held 50% of the issued shares in the company. The partnership between the Tan and the Bajumi families built up a successful business which included ownership of the Building, a large rubber plantation in Indonesia and a substantial stake (owned by the company) in a public listed company called Ssangyong Cement.

20 In 1985 TKT transferred all his shares in the company to the first plaintiff as his nominee. After TKT'S departure, the board of directors of the company in 1985 comprised of four nominees each from the Tan and the Bajumi families. The Tan directors were the three plaintiffs and Cheng Gay.

21 Disputes arose with the Bajumi family in or about 1994 over the ownership of the company as well as the ownership of the rubber plantation. The dispute led to the Bajumis commencing proceedings (CWU No.162 of 1996 and OS 727 of 1996) against the TKT and his family for oppression of the minority under s 216 of the Companies Act. The court proceedings were eventually settled in August 2004 with the Tan family buying over the Bajumi family's interest in the company while the Bajumi family bought out the Tan family's interest in the rubber plantation.

22 The second defendant deposed that after the conclusion of the litigation with the Bajumis, TKT called for a family meeting in September 2004 where he informed his children (including the plaintiffs) that he intended to give 50% of the issued shares in the company to the second defendant absolutely. There were no objections to his proposal. Consequently, 2,660,850 shares of the Bajumis in the company were transferred to the second defendant. Her total shareholding became 2,779,110 shares.

23 The plaintiffs' version (according to the first plaintiff) was that the 2,779,110 shares were transferred to the second defendant pending the setting up of a Tan family trust, on the understanding that those shares represented part of the children's entitlement in the company and were held on trust for them.

24 The first plaintiff deposed that on 30 December 1986, the third plaintiff transferred all his shares (243,090) in the company to the joint names of the first defendant and Cheng Gay. The third plaintiff was then leaving for the United Stated where he remained until 1995. No consideration was furnished by either the first defendant or Cheng Gay for the transfer.

25 On 15 November 1990, the first plaintiff similarly transferred his entire shareholdings in the company to the first defendant and Cheng Gay again without consideration. The first plaintiff claimed that the first and second transfers of shares were made on the basis and understanding that the same would be held by the first defendant and Cheng Gay as trustees for the third and first plaintiffs respectively. Hence, the first defendant signed documents to confirm this understanding with the first and third plaintiffs. This allegation however was denied by the first defendant who could not recall signing any such documents.

26 On 27 August 1997, Cheng Gay in turn transferred out all his shares (729,270) in the company

to the first defendant save for 1,000 shares each that he transferred to the first and third plaintiffs. Cheng Gay similarly transferred his joint shareholding (1,340,280) with the first defendant to the latter's sole name. The transfers were effected because Cheng Gay wanted to devote more of his time to another company called EnGro Corporation ("EnGro") of which he was the chief executive officer. EnGro was formerly called Ssangyong Cement Singapore (Private) Limited, a company incorporated in 1973 with Ssangyong Cement Industrial Limited, the Korean conglomerate. Cheng Gay received no consideration from the first defendant for the shares that he transferred to her. Cheng Gay subsequently stepped down as chairman of the company on 6 October 2004 and was replaced by the first defendant.

27 The result of all the transfers of shares was that the first defendant became the largest shareholder holding 2,304,070 shares equivalent to 43.3% of the company's issued capital.

28 According to the second defendant, because of an incident involving the third plaintiff in September 2004, another incident involving Cheng Gay in early March 2006 and one incident involving the second plaintiff on 21 April 2006, TKT became disillusioned with their children (save for the first defendant) so much so that in 2007, he executed a Will (and in 2008 a joint Will with the second defendant prepared by Hong Kong lawyers), to give away most of the couple's assets to charity. In the joint Will, the first defendant was appointed the sole executrix and trustee.

29 The first plaintiff claimed that in line with the proposed Tan family trust (see [23], sometime in 2006, the third plaintiff transferred (without consideration) his 1,000 shares in the company to the first defendant and the first plaintiff likewise did the same in 2009. By then, the third plaintiff was employed as a director of the China operations of EnGro.

30 On 22 January 2008, the second plaintiff transferred her shareholdings (236,520) in the company to the first defendant as a gift on the instructions of TKT who allegedly was under the influence of the first defendant. Because the transfer was done against her own wishes, the second plaintiff made a statutory declaration a day earlier declaring the transfer to be null and void.

31 According to the second defendant however, TKT had on or about 31 January 2008 decided to make a gift to her of the 118,200 shares in the company that she held as his nominee under a trust deed dated 31 May 2005. TKT therefore executed a deed of gift dated 31 January 2008 which deed also stated that he had made a gift to her of the 2,660,850 shares in [22]. On 25 February 2008, the second defendant and TKT were reappointed as directors of the company, which appointments the first plaintiff asserted were instigated by the first defendant (who denied the allegation).

32 With the above transfers, the only shareholders in the company at the commencement of these proceedings were the first and second defendants. Their shareholdings were:

(i) Tan Choo Suan2,542,590 shares47.8%

(ii) Ng Giok Oh2,779,110 shares52.2%

33 Besides the third defendant, TKT had a Hong Kong company called Afro-Asia International Enterprises HK ("AAIE") which held shares in EnGro. The second defendant deposed that TKT decided he would distribute the shares in AAIE to the second defendant and four of the children together with the EnGro shares held by the former. He intended to distribute 3.5m shares in AAIE together with the underlying 31,124,100 EnGro shares.

34 Accordingly, TKT wrote to the children on 16 August 2008 ("the Offer Letter") offering them the

shares in AAIE. TKT stipulated as a condition that only he and the second defendant would have a say in matters relating to the company including its future development and use of its assets.

35 In their common reply signed on 12 and 13 October 2008 drafted by the third plaintiff, the first and third plaintiffs and Cheng Gay objected to some of the shares in AAIE falling into the hands of outsiders such as the second plaintiff's husband.

36 The second defendant was concerned for the second plaintiff so she asked TKT to give the second plaintiff the monetary equivalent of 6m EnGro shares the second plaintiff would have received were it not for her brothers' objections. TKT was willing to give the second plaintiff $3m based on the traded market value of the shares. However, he instructed that the second plaintiff should only receive the annuity income from the $3m capital in her life-time and that her son Lau Jia Rong be given the capital. TKT gave the 6m shares in EnGro to the first defendant instead.

37 TKT passed away in Hong Kong on 15 November 2008 without putting in place the documentation for the distribution of shares in EnGro. Following his demise, the second defendant instructed Hong Kong solicitors to prepare a deed of family arrangement to reflect the wishes of TKT in relation to EnGro shares. She was disappointed as the plaintiffs and Cheng Gay wrote several aggressive letters to her Hong Kong solicitors Hastings & Co ("Hastings") between June and August 2009 either objecting to the terms of the draft deed or on other matters relating to TKT's estate.

38 The second defendant decided to resolve the matter by calling for a meeting in Hong Kong with the children. The meeting took place on 5 October 2009 at the office of Hastings. Although she hoped to discuss the draft deed, the plaintiffs and Cheng Gay raised many contentious issues and the meeting resolved nothing. Hastings wrote to the plaintiffs and Cheng Gay on the second defendant's behalf on 12 October 2009 to record her disappointment at the children's attitude and to reiterate that she and TKT wanted to give their assets to charity. To-date, the deed of family arrangement has not been signed.

39 At the time of TKT's demise, the company had five directors *viz* TKT, the first and second defendants together with the first and second plaintiffs. Around 18 January 2010, the second defendant received a notice of board meeting signed by the second plaintiff as company secretary stating a general meeting of the company would be convened for the purpose of passing a resolution to appoint Cheng Gay as a director. The second defendant objected as TKT had in his life-time told her several times that he did not want Cheng Gay to be involved in the company. She made known her objections to the first defendant but the first and second plaintiffs refused to withdraw the notice of meeting.

40 After discussing with the first defendant, the second defendant decided she would appoint a director based in Singapore who would be able to represent her as well as the interests and objectives of the estate of TKT. The main objective was to carry out charitable works which included the donating of a lump sum annually to the Singapore Buddhist Lodge's Lunar New Year Fund.

41 Accordingly, on 27 January 2010, the first defendant issued a notice signed by herself and the second defendant calling for an extraordinary general meeting ("the EGM") of the company to be held at short notice on 28 January 2010 for the purpose of passing *inter alia* several resolutions including the appointment of Reid from audit and consultancy firm Ferrier Hodgson as a director and the removal of several directors including the removal of the first plaintiff as a director. The first plaintiff manages the day to day operations of the company while the second plaintiff manages the Building itself.

42 The notice of the EGM did not go down well with the plaintiffs. Indeed, it prompted them to apply for the interim injunction in [2] and which they obtained from this court on 12 February 2010.

43 The first plaintiff's version was that in June 2009, it came to his attention that the second defendant had executed a trust deed dated 31 May 2005 in favour of the first defendant, stating she held on trust for the first defendant the 2,660,850 shares transferred to the first defendant by the Bajumi family. The first plaintiff asserted that the trust was ineffective as the $7.6m purchase consideration to the Bajumi family did not come from either the first or the second defendants but from a term loan which the first and second plaintiffs and the first and second defendants had taken out with DBS Bank on behalf of the Tan family and which was eventually repaid from the company's funds. The first defendant's version was that the repayment of the DBS loan was not made from the company's funds but from dividends received by its shareholders principally by the second defendant and herself. As for the trust deed, the first defendant stated it was the second plaintiff who had arranged for the second defendant to execute the document on the advice of the company's auditor Dan Ng, because of the second defendant's age. The first defendant claimed she was not involved in the preparation of the document. The first defendant only signed the document when it was sent to her in Hong Kong by the second plaintiff. In any case, the first defendant deposed she never considered the second defendant's shares hers and in her affidavit she emphatically renounced any beneficial interest under the trust deed, in the shares held in the second defendant's name.

44 The first plaintiff deposed that in January 2010, he proposed to the first defendant that Cheng Gay be reappointed as a director of the company. The first plaintiff claimed that TKT had expressed a wish, while he was still alive, that Cheng Gay should advise and assist in the running of the company, given that Cheng Gay had considerable business and corporate experience in EnGro as the chief executive officer.

45 Towards that end, the second plaintiff as the company secretary issued the notice in [39] convening a board of directors' meeting on 29 January 2010. The first defendant strongly objected to the proposed resolution by her email to the first and second plaintiffs claiming that TKT did not want Cheng Gay to be involved in the company. The first defendant demanded that the notice be withdrawn failing which she would convene an EGM at short notice to remove either the first or second plaintiffs as directors. The first plaintiff replied to the first defendant requesting evidence that TKT barred Cheng Gay from being a director of the company. The first defendant responded to say the two plaintiffs should check with the second defendant.

46 As the notice of the meeting on 29 January 2010 was not withdrawn, the first defendant made good her threat and issued the notice on 27 January 2010 in [41] calling for an EGM on 28 January 2010 to *inter alia* remove the first plaintiff as a director and to remove the second plaintiff as the company secretary. As stated earlier at [42], that EGM prompted the plaintiffs to apply for and to obtain the interim injunction from this court on 12 February 2010.

47 The first plaintiff asserted that in so far as the shareholdings of the first and second defendants were concerned, because of the trust alluded to earlier in [20] to [24] the correct position was as follows:

(a) the first defendant was the beneficial owner of 473,040 shares in the company representing 8.89% of the issued capital;

(b) the second defendant was the beneficial owner of 236,520 shares in the company presenting 4.44% of the issued capital;

(c) the third plaintiff was the beneficial owner of 1,458,540 shares in the company representing 27.41% of the issued capital;

(d) Cheng Gay was the beneficial owner of 1,458,540 shares representing 27.41% of the issued capital;

(e) the second plaintiff was the beneficial owner of 473,040 shares in the company representing 8.89% of the issued capital and

(f) the first plaintiff was the beneficial owner of 1,222,020 shares in the company representing 22.96% of the issued capital.

The plaintiffs' assertion of beneficial ownership in the shares they had transferred out was denied by the first and second defendants.

48 The first plaintiff deposed that his solicitors' demands to the first defendant to remove Reid as a director was met with a suggestion for the parties to meet in Hong Kong with the second defendant to verify whether the latter had acted under the influence of the first defendant in signing the notice of the EGM as the plaintiffs suspected.

49 It also came to the plaintiffs' attention that the first defendant took steps to appoint the second defendant as a signatory to the company's bank accounts. The first defendant had instructed the company's auditor Dan Ng to prepare the necessary directors' resolutions to put her plan into effect. The company's existing bank signatories were the first and second plaintiffs and the first defendant. Two out of three signatories were required to sign the company's cheques.

50 The plaintiffs alleged that by her actions, the first defendant had abused her powers as a shareholder and director of the company, had failed to act in the best interests of the company and had acted in bad faith in purporting to remove the first and second plaintiffs as director and company secretary respectively.

51 Having set out the material facts, I shall now return to the applications that were heard before this court.

The setting-aside applications

The law

52 The statutory provision for an action for oppression of the minority is to be found in s 216(1) of the Companies Act. The relevant portion of the section states:

Any member or holder of a debenture of a company…may apply to the Court for an order under this section on the ground ---

(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which

unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

53 Section 19(6) of the Companies Act sets out the meaning of "members of a company" as follows:

> The subscribers to the memorandum shall be deemed to have agreed to become members of the company and on the incorporation of the company shall be entered as members in its register of members and every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company.

54 The plaintiffs' grievances were grounded on the fact that although they were no longer registered as shareholders of the company, they were nevertheless the beneficial owners of some of the shares held by the first and the second defendants (see [47] above). Unfortunately, trusts whether expressed implied or constructive, are not recognized under s 195(4) of the Companies Act, which states:

> Subject to this section, no notice of any trust expressed, implied or constructive shall be entered in a register or branch register or be receivable by the Registrar and no liabilities shall be affected by anything done in pursuance of subsection (1), (2) or (3) or pursuant to the law of any other place which corresponds to this section and the corporation concerned shall not be affected by notice of any trust by anything so done.

Moreover Article 8 of the company's articles of association (exhibited as TCH-1 in the first plaintiff's affidavit) adopted s 195(4) of the Companies Act. It states:

> No person shall be recognized by the Company as holding any share upon any trust and the Company shall not be bound by or required to recognize any equitable, contingent, future or partial interest in any share or any right whatsoever in respect of any share other than an absolute right to the entirety thereof in the registered holder, except as by these Articles otherwise expressly provided or as by statute required or pursuant to any order of Court.

55 Consequently, without going into the merits of the plaintiffs' case, none of the three plaintiffs had any *locus standi* at this juncture to maintain an action under s 216 of the Companies Act, until and unless they first applied to court and obtained an order to restore the shares they had transferred to the first and or second defendants or, obtain a declaration that the first and second defendants held those shares on trust for them.

56 My view is reinforced by two English cases cited by counsel for the first and second defendants. In *Atlasview Ltd v Brightview Ltd* [2004] 2 BCLC 191, it was held that the petitioners (Mr and Mrs Barton) for the winding-up of the defendant company Brightview Ltd under s 459 of the UK Companies Act 1985 (equivalent to our s 216), had no *locus standi*; they were not members of the company even though Mrs Barton controlled the majority of the B class shares in the defendant company through the plaintiff company Atlasview Ltd which was a member of Brightview Ltd.

57 The second case that both counsel referred to was *Re McCarthy Surfacing Limited* [2006] EWHC 832. There, the court did not reject the petition presented under s 459 of the UK Companies Act 1985 by an individual Mr Marsden whose request to be registered as a member of the company McCarthy Surfacing Limited had been refused by the directors in the exercise of their discretion. The feature in this case that distinguished it from *Atlasview Ltd v Brightview Ltd* as well as the present case was the fact that Mr Marsden had received executed transfers of their shares from

his co- petitioners Messrs Hecquet and Hoare. Due to the refusal of the directors of the company to register the executed transfers, Messrs Hecquet and Hoare remained as registered shareholders of the shares in respect of which they had executed transfers in favour of Mr Marsden. The English court upheld Mr Marsden's right to file a petition because he came within the ambit of s 459(2) of the UK Companies Act 1985 which provision is *in pari materia* with our s 216(7) and which states:

> This section shall apply to a person who is not a member of a company but to whom shares in the company have been transmitted by operation of law as it applies to members of a company; and references to a member or members shall be construed accordingly.

Unfortunately, the plaintiffs did not come within the ambit of s 216(7) as they were transferors not transferees of the shares, to which they claimed an equitable interest.

58 As the plaintiffs have no *locus standi* to maintain an action under s 216 of the Companies Act, equally they have no basis to apply for and to obtain the interim injunction from this court on 12 February 2010; I accordingly discharged the order.

59 The plaintiffs were in effect putting the cart before the horse in this respect. I had pointed out to their counsel that his clients would first need to commence proceedings to regain the shares they had transferred to the first defendant. Only after they had succeeded in such proceedings and had been restored as "members" of the company, could the plaintiffs institute an action for oppression of the minority under s 216 of the Companies Act.

60 In fact, as was pointed out by the second defendant's counsel, if the plaintiffs succeeded in regaining the shares they had transferred to the first defendant, there would be no necessity for them to commence an action under s 216 of the Companies Act. The plaintiffs would by then be the majority shareholders based on [47] and jointly hold 59.26% of the issued capital. If Cheng Gay's shareholding was included, the four siblings would hold 86.67% of the issued capital leaving the first and second defendants as minority shareholders holding the balance 13.33%. The plaintiffs would be in control of the company.

61 In opposing the setting-aside applications, counsel for the plaintiffs relied on a Malaysian case *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd* [1996] 1 MLJ 113 ("the Malaysian case") and on the Court of Appeal decision in *Kitnasamy s/o Marudapan v Nagatheran s/o Manogar and another* [2000] 1SLR(R) 542 ("the Singapore case").

62 In the Malaysian case, the appellant was a shareholder whose 1,500 shares were sold off by the respondent company to set off a debt allegedly owed by the appellant to the respondent, which debt the appellant had denied owing. Notwithstanding the appellant's denial, the respondent sold off his shares. In response, the appellant filed a petition under s 181 of the Malaysian Companies Act 1985. The respondent applied to strike out the appellant's petition which application was granted by the court below, *inter alia* on the ground that only a member of the respondent and not a shareholder could invoke s 181 of the Malaysian Companies Act. On appeal, the Federal Court of Malaysia acknowledged that an application under s 181 of the Malaysian Companies Act 1985 (which is *in pari materia* with our s 216) was only available to a person who was on a company's register as a member. However, it held that there could be cases where the application of the rule could be unfair (as in the case at hand). The respondent had deprived the appellant of his membership. As it was guilty of unconscionable or inequitable conduct, it would be estopped from asserting that the appellant lacked standing to present the petition.

63 In the Singapore case, the appellate court found that the appellant had been informed by the

auditor of the company in question that he was a registered shareholder and the company's records in the Registry of Companies & Businesses would be updated after the annual returns were filed. The appellate court held that the appellant was entitled to commence an action under s 216 when he was excluded from the management of the company as his non registration as a shareholder was due to the default of those responsible for the company's administration including the respondents. The respondents were therefore estopped from asserting the appellant was not a member and had no *locus standi*.

64 The two cases are distinguishable from the present case as they were based essentially on the doctrine of estoppel. Further, in the Malaysian case, the appellant was a shareholder and member of the respondent company until it sold off his 1,500 shares. In the Singapore case, the appellant's name would have appeared on the register of the company as a member had the administrative processes been carried out by the respondents who had represented to the appellant that he was a shareholder. Here, the plaintiffs were claiming beneficial ownership of shares which were registered in the names of the first and second defendants who made no representation whatsoever to the plaintiffs. Indeed, the first/second defendants denied they were trustees for the plaintiffs of the shares they held.

The striking-out applications

65 I turn next to the striking-out applications. To understand the rationale behind the striking-out applications, it would be necessary to refer briefly to those paragraphs in the statement of claim that the first and second defendants applied to strike out. They were paras 51 to 62, paras 64 to 69, paras 71 to 84 as well as the reliefs prayed for in paras (m), (n),(o),(p) (q) and (r).

66 Paragraphs 51 to 53 of the statement of claim came under the heading "Removal of Chin Hoon as Managing Director" while paras 54 to 62 were headed "Purported removal of Chin Hoon as director and Choo Pin as company secretary of AAS [the company]". Paragraphs 64 to 66 came under the heading "Alternative claim for relief under s 216 of the Companies Act". Paragraphs 67 to 69 were headed "Attempt to appoint Ngo [the second defendant] as authorised bank signatory of AAS". Finally, paras 71 to 84 referred to "Conduct and management of project for redevelopment of Afro-Asia Building".

67 The plaintiffs' grievances in the above paragraphs of the statement of claim pertained to the running and management of the company/the Building by the first defendant who had shut them out. It was also related to their action under s 216 of the Companies Act. This is clear from para 65 of the statement of claim where the plaintiffs pleaded:

> In so doing, [the first defendant] has conducted the affairs of [the company] and exercised her powers as a director of [the company] in a manner oppressive to the plaintiffs as the beneficial shareholders of [the company] and which completely disregards and prejudices the plaintiffs'" interests as members and shareholders of [the company].

The paragraphs clearly disclosed no reasonable cause of action as the plaintiffs not being members of the company, cannot complain about the manner in which the first defendant managed the company. Neither can they invoke s 216 of the Companies Act.

68 As for the reliefs that were struck out, para (o) prayed for a declaration that the resolutions passed at the EGM by the first and second defendants were null and void. Paragraph (m) similarly prayed for declarations that the removals of the first and second plaintiffs as director and second secretary respectively, and the appointment of Reid and the first defendant as director and company

secretary respectively be null and void. Paragraph (o) asked for a declaration that the termination of the first plaintiff's appointment as the company's managing-director and his replacement by the first defendant was wrongful. Paragraph (p) of the reliefs prayed for reinstatement of the positions previously held by the first and second plaintiffs in the company as well as the removals of the first defendant and Reid from their positions. In (q), the plaintiffs asked for leave to be authorised to bring civil proceedings on behalf of the company against the first and second defendants while in (r), they asked the court for directions to regulate the conduct of the business and affairs of the company. Clearly, such reliefs were not available to persons who were not members of the company. Hence, they were struck out.

69 Counsel for the plaintiffs sought to argue that the plaintiffs' claim based on s 216 of the Companies Act was a claim in the alternative. That may be so but there was no basis for such an alternative claim to be mounted by the plaintiffs in the first place because they had no standing to make it.

70 For the reasons given above, I granted both the setting-aside and the striking-out applications with costs to the defendants.

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