

Chin Siew Seng v Quah Hun Kok Francis and another appeal
[2010] SGCA 44

Case Number : Civil Appeal Nos 24 and 27 of 2010
Decision Date : 01 December 2010
Tribunal/Court : Court of Appeal
Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s) : K Muralitharapany (Joseph Tan Jude Benny LLP) for the appellant in CA 24 and 27 of 2010; Prakash P Mulani and Aftab Khan (M & A Law Corporation) for the respondent in CA 24 of 2010 and the first respondent in CA 27 of 2010; Oon Thian Seng and Poonam Bai (T S Oon & Bazul) for the second respondent in CA 27 of 2010.
Parties : Chin Siew Seng — Quah Hun Kok Francis

COMPANIES

EVIDENCE

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [\[2010\] SGHC 38.](#)]

1 December 2010

Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

Introduction

1 These two appeals, Civil Appeal No 24 of 2010 ("CA 24") and Civil Appeal No 27 of 2010 ("CA 27"), are brought by Chin Siew Seng ("Chin") against the decision of the trial judge in *Seaspan Agencies Pte Ltd v Chin Siew Seng (Ho Syn Ngan Joanne and another, third parties) and another suit* [2010] SGHC 38 ("the Judgment"). CA 27 arises out of Suit No 373 of 2008 ("S 373"), in which the trial judge found Chin liable for breach of his director's duties that were owed to the first respondent in CA 27, Seaspan Agencies Pte Ltd ("Seaspan Agencies"). CA 24 is an appeal against the dismissal of Chin's claim in Suit 859 of 2008 ("S 859") against the respondent in CA 24, Quah Hun Kok Francis ("Quah"), for a reasonable price to be assessed for the shares in Seaspan Agencies which Chin had transferred to Quah.

The facts

2 In 1991, Chin, Quah, and two other individuals incorporated two companies: Seaspan Chartering Pte Ltd ("Seaspan Chartering") and Seaspan Agencies. Although both companies had common shareholders/directors, the companies were managed separately by different individuals and were involved in entirely distinct shipping-related services.

3 Seaspan Agencies, which was primarily managed by Quah (who was also the majority shareholder), was involved in the ship-agency business and acted as agents for ship-owners or charterers. It provided services to their vessels and crew by, for example, arranging port entry and space, supply of fuel, food and water, and was paid a fee for its services on the basis of each vessel handled. The other directors, Chin, a Tan Keng Seng ("Tan"), and a Bonfurt Sim Mong Seng ("Sim"),

did not participate in the management of Seaspan Agencies. Seaspan Chartering, which was managed by Chin, Tan and Sim, was in the ship-brokering business. It arranged fixtures between ship-owners/charterers and cargo owners for the shipment of cargo. For each successful fixture, the ship-owner/charterer would pay Seaspan Chartering a broker's commission based on the total freight payable for the cargo. Quah was a non-active director who only carried out post-fixture operations for Seaspan Chartering and, in return, received consultancy fees [\[note: 1\]](#).

4 Sometime in 2002, a split occurred between the shareholders/directors of the two companies. As a result, Quah resigned as a director of Seaspan Chartering and sold his shares in Seaspan Chartering to Chin and the other shareholders/directors. In turn, the other shareholders/directors resigned as directors from Seaspan Agencies and sold their shares in Seaspan Agencies to Quah, who continued to manage Seaspan Agencies. Chin, however, remained as a non-active director and minority shareholder of Seaspan Agencies.

5 Subsequently, in late 2003, Seaspan Chartering ceased to conduct business. Chin, who continued to be a minority shareholder and non-active director of Seaspan Agencies, decided, with Quah's consent, to transfer his ship-brokering business to Seaspan Agencies and brought with him two former employees of Seaspan Chartering, Joanne Ho Syn Ngan ("Ho") and Theresa Leong Mui Ling ("Leong"). Ho was appointed a director of Seaspan Agencies whereas Leong was employed as the accounts and administrative manager. Prior to this, Seaspan Agencies had never been involved in the ship-brokering business.

6 Although both the ship-agency and ship-brokering businesses were thereafter carried out through Seaspan Agencies, they were, in effect, managed separately as before, see above at [\[3\]](#). Quah alone managed the ship-agency business while Chin and Ho managed the ship-brokering side. Chin and Ho relied on their own personal contacts to solicit for ship-brokering business, with Chin focusing on palm oil shipments and Ho handling chemical shipments. Although Quah initially assisted in some operational aspects of the ship-brokering business, he eventually relinquished even those duties to Leong by late 2004. [\[note: 2\]](#) Leong was the only person involved in both the ship-agency and ship-brokering businesses by handling operational work for both sides. Towards the end of 2004, the paid-up capital of Seaspan Agencies was increased to \$100,000. Quah sold a portion of his shares to Chin, Ho and Leong. This resulted in Quah, Chin and Ho each holding 32,000 shares in Seaspan Agencies with Leong holding the remaining 4,000 shares as an incentive. Quah, Chin and Ho were paid equal salaries and received equal director's fees.

7 Sometime in 2005, Quah noticed that a number of "address commissions" were paid by Seaspan Agencies to ship-owners/charterers as a form of "goodwill discount" for successful fixtures on the ship-brokering side. These "address commissions" could sometimes amount up to 2.5% of the freight cost (or 50% of the gross commission that Seaspan Agencies would receive as ship-brokers). In 2005, Seaspan Agencies suffered cash flow problems as business faltered. Cracks began to surface in the relationship between Quah and Chin. When Chin's ship-brokering business picked up around mid-2005, Quah realised that the amounts for the "address commissions" paid out were even higher than usual, some amounting to 3.75% of the freight cost (or 75% of the gross commission that Seaspan Agencies would receive). When asked to explain the increase, Chin was not forthcoming and the relationship between the two further deteriorated.

8 Not long after, on 11 October 2005, Chin told Quah that he was resigning as a director of Seaspan Agencies. In addition, Chin informed Quah that he would be incorporating a new company to continue his ship-brokering business and that Ho and Leong would also be leaving Seaspan Agencies to join him in his new company. The next day, on 12 October 2005, Quah typed out four letters and passed them to Chin by hand. Three of the letters were addressed to Chin. In the first letter, Quah

informed Chin that an independent auditor would be appointed to examine the company accounts and Chin was prohibited from withdrawing any funds from Seaspan Agencies unless approval, with proper documentation, was given by all three directors. The second letter was essentially a recapitulation of the first letter. In the third letter, Quah informed Chin that Seaspan Agencies would not recognise any payments made to any third party unless there was confirmation from the third party that such payments had actually been received. The fourth letter was copied to Ho and faxed on 13 October 2005 to the company secretary of Seaspan Agencies. In that letter, Quah instructed the company secretary to remove Chin and Ho's names as directors and shareholders of Seaspan Agencies.

9 Chin replied to Quah on 13 October 2005 stating that he "[did] not agree and [did] not accept the content [*sic*] of [Quah's] letter" and that "all matters pertaining to the running/administering of [Seaspan Agencies would] be discussed and agreed upon by all shareholders" at a meeting to be held later. [\[note: 3\]](#) Separately, Chin wrote another letter, instructing the company secretary to refrain from acting on Quah's earlier letter pending further notice. Chin also incorporated a new company named Seaspan Singapore Pte Ltd ("Seaspan Singapore") on the same day. However, he continued to conduct his ship-brokering business out of the premises of Seaspan Agencies at International Plaza ("the old premises") even as he sought new office space for Seaspan Singapore. Ho joined Seaspan Singapore on 19 October 2005 as a director and also took up 6,000 of the 20,000 paid-up shares in Seaspan Singapore. Leong also came on board as an accounts and administrative manager. However, she continued to remain as an employee of Seaspan Agencies and provided her services to Seaspan Agencies as before.

10 Despite having joined Seaspan Singapore as directors, both Chin and Ho remained as directors of Seaspan Agencies and authorised signatories its bank accounts. In fact, Chin and Ho continued to sign cheques for payments arising out of Quah's ship-agency business because a minimum of two signatures were required to operate the account. [\[note: 4\]](#) The trial judge erroneously found that Chin continued to sign payment vouchers and cheques to pay for address commissions relating to his ship-brokering transactions until 9 February 2006 (the Judgment at [9]). The documentary evidence adduced, however, showed that the last cheque signed by Chin for the payment of address commissions was dated 31 October 2005 for the sum of \$38,113.14. [\[note: 5\]](#) Further, Chin and Ho both drew their last monthly salaries from Seaspan Agencies in October 2005. [\[note: 6\]](#)

11 At the end of October 2005, Chin instructed Leong to draw up a trial balance of Seaspan Agencies' accounts as at 12 October 2005. The trial balance reflected the net profit of Seaspan Agencies for the period of 1 January to 12 October 2005 as \$44,076.39. On 11 November 2005, Quah, Chin and Ho were paid a sum of \$14,104.44 each (being 32% of \$44,076.39) while Leong received \$1,763.06 (being 4% of \$44,076.39). Although the payments were described as "DIRECTORS FEES" and "TAXI CLAIM" in the payment vouchers, [\[note: 7\]](#) it was acknowledged by the respondents that the payments were in fact the distribution of the cash surplus to all the shareholders based on their respective shareholdings. In addition, Leong was also rewarded with a bonus of \$2,800 for her services in the year 2005.

12 Around the same time, the office lease of Seaspan Agencies was about to expire. Quah, realising that Chin, Ho and Leong's eventual departure would mean that he no longer required as much office space as before, decided not to renew the lease. After securing an office tenancy at Cecil Street ("the new premises") for Seaspan Singapore, Chin offered to sublet the new premises to Seaspan Agencies for a monthly rent of \$1,200. This was accepted by Quah. Seaspan Agencies then moved into the new premises together with Seaspan Singapore at the end of November 2005 and the two companies continued to share office premises until March 2006. A sign with only the name

"Seaspan Singapore" was affixed at the entrance to the new premises. [\[note: 8\]](#)

13 It also ought to be mentioned that in November 2005, Quah and Chin met to discuss the sale of Chin, Ho and Leong's shares in Seaspan Agencies to Quah. Based on the Chin's own assessment of the value of Seaspan Agencies and Quah's financial circumstances, Chin proposed, on behalf of Ho, Leong and himself, to sell their shares to Quah at a price of \$30,000. However, Quah was non-committal about purchasing the shares. Subsequently, on 23 January 2006, Chin's solicitors drafted a deed for the sale of the shares and sent it to Quah. One of the terms of the draft deed was that Seaspan Agencies consented to Seaspan Singapore's use of the word "Seaspan" in its name. Again, Quah refused to agree to a sale on those terms.

14 In early February 2006, Chin was informed that Ho and Leong had both agreed to sell their shares in Seaspan Agencies to Quah. Following this, although there was no further discussion on the price of the shares or terms of the sale with Quah, Chin proceeded to transfer his shares to Quah on 9 February 2006. The transfer deed expressly stated that Chin's 32,000 shares were transferred to Quah in consideration of \$14,118.40. [\[note: 9\]](#) Both Ho and Leong also transferred their shares to Quah. On the same day, Chin and Ho signed a resolution to withdraw as authorised signatories of Seaspan Agencies' checking accounts and officially tendered their written resignations as directors. The resignation letters were backdated to 12 October 2005 to reflect the date on which Chin had first indicated that he was resigning. There is no evidence of Quah raising any objections to these arrangements. After that, Chin requested Seaspan Agencies to move out from the new premises. It eventually did so sometime in March 2006 (see [\[12\]](#) above).

15 In May 2006, Quah appointed an auditor to examine the accounts of Seaspan Agencies. Through the audit, it was discovered that a number of address commissions that were paid out in relation to Chin's transactions between 24 June 2005 and 30 November 2005 were not paid to the named ship-owners/charterers in those transactions. In October 2006, Seaspan Agencies commenced legal proceedings in DC Suit No 3927 of 2006 against Seaspan Singapore, claiming that payments arising out of contracts concluded in the name of Seaspan Agencies were wrongly diverted into Seaspan Singapore's account. However, that action had to be discontinued because Seaspan Singapore was subsequently voluntarily wound up after Chin and Ho decided to separate because of differences (Ho had earlier resigned as a director of Seaspan Singapore on 17 July 2006). [\[note: 10\]](#)

Procedural history

16 Almost two years later, on 27 May 2008, Seaspan Agencies instituted S 373 against Chin for breach of his duties as a director of Seaspan Agencies by allegedly (a) diverting to Seaspan Singapore the ship-brokering commissions earned in respect of contracts entered into by Seaspan Agencies or Seaspan Singapore for the period when Chin was a director of Seaspan Agencies; and (b) procuring the payment of commissions by Seaspan Agencies to another party without the knowledge of the other directors at the material time. Seaspan Agencies also claimed for certain payouts made by Seaspan Agencies when Chin was still a director, which included the cash surplus payments made to Quah, Chin, Ho and Leong on 11 November 2005 (see [\[11\]](#) above). [\[note: 11\]](#) In response, Chin joined Ho and Leong as the first and second third parties in the proceedings, claiming that if he were to be found liable, the two of them should also be liable for any loss caused to Seaspan Agencies by the alleged breaches and/or payouts.

17 On 18 November 2008, Chin commenced S 859 against Quah, claiming for a reasonable price for the shares that he had transferred to Quah on 9 February 2006 (see [\[14\]](#) above). In S 859, Chin was not merely claiming the price of \$14,118.40 as stated in the transfer deed (see [\[14\]](#) above). Rather,

he was asking for the shares to be valued *after* taking into account the damages awarded to Seaspan Agencies in S 373, should he be found liable in that action. Chin conceded that this was really a tactical claim to prevent Quah from enjoying an “undeserved windfall” [\[note: 12\]](#) because if Seaspan Agencies was successful in its claim against Chin in S 373, then Quah, being the sole shareholder of Seaspan Agencies, would become entitled to *all* the profits arising from the ship-brokering business for the period between 11 October 2005 and 9 February 2006 even though it was Chin who had done all the work.

18 The two suits were heard by the trial judge, one following immediately after the other, with S 373 heard first. During the trial for S 373, Quah admitted that, like Chin and Ho, he had received a sum of \$14,104.44 on 11 November 2005 (see [\[11\]](#) above) and he was no longer pursuing Seaspan Agencies’ claim against Chin for the cash surplus payouts. In turn, Chin withdrew his claim against Leong, allowing her to drop out of the picture. It also surfaced at the trial that Chin had been paying address commissions to a commodities broker named Martin Charles Fernandez (“Martin”). Chin had known Martin since the mid-1980s when Martin was still working with the Federal Land Development Authority (“Felda”) in Malaysia. According to Chin, in an attempt to grow his ship-brokering business, he had entered into a confidential written agreement with Martin on 22 September 2003 whereby he would pay Martin commissions for referrals that resulted in concluded fixtures. Chin claimed that it was pursuant to this agreement and Martin’s referrals that he was able to obtain fixtures for Seaspan Agencies.

The decision below

19 Prior to the commencement of the trial of S 373, Chin conceded that he had remained as a director of Seaspan Agencies up to 9 February 2006 and therefore owed Seaspan Agencies a duty not to place himself in a position where his loyalties conflicted. However, in his defence, Chin claimed that Seaspan Singapore was entitled to the commissions on the basis that there was an agreement between him and Quah reached on 11 October 2005 whereby the two of them agreed that the ship-agency and ship-brokering businesses would part ways on the following terms:

- (a) any fixtures concluded by Chin on or before 11 October 2005 would belong to Seaspan Agencies while any fixtures concluded by Chin after that date would belong to his new company, Seaspan Singapore;
- (b) the cash surplus of Seaspan Agencies as at 12 October 2005 would be distributed to the shareholders in proportion to their respective shareholdings; and
- (c) the directors of Seaspan Agencies would be paid their respective remuneration for the month of October 2005.

Chin added that he had remained as a director of Seaspan Agencies only because, at that time, there was still operational work to be done for the shipments that had yet to be completed. Chin also claimed that Quah was simply in no position to follow up on those shipments because Quah had never dealt with Chin’s clients. Quah, however, denied having made any agreement with Chin. He claimed that the distribution of the cash surplus of Seaspan Agencies was done without his knowledge and that he had accepted the payment of \$14,104.44 only after finding out that Chin and Ho had each received an equivalent amount. Quah also alleged that Chin had refused to resign as director, despite being told to do so, in order to continue withdrawing funds from the accounts of Seaspan Agencies to pay his own salary for October 2005 and the address commissions. On this point, the trial judge rejected Chin’s contention that there was such an agreement on three grounds:

- (a) she was of the opinion that such an important agreement would have been documented;
- (b) she found Chin to be a less credible witness on the witness stand as compared to Quah; and
- (c) she found that there was no reason for Quah to agree to an arrangement “which would be wholly beneficial to Chin and of no benefit to Quah” (the Judgment at [11]).

20 Having determined that there was no express agreement between Chin and Quah, the trial judge proceeded to consider whether Quah’s knowledge that Chin was conducting ship-brokering business through Seaspan Singapore amounted to informal assent on the part of Seaspan Agencies to release Chin from his breach of his duty not to place himself in a position of conflict of interest. On this point, the trial judge conceded that although Quah may have had some knowledge that Chin was carrying on business through Seaspan Singapore as Seaspan Singapore and Seaspan Agencies shared the new premises, he could not have known the extent of Chin’s breach. Accordingly, the trial judge found Chin liable to compensate Seaspan Agencies for losses suffered as a result of the diversion of brokering commissions from Seaspan Agencies to Seaspan Singapore, up to 9 February 2006, and for damages to be assessed (the Judgment at [38]).

21 The second issue was whether Chin was in breach of his director’s duties by paying out address commissions to Martin without disclosing his identity to the other directors, namely Quah and Ho. According to Chin, Martin would verbally provide him with contact details of cargo owners looking to ship cargo and he would use that information to contact the cargo owners to arrange fixtures. [\[note: 13\]](#) For every successful fixture, Chin would pay cash to Martin or deposit money into Martin’s Singapore bank account. [\[note: 14\]](#) The trial judge found that although it was not uncommon in the industry for commissions to be paid in exchange for referrals, it was unlawful for Chin to have concealed the “private deal with a third party which required him to use [Seaspan Agencies’] funds to pay the third party” (the Judgment at [42]). As a result, the trial judge held that Chin was liable to compensate Seaspan Agencies for the payments that had been made to Martin.

22 As mentioned above at [\[16\]](#), Chin joined Ho to the action in S 373, asserting that she ought to be equally liable for the loss caused to Seaspan Agencies if he were found to be in breach of his duties. The trial judge found that the fact that Ho had joined Chin at Seaspan Singapore as a director and shareholder meant that she must have known of Chin’s efforts to divert commissions away from Seaspan Agencies to Seaspan Singapore. Accordingly, Ho was also found liable for diverting commissions to Seaspan Singapore but only with respect to the transactions which she had been responsible for (the Judgment at [45]). As for the payment of address commissions to Martin, the trial judge found that although Ho had been the co-signatory of the cheques made out to Martin, Ho had been deceived by Chin and was in fact ignorant about the nature of the payments (the Judgment at [46]).

23 After finding in favour of Seaspan Agencies in S 373, the trial judge then rejected Chin’s claim in S 859 as frivolous on the ground that Chin had no basis for asking the court to rewrite the terms of the deed and substitute the price of \$14,118.40 with a “reasonable price” (the Judgment at [48]).

The appeals

The credibility of the witnesses

24 In our view, the trial judge placed far too much emphasis and reliance on her impressions about

the credibility of the witnesses. We recently pointed out in *Ng Chee Chuan v Ng Ai Tee (administratrix of the estate of Yap Yoon Moi, deceased)* [2009] 2 SLR(R) 918 that a court should be slow to place too much reliance on the perceived credibility of witnesses when there are undisputed facts and/or objective evidence from which the court can draw the appropriate inferences (at [16]):

While it is no doubt necessary to ascertain the credibility of witnesses in most cases where the oral evidence of the parties conflict, it is not always appropriate to rely primarily on credibility (determined on the basis of inconsistent testimony) as a basis for drawing factual inferences, especially where the events in question have taken place many years ago and there are undisputed objective facts. Imperfect memories and uncertain recollections should not necessarily be treated as impinging on the credibility of a witness. These are but afflictions which the passage of time will, in varying degrees, bring to bear on all individuals.

25 The trial judge, having favoured Quah as the more credible witness on the witness stand (see [19] above), appeared to have charitably overlooked the many inconsistencies in his evidence. For instance, although Quah was plainly evasive when questioned about his part in the distribution of the cash surplus (the Judgment at [12]), the trial judge generously concluded that he was not forthright because he knew that the payments had been falsely classified in the payment vouchers as directors' fees and taxi claims. With respect, we disagree with the trial judge's approach and the inferences on credibility she had drawn. Given that, in the present case, there is sufficient undisputed evidence in the form of contemporaneous documents and the subsequent conduct of the parties, the trial judge ought not to have relied as heavily on the perceived credibility of the witnesses. With that observation, we will now proceed to deal first with the issues arising in CA 27, which is Chin's appeal against the trial judge's decision in S 373.

Whether Seaspam Singapore's receipt of ship-brokering commissions for fixtures concluded by Chin and Ho during the period between 11 October 2005 and 9 February 2006 was with the knowledge and assent of Seaspam Agencies

26 As mentioned above at [19], the trial judge found in S 373 that there was no express agreement between Quah and Chin that Seaspam Singapore would be entitled to receive the ship-brokering commissions for the fixtures concluded by Chin between 11 October 2005 and 9 February 2006; accordingly, both Chin and Ho were in breach of their duties to Seaspam Agencies. This conclusion appears to disregard, in its entirety, the documentary evidence and subsequent conduct of the parties (Quah's, in particular), which, in our judgment, points unequivocally to some kind of arrangement or settlement between the then shareholders of Seaspam Agencies to sever the ship-brokering and ship-agency businesses sometime in October 2005, freeing Chin to start his own business and permitting Ho to join Chin.

27 First, we found it disingenuous of Quah to now complain that Chin had wrongfully diverted commissions and business opportunities to Seaspam Singapore when at no point in time during the period in which Chin was carrying out of the ship-brokering business under his new company did Quah object to his doing so. Taking the three letters above at [8] that Quah had sent to Chin on 12 October 2005 as the starting point for our analysis, we note that although Quah had adamantly maintained that Chin was prohibited from withdrawing funds from Seaspam Agencies without the approval of all three directors, there was no similar opposition to Chin's intention to resign and to transfer the ship-brokering business to his new company. Further, we find it odd that, during the entire four-month period Chin was carrying on business under Seaspam Singapore while still a director of Seaspam Agencies, Quah appears not to have protested about this despite being aware that Chin was conducting business under Seaspam Singapore and that there was no longer any ship-brokering business coming into Seaspam Agencies after 13 October 2005. Certainly, there is no documentary

evidence of any objections being raised. Quah also knew perfectly well that Chin was still signing cheques on behalf of Seaspan Agencies; yet he did nothing to remove Chin as a signatory after he had sent the letters dated 12 October 2005. Even more astonishingly, when the lease for the old premises expired, Quah, without any qualms, moved into the new premises which had Seaspan Singapore's name prominently displayed at its entrance. In light of these facts, we doubt that Quah then found Chin's conduct as reprehensible as he now makes it out to be.

28 Besides the curious absence of objections on Quah's part, there is also the undisputed subsequent conduct of the parties. In our judgment, the parties' conduct was entirely consistent with the existence of an agreement that the businesses would be split in October 2005 and that Chin was free to pursue his own ship-brokering business thereafter. Indeed, it was undisputed that the last monthly salaries for Chin and Ho were drawn in the month of October 2005 and that Leong was also paid a bonus for the year 2005 although it was still only October. Crucially, Quah personally approved the Central Provident Fund contributions for October 2005 for all four of them and signed the payment voucher. [\[note: 15\]](#) More tellingly, the cash surplus of the company was distributed to all the shareholders according to their respective shareholdings after Leong had drawn up the trial balance for Seaspan Agencies as at 12 October 2005. This, to us, was a clear and unambiguous act by the then shareholders to sever the independently managed ship-agency and ship-brokering businesses. In reality, Seaspan Agencies had merely been a vehicle of convenience for the operations of the respective businesses. Before Chin, Ho and Leong joined Seaspan Agencies in 2003, it had no ship-brokering business to speak of. Subsequently, although they were under the same company, Quah played no part in the management and the acquiring of revenue for the ship-brokering business while Chin and Ho were wholly uninvolved in the ship-agency business. The evidence also suggested that a split was imminent sometime in early-2005. The relationship between Quah and Chin had by then deteriorated because of a number of unresolved issues such as the address commission payments by Chin and the lack of revenue coming into Seaspan Agencies. This eventually culminated in their agreement to part ways in October 2005. Based on our finding that there was such an agreement, we accept that Chin and Ho had remained as directors until 9 February 2006 only for the parties' mutual convenience.

29 In the result, we hold that all the directors and shareholders of Seaspan Agencies knew and consented to Seaspan Singapore's receipt of ship-brokering commissions for the period between 11 October 2005 and 9 February 2006 for its exclusive account. Chin and Ho were not, in the prevailing circumstances, in breach of their duties to Seaspan Agencies with respect to the claim for the diversion of ship-brokering commissions and business opportunities during that period.

Whether Chin is liable to account to Seaspan Agencies for the address commissions allegedly paid to Martin.

30 On this issue, the trial judge had found that Chin was in breach of his duty to Seaspan Agencies and was liable to compensate Seaspan Agencies for the address commissions paid to Martin (see [\[21\]](#) above). We are of the view that that this issue had to be viewed contextually. First, there was no evidence led that the address commissions paid out to Martin were higher than the market rate. Indeed, the trial judge herself commented that Chin would have been lauded for bringing in additional revenue which benefited the company had he disclosed the arrangement he had entered into with Martin (the Judgment at [\[42\]](#)). The company ledger showed that for the year 2005, Chin successfully concluded a total of 24 transactions by October, [\[note: 16\]](#) a substantial improvement in business compared to the previous year during which Chin only secured six fixtures. [\[note: 17\]](#) Considering the considerable increase in ship-brokering business arising from Chin's efforts, it was Seaspan Agencies who appeared to have been the main beneficiary of the agreement between Chin

and Martin.

31 Nevertheless, we find that the circumstances in which Chin paid Martin the address commissions were questionable, to say the least. Not a single document was produced to show that the address commissions were actually paid to and or received by Martin. In light of this, we agree with the trial judge that Chin was in breach of his duty as director and is liable to account to Seaspan Agencies for the address commissions allegedly paid to Martin.

32 However, Chin is only liable to pay Seaspan Agencies the sum of \$113,120.62, being 32% of the \$353,501.95 awarded by the trial judge (the Judgment at [50]). This reflects Quah's shareholding in Seaspan Agencies at the time the payments were made to Martin. To award Seaspan Agencies the whole of the alleged commissions paid would not be correct. This is because Quah had used Seaspan Agencies' right to sue Chin only after he had obtained all the shares from Chin, Ho and Leong; Quah had quite plainly wanted to secure all the profits from Chin's ship-brokering business and the address commissions personally for himself.

33 Although Quah asserted that he had already paid Chin \$14,118.40 as consideration for his shares and adduced a few payment vouchers in an attempt to establish such payment, there was no credible evidence to substantiate his claims. First, the payment vouchers simply reflected withdrawals of cash advances from Seaspan Agencies in the form of cash cheques. Second, even the figures on the payment vouchers did not add up to the figure of \$14,118.40: there were vouchers for the sums of \$7,000, \$3,000 and \$1,000. Quah weakly asserted that the remainder of \$4,118.80 was paid to Chin on 8 February 2006 but had no document to show that such payment was in fact made.

34 Chin claimed that, although he had executed the transfer of his shares to Quah, he was never paid any money for the shares. He explained that he had simply transferred the shares to Quah to sever their relationship and did not see the need to discuss a price or ask for payment because he felt that Quah was in no position to pay, given that Quah already had difficulty repaying the cash loans that he owed to Seaspan Agencies. [\[note: 18\]](#) It was undisputed that as at 12 October 2005, Quah still owed Seaspan Agencies a debt of around \$140,000 in personal loans and advances and that he was the only director who owed Seaspan Agencies any money. Given that Quah still owed Seaspan Agencies such a substantial amount of money in personal loans and advances which he was at that time unable to repay, it was unlikely that there was any residual value left in Seaspan Agencies after its entire cash surplus had been distributed on 11 November 2005. Under such circumstances, we accept that Chin no longer saw any value in his shares in Seaspan Agencies, and was willing to transfer his shares to Quah without consideration.

Whether Chin has any basis for claiming a reasonable price for the shares he transferred to Quah

35 Having arrived at our conclusion that Chin was willing to forego his shares in Seaspan Agencies without consideration, it must follow that there is no merit in Chin's appeal in CA 24 and we therefore dismiss it.

Conclusion

36 In summary, for CA 27, we allow the appeal in part and find that both Chin and Ho are not liable for the ship-brokering commissions that were received by Seaspan Singapore. Chin, however, is liable to Seaspan Agencies for the sum of \$113,120.62 for the address commissions paid out to Martin (see [\[32\]](#) above). As for CA 24, the appeal is dismissed.

37 In so far as the costs of the present appeals and the proceedings below are concerned, each party is to bear its own costs. Here, we take into account the fact that the respondents have only recovered a fraction of their original claim. The usual consequential orders will apply.

[\[note: 1\]](#) Chin's AEIC at para 5; CA24, ROA (Vol III), p 94

[\[note: 2\]](#) NE Day 3 (18 Nov 2009) p 236; CA27, ROA (Vol III Pt B), p 654

[\[note: 3\]](#) CA24, ROA (Vol IV Pt A), p 381

[\[note: 4\]](#) Oral submission by counsel for Seaspan Agencies, Mr Prakash P Mulani at hearing on 2 August 2010

[\[note: 5\]](#) CA 27, ROA (Vol V Pt A) p 992

[\[note: 6\]](#) CA27, ROA (Vol V Pt B) p1300

[\[note: 7\]](#) CA 27 ROA (Vol V Pt B) pp 1303-1306

[\[note: 8\]](#) NE Day 2 (17 Nov 2009) pp 211-212; CA 27, ROA (Vol III Pt B) pp 625-626

[\[note: 9\]](#) CA24, ROA (Vol IV Pt B) p 247

[\[note: 10\]](#) NE Day 23 (18 Nov 2009) p 311; CA 27 (ROA (Vol III Pt B) p 729

[\[note: 11\]](#) In para 9 of its Statement of Claim (Amendment No 1);

[\[note: 12\]](#) Chin's AEIC at para 48

[\[note: 13\]](#) NE Day 2 (17 Nov 2009) p 169; CA27, ROA (Vol III Pt B) p 583

[\[note: 14\]](#) NE Day 2 (17 Nov 2009) p 171; CA 27, ROA (Vol III Pt B) p 585

[\[note: 15\]](#) CA 27, ROA (Vol V Pt B) p 1302

[\[note: 16\]](#) 2AB 902-905

[\[note: 17\]](#) 2AB 895-901

[\[note: 18\]](#) NE Day 1 (19 Nov 2009) p 341; CA24, ROA (Vol III) p 214

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