IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 140

Suit No 125 of 2014

Between

(1) Koh Keng Chew
(2) Koh Oon Bin
(3) Koh Hoon Lye

… *Plaintiffs*

And

(1) Liew Kit Fah
(2) Liew Chiew Woon
(3) Pang Kok Lian
(4) Soh Kim Seng
(5) Soh Soon Jooh
(6) Poh Teck Chuan
(7) Samwoh Corporation Pte Ltd
(8) Samwoh Resources Pte Ltd
(9) Samwoh Infrastructure Pte Ltd
(10) Samgreen Pte Ltd
(11) Samwoh Marine Pte Ltd
(12) Samwoh Shipping Pte Ltd
(13) Resource Development Holdings Pte Ltd
(14) Highway International Pte Ltd
(15) Sam Land Pte Ltd
(16) Sam Development Pte Ltd

… *Defendants*

JUDGMENT

[Companies] — [Oppression] — [Minority shareholders]

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v
Liew Kit Fah and others

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16–19, 23–26 February; 1–2 March; 18 April 2016

29 July 2016 Judgment reserved.

Chua Lee Ming JC:

Introduction

1 The plaintiffs hold 28.125% of the shares in the 7th to 16th defendants. They have brought this action under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) against the 1st to 6th defendants, who hold the remaining 71.875% of the shares.

2 Although the 1st to 6th defendants did not admit the plaintiffs' allegations of oppressive conduct, they agreed with the plaintiffs that the relationship of mutual trust and confidence between the parties had broken down and that a parting of ways had become inevitable. The parties agreed that the appropriate order was a buyout order. However, whilst the 1st to 6th defendants were prepared to buy out the plaintiffs, the plaintiffs themselves wanted to buy out the 1st to 6th defendants. In the circumstances, the parties

asked this court to decide a single issue: whether the order should be for the 1st to 6th defendants to purchase the plaintiffs' shares in the 7th to 16th defendants, or for the plaintiffs to purchase the 1st to 6th defendants' shares in the 7th to 16th defendants. It was also agreed that the buyout order would be at a price to be determined by an independent valuer to be appointed. The appointment of the valuer, the reference date and the costs of the valuation will be decided by this court if the parties cannot agree on the same within 30 days of the buyout order being made. A consent order was entered to reflect the parties' agreement. I would add that the parties do not want the companies to be wound up and, indeed, there is no reason to wind up the companies.

Background

3 In 1975, a partnership called Samwoh Transport and Trading ("Samwoh Trading") was formed by three friends, Mr Koh Keng Chew, Mr Soh Kim Seng and the late Mr Pang Chok. It was in the transport and logistics business. Subsequently, three additional partners came on board: Mr Wang Nee Chon and Mr Liew Chiew Woon in 1978, and Mr Poh Choon Huat in 1980.[1] The six of them ("the first-generation directors") managed Samwoh Trading.

4 In 1985, the first-generation directors incorporated the 7th defendant ("Samwoh Corp") to move into the business of manufacturing asphalt premix concrete ("the asphalt business").[2] Since then, Samwoh Corp has expanded into other businesses such as construction, recycling of construction waste, and maintenance of road, aircraft and seaport pavements. The 8th to 16th defendants were incorporated for the purposes of these other businesses.[3] Together, Samwoh Corp and these companies make up the Samwoh Group although the mainstay of the Samwoh Group's business remains Samwoh

Corp.[4] Business decisions for the entire Samwoh Group are made by the Samwoh Corp board of directors ("the Samwoh Board").[5]

5 The plaintiffs in this suit are as follows:

(a) The 1st plaintiff, Mr Koh Keng Chew, was a director of Samwoh Corp from its incorporation until he stepped down in 1995.[6] Since then, he has held an informal position as an advisor to the Samwoh Group. He is the father of the 2nd and 3rd plaintiffs.

(b) The 2nd plaintiff, Mr Koh Oon Bin ("Elvin Koh"), joined Samwoh Corp as its general manager in 1996 and was on the Samwoh Board as managing director ("MD") from January 2000 to May 2013.

(c) The 3rd plaintiff, Mr Koh Hoon Lye ("Koh HL"), is Elvin Koh's younger brother. He was appointed as a director of Samwoh Corp in 1995, taking over his father's position,[7] and remains on the Samwoh Board.

6 The 1st to 6th defendants are as follows:

(a) The 1st defendant, Mdm Liew Kit Fah, is the widow of Mr Pang Chok. She inherited his shares when he passed away in 1992. She is the 3rd defendant's mother and a relative of the 2nd defendant.[8]

(b) The 2nd defendant, Mr Liew Chiew Woon, joined Samwoh Trading in 1978 with a 10% share in the partnership. He was a director of Samwoh Corp from its incorporation to January 2000, and has held an informal position as advisor to the Samwoh Group since then.[9]

(c) The 3rd defendant, Mdm Pang Kok Lian ("Pang KL"), joined Samwoh Corp after her father, Mr Pang Chok, passed away in 1992. She was appointed as a director of Samwoh Corp in 1994.[10]

(d) The 4th defendant, Mr Soh Kim Seng, was a director of Samwoh Corp from its incorporation until 2000,[11] and has held an informal position as an advisor to the Samwoh Group since then. He is the father of the 5th defendant.

(e) The 5th defendant, Mr Soh Soon Jooh ("Eric Soh") was appointed as a director of Samwoh Corp in 2000. He was appointed Chief Executive Officer ("CEO") of Samwoh Corp in May 2013.

(f) The 6th defendant, Mr Poh Teck Chuan ("Poh TC"), is the son of Mr Poh Choon Huat. When Samwoh Corp was incorporated, the elder Mr Poh held 20% of the shares in Samwoh Corp. He sold 10% of his shares back to Samwoh Corp in 2005 and passed away in 2010. By a trust deed in March 2012, the beneficiaries of the elder Mr Poh's estate nominated Poh TC to hold the remaining 10% shareholding in Samwoh Group on their (and his) behalf.[12] Poh TC was appointed to the Samwoh Board in May 2013.

7 Of the plaintiffs and the 1st to 6th defendants, only Elvin Koh, Koh HL, Eric Soh, Pang KL and Poh TC gave evidence in this suit.

8 The shareholding structure of Samwoh Corp has changed over the years. The following table shows the present shareholding structure in Samwoh Corp. The shareholding structure in all the companies in the Samwoh Group is identical, save that the shares in the 14th defendant are registered in the names of Pang KL and one Mr Huang Hong Hee and those in the 15th and

16th defendants are registered in the name of Pang KL. As for the shares in the 14th to 16th defendants, it was not disputed that the legal owners of those shares hold them on trust for their beneficial owners in the same proportions set out below.[13]

Shareholder	**Proportion of issued share capital of Samwoh Corp (%)**
Plaintiffs	
Koh Keng Chew	22.5
Elvin Koh	3.375
Koh HL	2.25
Defendants	
Liew Kit Fah	22.5
Liew Chiew Woon	11.25
Pang KL	3.375
Soh Kim Seng	22.5
Eric Soh	2.25
Poh TC	10.0

9 Initially, the Samwoh Board comprised the first-generation directors.[14] Sometime around 2000, there were plans to list Samwoh Corp. Subsequently, the first-generation directors retired from the Samwoh Board and became advisors to the Samwoh Group. By agreement, the Samwoh Board was reconstituted to comprise Elvin Koh, Koh HL, Pang KL and Eric Soh, with Elvin Koh serving as MD.[15] The listing did not take place but the composition of the Samwoh Board remained unchanged until May 2013. It was undisputed that from 2000 to May 2013, commercial decisions the Samwoh Group were undertaken with the consensus of all directors on the Samwoh Board and that the directors would consult the shareholders where necessary or update them

after the Board had made important decisions.[16] These meetings between the Board and the advisors, who were still shareholders, were known as Advisors' meetings.

10 The Samwoh Group has achieved considerable success over the years. However, events from around 2012 gave rise to friction within the Samwoh Board and, consequently, among the shareholders. The disputes led to the plaintiffs' commencing this suit on 29 January 2014.

The plaintiffs' case for a minority buyout

11 The plaintiffs submitted that they should be allowed to buy out the 1st to 6th defendants ("a minority buyout") for the following reasons:[17]

(a) There has been an undisputed and irretrievable breakdown of mutual trust and confidence among the parties.

(b) The plaintiffs have played a pivotal role in the growth and development of the Samwoh Group's business.

(c) The majority shareholders – the 1st to 6th defendants – are unfit to exercise control over the Samwoh Group given their oppressive and egregious misconduct in the management of the Samwoh Group as well as the present litigation.

(d) The plaintiffs are willing and able to finance the minority buyout and take over management of the Samwoh Group.

Breakdown of mutual trust and confidence

12 As stated earlier, it is common ground that there has been an irretrievable breakdown of mutual trust and confidence between the plaintiffs and the 1st to 6th defendants.

Plaintiffs' role in the growth and development of Samwoh Group

13 The plaintiffs attributed the Samwoh Group's growth to Elvin Koh's leadership.[18] The 1st to 6th defendants' position was that the growth of the Group was largely due to the contributions of the Samwoh Board and senior management.[19]

14 The Samwoh Group grew under the leadership of Elvin Koh. It was not disputed that Elvin Koh initiated the move into the asphalt business which became the Group's main business.[20] The plaintiffs pointed out that during Elvin Koh's tenure as MD, Samwoh Corp's annual revenue had increased from approximately $49m in 2001 to in excess of $100m in 2011 and 2012.[21] It was during Elvin Koh's tenure that Samwoh Corp won first place at the prestigious Singapore Enterprise 50 Awards in 2009 and 2010.[22] In Eric Soh's draft speech for a management retreat, circulated to the Samwoh Board on 26 September 2013, he acknowledged that "without [Elvin Koh] at the helm and without his leadership", Samwoh Group would not be what it was.[23]

15 The 1st to 6th defendants downplayed the significance of Elvin Koh's contributions. They pointed out that the Samwoh Group continued to perform well even after Elvin Koh was no longer MD.[24] The Group's aggregate profit after tax was $24.928m for Financial Year ("FY") 2014, following a loss of $20.251m in FY 2013 and a comparatively modest profit of $538,000 in FY 2012.

16 It would be unfair not to give Elvin Koh credit for having led the Samwoh Group in his 13 years as MD, but it would be equally unfair not to acknowledge the contributions of the other directors and shareholders. Eric Soh and the present Samwoh Board have also demonstrated their ability to manage the company without Elvin Koh. In my view, it would be wrong in this case to attribute the success of the Samwoh Group to any one individual or family. In any case, as will be seen later in this judgment, in determining whether a minority buyout should be ordered, the contribution of a minority shareholder to the company is at best a secondary consideration (see [107]).

Whether 1st to 6th defendants are unfit to exercise control

17 The plaintiffs submitted that the 1st to 6th defendants are unfit to exercise control of the company because of their oppressive or egregious conduct both in the management of the Samwoh Group and in the present litigation. The plaintiffs relied on the following alleged egregious conduct:

(a) The "covert and orchestrated plot" to remove Elvin Koh as director and MD of the Samwoh Group;

(b) The surreptitious amendment of Elvin Koh's settlement agreement in an aborted attempt to stymie any potential claims he might have as shareholder of the Samwoh Group;

(c) The systematic exclusion of Koh HL from the management of the Samwoh Group;

(d) The deliberate and covert tampering of written minutes and audio recordings of Samwoh Corp's Advisors' meetings; and

(e) Dishonest conduct in the course of the litigation.

Elvin Koh's removal as director and MD

18 The plaintiffs submitted that the 1st to 6th defendants did not have any good reason for removing Elvin Koh as MD and director. The plaintiffs also alleged that either all of the 1st to 6th defendants or some of them formed a plan to remove Elvin Koh in late 2012.

19 The events that led to Elvin Koh's removal as director and MD appear to have been triggered by Pang KL's appointment of a new Financial Controller ("FC") for the Samwoh Group. On the evening of 1 September 2011, the then FC, Mr Lau Kok Keong ("Lau KK"), expressed his unhappiness about a finance manager in an email to Pang KL, who was head of the finance department. The next morning, he forwarded that email to Elvin Koh to "keep [him] in the loop" on the "political situation" in the department.[25] Pang KL admitted on the stand that she felt angry with Lau KK for having brought the matter up to Elvin Koh.[26] She regarded Lau KK's email as a complaint to Elvin Koh about the way she handled the matter and was angry that Lau KK had not given her a chance to talk to him first.[27] In January or February 2012, Pang KL started looking for a new FC to replace Lau KK.[28]

20 Pang KL found a new FC more than a year later. On 9 April 2013, Pang KL extended an offer of employment as FC to one Mr Tan Chin Hock ("Tan"). On 11 April 2013, she informed the Samwoh Board that she had hired Tan as a new FC to replace Lau KK.[29] Tan accepted the offer on 12 April 2013.[30] On the same day, in a reply email to the Board, Elvin Koh expressed his disapproval of Tan's appointment, noting that Lau KK had been a "capable FC". Elvin Koh also made the point that the appointment of senior executives in the company ought to be approved by the MD.[31] On 15 April

2013, he sent a further email at 12:15 a.m. to the Board emphatically stating that Lau KK would remain the "only Group FC".[32]

21 Pang KL responded by calling for a Board meeting to be held on the same day.[33] At the meeting which was held later that morning, Elvin Koh said that it was highly improper for Pang KL to have hired a new FC without consulting the Board.[34] Eric Soh supported Pang KL whereas Koh HL supported Elvin Koh, resulting in a deadlock.[35] Pang KL wanted to refer the matter to the shareholders since the Board could not decide. Elvin Koh responded that the appointment of the FC was only an operational issue and that, as the MD, he should "have the final say" by way of a casting vote to break the deadlock.[36] Pang KL saw this as an attempt by Elvin Koh to achieve control of the Samwoh Board.[37]

22 As the issue was not resolved at the Board meeting, Pang KL called a shareholders' meeting that very afternoon.[38] According to her and Eric Soh, the purpose of the meeting was to seek the other shareholders' views on the issue.[39] All the shareholders turned up except for Koh Keng Chew, who was feeling unwell.[40] At the meeting, Pang KL maintained that she could no longer work with Lau KK. Elvin Koh repeated his view that Lau KK should be given a chance to "explain himself on the areas that he has done wrong".[41] Pang KL wanted the shareholders to vote to resolve this issue.[42] Elvin Koh was saddened that a decision had to be made this way and said this to the shareholders present:[43]

> I have already said the decision should be with the board of directors. If you want to settle things this way, then there is nothing I can do. If this is the case, then you should find a new managing director as well. You should find someone better to prevent problems in the future … Let's do this now because the company cannot operate without a head and the managing director must have the authority.

23 It appeared that Pang KL had already prepared voting slips and she asked for the voting slips to be distributed to the shareholders to vote on the appointment of the new FC. Elvin Koh then pointed out that the vote might not be proper.[44] Samwoh Corp's Articles of Association require 14 days' notice for a shareholders' meeting.[45] It was therefore agreed that the shareholders' meeting would be held on 29 April 2013.[46]

24 The shareholders' meeting of 29 April 2013 was likewise attended by all the shareholders except Koh Keng Chew. Again, the shareholders could not agree on Tan's appointment as FC. In the event, as Elvin Koh and Koh HL had only received notice of the meeting on 28 April 2013, and Koh Keng Chew had not been invited to attend, it was agreed that an extraordinary general meeting ("EGM") would be held on 13 May 2013.[47] The agenda was to comprise the following three items which had been proposed at the earlier meeting on 15 April 2013: (a) the appointment of a new FC for Samwoh Group, (b) the appointment of a new MD, and (c) the appointment of independent directors to the Samwoh Board. However, before the meeting ended, Pang KL suggested that the shareholders re-elect the Samwoh Board. Eric Soh supported Pang KL's proposal.[48] Elvin Koh agreed and acknowledged that the shareholders had the right to re-elect the Samwoh Board.[49] He added that if he were re-elected and appointed as MD, he would suggest having an independent director on the Board to help "refine the system".[50] Eric Soh asked the company secretary to add the re-election of the Samwoh Board to the agenda for the EGM.

25 At the EGM on 13 May 2013,[51] Poh TC proposed appointing Eric Soh as chairman of the meeting. Soh Kim Seng seconded the proposal and Eric Soh was appointed as chairman without a vote being taken. The resolution to appoint a new FC was passed by six votes (the 1st to 6th defendants) to three

(the plaintiffs).[52] Before voting on the re-election of the Samwoh Board, Poh TC and Liew Kit Fah suggested that the shareholders vote by poll – the first time this had been done in any shareholders' meeting.[53] Five directors were elected to the Samwoh Board: Pang KL, Eric Soh, Poh TC, Koh HL and one Dr Ho Nyok Yong ("Dr Ho"). Dr Ho was a senior employee of the company although not a shareholder. Elvin Koh was not re-elected. The meeting also passed the resolutions for Samwoh Corp to appoint an MD and independent directors, with the new Board to decide on the appointees in due course[54]

26 The following issues arose in connection with Elvin Koh's removal as director and MD :

(a) Whether there was a common understanding that Elvin Koh would lead Samwoh Corp, *ie*, continue in his position as MD.

(b) Whether there were good reasons for removing Elvin Koh as director.

(c) Whether Elvin Koh's removal as director and MD was part of a covert and orchestrated plot.

Whether there was a common understanding that Elvin Koh would continue as MD

27 In their statement of claim, the plaintiffs pleaded that there was a common understanding that Elvin Koh would lead Samwoh Corp and the Samwoh Group as MD.[55] However, they did not press this point in their closing submissions. In any case, the evidence showed that there was no such common understanding. During cross-examination, Elvin Koh agreed that his complaint was not based on any such understanding.[56] Elvin Koh also confirmed that, in 1999, when Samwoh Corp was preparing to be listed, the

shareholders discussed the structure of the board and agreed that there was no need for each shareholder to have a representative on the board.[57] Elvin Koh's complaint was that he did not have the opportunity to explain his conduct to the shareholders.[58]

Whether there were good reasons for removing Elvin Koh as director

28 In their oral testimonies, Eric Soh and Pang KL claimed that they removed Elvin Koh as director because of his admissions at the 15 April 2013 and 29 April 2013 meetings that he did not wish to continue as a director of the Samwoh Group,[59] although I note that Eric Soh was less certain than Pang KL that Elvin Koh had indicated an intention to resign as director.[60] However, it is clear from the transcripts of the meetings that Elvin Koh said no such thing. Elvin Koh did say that the shareholders should choose another MD if they felt someone else would better serve as the leader but not that he wished to resign from the Board. Both Eric Soh and Pang KL admitted, after extensive questioning, that they did not have any reason for believing that Elvin Koh wanted to resign as a director.[61]

29 The 1st to 6th defendants further submitted that Elvin Koh's insistence on a casting vote meant that the plaintiffs would control the Samwoh Board and be able to override the dictates of the 1st to 6th defendants who, together, formed the majority. The 1st to 6th defendants submitted that they were justified in rejecting this radical shift from the consensus-based model of board management.[62] This might have been a reasonable consideration with respect to the decision to remove Elvin Koh as MD. However, it did not mean that Elvin Koh had to be removed as a director as well.

Whether there was a covert and orchestrated plot to remove Elvin Koh

30 The 1st to 6th defendants met at Orchid Country Club sometime in early May 2013, before the EGM ("the OCC meeting"), and planned to remove Elvin Koh from the Samwoh Board.[63] Poh TC admitted that the purpose of the OCC meeting was to agree on what to do about Elvin Koh, and that the shareholders present agreed to remove Elvin Koh as director from various companies of the Samwoh Group at the upcoming EGM.[64] Eric Soh testified that during the meeting, those present were unhappy with Elvin Koh and concluded that they should not re-elect him.[65] Pang KL admitted in her own AEIC that the shareholders who were present at the meeting at Orchid Country Club ultimately agreed not to re-elect Elvin Koh.[66]

31 The 1st to 6th defendants also agreed that Pang KL and Eric Soh would vote for Elvin Koh's re-election, purportedly to save him the embarrassment of being unanimously voted off the Board.[67] In fact, it appears that the reason they had decided on voting by poll when it came to re-electing the Board at the EGM on 13 May (see [25] above) was so that Pang KL and Eric Soh could vote in favour of Elvin Koh's re-election. This plan was carried out at the EGM. The plaintiffs submitted that the voting arrangement was a purely tactical move to make it more difficult for Elvin Koh to complain about not being re-elected by pretending that the initiative to remove Elvin Koh did not come from Pang KL and Eric Soh.[68] The plaintiffs further submitted that the 1st to 6th defendants also agreed to re-elect Koh HL for the same tactical reason. I agree with the plaintiffs.

Conclusion on Elvin Koh's removal as director and MD

32 In my view, the 1st to 6th defendants (led by Pang KL and assisted by Eric Soh) plotted Elvin Koh's removal as MD and director. The evidence

shows that Pang KL was unhappy with Elvin Koh's disagreement with her decision to appoint a new FC. As the dispute escalated, Elvin Koh's insistence on having a casting vote very likely upset the 1st to 6th defendants as the casting vote would mean that Elvin Koh and Koh HL would control the Board.

33 However, as shareholders, the 1st to 6th defendants were entitled to remove Elvin Koh as MD and director. There was no mutual understanding that Elvin Koh would remain as MD or as director. Indeed, at the EGM, Elvin Koh admitted that the shareholders had the right to remove him although he had not expected them to make the decision they had (see [25] above). In his oral testimony, Koh HL also agreed that the shareholders had "the authority" to remove Elvin Koh as a director.[69] Further, Elvin Koh tendered his resignation as *director* of Samwoh Corp on 13 May 2013.[70] This was followed, on 15 May 2013, by his resignation as director from the other companies in the Samwoh Group. Thereafter, he negotiated his *ex gratia* compensation package. At no time did Elvin Koh consider his removal as MD or director to be wrongful.

34 The plaintiffs described the 1st to 6th defendants' plan to remove Elvin Koh as covert but obviously, the 1st to 6th defendants could not have been expected to invite the plaintiffs to the OCC meeting or to involve them in the plan. In my view, the 1st to 6th defendants' conduct in removing Elvin Koh was neither oppressive nor unfair, much less egregious. The disagreements led to a power struggle among the second-generation shareholders and Pang KL and Eric Soh were able to gather the support of the majority shareholders.

Whether Elvin Koh's settlement agreement was surreptitiously amended

35 Following the EGM, Elvin Koh met Eric Soh, Koh HL and Pang KL on 15 May 2013 to discuss the terms of his compensation.[71] There were two

draft settlement agreements in evidence. The first, dated 17 May 2013, was sent by Elvin Koh to Eric Soh on 20 May 2013 with his comments.[72] The second was dated 22 May 2013 and signed by Eric Soh, Pang KL and Koh HL, but not Elvin Koh.[73] The following waiver clause was present in both draft agreements:

> The compensations are in full and final settlement of all your entitlements and you undertake that you have no further claim against each and every company of the Samwoh Group of Companies (see list of companies as attached) whatsoever upon signing of this agreement.

36 Elvin Koh signed the final version of the settlement agreement on 27 May 2013.[74] Eric Soh, Koh HL and Pang KL signed on behalf of Samwoh Corp. The waiver clause in its final form was longer and extended the waiver to all claims that Elvin Koh may have (a) in any capacity (including as a shareholder) and (b) against any shareholder, director, officer, manager, employee, secretary, staff or agent of the Samwoh Group. The amended waiver clause reads as follows:

> The compensations are in full and final settlement of all your entitlements and any claims that you may have in whatever capacity (whether as shareholder, officer, director, employee or any capacity or position whatsoever) against each and every company of the Samwoh Group of Companies (see list of companies attached), as well as against any shareholder, director, officer, manager, employee, secretary, staff or agent, thereof, upon the signing of this Agreement. You also confirm by the signing of this Agreement that you have no further or future claim whatsoever against every company of the Samwoh Group of Companies (see list of companies attached), as well as against any shareholder, director, officer, manager, employee, secretary, staff or agent thereof, any of which are hereby irrevocably waived.

37 Eric Soh said that he forwarded the first draft agreement to Pang KL without going through it.[75] The next time he saw the agreement was in its final form on 27 May 2013. Pang KL confirmed that (a) Eric Soh left the drafting of

the settlement agreement to her,[76] (b) she instructed her subordinate to prepare and clear the draft with her, (c) none of the 1st to 6th defendants had sent the draft with the amended waiver clause to Elvin Koh before 27 May,[77] and (d) she was the only person who knew about the changes to the waiver clause.[78] It is clear therefore that the waiver clause in the agreement was amended before 27 May 2013 with Pang KL's approval and without Elvin Koh's knowledge. Despite that, she took no steps to highlight this change to Elvin Koh.

38 Elvin Koh claimed that although he signed and initialled every page of the agreement, he did not read all the words when signing the final version of the agreement, focusing only on the amount of compensation he would be receiving.[79] He only discovered the changes when he brought his case to his solicitors.[80]

39 I accept Elvin Koh's evidence. It seems to me that if Elvin Koh had realised that the waiver had been amended, it is highly likely that he would have complained about not having been told about the amendment. It is also highly likely that he would have sought legal advice on the amended waiver clause, especially given the strained relationship between Pang KL and him by then.

40 The plaintiffs submitted that the surreptitious amendment of the settlement agreement was intended to stymie claims by Elvin Koh as a shareholder. However, the 1st to 6th defendants confirmed that they were not in fact relying on the waiver clause. On the stand, Pang KL unhesitatingly accepted that the waiver clause did not preclude Elvin Koh from bringing a claim as a shareholder.[81]

41 The legal effect of the waiver clause is therefore not in issue. However, Pang KL's conduct remains relevant. For reasons best known to her, Pang KL made a conscious decision not to inform Elvin Koh about the amendment of the settlement agreement. I note however that the amendment caused Elvin Koh no prejudice in this case.

Whether Koh HL was excluded from management

42 The plaintiffs complained that the 1st to 6th defendants

(a) excluded Koh HL from management and Board meetings;

(b) restricted Koh HL's access to information; and

(c) removed Koh HL as director of the 9th defendant, Samwoh Infrastructure Pte Ltd ("Samwoh Infrastructure").

43 The 1st to 6th defendants submitted that the actions stated above were necessary because of the potential conflict of interest that had arisen when Elvin Koh set up his own asphalt premix business, United E&P Engineers, in June or July 2013.[82]

Exclusion from management and Board meetings

44 The plaintiffs pleaded that the Board decided to exclude Koh HL from all discussions and meetings regarding the strategy, operations and/or future of Samwoh Corp and Samwoh Group.[83] More specifically, the plaintiffs pleaded that Koh HL was excluded from (a) meetings with Samwoh's bankers, DBS and UOB, in or around July 2014 on the progress of the suit and the impact on Samwoh financial group,[84] and (b) meetings pertaining to the preparation of a corporate governance report by RSM Ethos.[85]

45 The 1st to 6th defendants relied on legal advice from TSMP Law Corporation contained in a memorandum dated 28 May 2014 ("the TSMP Memo").[86] TSMP recommended that in the light of the "existing litigation and the potential leakage of information", Koh HL should not be involved in Board meetings and other discussions regarding the strategy, operations, and/or the future of Samwoh Group and its companies. However, if Koh HL was "able to address these concerns", it was "open to the Board to reconsider the position".[87]

46 In an email dated 3 June 2014, Koh HL clarified that he had no interest as shareholder or investor in United E&P and that, as a director, he was fully entitled to be included in board meetings and discussions.[88] Koh HL met with the Board on 4 June 2014 and with Eric Soh, Poh TC and Dr Ho on 13 June 2014, both times to discuss concerns in the Memo.[89] No satisfactory solution could be found to address the concerns. On 30 June 2014, Eric Soh informed Koh HL that the Board was asking Koh HL to "absent [himself] from discussions regarding the strategy, including but not limited to sensitive matters such as tender bidding; operations and/or future of the Samwoh Group".[90]

47 The plaintiffs described the TSMP Memo as a "smokescreen" by the 1st to 6th defendants and "just another one of [their] contrivances to justify their conduct".[91] In my view, this was an overstatement. The 1st to 6th defendants' concerns over how they should treat Koh HL were understandable given the circumstances. I do not see anything objectionable in the fact that Eric Soh sought legal advice to guide the Board. I note also that the Board confined their exclusion of Koh HL to only those matters mentioned by TSMP – *ie*, strategy and sensitive matters. They left open the option for him to make proposals on how to address the concerns highlighted by TSMP.

48 As for the plaintiffs' specific complaints, in my view, excluding Koh HL from the meetings with Samwoh's bankers was not objectionable. Sensitive issues such as the progress of the suit were discussed at these meetings.[92] Koh HL himself agreed that he should be excluded from discussions about the suit or the financing of the buyout of the minority shareholders.[93] In their closing submissions, the plaintiffs did not rely on the alleged exclusion of Koh HL from the meetings with the bankers.

49 As for RSM Ethos, it had been tasked to prepare a corporate governance report, which included a risk assessment survey. The final report was dated 21 November 2014. Koh HL's complaint was that the board had communicated with the consultants from RSM Ethos without his knowledge, even though he was in charge of the project. There was some evidence of this.

50 On 15 September 2014, using her personal email account, Pang KL provided the *personal* email addresses of Eric Soh and Dr Ho to Dennis Lee, a director of RSM Ethos and its designated representative for the project.[94] That evening, Dennis Lee sent a draft risk register to Pang KL, Eric Soh and Dr Ho's personal accounts.[95] Koh HL found out when Dr. Ho emailed someone from RSM Ethos on a separate matter but copied the entire Samwoh Board, without realizing that the previous emails with Dennis Tan were within the chain.[96] Pang KL admitted that she did not want Koh HL to see the earlier drafts of the risk register which included risks that the asphalt business might be facing.[97] Dr Ho, Eric Soh and Pang KL were supposed to review this information before it was sent to Koh HL.[98]

51 Koh HL expressed his displeasure by sending an email to the rest of the Board on 22 December 2014.[99] He then met personally with Dennis Lee to

review the report.[100] Koh HL again brought up the issue of his exclusion at a Board meeting on 23 December 2014.

52 Pang KL may have been overly cautious about letting Koh HL have access to the drafts. However, and more importantly in my view, the matter was resolved at the 23 December meeting when the Board agreed to send their comments on the final draft copy to Koh HL, and that he would collate the comments and send them to Dennis Lee.[101] On the stand, Koh HL accepted that he had an opportunity to review the drafts of the report of RSM Ethos and that it was in fact finalised with his involvement and input.[102]

Restriction of access to information

53 It was not disputed that Koh HL was subjected to two security measures. First, Koh HL had to ask Dr Ho for permission to view sensitive documents. Second, even if Dr Ho agreed, Koh HL would only be shown the information in a room with CCTV monitoring and he would not be allowed to take copies of documents.[103] The question is whether either or both measures were unjustified restrictions on Koh HL's right as a director to access Samwoh Group's sensitive information including management accounts.

54 The 1st to 6th defendants claimed that all directors were subject to both measures. The evidence showed that both measures were applied to Pang KL.[104] However, under cross-examination, Pang KL admitted that the requirement to obtain Dr Ho's permission effectively applied only to Koh HL because Dr Ho would not say no to a request by Eric Soh or herself.[105] I agree with the plaintiffs that both measures were in fact targeted at Koh HL. However, the measures were put in place because of concerns over the potential conflicts of interest arising out of Elvin Koh's competing business, Koh HL's relationship to Elvin Koh, and Koh KL's participation in this suit. Therefore, I do not think

that the fact that the measures were targeted at only Koh KL is cause for complaint.

55 However, the question remains whether the decision to impose the measures on Koh HL was unfair. The 1st to 6th defendants claimed that there was a real risk of sensitive information being leaked to Elvin Koh's competing business, a risk which was particularly pronounced given the competitive and sensitive nature of pricing in the asphalt premix business and Koh HL's close relationship with Elvin Koh.[106] They submitted that their suspicions were confirmed by two observations. First, Elvin Koh learnt about Samwoh Group's performance in 2015 based on information "from [his] brothers".[107] Second, United E&P had successfully bid for contracts from Samwoh Corp's clients.[108] However, there was no evidence that Elvin Koh had been told anything more specific about the Samwoh Group's performance other than that the Group had done well. I do not see anything wrong in a director (Koh HL) telling a shareholder (Elvin Koh) that the Group had done well. As for the fact that United E&P had successfully bid for contracts from Samwoh Corp's clients, this could not have been surprising given that Elvin Koh had led the Samwoh Group as MD for several years and would have built a relationship with these clients.

56 In my view, the Board did not have sufficient grounds to show that Koh HL had leaked or would leak sensitive financial information to Elvin Koh. All they had was a suspicion. Nevertheless, given Koh HL's relationship to Elvin Koh and his participation as a plaintiff in this suit, I do not think it was unreasonable for the Board to restrict Koh HL's access to information that was sensitive with respect to United E&P or this suit.

57 It would be unreasonable if the Board used the measures to restrict Koh HL's access to other information. However, there was no evidence that the Board has done so. There was evidence that Koh HL made two requests for "sensitive documents". The first, made on 17 April 2015, was for documents in litigation over companies known as Knight Synergy and Synergy GeoTech. This request was discussed at a Board meeting of 18 April 2015, and Eric Soh directed the documents to be made available and for the review to be carried out in a specific room.[109] The second request pertained to resignation letters, exit interview documents, and warning letters, and was made via email on 5 May 2015. Dr Ho asked Koh HL why he required the documents. Although it is not clear if the Board had any reason to deny Koh HL access to these documents, there was no evidence that Koh KL pursued this request any further.[110]

Removal from Samwoh Infrastructure

58 On 29 June 2015, Koh HL attended the Annual General Meetings (AGMs) of Samwoh Corp, Samwoh Resources Pte Ltd (the 8th defendant), Samgreen Pte Ltd (the 10th defendant), Samwoh Shipping Pte Ltd (the 12th defendant) and Resource Development Holdings Pte Ltd (the 13th defendant) ("the six AGMs"). He attended the AGMs in his capacity as director but appointed his brother Koh Woon Chee as his proxy to exercise his vote as shareholder.[111] Koh Woon Chee abstained or voted against (1) adopting the Director's Reports and Audited Financial Statements for the financial year ending 31 December 2014, (b) the re-appointment of Pang KL as director, and (c) the remuneration of Samwoh Corp's directors for FY 2014.[112]

59 At Samwoh Board meetings on 13 and 23 July 2015, the other Board members expressed their unhappiness at the way Koh HL's votes had been

exercised at the six AGMs. On 27 July 2015, Eric Soh wrote on behalf of the Board to Koh HL and repeated the directors' concerns about Koh HL's ability to distinguish between his interests as a shareholder and his duties as a director. Eric Soh pointed out the following:[113]

(a) Koh HL's votes as shareholder were inconsistent with the position that Koh HL had taken as director.

(b) One of the reliefs sought in the present suit was the winding up of the Samwoh Group.

(c) Intended amendments to the statement of claim in the present suit included allegations which appeared to impugn some of the directors' integrity.

In the same letter, Eric Soh invited Koh KL to resign as a director of the Samwoh Group, either immediately or, in any event, before the upcoming AGM of Samwoh Infrastructure on 31 July 2015.

60 At Samwoh Infrastructure's AGM on 31 July 2015, Eric Soh questioned Koh HL's ability to look after the interests of all the shareholders when he was suing many of them.[114] Not unexpectedly, Koh HL was not re-elected as a director of Samwoh Infrastructure.[115]

61 Subsequently, on 7 August 2015, Koh HL replied in writing to Eric Soh's email of 27 July 2015 saying that he would not resign as a director of Samwoh Group as there was no reason for him to do so. [116]

62 The plaintiffs argued that Koh HL's removal was due to the fact that he had not agreed to withdraw the winding up prayer (which is now no longer in issue) or withdraw from participating in this suit.[117]

63 The 1st to 6th defendants submitted that Koh HL was not elected because his conduct showed his inability to keep his interests as shareholder and director separate; consequently, this meant he could not discharge his duties as a director.[118] Specifically, they referred to the fact that Koh HL approved certain resolutions as a director and then voted against the same resolutions at a shareholder at the six AGMs of the 7th, 8th, and 10th to 13th defendants.

64 Koh HL admitted that how he had voted at the six AGMs meant that he took contradictory positions as shareholder and as director.[119] However, he had explained that the plaintiffs had made a conscious decision on how they should vote at the six AGMs, and that Koh Woon Chee had voted the way he did pursuant to that decision.[120] Further, this inconsistency was already present at the 2014 AGMs. Although Koh HL was a director then, he had abstained from voting on the Director's Reports and Audited Financial Statements as a shareholder at the 2014 AGMs of the 8th, 12th, and 13th defendants, and on Pang KL's re-election as director at the 2014 AGM of the 11th defendant.[121] The 1st to 6th defendants had not raised any issues over the way Koh HL voted at the 2014 AGMs and the 2015 AGMs.[122]

65 It was clear that the 1st to 6th defendants were uncomfortable, to say the least, with Koh HL remaining on the Samwoh Board in view of this present action. That discomfort is understandable. They therefore removed Koh HL as a director of Samwoh Infrastructure. As Eric Soh admitted, they would also have voted not to re-elect Koh HL as director of the other

companies in the Samwoh Group,[123] except that Koh HL's re-election did not arise during the AGMs of those other companies.

66 In my view, the simple answer to this issue is that, as shareholders, the 1st to 6th defendants were entitled not to re-elect Koh HL as a director of Samwoh Infrastructure or, indeed, of any of the other companies in the Samwoh Group. There was no common understanding that any one of the shareholders would be entitled to be appointed as a director. It is trite that shareholders do not owe any duties to consider the interests of other shareholders in the absence of any understanding to the contrary. No understanding to the contrary existed in this case.

Whether there was tampering of meeting minutes and recordings

67 The plaintiffs alleged that

(a) Pang KL tampered with the handwritten minutes of the 8 June 2012 meeting[124] by replacing the last three pages of those minutes with four pages of her own;[125] and

(b) the audio recordings of the Advisors' meetings on 8 June 2012, 7 February 2013, 7 August 2013 and 24 October 2013 had been manipulated or tampered with.[126] The plaintiffs obtained these recordings and inspected them on 14 May 2014.[127]

68 The usual procedure for minute-taking at these Advisors' meetings was as follows.

(a) The handwritten minutes of such Advisors' meetings were recorded by Ms Koh Siew Huay ("Ms Koh"), who is the sister of Elvin Koh and Koh HL. She was a senior accountant in Samwoh Corp at the

material time. From 2009, she was tasked with taking notes at the Advisors' meetings and preparing the minutes thereafter.[128]

(b) Ms Koh would also make tape recordings of the meetings. She used both her handwritten notes and the tape recordings to help her prepare the minutes.[129] From April 2013 onwards, Ms Chen Nyet Fon (also known as Felicia Chen) took over the task of recording the meetings and preparing the minutes. She was a personal assistant in Samwoh Corp from 1 July 2013 until her resignation from the company on 4 July 2014.[130] She recorded the Advisors' meetings on 7 August and 24 October 2013.

(c) Ms Koh would pass the draft minutes of each meeting to Pang KL, who would sometimes make corrections. The draft would be read out at the subsequent Advisors' meeting. The shareholders would sign on the front page to signify their approval.

Written minutes of the 8 June 2012 meeting

69 The plaintiffs' allegation that Pang tampered with the minutes of the 8 June 2012 meeting was not pleaded. However, since the 1st to 6th defendants dealt with it during the trial, I will address it as well.

70 It was not disputed that Pang KL replaced the last three pages of the minutes of the 8 June 2012 meeting with four pages of her own minutes. Pang KL admitted that these were her amendments to the draft prepared by Ms Koh.[131] She asserted that the amended minutes were read out and approved by the shareholders at the subsequent Advisors' meeting on 31 October 2012. This assertion was confirmed by the tape recording of the 31 October 2012 meeting

which was played during the trial. The authenticity of the recording was not challenged.

71 Elvin Koh agreed that there was nothing in Pang KL's version that was wrong; it was merely a longer version of Ms Koh's version.[132] Pang KL's version did not omit anything that had been recorded by Ms Koh.[133] Elvin Koh suggested that the details recorded by Pang KL may have been more unfavourable towards him as they captured more of the discussion about his mistakes.[134] However, it is indisputable that he approved the version that was read out at the 31 October 2012 meeting. According to the minutes of the 31 October meeting, the minutes of the 8 June 2012 meeting were read out and "unanimously adopted without modification".[135] Clearly, the allegation that Pang KL tampered with the minutes of the 8 June meeting cannot stand.

Tape recordings of the 8 June 2012 meeting

72 The tape recordings of the 8 June 2012 meeting were analysed by experts in audio forensic analysis. The plaintiffs' expert was Mr Peter Garde, a forensic speech and audio engineering consultant. The 1st to 6th defendants' expert was Dr Philip Thomas Harrison, a director at JP French Associates, which provides specialised consultancy services in the forensic analysis of voices.

73 Mr Garde and Dr Harrison agreed on the following:

(a) The 8 June 2012 meeting was recorded in four parts on two cassette tapes. The part allegedly tampered with was Side A of the second cassette tape, which recorded the 8 June 2012 meeting from the start of the tape to about the 37-minute mark ("the Partial Recording").

There was a small label in the top left corner with the words "8/6/12 #2" written in blue ink.[136]

(b) The Partial Recording was recorded over a previous meeting, which meant that the remainder of Side A (as well as Side B) were recordings of the previous meeting. There were two issues with the Partial Recording.

(c) First, towards the end of the Partial Recording, at about the 36-minute mark, the recording increased in pitch and delivery speed. This was due to the tape speed slowing down during the recording process ("the Tape Speed issue"). A recording that has been made at a slower tape speed and replayed at normal speed will sound like it has been speeded up. The increase in pitch and delivery speed became auditorily obvious at 36:00 and continued until 37:20. The recording reached a speed which made it impossible to decipher.

(d) The Tape Speed issue had three possible causes:

(i) The battery of the recorder going flat.

(ii) Friction intervention – *ie*, pressure is applied to the centre of the tape reel (*eg*, using one's finger) to slow down the recording speed.

(iii) Battery intervention – *ie*, the operator of the recorder connects a variable resistor to the batteries and slows down the recording speed by increasing the resistance.[137]

(e) Second, there were three transient events at the end of the Partial Recording caused by someone stopping and restarting the recording twice before finally stopping the recording. I will refer to

these collectively as "the Transient Events". It was not possible to tell how long the recording was stopped before it was restarted.

74 On the Tape Speed issue, Dr Harrison concluded that the Tape Speed issue was due to the battery going flat.[138] This was borne out by the test recordings he made with batteries which were going flat. Dr Harrison found that they were similar to the Partial Recording although the period and rate of change were not replicated exactly.[139]

75 Mr Garde did not think battery failure could be a cause of the tape speed. He set three criteria and found that despite replicating the tests with many types of batteries, he was unable to simulate the profile of the Partial Recording.[140] Mr Garde's explanation was supported by Ms Koh's recollection that the batteries had enough power for the recorder to run after the meeting on 8 June 2012 was over.[141]

76 However, Mr Garde's alternative explanations – friction intervention and battery intervention – are not probable, as Mr Garde himself accepted. Since the recorder was placed on the table, it was unlikely that anyone could have caused friction intervention, much less battery intervention, during the course of the meeting without being noticed.

77 Therefore, Mr Garde suggested that one of the attendees covertly used a second recorder to record the meeting; he called this the two-recorder hypothesis.[142] On this hypothesis, someone made a recording but probably terminated it prematurely and then interchanged it with the original recording. The Tape Speed issue on the second recorder could have been due to any of the three causes, most likely friction or battery interventions. In my view, Mr Garde's two-recorder hypothesis is also unlikely. First, there is no evidence

whatsoever as to who might have made this covert recording. Second, it does not seem likely that anyone could have made a covert recording and physically manipulated the recording speed using either friction or battery interventions without being noticed. Ms Koh testified that she, Elvin Koh and Pang KL were seated quite close together.[143] There is no reason to believe that it was any different for the others who were at the meeting. Third, the two-recorder hypothesis is at odds with the conclusion in Mr Garde's first report that the Partial Recording was not an "authentic" recording, *ie*, it was not made at the meeting itself.[144] In other words, it was a copy. Under the two-recorder hypothesis, the covert recording would have been made at the meeting and therefore would be an authentic recording.

78 Dr Harrison's conclusion, *ie*, that the battery went flat, seems more probable. Mr Garde has not managed to rule out battery failure as a cause of the Tape Speed issue. It seems possible that, as Dr Harrison explained, Mr Garde might not have been able to replicate the Tape Speed issue with the batteries he tested because he set himself overly stringent criteria.[145] However, Dr Harrison's conclusion runs counter to Ms Koh's evidence that she did not recall the battery running flat.[146]

79 I turn next to the Transient Events. Dr Harrison explained, and Mr Garde agreed, that the Transient Events were original to the Partial Recording, meaning that they were made on the Partial Recording and not copied from another tape.[147] However, it seems unlikely that the Transient Events could have been created during the process of recording the meeting without anyone else noticing the same, even on Mr Garde's two-recorder hypothesis.

80 Mr Garde suggested that the Transient Events could have been created during a copy process. However, Dr Harrison noted that this would have

meant pressing the stop button at the very split second that the Tape Speed issue ended – something which could not be easily achieved.[148]

81 Dr Harrison suggested that the form of the Transient Events was consistent with the batteries going flat; they were different from transients observed in an experiment involving a fully-charged battery.[149] However, Mr Garde explained that if the battery went flat, the Aiwa recorder would remain in record position.[150] There is no explanation for why the stop button was pressed. Also, Ms Koh did not recall the batteries going flat.

82 In addition to the difficulties with Mr Garde's conclusions discussed above, the plaintiffs' case also requires the following chain of events to have taken place. Mr Garde's hypothesis for the Tape Speed issue was that someone covertly recorded the meeting ("the 2nd cassette"), covertly intervened with the recording speed and then covertly interchanged the 2nd cassette with the one originally made by Ms Koh ("the 1st cassette"). However, according to Ms Koh (who was the plaintiffs' witness), the recording was clear, audible and complete when she listened to it sometime in June 2012 to prepare the minutes of the meeting.[151] That means the switching of the cassette tapes had to take place after she had prepared the minutes. No reason has been offered why the 1st to 6th defendants would have gone through the trouble of making the covert recording with the Tape Speed issue only to surreptitiously switch the cassette tapes *after* Ms Koh had prepared the minutes. As for the Transient Events, based on Mr Garde's theory that the cassette tape was a copy, someone would have had to obtain the 2nd cassette, make a copy of that and create the Transient Events during the copy process ("the 3rd cassette"), and then make a second switch to replace the 2nd cassette with the 3rd cassette. On top of it all, the 3rd cassette had to be made using one of the used cassette tapes containing a recording of a previous meeting

(see [73(b)]). I find this whole chain of events to be highly improbable. There was also no discernible reason why the 1st to 6th defendants would have done any of this when the comprehensive minutes had been approved at the 31 October 2012 Advisors' meeting and the plaintiffs had no real issue with the contents of the minutes.

83 Both experts' evidence could not satisfactorily explain the Tape Speed issue or the Transient Events. However, the burden is on the plaintiffs to prove their allegation that the tape recording had been tampered with. As I am not persuaded by Mr Garde's explanations, the plaintiffs have therefore not discharged their burden of proving that any or all of the 1st to 6th defendants tampered with the tape recording of the 8 June 2012 meeting.

Digital recordings

84 The digital recordings were of the 7 February 2013, 7 August 2013 and 24 October 2013 meetings. Felicia Chen purchased a new digital audio recorder ("Sony Silver") on 4 August 2013.[152] The 7 August 2013 and 24 October 2013 meetings were recorded using Sony Silver. Before that, she had used her own digital tape recorder to record meetings.[153]

85 The plaintiffs' expert, Mr Robert Leighton Phillips, a Certified Forensic Examiner and Chief Technology Officer of RP Digital Security Pte Ltd, found that the hash values of the files extracted from two other Sony devices used by Samwoh Corp ("Sony Black" and "Sony Blue") were the same as the hash values of the corresponding files on the CD.[154] Sony Silver was not inspected as its existence was not known to the plaintiffs at the time, a point which I return to at [90] below. A hash value acts as a fingerprint for the file which it was created from. Two or more files which have the same hash value are identical.[155] This ruled out any possibility that a different recording

was tendered on the CD from the original recordings which had been made at the meetings.

86 However, Mr Phillips suggested that four files could have been manipulated digitally on a computer, based on a number of observations, the most pertinent of which are as follows: [156]

(a) The creation date of the files 130807_001.mp3 and 131024_001.mp3 for the 7 August and 24 October meetings respectively was 6 May 2014. The date of last access to these files was also 6 May 2014, suggesting that someone had plugged Sony Blue into a computer on that date and altered its contents.

(b) Another version of the 7 August meeting, 130807_002 was found on Sony Blue. The first 1 minute and 20 seconds of 130807_001 were not reflected in 130807_002. Apart from that, they sounded like recordings of the same meeting, though possibly from different devices.

(c) Two audio editing programs – Power Voice II and Wavelab LE7 – had been installed, licensed and used on a desktop computer used by Felicia Chen. Both programs were last used on 2 October 2013.[157]

(d) The security audit log was disabled, and the audit log records cleared, on that computer on 23 March 2008.[158] These actions suggested an intention to conceal some action on the computer.

87 In my view, it has not been proven that the digital recordings have been tampered with.

(a) First, the fact that the creation dates of 130807_001.mp3 and 131024_001.mp3 were 6 May 2014 and not the dates of the meetings is easily explained. The 1st to 6th defendants' expert witness, Mr David C Rule, a partner at Xione Group Pte Ltd specialising in digital forensic investigations, explained that 6 May 2014 was the date when both files were copied onto Sony Blue.[159] The plaintiffs had requested for these recordings. Felicia Chen copied the audio recordings onto Sony Blue.[160] On 7 May 2014, Samwoh Corp handed over a number of devices including Sony Blue to TSMP so that the plaintiffs' lawyers could inspect them at their office. The letter to TSMP from Samwoh Corp shows that Sony Blue included these two files.[161]

(b) Second, although the first 1 minute and 20 seconds of 130807_001 were not captured on 130807_002, Mr Phillips conceded that there was no content detected missing from it.[162] He also accepted Mr Rule's analysis that the metadata from the two files showed that they came from the Sony Silver and Sony Blue recorders.[163] This supports the 1st to 6th defendants' case that Sony Silver and Sony Blue had been used by Felicia Chen and Pang KL respectively to record the same meeting. It will be recalled that it was the version on the Sony Silver that was disclosed on the CD, not Pang KL's.

(c) Third, I accept Felicia Chen's explanation that she used the digital audio editing programs only to listen to the audio recordings. Felicia Chen testified that after a corporate retreat in September 2013, she had asked a member of the IT department to install the audio software bundled in a CD with the purchase of Sony Silver.[164] The installation date would have been in September or October 2013.[165] This is consistent with the last-used date of the two programs being 2

October 2013. Mr Phillips accepted that both programs would allow one to play MP3 files.[166] The plaintiffs suggested that Felicia Chen could simply have used a default program like Windows Media Player.[167] However, just because Felicia Chen used audio programs with editing functions does not necessarily mean that she edited those files. Felicia Chen said she did not know how to edit audio files[168] and I saw no reason to disbelieve her. The plaintiffs alleged that Pang KL instructed Felicia Chen to edit the audio files. In my view, that allegation is entirely speculative.

(d) Fourth, Mr Phillips accepted Mr Rule's observation that the security audit log on the computer was disabled by default.[169]

88 There is one more point to address. The experts could find no trace of Sony Silver being connected to Felicia Chen's computer or laptop on the dates the audio recordings were allegedly transferred from the Sony Silver. This made it possible that the files were manipulated before transfer. There were two ways to transfer the files: using an external medium such as a USB stick or SD card, or plugging in the Sony Silver directly into the laptop using its internal USB jack. The experts agreed that it would be impossible to trace any transfer if external media were used.[170] However, Felicia Chen testified to plugging in the Sony Silver directly to her desktop or laptop. She said she might have brought home the Sony Silver and copied the files to a thumb drive before bringing it back to the office. However, she could not remember whether she had in fact done so.[171] There is no need to make a specific finding on what happened. In my view, looking at all the evidence, the absence of any digital trace, puzzling though it may be, does not prove that there was tampering of any sort.

89 I therefore reject the allegations that any or all of the 1st to 6th defendants had tampered with the digital audio files.

Defendants' conduct in the course of litigation

90 The plaintiffs submitted in their closing submissions that Pang KL tried to conceal the existence of Sony Silver. The plaintiffs had asked for inspection of the original recordings of nine Advisors' meetings in 2012 and 2013 (including the four meetings referred to previously).[172] The inspection took place on 14 May 2014.[173] Pang KL had instructed Felicia Chen to hand over, among other things, the audio recorders used to record these meetings.[174] The Sony Silver was not produced for inspection. Pang KL's explanation was that she did not know that Samwoh Corp had a Sony Silver recorder until Mr Rule's forensic investigation revealed that a device other than those which had been produced had been used to record the meetings of 7 August 2013 and 23 October 2013. She contacted Felicia Chen (who had by then left Samwoh Corp's employ) who told her about the existence of Sony Silver. She then located and handed over Sony Silver on 18 November 2015.[175]

91 Felicia Chen testified that she had consulted Pang KL in May 2014 about which recorders to hand over, and asked for permission not to hand over Sony Silver as it was her working recorder.[176] Felicia Chen agreed that Pang KL must have known in May 2014 that Sony Silver existed.[177]

92 On balance, I accept Felicia Chen's evidence that Pang KL must have known about the existence of Sony Silver in May 2014. However, this was not a case where Pang KL instructed Felicia Chen not to hand over Sony Silver. Rather, Felicia Chen wanted to hold on to Sony Silver as it was her working recorder and Pang KL agreed. Pang KL should have consulted her lawyers

before agreeing to Felicia Chen's request. However, this was not a case of dishonesty.

Conclusion on factual allegations

93 In summary, the plaintiffs have proven the following against the 1st to 6th defendants:

(a) Elvin Koh was prepared to be replaced as MD but he had not given any indication that he wanted to resign as director. The 1st to 6th defendants planned to remove Elvin Koh as MD and director at the 13 May EGM. However, as majority shareholders, they were entitled to remove Elvin Koh as MD and director since there was no common understanding that Elvin Koh could not be removed.

(b) The waiver clause in Elvin Koh's settlement agreement had been amended with Pang KL's knowledge before Elvin Koh signed it. Pang KL did not inform him of the amendment. However, ultimately, this amendment did not prejudice him in this action.

(c) Pang KL agreed to Felicia Chen's request to hold on to the Sony Silver although she ought to have known that it should have been produced for the plaintiffs' inspection in May 2014. However, there was no evidence that she did so to hide anything.

Whether a minority buyout order should be made

The parties' arguments

94 The plaintiffs' arguments were as follows:[178]

(a) The court must consider all the relevant circumstances of the case to reach a fair and just outcome.

(b) The relevant circumstances include not just oppressive and egregious mismanagement of the Samwoh Group but dishonest conduct in the litigation.

(c) The court can also consider whether the minority is ready, willing and able to take over the reins of the company and/or has been actively involved in the management of the company prior to their exclusion.

(d) Based on the facts alleged, a minority buyout was justified in all the circumstances. In addition, the plaintiffs had the necessary funds for the buyout.

95 The 1st to 6th defendants' arguments were as follows: [179]

(a) The court should focus on whether the majority's conduct was "sufficiently egregious and extreme to warrant a forced sale of the majority's shares to the minority". The factors the court should consider are:

(i) Whether there has been serious dishonesty or gross incompetence on the part of the majority;

(ii) Whether the majority is able to purchase the minority's shareholding;

(iii) Provisions of any shareholder's agreement; and

(iv) Whether a winding up of the company would be desirable.

(b) Therefore, even taking the plaintiffs' case at its highest, there was no egregious conduct, grave dishonesty or gross incompetence on the part of the 1st to 6th defendants.

96 The Samwoh Group also submitted that a minority buyout order should not be granted but on slightly different grounds. They gave three reasons: [180]

(a) A minority buyout order is only justified if there has been sufficiently egregious misconduct on the part of the majority. The misconduct must be over and above that which would typically justify a finding of oppression.[181] The facts alleged by the plaintiffs, even if true, would at best justify a finding of "ordinary" oppression.

(b) In addition, a minority buyout would be highly likely to be disruptive. It would result in a likely replacement of four out of five directors on the Samwoh board and trigger change of shareholding default clauses in Samwoh Group's banking facilities due to the significant change of shareholding (as compared to the change of shareholding if the 1st to 6th defendants were to purchase the plaintiff's shares).

(c) Lastly, a minority buyout order would likely result in a merger between Elvin Koh's United E&P and the Samwoh Group, which would require approval from the Competition Commission of Singapore ("CCS"). If CCS approval were granted, it would not be for some time, and it was unclear who should manage the Samwoh Group in the meantime. If CCS approval were not granted, Samwoh Group might be required to dispose of operations or assets, and there had been no suggestions by the plaintiffs on how this could be done.

The applicable legal principles

97 Section 216 of the Companies Act confers personal remedies on the applicant shareholder in cases of oppression or injustice. To bring an action under s 216, an applicant must show that the conduct complained of affected him in his capacity as a shareholder. Any remedy granted under s 216(2) must be granted "with a view to bringing to an end or remedying the matters complained of". There is no doubt that the range of remedies which the court has the power to grant includes a minority buyout order.

98 However, it was common ground that a minority buyout order is the less usual remedy. As pointed out in Hans Tjio, Pearlie Koh & Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015) at para 11.088:

> Section 216(2)(d) contemplates a situation in which the shares of the applicant are purchased from him. This is by far the more usual form of the order and allows the applicant to realise his investment in the company at a fair value.

99 In *Fedorovitch v St Aubins Pty Ltd (No 2)* [1999] NSWSC 776 ("*Fedorovitch*"), Young J explained the purpose of a remedy under the equivalent provision of s 216 as follows (at [9]):

> Since its original appearance in the Act, the section has been reframed to allow other remedies, so that today the prime remedy is a buy-out by one side of the other. Essentially, however, the aim still is to permit the minority to free its capital, even though it has locked its capital into a venture. The reason for this is that it is unfair that the capital should continue to be locked up if the circumstances are indicative of oppression. *Accordingly, the prime thrust of the section is to either make the venture work so that the capital is properly employed, or to allow the capital to be removed. It is not for punishment or compensation or for making the profit that ought to have been made had the venture been successful.*
>
> [emphasis added]

100 It has also been said that a minority buyout order should be "cautiously made for it amounts to a judicially endorsed compulsory acquisition of the majority's shares": Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 2nd Ed, 2007) ("*Minority Shareholders' Rights and Remedies*") at 238. The court would be more inclined to order the purchase of the applicant shareholder's shares because "it is one thing to allow the [applicant] to realise his interest in the company and quite another thing compulsorily to expropriate the interests of other members, who will usually constitute the majority": Robert Hollington QC, *Hollington on Shareholder's Rights* (Sweet & Maxwell, 7th Ed, 2013) at para 8-51.

101 A minority buyout order exceeds the purpose of allowing the minority shareholder to exit the company. Instead, it punishes the majority and amounts to an expropriation of the majority's shares. For these reasons, in my view, there must be something more than just oppressive or unfair conduct before a minority buyout order is justified.

102 One obvious instance where a minority buyout order is appropriate is where the majority is financially or legally unable to buy out the minority. On the other hand, it is also obvious that a minority buyout order should not be made if it would not be in the company's interest, *eg*, where there are other shareholders who object to the minority shareholder being put in control of the company: *Re a company (No 0056885 of 1988), ex parte Schwarcz (No 2)* [1989] BCLC 427 at 451–452.

103 The more difficult question is whether, and if so when, the majority's egregious conduct towards the minority can justify a minority buyout order. In *Minority Shareholders' Rights and Remedies*, the learned author suggests (at 239) that a minority buyout order would be appropriate "where the

mismanagement of the company has been oppressive and egregious, but where the winding up of the company may not be desirable in so far as it might have societal repercussions". Two observations may be made. First, I do not think the court has to conclude that winding up is undesirable before making a minority buyout order. A winding up order should be an order of last resort where the company is a going concern. Second, I do not think the learned author meant to say that all oppressive or egregious conduct will justify a minority buyout order. That would be an unsupportable proposition.

104 Indeed, in *Sharikat Logistics Pte Ltd v Ong Boon Chuan and others* [2014] SGHC 224 ("*Sharikat Logistics*"), the only local decision to consider the possibility of a minority buyout order, Judith Prakash J found egregious acts on the part of the majority shareholders but held that they were not egregious enough for a minority buyout order (at [235]–[236]).

105 In my judgment, egregious conduct justifies a minority buyout order if it renders the majority shareholder unfit to exercise control of the company. Where there is no reason to conclude that the majority is unfit to exercise control of the company, the usual order that the majority buy out the minority suffices as a remedy for the minority. A majority shareholder would be unfit to exercise control of the company if allowing him to do so would be damaging to the company or its business, or would pose a serious risk to the public. I would add that in principle, exercising control as a shareholder is different from managing a company. However, s 216 cases often involve shareholders who are also managing the company as directors. In such cases, the majority shareholder's fitness to manage the company would also be relevant since his control of the company allows him to manage the company.

106 There are not many cases in which minority buyout orders were considered. Apart from *Sharikat Logistics*, the parties referred me to the following cases.

107 In *Re a Company (No 006834 of 1988), ex parte Kremer* [1989] BCLC 365 ("*Kremer*"), Hoffman J noted that it was "inconceivable" that a court would order the majority shareholder, who was "actively concerned in the management of the company" to be "compulsorily expropriated", especially since he had made far greater contributions to the growth of the company than the minority shareholder (at 367). In his view, the allegations of mismanagement and misappropriation, if proven, would amount at most to "high-handed conduct"; there was nothing in them which could "carry a serious imputation of dishonesty" (at 368). While the majority shareholder's greater contributions to the company's growth was a relevant consideration, this must have been, at best, a secondary consideration. This is because, as Hoffman J observed, the normal remedy in an ordinary case of breakdown of confidence between the parties is for the minority shareholder to be offered a fair price for his shares; the s 216 remedy is not intended to "enable the court to preside over a protracted and expensive contest of virtue between the shareholders and … award the company to the winner" (at 368).

108 In *Re a company (No 00789 of 1987); ex parte Shooter* [1990] BCLC 384 ("*Shooter*"), the company ran a football club. The majority shareholder was chairman of the board. He had managed the company's affairs "with a very nearly total disregard of the requirements of the Companies Act" (at 388). There was repeated failure to hold annual general meetings or to lay accounts before members. The failure to hold annual general meetings deprived the company of any proper board of directors. This led Harman J to observe that the company's affairs had been conducted by the majority

shareholder "without any regard for formalities or legal obligations", thereby demonstrating that he was "unfit to exercise such control [of the company] in law, although not for any reason of bad faith" (at 395). Having observed that he had the power to make an order that would "enable the company, for the future, to be properly run", Harman J made a minority buyout order.

109 In *Re Brenfield Squash Rackets Club Ltd* [1996] 2 BCLC 184 ("*Brenfield*"), the majority shareholder was a company named FMR Investments ("FMR"). The company ran a squash club. FMR and the company shared three directors. Rattee J found that the "whole pattern of the management of the company's affairs" by the directors had been to benefit themselves through FMR to the detriment of the minority shareholders, and then dishonestly conceal such facts from the minority shareholder (at 189). For example, the directors caused the company to execute a charge on company premises to secure FMR's own debt to a bank (at 187). The majority shareholder had also neglected the management of the company since no annual general meeting had been held, and no audited accounts produced, from 1992 to 1996 (at 189). Rattee J made a minority buyout order. Acknowledging that it may be a comparatively unusual order, Rattee J concluded that it was appropriate in the circumstances of the case. Rattee J expressly took into consideration the fact that the minority may in any event have become entitled to purchase the majority's shares under a shareholders' agreement on the ground that FMR had ceased to trade or was unable to pay its debts (at 190–191).

110 In *Fexuto Pty Ltd v Bosnjak Holdings Pte Ltd* [2001] NSWCA 97 ("*Fexuto*"), the oppressive conduct comprised, among other things, the acquisition of corporate opportunities by the majority shareholder in breach of his fiduciary duties, the failure to provide proper and lawful access to

information, and the exclusion of the minority shareholder from the decision making process in breach of a consensus style of management. The New South Wales Court of Appeal upheld the order made by the trial judge for the majority shareholders to buy out the minority. Describing a minority buyout order as "extraordinary, and virtually unprecedented" (at [160]), Spigelman CJ found that the conduct of the majority shareholders "did not approach the level of moral blameworthiness" in *Shooter* and *Brenfield* (at [163]). His view was that only a "systematic course of improper conduct" would justify a minority buyout order (at [166]).

111 In *Oak Investment Partners XII, Limited Partnership v Boughtwood and others* [2009] EWHC 176 (Ch) ("*Oak Investment*"), there were two principal shareholders in a company. Both the majority shareholder ("Boughtwood") and the minority shareholder ("Oak") brought petitions under s 996 of the Companies Act 2006 (c 46) (UK) and established unfair prejudice against each other. Sales J found that Boughtwood had, among other things, tried to assert wider management authority in the business contrary to what had been agreed, and had also staged a coup to take control of the company, thereby destroying the relationship of trust and confidence which should have been the foundation of the quasi-partnership between the shareholders (at [329]). Oak's misconduct, in contrast, did not cause actual prejudice to Boughtwood and was "very minor" in comparison with his (at [328]). Sales J concluded that a minority buyout order, while an "atypical order to make", would be the order that best met the overall justice of the case (at [327] and [330]). The decision was upheld on appeal: *Boughtwood v Oak Investment Partners XII, Ltd Partnership* [2010] EWCA Civ 23. The Court of Appeal described Boughtwood's conduct as "damaging to the group and its business" and "seriously destructive of the group's well-being" (at [120] and [122]). Boughtwood's conduct was also described as "probably the most direct cause

of PML's subsequent collapse into administration" (at [120]). PML was subsidiary of the company. In addition, Boughtwood was found to have created a "poisoned culture that was damaging to the group's morale" (at [122]).

112 In *Lantsbury v Hauser and another* [2010] EWHC 390 ("*Hauser*"), the majority shareholder (a) used company money as his own, (b) materially misled the minority into accepting fewer shares than his rightful entitlement in a share issue (leading the court to reverse that share issue), (c) entered false public records and give false information to the company's bankers saying that the minority shareholder had been removed as a director, and (d) misappropriated company property. The court made a minority buyout order, concluding that any continued involvement of the majority shareholder in the running of the company carried "a serious risk to the public", since he was "plainly not a fit person to hold the office of director in a limited liability company" (at [79]).

113 In my view, the proposition that a majority shareholder's egregious conduct should not warrant a minority buyout order unless it makes him unfit to exercise control of the company is consistent with the above cases. It can be seen from the above that the courts in *Shooter* and *Hauser* were prepared to make a minority buyout order because the majority was found to be unfit to exercise control of the company. In *Oak Investment*, the Court of Appeal did not expressly discuss the majority's fitness to exercise control of the company. However, the Court of Appeal upheld the minority buyout order for reasons which strongly suggest that the majority was unfit to exercise control of the company. In *Kremer*, the court refused to make a minority buyout order after finding high-handed conduct and noted that there was no serious imputation of dishonesty. In my view, a serious imputation of dishonesty would suggest that

the majority shareholder is unfit to exercise control of the company. The court in *Fexuto* also refused to make a minority buyout order. Spigelman CJ was of the view that only a systematic course of improper conduct could justify a minority buyout order. It seems to me that a systematic course of improper conduct would also suggest that the majority shareholder is unfit to exercise control of the company, although admittedly the nature of the improper conduct would be relevant as well.

114 The decision in *Brenfield* has to be looked at in context. A key reason for the minority buyout order in that case was the fact that the minority may have become entitled to purchase the majority's shares under the shareholders' agreement. It is also questionable whether the majority shareholder would have been able to buy out the minority given its unsatisfactory financial position. In my view, there is nothing in *Brenfield* that contradicts the proposition that egregious conduct is insufficient to justify a minority buyout order if it does not cause the majority shareholder to be unfit to exercise control of the company. *Brenfield* has to be looked at in the light of the facts in that case.

115 The plaintiffs urged me to place greater weight on the opinion of Fitzgerald JA in *Fexuto*. Fitzgerald JA preferred not to view a minority buyout order as an exceptional remedy (at [705]):

> I do not accept that there is some special inhibition on the Court's power to order shareholders engaged in oppression to sell their shares because they constitute a majority. What order is practically just will depend on the particular circumstances of each case. Majorities should not be encouraged to think that oppression is unlikely to have any more adverse consequence than an obligation to purchase the oppressed minority's shares, which might well suit the majority's purpose …

116 The caution in Fitzgerald JA's opinion is a valid one. However, in my respectful opinion, that has to be balanced against, and greater weight given to, the intent of a s 216 remedy and the expropriatory nature of a minority buyout order. A s 216 remedy is not meant to punish the majority shareholder for his misconduct by dispossessing him of his shares. A minority buyout order ought not to be available as a matter of course; it should be made only in exceptional situations. In a normal case such as the present, the unfairness to a minority caused by locking up his investment in a company, managed by a shareholder with whom he has fallen out, is remedied by offering the minority shareholder a fair price for his shares. Any departure from that principle must be justified by wider considerations. In the context of a minority buyout order under s 216, such justification exists where the majority shareholder is not fit to exercise control of the company in that allowing him to continue exercising control of the company would be damaging to the company or its business, or would pose a serious risk to the public.

Order to be made in the present case

117 My conclusion can be put shortly. The proven instances of misconduct of the 1st to 6th defendants (at [93] above) do not amount to misconduct which renders the 1st to 6th defendants unfit to exercise control of the Samwoh Group. As much as I acknowledge the grievances of Elvin Koh and Koh HL regarding the way they were removed as directors, in my view, there is no reason to forcibly take away the 1st to 6th defendants' rights as the majority shareholders to continue exercising control of the Samwoh Group. The usual buyout order suffices to address the plaintiffs' grievances. My order therefore is for the 1st to 6th defendants to purchase the shares of the plaintiffs.[182]

118 I would add for completeness that in my view,

(a) even if all the allegations made by the plaintiffs had been proven, they would not have led me to conclude that the 1st to 6th defendants are unfit to exercise control of the Samwoh Group; and

(b) even if the test for a minority buyout order does not require a finding that the 1st to 6th defendants are unfit to exercise control of the Samwoh Group, the allegations by the plaintiffs (even if proven) are not egregious enough to justify a minority buyout order.

Two further observations

119 I make two further observations. First, the Samwoh Group had submitted that a minority buyout order (a) may raise competition law issues because Elvin Koh is in a similar business, and (b) would likely be disruptive as it would result in a likely replacement of four out of five directors and trigger default clauses in the Samwoh Group's banking facilities due to the significant change of shareholding. These arguments would have been relevant factors to consider if I had been minded to make a minority buyout order on the facts. The question would be whether a minority buyout order would be in the interests of the company given the issues raised. The court would have to balance the impact of these issues on the company against the fact that the majority has been found unfit to exercise control of the company. However, in light of the conclusion I have reached, this issue is moot.

120 The second observation concerns Elvin Koh's testimony that he would require third-party financing for the plaintiffs' purchase of the 1st to 6th defendants' shares if I ordered a minority buyout. Elvin Koh testified that he already had a fund to buy the 1st to 6th defendants' shares and that this fund

would also "involve" other investors – specifically, two other construction companies.[183] The 1st to 6th defendants submitted that this was tantamount to a takeover attempt and therefore an abuse of court process.[184] I would have thought that this would be a relevant factor against making a minority buyout order given the expropriatory nature of the order. Section 216(2)(*d*) of the Companies Act also contemplates purchases of shares only by other shareholders, debenture holders or the company itself. The difficulty though is that there is nothing to stop a minority from selling some of the shares to a third party after he has purchased the majority's shares. Anyway, in view of the conclusion I have reached, I do not need to decide this issue.

Conclusion

121 My order is for the 1st to 6th defendants to purchase the shares of the plaintiffs in the 7th to 16th defendants. As agreed between the plaintiffs and the 1st to 6th defendants, the price will be determined by an independent valuer to be appointed. The valuer to be appointed, the reference date for the valuation and the costs of the valuation will be decided by this court if the parties cannot reach agreement on the same within 30 days of this order.

122 The plaintiffs are to pay costs to

(a) the 1st to 6th defendants fixed at $270,000 plus reasonable disbursements to be fixed by me if not agreed;

(b) the 7th to 16th defendants fixed at $100,000 plus reasonable disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judicial Commissioner

Alvin Yeo SC, Lim Wei Lee, Daniel Tan Shi Min and Catherine Chan (WongPartnership LLP) for the plaintiffs;
Francis Xavier SC, Patrick Ang, Chong Kah Kheng, Amy Seow, Chai Wei Han and Priscilla Soh (Rajah & Tan LLP) for the 1st to 6th defendants;
Thio Shen Yi SC, Gordon Lim and Matthias Goh (TSMP Law Corporation) for the 7th to 16th defendants.

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[1] Statement of Claim ("SOC") at para 13.
[2] SOC at paras 1 and 11.
[3] SOC at para 1, 1st to 6th defendants' Defence ("D1–6's Defence") at para 2.
[4] SOC at paras 1 and 15.
[5] SOC at para 25, D1–6's Defence at para 24.
[6] SOC at para 2, D1–6's Defence at para 3.
[7] SOC at para 19, D1–6's Defence at para 18.
[8] SOC at para 4.
[9] SOC at para 5; D1–6's Defence at para 28(b).
[10] SOC at para 5.
[11] SOC at para 6.
[12] SOC at paras 7 and 14(d); Poh TC's Affidavit of Evidence-in-Chief (AEIC) at para 16.
[13] SOC at para 9; 7th to 6th Defendants' Defence at para 10; Pang KL's AEIC at paras 3–5.
[14] SOC at para 15.
[15] SOC at para 22; D1–6's Defence at paras 21 and 25.
[16] D1–6's Defence at para 27; Plaintiffs' Reply to the 1st to 6th Defendants' Defence at para 36; Transcript (25 February 2016) at p 79, lines 15–19 and p 81, lines 2–20.
[17] Plaintiffs' letter to court dated 16 March 2016.
[18] SOC at para 89.
[19] Defence at para 91.
[20] Elvin Koh's AEIC at paras 10–12.
[21] Elvin Koh's AEIC at para 39.
[22] Elvin Koh's AEIC at para 40.

[23] 22 AB 145.
[24] Transcript (18 April 2016) at p 15, lines 10–20.
[25] 11 AB 164.
[26] Transcript (25 February 2016) at p 41, lines 5–7.
[27] Transcript (25 February 2016) at p 42, line 21 to p 43, line 1.
[28] Transcript (25 February 2016) at p 54, lines 15–18.
[29] 20 AB 152.
[30] 20 AB 148–150.
[31] 20 AB 153.
[32] 20 AB 178.
[33] 20 AB 181.
[34] Elvin Koh's AEIC at para 148.
[35] Elvin Koh's AEIC at para 149; Pang KL's AEIC at para 132.
[36] Elvin Koh's AEIC at para 150; Transcript (17 February 2016) at p 9, lines 22–25, p 10, lines 4–16.
[37] Eric Soh's AEIC at para 106; Pang KL's AEIC at para 132.
[38] Transcript (17 February 2016) at p 11, lines 2–6; Eric Soh's AEIC at para 106; Pang KL's AEIC at para 133.
[39] Eric Soh's AEIC at para 106; Pang KL's AEIC at para 133.
[40] Koh HL's AEIC at para 36.
[41] 30 AB 73, 74, 78.
[42] 30 AB 76.
[43] 30 AB 80.
[44] 30 AB 83.
[45] 1 AB 93.
[46] 20 AB 171; Eric Soh's AEIC at para 116; Pang KL's AEIC at para 143.
[47] 20 AB 230; 30 AB 27–28.
[48] 20AB 231–232.
[49] 30 AB 44.
[50] 30 AB 45.
[51] 20 AB 276–280.
[52] 20 AB 276; Elvin Koh's AEIC at para 173.
[53] Elvin Koh's AEIC at para 174.
[54] 20 AB 279.
[55] SOC at para 22.
[56] Transcript (17 February 2016) at p 46 at lines 19–24.
[57] Elvin Koh's AEIC at paras 26–27.
[58] Transcript (17 February 2016) at p 47, line 22 to p 48, line 1.
[59] Transcript (25 February 2016) at p 106 at lines 1–9.
[60] Transcript (23 February 2016) at p 46, lines 3–15 , p 47, lines 3–8.
[61] Transcript (24 February 2016) at p 71, lines 1–3;Transcript (25 February 2016) at p 113, lines 18–22.
[62] 1st to 6th Defendants' Closing Submissions (1–6DCS) at paras 46–47.
[63] Pang KL's AEIC at para 156.
[64] Transcript (26 February 2016) at p 98, lines 9–18.
[65] Transcript (23 February 2016) at p 51, lines 1–11.
[66] Pang KL's AEIC at para 159.

[67] Transcript (25 February 2016) at p 114, line 24 to p 115, line 1; Transcript (23 February 2016) at p 56, lines 4–14.
[68] Plaintiffs' Closing Submissions (PCS) at para 108.
[69] Transcript (19 February 2016) at p 56, lines 17–21.
[70] 21 AB 62.
[71] 21 AB 70–74.
[72] 21 AB 78–90.
[73] 21 AB 85–86.
[74] 21 AB 87–92.
[75] Transcript (19 February 2016) at p 102, lines 14–16.
[76] Transcript (18 February 2016) at p 124, lines 10–13.
[77] Transcript (18 February 2016) at p 124, lines 4–7.
[78] Transcript (18 February 2016) at p 130, line 24 to p 131, line 2.
[79] Transcript (18 February 2016) at p 54, line 18 to p 55 line 3.
[80] Transcript (18 February 2016) at p 57, lines 22–24.
[81] Transcript (25 February 2016) at p 132, lines 3–11.
[82] Elvin Koh's AEIC at para 206.
[83] SOC at para 78.
[84] SOC at para 80(a).
[85] SOC at para 80(e).
[86] 25 AB 230–231.
[87] 25 AB 231.
[88] 25 AB 232.
[89] Koh HL's AEIC at para 112; Transcript (24 February 2016) at p 159, line 25 to p 160, line 6; Eric Soh's AEIC at para 216.
[90] Eric Soh's AEIC at para 217; 1st to 6th Defendants' Bundle of Documents at p 88.
[91] Transcript (18 April 2016) at p 105, line 7; PCS at para 137.
[92] Eric Soh's AEIC at para 221; Pang KL's AEIC at para 257.
[93] Transcript (19 February 2016) at p 22, lines 1–10.
[94] 26 AB 87.
[95] 26 AB 88.
[96] 26 AB 238.
[97] Transcript (26 February 2016) at p 29, lines 5–14; p 30, lines 6–11.
[98] Transcript (26 February 2016) at p 29, lines 15–17.
[99] 27 AB 129.
[100] 27 AB 136.
[101] 28 AB 222.
[102] Transcript (19 February 2016) at p 29, lines 14–19; p 30, lines 20–22.
[103] Transcript (24 February 2016) at p 181, lines 2–16.
[104] 27 AB 292; 28 AB 200, 274.
[105] Transcript (26 February 2016) at p 54, lines 17–23.
[106] 1–6DCS at para 84.
[107] Transcript (18 February 2016) at p 123, lines 22–25.
[108] 1–6DCS at para 86; Transcript (18 February 2016) at p 93, line 9 to p 97, line 9.
[109] 27 AB 309.
[110] 27 AB 296–297.
[111] Koh HL's AEIC at paras 167–168.

[112] Koh HL's AEIC at para 168.
[113] 28 AB 151–154.
[114] 28 AB 165–166.
[115] SOC at para 83; 28 AB 173.
[116] 28 AB 177.
[117] PCS at para 151.
[118] 1–6DCS at para 82.
[119] Transcript (19 February 2016) at p 45, lines 3–9.
[120] Transcript (19 February 2016) at p 42, lines 13–19.
[121] 25 AB 257, 273 266, 276.
[122] Transcript (24 February 2016) at p 188, lines 10–13.
[123] Transcript (23 February 2016) at p 39, lines 19–25.
[124]16 AB 104–111.
[125] Elvin Koh's AEIC at para 137.
[126] SOC at para 75.
[127] SOC at para 74.
[128] Transcript (19 February 2016) at p 87, line 23 to p 88 line 4.
[129] Transcript (19 February 2016) at p 89 lines 21–25.
[130] Felicia Chen's AEIC at para 2.
[131] Transcript (25 February 2016) at p 69, line 23 to p 70, line 2.
[132] Transcript (18 February 2016) at p 19, lines 3–6.
[133] Transcript (18 February 2016) at p 34, lines 1–5.
[134] Transcript (18 February 2016) at p 16, lines 12–20.
[135] 17 AB 200.
[136] Peter Garde's Report (annexed to his AEIC) at para 13; Philip Thomas Harrison's Report (annexed to his AEIC) at para 23.
[137] Peter Garde's 2nd Report at para 38.
[138] Phillip Thomas Harrison's Report at para 49.
[139] Philip Thomas Harrison's Report at paras 46 and 48.
[140] Peter Garde's 2nd Report at paras 39–40.
[141] Transcript (2 March 2016) at p 54, line 22 to p 55, line 8.
[142] Transcript (1 March 2016) at p 30 at lines 1–4; Peter Garde's 2nd Report at paras 63–64.
[143] Transcript (2 March 2016) at p 60, lines 12–23.
[144] Peter Garde's 2nd Report at para 20.
[145] 1–6DCS at paras 114–115; Transcript (1 March 2016) at p 49, lines 11–14.
[146] Transcript (2 March 2016) at p 53, line 15 to p 57, line 6.
[147] Transcript (1 March 2016) at p 31, lines 20–24; p 36, lines 6–8.
[148] Transcript (1 March 2016) at p 33, line 22 to p 34, line 5.
[149] Transcript (1 March 2016) at p 81, lines 5–12.
[150] Transcript (1 March 2016) at p 81, lines 3–20.
[151] Ms Koh's AEIC at para 12.
[152] Felicia Chen's AEIC at para 7.
[153] Transcript (26 February 2016) at p 110, lines 21–23.
[154] Robert Leighton Phillips' Report (annexed to his AEIC) at p 24.
[155] Robert Leighton Phillips' Report at p 7; David C Rule's Report (annexed to his AEIC) at p 6.
[156] Robert Leighton Phillips' Report at pp 24–25 and 26–27.

[157] Robert Leighton Phillips' Report at pp 23–24.
[158] Robert Leighton Phillips' Report at p 18.
[159] David C Rule's Report at paras 6.1.4 and 6.4.3.
[160] Felicia Chen's AEIC at para 21–25.
[161] 25 AB 168–169.
[162] Transcript (2 March 2016) at p 36, lines 12–19.
[163] Transcript (2 March 2016) at p 34, lines 18–22.
[164] Transcript (26 February 2016) at p 115, lines 10–21.
[165] Transcript (26 February 2016) at p 116, lines 5–11.
[166] Transcript (2 March 2016) at p 46, lines 15–22.
[167] PCS at para 169(e).
[168] Transcript (26 February 2016) at p 138, lines 23–24.
[169] Transcript (2 March 2016) at p 45, lines 17–21.
[170] Transcript (2 March 2016) at p 45, lines 5–12.
[171] Transcript (2 March 2016) at p 71, lines 17–21; p 72, lines 9–14.
[172] Pang KL's AEIC at para 220.
[173] SOC at para 74.
[174] Pang KL's AEIC at para 221.
[175] Pang KL's AEIC at paras 236–237.
[176] Transcript (26 February 2016) at p 136, lines 2–4; p 137, lines 14–24.
[177] Transcript (26 February 2016) at p 138, lines 4–8.
[178] PCS at paras 179, 182 and 184.
[179] 1–6DCS at para 42.
[180] 7th to 16th Defendants' Closing Submissions (7–16DCS) at paras 38–47 and 53–55.
[181] 7–16DCS at para 6.
[182] 7–16DCS at para 4.
[183] Transcript (18 February 2016) at p 102, lines 18–23.
[184] 1–6DCS at para 147.