IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 36

Suit No 1258 of 2019

Between

Phua Kiah Mai

… *Plaintiff*

And

The Kheng Chiu Tin Hou Kong and Burial Ground

… *Defendant*

GROUNDS OF DECISION

[Companies] — [Winding up]

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v
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Introduction

1 This application for winding-up of The Kheng Chiu Tin Hou Kong and Burial Ground ("the Company", hereinafter also "the Defendant") is but the latest chapter in a long-drawn out dispute between members of the Hainanese community. There have been previous instances of dispute and disagreement, with various attempts at reconciliation and mediation. In the present case, Mr Phua Kiah Mai ("the Plaintiff"), a member and director of the Company, established sufficient basis for the Company to be wound up, as he showed that the interests of the minority were being disregarded. However, the Plaintiff's attempt to invoke an underlying basis or agreement between members that the

Company was to serve as the financial arm of the Singapore Hainan Hwee Kuan ("the Society"), which the Plaintiff is President of, failed.[1]

Background

2 The Company is a company limited by guarantee and incorporated on 16 November 1964.[2] It was set up to, *inter alia*, administer and maintain the Kheng Chiu Tin Hou Kong temple ("the Temple") that was built by Hainanese migrants in Singapore, as well a burial ground which was compulsorily acquired by the Government in April 1973.[3] Its predecessor is the Kheng Chiu Tin Hou Kong ("the Company Predecessor"), which was founded in around 1853 to maintain the Temple.[4] The Society is an association registered with the Registry of Societies on 18 December 1890.[5] It was formerly known as the Kiung Chow Hwee Kuan ("the Society Predecessor") and renamed as the Singapore Hainan Hwee Kuan on 16 September 1994.[6]

3 On 13 May 2013, the Plaintiff filed Originating Summons No 415 of 2013 seeking, *inter alia*, to invalidate certain proxy forms that were filed in the Company's elections in 2012 to appoint its Board of Directors. This was later converted to Suit No 658 of 2013 ("Suit 658"), where substantially the same reliefs were sought. Suit 658 was subsequently settled by consent on 13 May

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1 Affidavit of Evidence in Chief of Phua Kiah Mai dated 23 November 2020 ("Phua's AEIC), para 12.

2 Phua's AEIC, para 3; Affidavit of Evidence in Chief of Foo Jong Peng dated 23 November 2020 ("Foo's AEIC"), para 23.

3 Foo's AEIC, paras 23–26.

4 Foo's AEIC, para 16.

5 Phua's AEIC, para 8.

6 Phua's AEIC, para 9.

2015.[7] The resulting consent order ("Consent Order") provided, amongst other things, that the Company would convene an Annual General Meeting ("AGM") in the 2015 work year to hold an election for its Board of Directors; and that a 3-person panel would be constituted to determine membership issues, the validity of proxy forms for that election, and any other matters delegated by the parties or the Court.

4 On 21 June 2019, the Company filed Originating Summons 789 of 2019 ("OS 789") seeking, *inter alia*, a declaration that the Consent Order was rendered inoperative or frustrated, and that the Company would be discharged from further performance of the same.[8] On 6 August 2019, the Plaintiff filed Companies Winding Up No 219 of 2019 ("CWU 219"), seeking that a winding up order be made against the Company. OS 789 was subsequently stayed on 26 August 2019 pending the outcome of CWU 219.[9] CWU 219 was converted to the present proceedings in Suit No 1258 of 2019 ("Suit 1258") on 18 November 2019.[10]

Summary of the Plaintiff's Case

5 The Plaintiff argued that the Company should be wound up on the basis of s 254(1)(*i*) and/or s 254(1)(*f*) of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"). He argued that the substratum of the Company was to work jointly with the Society for the benefit of the Hainanese community in Singapore and provide financial support to the Society; and this had been lost as it ceased to so

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7 HC/ORC 3101/2015 (Phua's AEIC, p 817–821).

8 Foo's AEIC, p 412.

9 HC/ORC 5787/2019.

10 HC/ORC 8164/2019.

work with the Society. He submitted that there was a justifiable loss of confidence in the management of the company which provided grounds for winding up under s 254(1)(*i*), and that the Defendant's directors had acted in the affairs of the Company in their own interests rather than in the interests of the members as a whole, or in any other manner apparently unfair and unjust to other members pursuant to s 254(1)(*f*) of the CA. He alleged, amongst others, that there was a lack of probity, accountability and transparency on the part of those directors. It was also alleged that they had conducted the affairs of the Company to the exclusion of the Plaintiff and certain other directors of the Company, in a manner that was not in the interests of the members of the Company as a whole.

Summary of the Defendant's Case

6 The Defendant argued that there was no such substratum as alleged by the Plaintiff. It argued that the Plaintiff had raised trivial matters in support of his allegation of a justifiable loss of confidence in the management of the Company. It was submitted that the Plaintiff's claimed breaches of statutory and constitutional requirements on the part of the Company were not connected to unfairness justifying a winding up; and that these were also caused by an impasse over the implementation of the Consent Order, for which the Plaintiff was responsible as well. Furthermore, the Plaintiff's allegations did not show that certain directors had acted against the interests of the members of the Company. For example, its decision not to fund the Society, which was not a member of the Company, was made in the interests of its members.

The Decision

7 While I was not persuaded that the Plaintiff made out a case for just and equitable winding up on the basis of any relationship between the Society and the Company, I did find that there was unfairness in the conduct of the affairs of the Company justifying winding-up being ordered under either s 254(1)(*f*) or (*i*) of the CA. I, however, stayed the winding-up pending appeal, and also invited the Official Receiver and Public Trustee as well as the Commissioner of Charities to be present should the winding up proceed further.

Analysis

8 The bases for the winding up sought by the Plaintiff, a member of the Company, are:

(a) That it is just and equitable under s 254(1)(*i)* of the CA (the "just and equitable" ground); and

(b) That the directors acted in their own interests rather than those of the members as a whole, or in any other manner that appears to be unfair or unjust to other members, contrary to s 254(1)(*f*) of the Act (the "unfairness" ground).[11]

These bases are invoked under s 254 of the CA rather than s 125 of the Insolvency, Restructuring and Dissolution Act 2018 (No. 40 of 2018), as the proceedings were started before the commencement of the latter. The provisions are in any event materially the same and no difference would have arisen.

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[11] I used a different term in my brief remarks, namely, "Loss of Confidence"; but on reflection, to my mind "Unfairness" is a better descriptor.

9 I note that there is some overlap given the broad language used in both ss 254(1)(*i*) and (*f*) of the CA, in respect of the conduct of the management of a company, and the just and equitable ground may cover such circumstances as well (*Report of the Steering Committee for Review of the Companies Act* (June 2011) ("*Steering Committee Report*") at ch 2, para 135). I deal with this in the discussion on s 254(1)(*f*).

Just and equitable ground

10 I was not persuaded by the Plaintiff's argument that this ground was made out, in so far as reliance was placed on the substratum or basis because of any historical relationship between the Company and the Society, or anything in the vein of a quasi-partnership.

The law

11 Section 254(*i*) of the CA provides as follows:

> **Circumstances in which company may be wound up by Court**
>
> **254.**— (1) The Court may order the winding up if —
>
> (*i*) the Court is of the opinion that it is just and equitable that the company be wound up.

12 As noted in the controlling authorities such as *Sim Yong Kim v Evenstar Investments Pte* Ltd [2006] 3 SLR (R) 827 ("*Sim Yong Kim*") and *Perennial (Capitol) Pte Ltd and Anor v Capitol Investment Holdings Pte Ltd and other appeals* [2018] 1 SLR 63 ("*Perennial*"), the foundation of the jurisdiction under s 254(1)(*i*) of the CA is unfairness (*Sim Yong Kim* at [31] and *Perennial* at [40]). The concept of "just and equitable" recognises that companies involve individuals with "rights, expectations and obligations inter se which are not

necessarily submerged in the company structure" (*per* Lord Wilberforce in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 ("*Ebrahimi*") at 379, cited with approval in *Sim Yong Kim* at [29]).

13 However, the notion of "unfairness", though broad, does not give the Court a licence for capriciousness, and its powers should be exercised with caution. The Court of Appeal in *Perennial* reiterated the guidance given in *Ting Shwu Ping v Scanone Pte Ltd and another appeal* [2017] 1 SLR 95 ("*Ting Shwu Ping*"), that the provision empowers the Court to "subject the exercise of legal rights to equitable considerations", namely those of a personal character arising between individuals, such that it would be "unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way" (*Perennial* at [41]; *Ting Shwu Ping* at [74], citing *Ebrahimi* at 379). In *Ebrahimi*, Lord Wilberforce noted that the superimposition of equitable considerations which may give rise to a winding up under this ground typically includes one or more of the following elements (at 379):

(a) An association formed or continued on the basis of a personal relationship of mutual confidence;

(b) An agreement or understanding that all or some of the shareholders shall participate in the conduct of the business; and

(c) Restriction on the transfer of the members' interests in the company, such that if confidence is lost or one member is removed from management, he cannot take out his stake and go elsewhere.

14 In line with Lord Wilberforce's observation that "it is these, and analogous, factors" which may bring the "just and equitable" jurisdiction into

play, the Courts have not limited their jurisdiction to superimpose equitable considerations in merely these three circumstances (*Sim Yong Kim* at [30]). It has been observed that the various categories of cases involving winding-up on just and equitable grounds include (Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 3rd Ed, 2017) at paras 5.037–5.069; see also *Chow Kwok Chuen v Chow Kwok Chi and another* [2008] 4 SLR(R) 362 at [18], citing *Walter Woon on Company Law* (Sweet & Maxwell Asia, 3rd Ed, 2005) (Tan Cheng Han gen ed) at paras 17.54–17.74):

(a) Oppressive conduct, such as the exclusion of a member from management participation contrary to an understanding that he will be allowed to so participate;

(b) An irretrievable breakdown in relationship amongst the shareholders;

(c) Loss of substratum, where the main or primary object of the company can no longer be achieved; and

(d) Where a company was formed with a fraudulent purpose.

15 The breach of a general understanding or common intention as to the type and limits of a corporate venture gives rise to a loss of substratum or basis, *ie*, the main object which the company was formed to achieve (*Ma Wai Fong Kathryn v Trillion Investment Pte Ltd and others and another appeal* [2019] 1 SLR 1046 ("*Kathryn Ma*") at [63]; citing *Re Goodwealth Trading Pte Ltd* [1990] 2 SLR(R) 691 at [25]). In such cases, the unfairness lies in holding the parties to the association despite the loss of substratum (*Kathryn Ma* at [63]). In particular, it is noted that in some of the local cases, such as *Sim Yong Kim*, the notion of legitimate expectations was used to consider the extent and nature

of that shared understanding (at [40]–[45]). This followed from its use in English cases including *Re Astec (BSR) plc* [1998] 2 BCLC 556, which was approved by Lord Hoffmann in *O'Neill and another v Phillips and others* [1999] 1 WLR 1092 ("*O'Neill*") at 1101. Although the latter were cases concerning unfair prejudice under s 459 of the Companies Act 1985 (c 6) (UK) (corresponding to s 216 of the CA), the Court of Appeal in *Sim Yong Kim* noted that the jurisdiction under ss 216 and 254(1)(*i*) of the CA, although distinct, do overlap in many situations, being both predicated on the concept of unfairness (*Sim Yong Kim* at [38]).

16 Lastly, it is noted that the cases in this area generally proceed on the basis of unfairness in the context of a "quasi-partnership", which may include one or more of the elements noted in *Ebrahimi* (as noted at [13] above; *Seah Chee Wan and another v Connectus Group Pte Ltd* [2019] SGHC 228 ("*Seah Chee Wan*") at [115]–[116]). It must then be shown why keeping the company as a going concern would result in unfairness (*Seah Chee Wan* at [117]). In this context, the term "quasi-partnership" is simply a shorthand label which is intended to reflect those factors which bring into play the equitable principles borrowed from the law of partnership (Robin Hollington QC, *Hollington on Shareholder's Rights* (Sweet & Maxwell, 9th Ed, 2020) at para 7.40). The underlying question is whether the circumstances surrounding the conduct of the affairs of a company are such as to give rise to equitable constraints on the behaviour of other members, going beyond the strict rights and obligations in statute and the constitutional documents (*Fisher v Cadman* [2006] 1 BCLC 499 ("*Fisher*") at [84]). Ultimately, even where the statutory grounds for winding up a company have been technically established, the Court has a residual discretion to consider whether, having regard to all relevant factors including the utility and effect of the winding up order and the overall fairness and justice

of the case, the company concerned should be wound up (*Lai Shit Har and another v Lau Yu Man* [2008] 4 SLR(R) 348 at [33]; *Perennial* at [82]; *Foo Peow Yong Douglas v ERC Prime II Pte Ltd and another appeal and other matters* [2018] 2 SLR 1337 ("*Douglas Foo*") at [59]).

Application to the facts

17 The Plaintiff invoked a loss of substratum on the basis of an alleged historical and social connection and relationship between the Company and the Society. However, I found that the Plaintiff was unable to establish the existence of the purported basis or substratum. In addition, even if the substratum existed as alleged, any such failure in this regard was insufficient to justify winding up.

18 The Plaintiff's contentions are dealt with in the following sequence:

(a) Whether the alleged substratum existed; and

(b) Whether a loss of the said substratum could be made out.

(1) The Plaintiff did not establish the existence of the alleged substratum

19 The Plaintiff argued, in his words, that the Society and Company were "two-in-one" organisations, with the Company serving as the financial arm of the Society.[12] On the Plaintiff's conception, the Company was intended to serve the needs of the Society. Its primary obligation was to fund the latter's administrative expenses and the costs of its activities, such as scholarships disbursed by the Society. The inextricable relationship between the two organisations was evidenced by the fact that they jointly used the Kheng Chiu

[12] Plaintiff's Closing Submissions, paras 114 and 159.

Building ("the Building").[13] Although the Building was legally owned by the Company, up till 2019, the Company allowed the Society to use it rent-free. They also shared a joint secretariat and jointly managed the Kheng Chiu Loke Tin Kee Home ("the Home"), which was established by the Hainanese community as a joint endeavour by the Company and the Society.[14] The Plaintiff's position was therefore that the members of the Company had a legitimate expectation that the Company would work together with the Society as a "two-in-one" organisation, and provide it financial support and rent-free use of the Building.[15] This was said to be breached as Mr Foo Jong Peng ("Mr Foo"), a director and Chairman of the Company, and his faction allegedly refused to work jointly with the Society, to allow the Society to use the Building, and to provide financial contributions to the Society.

20 The Plaintiff relied on what he claimed was a historical connection between the Company and the Society, by way of establishing the alleged substratum. According to the Plaintiff, the Temple was initially set up by the Society Predecessor and manged by it. The Company Predecessor was then set up as a separate unregistered society in the name of the Temple, to take over from the Society Predecessor the administration of the assets of the Hainanese community, allegedly to avoid confiscation of the assets it held. This was as the colonial government in the 1930s had taken a hard-line stance against societies, and the Society Predecessor as a registered society was subject to greater scrutiny and control, such as being required to declare its real estate and cash

13 Plaintiff's Closing Submissions, paras 134–135 and 138.

14 Plaintiff's Closing Submissions, paras 95–98.

15 Plaintiff's Closing Submissions, para 493–494.

flow statements.[16] On the other hand, religious societies including temples were exempted from registration and did not have to furnish as much information.[17] The Building was also established and jointly managed by the Society and the Company, with the two even jointly undertaking a reconstruction of the Building post-World War II.[18] Similarly, the Home was set up by the Hainanese community and was joint endeavour between the two: the Society previously administered the property, and had contributed to it.[19] The Society and the Company operated as what was described as a "two-in-one" organisation: from around 1936, the Society Predecessor would organise all the activities and events for the Hainanese community and the Company Predecessor would fund these activities and events.[20] In 1964, the Company Predecessor was incorporated, which allowed it to directly hold the properties that belonged to the Hainanese community; and it continued to function as the financial arm of the Society Predecessor and subsequently the Society.[21] It was further argued that the Defendant understood and accepted the Company and the Society functioning as a "two-in-one" organisation, as evidenced by various indicia in the activities of the organisations, in particular a mediation agreement in 2007 ("the Mediation Agreement"). The Mediation Agreement had come on the back of disputes between the disputes between the Company and the Society in 2007.[22]

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16 Plaintiff's Closing Submissions, paras 62–63.

17 Plaintiff's Closing Submissions, paras 72–73 and 77–78.

18 Plaintiff's Closing Submissions, paras 83–94.

19 Plaintiff's Closing Submissions, paras 95–98.

20 Plaintiff's Closing Submissions, para 99.

21 Plaintiff's Closing Submissions, paras 107–109; Phua's AEIC, para 9.

22 Phua's AEIC, paras 69 and 79–86.

21 The Defendant refuted this, stating that the Plaintiff was unclear on what he meant by "two-in-one" organisations. It argued that he was unable to provide any evidence showing that meant it was the financial department of the Society and must take orders from it.[23] It submitted that the Rules of the Society Predecessor or the Society did not recognise that the Company Predecessor or the Company was intended to be its financial arm nor made references to, *inter alia*, an expectation of financial support.[24] The Company's Memorandum and Articles of Association ("M&A") also did not refer to the Society.[25]

22 The Defendant thus denied the Plaintiff's characterisation of the relationship between the Society and the Company. It questioned the reliability of the sources relied on by the Plaintiff in asserting a historical relationship between the Company and the Society. It argued that the Company's activities did not prove that it was the financial arm of the Society or that its main object was to provide the Society with financial support. It submitted that this was also not borne out by the Mediation Agreement, which provided that the Company's assets were held for the purposes of the community (as opposed to the Society); and its provisions that the Company was to pay certain regular sums to the Society was a "far cry" from recognising that the Company's primary object was to fund the Society's expenses. In any event, it argued that both parties did not comply with the terms of the Mediation Agreement.[26]

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23 Defendant's Closing Submissions, paras 130–132.

24 Defendant's Closing Submissions, para 134.

25 Defendant's Closing Submissions, para 137.

26 Foo's AEIC, paras 47–48.

23 In my view, it was not sufficient that the Plaintiff contended that the Society and the Company were "two-in-one": what mattered was whether the members of the Company had such an understanding. However, the evidence relied upon did not show this on the balance of probabilities. The actions relied upon by the Plaintiff were explicable on other equally plausible grounds.

24 The alleged historical reason for the formation of the Company Predecessor and the incorporation of the Company was also not established. Rather, some of the evidence was rejected as being hearsay, or otherwise unreliable. Furthermore, even if that reason was accepted, it was not established that the company was incorporated on that basis. As such, the Plaintiff could not demonstrate the existence of the alleged substratum.

(A) THE COMPANY WAS NOT SHOWN TO HAVE BEEN FORMED TO AVOID LOSS OF ASSETS

25 First, it was not shown that the Company Predecessor was formed to avoid the forfeiture of assets. The Plaintiff sought to rely on, *inter alia*, minutes from an AGM of the Company on 17 May 1997 and those from a meeting of the Council of the Society on 20 July 2019.[27] At the former, one Mr Tan See Swan ("Mr Tan") stated that he was told by the late President of the Society Predecessor, Mr Foo Chee Fong ("Mr CF Foo"), that its assets had been transferred to the name of a temple to avoid the risk of the Society Predecessor being banned by the colonial government; at the latter, one Mr Lim Keen Ban ("Mr Lim") was recorded as relating a similar rationale to the other Council members based on his understanding. However, neither Mr CF Foo nor Mr Lim were before the Court to testify as to such a belief held by them. Another

[27] Agreed Bundle ("AB") Vol 1, p 93 and AB Vol 8, pp 2847–2848.

member at the former meeting had also objected as to Mr Tan's characterisation of the history of the Company and the Society, and asserted that there had been no such transfer of properties, which were acquired in the name of the Company Predecessor to begin with. When presented in cross-examination with what that other member had stated, the Plaintiff agreed that "different members would have different interpretation of history".[28]

(B) THE BUILDING AND THE HOME WERE NOT ESTABLISHED BY THE HAINANESE COMMUNITY AS A WHOLE

26 Second, it was not shown that the Building and the Home were in fact established by the Hainanese community as a whole, and that this entailed the Society and the Company functioning together. The Plaintiff argued that the Hainanese community had purchased the property in Beach Road on which the Building was later constructed, and that this was held by the Company Predecessor for the benefit of the Hainanese community and the Society Predecessor.[29] He relied on certain cause papers filed in Originating Summons No 185 of 1936 ("OS 185"), wherein the trustees of the Company had applied for, and obtained a Court order which vested in them various properties (including the property in Beach Road) which were said to be formerly administered by the Society Predecessor.[30] However, I accepted the Defendant's argument that the Court order was obtained by consent and the evidence was therefore untested.[31] The Plaintiff agreed in cross-examination that the prayers

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28 Transcript (4 February 2021), p 69, lines 2–8.

29 Plaintiff's Closing Submissions, paras 84–87.

30 Plaintiff's Bundle of Documents Vol 1, p 7, and pp 34–35.

31 Defendant's Closing Submissions, para 155.

and Court order also did not mention the Society Predecessor.[32] To my mind, therefore, the cause papers in OS 185 merely spoke to a belief that the Company Predecessor had been set up to administer those properties as properties belonging to the Hainanese community. They did not show that the Society Predecessor or the Society had any claim over them.

27 Furthermore, although the Plaintiff pointed to several publications of the Society and Company stating, *inter alia*, that a committee to reconstruct the Building was composed of both executive members of the Society Predecessor and directors of the Company Predecessor,[33] it was relevant that the management of the Building was in fact done by the property management committee of the Company.[34] The directors of the Company also decided at a Board meeting on 19 November 2010 that since the Building was registered under the Company's name, the Company should handle its leasing and rent revenue.[35]

28 The Home also appeared to have been managed by the Company and not the Society. Its management was undertaken by a committee consisting of 11 members appointed by the Board of Directors of the Company.[36] The Plaintiff had additionally asserted in his Reply in Suit 1258 that the Home was "financed and managed by the Defendant's predecessor for over 100 years" from its founding in 1902.[37]

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32 Transcript (8 February 2022), p 28 lines 1–15; p 29 lines 8–10.

33 Plaintiff's Closing Submissions, paras 89–90.

34 AB Vol 3, pp 862–866; pp 899–900 and pp 901–902.

35 AB Vol 4, p 1276 and p 1278.

36 AB Vol 1, p 100.

37 Reply, para 8.

(C) THE COMPANY WAS NOT THE FINANCE ARM OF THE SOCIETY

29 Third, the evidence did not in fact show the Company functioning as the financing arm of the Society. Although the Company had financially supported the Society over the years,[38] it did not appear that, prior to the Mediation Agreement,[39] the Company was obliged to fund the Society. The Plaintiff conceded that such an understanding was not recorded in writing anywhere else.[40] In any event, the Society had recorded a deficit in several years prior to 2012, when the Company ceased its funding of the Society.[41] This suggested that the Company had no obligation to prevent the Society from going into deficit, contrary to what was asserted by the Plaintiff.[42] The Society also had other sources of funding, such as from its members and management committee, or from fundraising for different events.[43] Moreover, it did not appear that the Society had control over the Company's use of funds: the Plaintiff testified that the Society had never sued to complain about such use, or that it had not been accorded priority. According to the Plaintiff, the Society did not interfere as to which organisations the Company donated to.[44]

30 Furthermore, although the Mediation Agreement provided, *inter alia*, that the Company would grant the Society an annual subvention of $130,000 for its regular administrative expenses, and reimburse it in respect of its annual

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38 See, *eg*, Phua's AEIC, para 263; AB Vol 7, p 2309.

39 AB Vol 14, pp 4760–4761.

40 Transcript (5 February 2021), p 97 line 23–p 98 line 2.

41 AB Vol 7, p 2309 and p 2468; AB Vol 8, p 2640.

42 Transcript (5 February 2021), p 95 line 12–p 96 line 12.

43 Transcript (11 February 2021), p 25 line 19–p 26 line 10; p 46 lines 16–23.

44 Transcript (5 February 2021), p 41 line 20–p 42 line 9.

scholarship and bursary awards as well as other welfare, cultural and educational activities,[45] the Society did not subsequently initiate legal proceedings to enforce the Mediation Agreement when the Company stopped paying the amount.[46] The Society also did not take steps to form a consultative council which, according to the Mediation Agreement, was intended to resolve differences arising from the implementation of the Agreement.[47]

31 As for the Company's provision to the Society of rent-free use of the Building, it was not clear that this was only provided to the Society as opposed to other organisations. Although Mr Foo deposed that the Company supported all Hainanese associations and therefore provided them with complimentary use of the facilities in the Building,[48] he later conceded in cross-examination that the Company had previously charged certain of these associations for use of the said facilities.[49] The Defendant subsequently sought to rely on several hall rental application forms for organisations such as the Nanyang Calligraphy Centre and the Chinese Opera & Drama Society (Singapore), on which it was indicated that their fees been waived.[50] Additionally, although the Mediation Agreement provided as well that the Company would "continu[e] with the current practice of … allowing the [Society] to use rent-free the premises at the [Building]",[51]

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45 AB Vol 14, p 4760.

46 Transcript (5 February 2021), p 2 line 24–p 3 line 4; p 19 lines 7–16.

47 Transcript (5 February 2021), p 14 line 13–p 15 line 13; AB Vol 14, p 4762.

48 Foo's AEIC, para 115.

49 Transcript (24 February 2021), p 101 line 7–p 102 line 1; p 103 lines 18–22; p 108 line 14–p 19 line 13.

50 Defendant's Bundle of Documents ("DBD") Vol 3, pp 579 and 581; Defendant's Reply Submissions, para 74.

51 AB Vol 14, p 4760.

the Society did not at any point initiate legal proceedings to enforce the Agreement, as mentioned above (at [30]).

32 What the evidence therefore showed was entirely more equivocal than what the Plaintiff contended. There was some cooperation and perhaps at most coordination over the years, which was better explained by their largely common membership and leadership, at least in better times.[52] There was no strong evidence that the funds were disbursed or rent-free use of the Building was given because the Company did indeed regard it as an obligation to support the Society, in the way contended for by the Plaintiff.

(D) THE DEFENDANT'S CONSTITUTIONAL DOCUMENTS DID NOT REFER TO THE MATTERS RAISED BY THE PLAINTIFF

33 Fourth, as submitted by the Defendant, its M&A made no mention of the various matters raised by the Plaintiff.[53] The objects covered matters relating to religion, the administration of the Temple and burial grounds; the establishment of schools or other educational institutions; the establishment of scholarships and other awards for the benefit of the Chinese community; the support of welfare and charitable associations or projects in Singapore or elsewhere; the receipt of gifts; and the purchase or acquisition of property.[54] The M&A further provided that the income and property of the Company would be applied solely towards the objects as set out in the M&A. Yet, none of the objects specified therein entailed any of the purposes pleaded by the Plaintiff, namely: providing support for the Society; working jointly with the Society;

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52 Transcript (18 February 2021), p 45 line 7–p 46 line 2.

53 AB Vol 1, pp 10–25.

54 AB Vol 1, p 10.

acting as its financial arm; or allowing the Society to use the Building rent-free. This was even though the M&A was last amended in 1993, by which time there would not have been any reason to be concerned about control by the former colonial government over the activities of the Society.[55]

34 Indeed, had this been an important issue over the years, one would have expected some formalisation of the alleged substratum to have been made: if not to the Company's constitutional documents, then at least in the form of a memorandum of understanding or some other document. Neither the Mediation Agreement nor the Consent Order between the Society and the Company fulfilled this role, as compromises may be entered into for a variety of reasons, without full acceptance of the version of events put forward by the other side. The fact that no formalisation was done over many decades gave rise to considerable doubt that the alleged substratum really existed. Here, the Company was shown, to my mind, to have other possible functions beyond financial support for the Society. As recognised in its M&A, these included maintaining and managing the Temple and burial ground;[56] holding religious and cultural festivals;[57] supporting schools;[58] and supporting welfare and charitable projects, including the Home.[59] Accordingly, the fact that the Company had provided funding to the Society over the years could not itself be a basis for the substratum. That would, if at all, be an argument in estoppel or

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55 AB Vol 1, pp 23–25; Transcript (4 February 2021), p 33 line 18–p 34 line 4.

56 Foo's AEIC, paras 24–25.

57 Foo's AEIC, para 27; Affidavit of Evidence in Chief of Ngiam Seng Wee dated 23 November 2020 ("Ngiam's AEIC"), para 4.

58 Foo's AEIC, para 28; Ngiam's AEIC, para 17.

59 Ngiam's AEIC, para 14.

some similar doctrine, being a matter to be raised in a direct claim by the Society against the Company.

(E) THE MEMBERS OF THE COMPANY DID NOT HAVE AN UNDERSTANDING AS ALLEGED BY THE PLAINTIFF

35 Fifth, the members of the Company were also not proven to have had such an understanding of the organisations being "two-in-one". The difference of views between the members within the Company were obvious, and if anything, most of the members as indicated by the views of the majority of the Board seemed to be content to have a different kind of relationship than what was claimed by the Plaintiff.

36 The case law does show that it is possible for a relationship between members of a company giving rise to equitable considerations to occur before or after incorporation (*Michel v Michel and others* [2020] 1 BCLC 54 at [83]). In *Lim Ah Sia v Tiong Tuang Yeong and others* [2014] 4 SLR 140, the Court recognised that a quasi-partnership could arise in respect of subsequent agreements after incorporation. This could take place, for example, when the "original objects and purposes for which the [c]ompany was incorporated had disappeared", and the remaining shareholders decided to carry on the business based on new understandings and agreements in response to the "radically changed circumstances", which were not formalised due to the existing mutual trust and confidence between shareholders (at [70]). However, what I see from the cases is that there must be clear evidence of such a new understanding or new agreement being formed (see, *eg*, *Strahan v Wilcox* [2006] 2 BCLC 555 at [23] and [25]; *Shepherd v Williamson and another* [2010] EWHC 2375 (Ch) at [81]–[89]).

37 As for a quasi-partnership, understanding or other substratum lasting beyond the original members, I do note that there are cases in which it has been found that a mutual understanding giving rise to equitable considerations between members in a company may also endure and bind successors. For example, in *Khoshkhou v Cooper and others* [2014] EWHC 1087 (Ch), David Cooke J held that the entry of a new member and director into the company did not affect its continued characterisation as a quasi-partnership which was closely dependent on the involvement of some or all of its shareholders, and the personal relationship between the four original members (at [25]). It was not disputed that the new member had joined due to his friendly relations with one of the directors, and intended to play a full part in the management and operations of the company. Similarly, in *Fisher*, Mr Phillip Sales (sitting as a Deputy Judge of the English High Court) held that where a father had run a business as an informal family company, his death and that of his spouse, and the devolution of their shares to their children did not affect its quasi-partnership nature (at [89]). In *Re Edwardian Group Ltd* [2019] 1 BCLC 171, Fancourt J regarded the situation in *Fisher* as one where the shareholders who were not parties to the equitable considerations were closely connected to the quasi-partners, such that the established quasi-partnership character of the company did not change (at [134]). He considered that such equitable considerations arising from an agreement or understanding between members were (at [135]):

> … enforceable in equity because of its mutuality: the mutual relationship of trust and confidence, of a personal character, affects the conscience of each member equally. Almost by definition, if the majority (by voting rights) of the members are not bound by any such mutual rights or understanding, the company does not have the characteristics of a partnership. One can see that, in an exceptional case, the fact that a small shareholding may have devolved on someone 'outside the ring' ought not to affect the character of the company. In other cases, the shares may only be permitted to be transferred to someone

> who is a member of the class within the ring, so that the character of the company is unaffected. …

Again, for such understanding to endure and enure to successors, there must be clear evidence of its intended durability. As has been examined here, what was put forward fell far short.

38 Furthermore, the great difficulty with the Plaintiff's assertion of a substratum was that, even beyond the constitutional documents of the Company, the members of the Company were not shown to have a general understanding and common intention as to such an alleged main object (*Re Johnson Corp Ltd* (1980) 5 ACLR 227 at 235; *Strong v J Brough & Son (Strathfield) Pty Ltd* (1991) 5 ACSR 296 at 300; *Sim Yong Kim* at [14]). For example, at a Board meeting on 3 June 2014, 13 of 16 directors voted against allocating the Society funds for 2013 and 2014.[60] This was despite assertions at the meeting by the Plaintiff and another director of the Company, Mr Richard Cheng ("Mr Cheng"), that the Company was the "economic pillar" of the Society.[61] The Plaintiff also relied on a motion tabled at an AGM of the Company on 1 August 1998 to study the feasibility of amalgamating the two organisations, in support of his argument that the members of the Company were aware of its close relationship with the Society.[62] That motion was later withdrawn by its proposer. However, in the discussion which followed, several members observed that there was a problem of a lack of cooperation between the two organisations.

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60 AB Vol 6, pp 2040–2041.

61 AB Vol 6, p 2040.

62 AB Vol 1, pp 168–171.

39 The Plaintiff sought to rely as well on a number of publications in arguing that the members of the Company would have been informed that the Company and the Society functioned as "two-in-one". These included a publication from the Company for its 165th anniversary which stated that the Company and Society were "still operating in the old manner by taking care of their respective duties on internal and external affairs".[63] Various annual reports of the Company also recorded that its main activities included, amongst other things, the funding of the recurrent expenditures of the Society.[64] However, Mr Foo testified that the writers of the former publication were not themselves Hainanese and merely "copied over the content" from previous magazines.[65] The Defendant also pointed to a news report from June 1991 which referred to controversy over "who control[led] the kitty of the [Society Predecessor] – the [Company] or the clan itself".[66] This suggested that there were previously already disagreements over the Company's purported obligations to fund the Society and provide it rent-free use of the Building.

(F) IT WAS NOT SHOWN THAT THE AGREEMENT INVOLVED ALL THE MEMBERS

40 Sixth, another difficulty with the Plaintiff's argument was that where the alleged agreement affected the general activities of the Company, one would have expected the agreement to involve all the members. Anything less would lead to the result that the other members who were strangers to the alleged arrangement would be bound as well. Yet, there was no mechanism for this, nor did the Plaintiff adduce any such evidence.

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63 DBD Vol 3, p 521.

64 AB Vol 2, pp 438 and 542.

65 Transcript (25 February 2021), p 54 lines 2–12.

66 AB Vol 13, p 4391–4396; Transcript (18 February 2021), p 31 line 8–p 32 line 14.

(G) IT WAS NOT SHOWN THAT THE SOCIETY REPRESENTED ALL HAINANESE PERSONS

41 Finally, it was also no answer for the Plaintiff to have pointed to the supposed expectations or objectives of the Hainanese community. There was no evidence that the Society did in fact represent all Hainanese, or had some legal capacity to represent them. The aspirations of the Society, its leadership and its members over the years did not count. In the absence of evidence of the involvement of all or substantially the whole of the Hainanese population in the affairs of the Society, and acceptance by them of the Society's claimed position, the Plaintiff's assertions could not be accepted. The conferment of some representative power on the Society by statute would have been an alternative basis, but there was no such statutory framework in place.

42 All of this left aside the important question of who counted as Hainanese – which the Court did not have to go into on this occasion.

(2) Even if the alleged substratum existed, it was not so limited as to justify a winding up

43 I was of the view that even if the purported main object of the Company as argued by the Plaintiff was made out, the substratum of the Company was not so limited as to justify a winding up. This is as a company will not be wound up on the "just and equitable" ground simply on the basis that a prominent purpose for the company is incapable of being achieved, if other objects of the company are still capable being achieved (*Re Perfectair Holdings Ltd* (1989) 5 BCC 837 ("*Perfectair Holdings*") at 848). The level of unfairness in cases concerning a loss of substratum was thus described in *O'Neill* as (at 1101–1102):

> … there may be some event which puts an end to the basis upon which the parties entered into association with each other, making it unfair that one shareholder should insist upon the continuance of the association. The analogy of contractual frustration suggests itself. The unfairness may arise not from what the parties have positively agreed but from a majority using its legal powers to maintain the association in circumstances to which the minority can reasonably say it did not agree: non haec in foedera veni. It is well recognised that in such a case there would be power to wind up the company on the just and equitable ground …

44 As such, in *Ho Po Yeng v Ho Ming Chun* [2013] HKEC 378, Harris J in the Hong Kong Court of First Instance rejected the petitioner's argument that there was an understanding between the founding members of the subject company that its business would be machinery maintenance and the manufacture of plastic injection moulding, and that the company would be wound up in the event that this ceased to continue. Applying *Perfectair Holdings*, Harris J observed that the objects clause of the subject company was drafted in wide terms: although manufacturing and dealing in plant and machinery was the first of the commercial activities listed as the principal purposes of the company, it was merely the most prominent amongst many. The clause also expressly included carrying on business as property owners, and the company had been letting out rental properties for income for 12 years prior to the petition for winding up. The argument as to a loss of substratum was therefore not made out.

45 In the present case, it was clear from the M&A of the Company (as noted at [33] above) that the Company had numerous other objects. These included the administration of the Temple and burial grounds, and the support of welfare and charitable associations or projects in Singapore or elsewhere. It was similarly understood by its members that the Company financially supported other associations and projects, in particular the Home – although, as will be

discussed below, it was not clear that a proper procedure was followed in relation some of those payments.[67] I was therefore of the opinion that even assuming that a principal object of the Company was to financially support the Society and provide it rent-free use of the Building, the failure of the Company to do so did not in itself justify winding up on the just and equitable ground.

46 For completeness, to address the purported failure of the Company's main object as alleged by the Plaintiff, there was evidence showing that the Company did not furnish the Society with the funding it requested for in relation to certain activities, even though the Society had sought to clarify the Company's questions on them, and the Company did not appear to raise further concerns.[68] As for the alleged exclusion of the Society from the Building, the Plaintiff's complaint was four-fold, namely: (a) the Society was prevented from using the auditorium in the Building for its Chinese New Year celebrations on 8 February 2019 as well as its weekly education and cultural classes; (b) the Society was prevented from using a meeting room in the Building, with no explanation given to it; (c) the documents and records of the Society were removed from the joint secretariat office in the Building; and (d) the signboard on the façade of the Building which stated "Hainan Hwee Kuan" was replaced with one stating "Kheng Chiu Building".

47 I found that the purported exclusion of the Society from the auditorium was plausibly on account of security and safety concerns: minutes from an

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67 Foo's AEIC, paras 28–29; Affidavit of Evidence in Chief of Lim Fang Siang dated 23 November 2020 ("Lim's AEIC"), para 10; Affidavit of Evidence in Chief of Liang Foo Jee dated 23 November 2020 ("Liang's AEIC"), para 7; DBD Vol 3, pp 535–543; Transcript (3 March 2021), p 43 line 2–p 44 line 8.

68 AB Vol 6, pp 1953–1954; 2020; AB Vol 12, p 4135; Transcript (23 February 2021), p 54 line 24–p 66 line 13; p 81 line 20–p 82 line 1; p 84 lines 16–18.

informal meeting of the Board of Directors on 30 July 2019 recorded that some persons had damaged the auditorium, resulting in its closure.[69] However, it did not appear that the Society was given any reason for not being allowed to use the meeting room, as accepted by Mr Foo in cross-examination.[70] It also transpired that another organisation, the Singapore Yio Chu Kang Kheng Zai Tung Yeo Hui, of which Mr Foo was President, used the same room on 15 December 2018,[71] around the time the Society requested to use it on 26 December 2018 and 16 January 2019. Furthermore, on the removal of the documents and records of the Society from the joint secretariat, although the evidence was not clear on which party initiated the removal, this appeared to be a natural corollary of the fact that the Society was stopped from using the facilities in the Building.[72] As for the replacement of the signboard on the façade of the Building, it was nevertheless reasonable for a signboard bearing the name of the Building to be placed at its entrance, as conceded by the Plaintiff.[73] The matters relied on by the Plaintiff as going towards a loss of substratum would therefore have been made out only in part, on the assumption that there was indeed such a substratum as alleged – which was not the case, as discussed above.

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69 Supplementary Affidavit of Evidence in Chief of Liang Foo Jee dated 2 March 2021 ("Liang's Supplementary AEIC"), p 20.

70 Transcript (24 February 2021), p 63 lines 5–13; p 71 lines 9–14.

71 AB Vol 14, p 4889; Transcript (24 February 2021), p 54 line 5–p 55 line 1.

72 Transcript (26 February 2021), p 10 line 15–p 11 line 17; Phua's AEIC, paras 326–330.

73 Transcript (9 February 2021), p 8 line 19–p 9 line 2.

Conclusion on just and equitable ground

48 In sum, I found that none of the evidence relied upon by the Plaintiff sufficiently showed that the members of the Company recognised any relationship of the sort he asserted, as between the Company and the Society. The previous provision by the Company of funding or support could just as easily have been a temporary arrangement, lacking any intention or objective of being long-lasting. All that the Plaintiff relied upon was equivocal, and could have been explained on other grounds. In any event, the existence of other objects of the Company which continued to be relevant meant that winding up could not be justified on the basis of any loss of the alleged substratum.

Unfairness ground

49 As regards this ground, a number of allegations were made by the Plaintiff, not all of which, I found, were made out.

The law

50 Section 254(1)(*f*) of the CA provides as follows:

> **Circumstances in which company may be wound up by Court**
>
> **254.**— (1) The Court may order the winding up if —
>
> (*f*) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members.

51 Under the first limb of the subsection, "the directors" does not require the Board to act unanimously; it is sufficient if the effective majority has acted in their own interests or the interests of one or more of those Board members,

or even where one director has "caused his will to be carried into effect … with the result that his personal interest has been preferred" (*Re Cumberland Holdings Ltd* (1976) 1 ACLR 361 ("*Cumberland Holdings*") at 374). Furthermore, the "affairs of the company" is a wide description encompassing all matters which may come before the Board for consideration (*Cumberland Holdings* at 374–375). What is targeted is the directors preferring their own interests to one or more or some significant section of the members, and thus cannot be said to be acting in the interests of the members as a whole (*Re HL Sensecurity Pte Ltd (formerly known as HL Integral Systems Pte Ltd)* [2006] SGHC 135 ("*HL Sensecurity*") at [28]). The reference to "unfair and unjust" connotes some commercial morality or integrity which the law ought to uphold, on a consideration of all the circumstances (*Foo Yin Shung & Ors v Foo Nyit Tse & Brothers Sdn Bhd* [1989] 2 MLJ 369; *HL Sensecurity* at [28]).

52 An overlap with s 254(1)(*i*) of the CA through loss of confidence does arise, and the two are often raised in the alternative (*Steering Committee Report* at ch 2, para 135; see, *eg*, Douglas *Foo* at [28]; *Poh Leong Soon v SL Hair & Beauty Slimming Centre Pte Ltd* [2018] SGHC 109 at [22] and *EQ Capital Investments Ltd v The Wellness Group Pte Ltd* [2019] SGHC 154 at [45]). As such, I do not propose to distinguish them in this aspect. What must be borne in mind is that the loss of confidence by minority members must not be because they were outvoted on the business affairs of the company but because of a lack of probity in conduct (*Loch and another v John Blackwood Limited* [1924] AC 783 at 788; *Douglas Foo* at [48]). The prohibition is not against all actions that may adversely affect the minority, nor does the provision operate to confer upon the minority an effective veto in all matters. The line between legitimacy and otherwise is not readily drawn, and must be teased out from case to case.

Application to the facts

53 In my view, the behaviour by the directors in control clearly fell beyond the pale.

54 A number of allegations were raised by the Plaintiff. He argued that there was a failure to convene general meetings, present and file financial statements, and file annual returns. These contravened the requirements under statute. Board meetings had also not been held since 2015. The Plaintiff further contended that there was unfair conduct arising out of the aforementioned alleged exclusion of the Society from the Building including the replacement of the signboard stating "Hainan Hwee Kuan" on the Building, and a failure to implement the Consent Order. The Defendant responded that the Plaintiff was aware that an impasse in the implementation of the Consent Order, for which he was partly responsible, meant that the Company was unable to comply with certain statutory and constitutional requirements.[74] Furthermore, informal meetings had been held instead of Board meetings, as notice was given for them and it was simply that the meetings did not achieve quorum.[75] The use of the Building by the Society was also a matter within the Company's discretion,[76] and complaints such as the removal of the signboard were trivial in nature and did not justify winding up.[77]

55 Out of all of the Plaintiff's various contentions, what could be teased out from the arguments and pleadings that were to my mind operative were certain

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74 Defendant's Closing Submissions, para 256.

75 Defendant's Reply Submissions, para 141.

76 Defendant's Reply Submissions, para 125.

77 Defendant's Closing Submissions, paras 235–236.

lapses surrounding the holding of meetings, and a lack of accountability and transparency in relation to the financial matters of the Company. I accepted that these were instances of the effective majority of the Board conducting the affairs of the Company in manner which was unfair to the Plaintiff and his faction.

(1) Lapses surrounding the holding of meetings

56 The Plaintiff argued that there had been no Board meetings held since 20 January 2015, and that none were convened despite repeated requests by Mr Cheng.[78] Rather, it was alleged that Mr Foo's faction made decisions and conducted the affairs of the Company without consulting with the Board of Directors, and to the exclusion of the Plaintiff's faction. The Defendant argued that it informed all directors via letter whenever a Board meeting was scheduled and that it was in fact the Plaintiff and fellow directors Mr Cheng and Mdm Long Ah Joong ("Mdm Long") who had refused to attend any meetings since 2013.[79] The Company nevertheless continued to hold meetings which turned out to be informal as they could not achieve quorum, and notices for these were sent to the directors.[80] Furthermore, given that the Board was discussing ongoing lawsuits and issues with the Society, the Plaintiff ought not to have participated in any case, as he would have been in a position of conflict.[81] The Plaintiff also admitted to being aware of a proposal that was raised by one Mr Han Chee Juan ("Mr Han") at one of these meetings, regarding an amount that the Company would pay to the Society; and the Plaintiff had corresponded with Mr Han on this proposal. The Company therefore reasonably expected that the Society

78 Statement of Claim, para 80.

79 Defence, para 65; Foo's AEIC, para 159.

80 Defendant's Reply Submissions, paras 140–141.

81 Defendant's Closing Submissions, para 243.

would be kept apprised by Mr Han of developments in the negotiations. These informal meetings were therefore not "clandestine affairs intended to be hidden from [the Plaintiff's] knowledge".[82]

57 I found that there were no properly constituted Board meetings held from 2015. I accepted that there was no refusal by the Plaintiff and those aligned with him, namely Mr Cheng and Mdm Long, to attend Board meetings. The evidence did show, as submitted by the Plaintiff, that these three persons attended meetings from 2010 to January 2015.[83] Furthermore, Mr Foo testified that he could not recall if there were official Board meetings convened after January 2015.[84] Indeed, it was Mr Foo himself, as well as Mr Liang Foo Jee ("Mr Liang"), a Company director from 2010 and Treasurer from 2013, who brought up the existence of small group meetings, where decisions concerning the Company were made.[85] They testified that no notices were sent out for these meetings, and no minutes were taken.[86] Mr Liang's testimony in Court was, as noted by the Plaintiff, at odds with his affidavit evidence, in which he had deposed that the Board must be notified and must discuss all proposals before allocating the Company's funds.[87] It would seem that some of the Defendant's witnesses considered that it was enough for these small group meetings to be

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82 Defendant's Closing Submissions, paras 238–240.

83 Plaintiff's Closing Submissions, para 382; Annex B.

84 Transcript (24 February 2021), p 22 lines 3–7.

85 Transcript (24 February 2021), p 59 lines 18–p 60 line 15; Transcript (3 March 2021), p 43 lines 2–p 44 line 8.

86 Though as noted in [58] below there were indeed some minutes taken of some purported meetings, and copies of some notices at least were kept, even if there was no evidence that they were sent to all the directors of the Company.

87 Affidavit of Evidence in Chief of Liang Foo Jee dated 23 November 2020 ("Liang's AEIC"), para 7(b); Plaintiff's Closing Submissions, para 388.

chaired by Mr Foo as the Chairman of the Board. These were by Mr Foo's admission informal meetings, *ie*, not actual Board meetings. The fact that the Defendant's witnesses accepted that Board meetings were not in fact held puts paid to the assertion that there were proper Board meetings after 2015.

58 If that was not enough, the Plaintiff appeared to have been excluded from these purported meetings between members of the Board from 2015. The Defendant disclosed in these proceedings notices of "BOD meeting[s]" which were addressed to all directors, although there was no evidence to show that they were sent to all directors including the Plaintiff.[88] Attendance sheets and meeting minutes showed that these meetings took place on 6 May 2016, 6 May 2017, 21 March 2018, 31 March 2018 and 30 July 2019.[89] Yet, the Plaintiff's faction (including himself, Mr Cheng and Mdm Long)[90] was not recorded as having attended these meetings. The evidence of the Plaintiff and Mr Cheng was that they were not informed of any Board meetings since January 2015, nor were they informed of the informal meetings.[91]

59 There was the evidence of the Accounts Executive of the Company who deposed that the Company's secretariat did not receive any instructions to stop issuing notices of Board meetings to any director, including the Plaintiff and Mr Cheng; and that she had seen the Company's Executive Secretary mailing out

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88 DBD, Vol 1, pp 24–37.

89 DBD, Vol 1, pp 4–22; Liang's Supplementary AEIC, pp 22–31.

90 Phua's AEIC, para 355.

91 Phua's AEIC, paras 359 and 364; Affidavit of Evidence in Chief of Richard Joseph Cheng Tim Leck dated 23 November 2020 ("Cheng's AEIC"), paras 52–53.

these notices before every Board meeting.[92] The Accounts Executive also recalled a conversation with the Executive Secretary in which the latter had stated that all directors should be notified regardless of the circumstances, including the Plaintiff's suing of the Company.[93] However, her evidence was not specific about actual events and matters observed, being more in the nature of her general recollection of what she thought would have been the practice normally. This was of little probative weight. Furthermore, when weighed against the evidence and admissions of Mr Foo and Mr Liang, I could not give the Accounts Executive's general testimony much weight at all.

60 Additionally, given that the Plaintiff, Mr Cheng and Mdm Long had attended a majority of the Board meetings from 18 January 2010 to 20 January 2015,[94] I accepted that they did not attend these informal meetings as they were not told of them. Although three of the five meeting notices disclosed by the Defendant referred to a discussion of the conflicts between the Company and the Society as being on the agenda, with a fourth notice listing for discussion the Society's use of the auditorium, not all matters on the agenda concerned the Society. These included the Company's preparation of accounting reports, the preparation for certain celebrations and migration of the burial ground. The fact that the Plaintiff may have been conflicted out on certain matters did not excuse the Company from formally convening Board meetings and notifying all directors of the same, with the appropriate procedures used to deal with any conflict of interest.

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92 Affidavit of Evidence in Chief of Chow Yew Eng dated 23 February 2021 ("Chow's AEIC"), paras 14–15.

93 Chow's AEIC, para 16.

94 Plaintiff's Closing Submissions, Annex B.

61 Significantly, these informal meetings appeared to have taken the place of the Board meetings, to decide on the direction of the Company (as noted at [57] above). In cross-examination, Mr Foo took the view that the directors at these meetings could make decisions on behalf of the Company.[95] Such decisions included deciding that the Society could not use the auditorium in the Building for its Chinese New Year celebrations in 2019,[96] and the engaging of security personnel in relation to events at the auditorium.[97] Funding that was disbursed by the Company for various projects was also decided upon informally among several directors, according to Mr Liang.[98] A donation of $110,000 that was paid to an old folks' home and orphanage in China in September 2018 was also only approved by Mr Foo and not discussed at a Board meeting.[99] All this was done without the participation of the opposing directors, thus depriving the minority within the Company of the opportunity to at least be heard.

62 This was also a failure to ensure proper management. A company is not to be run according to the whims and fancy of those in control. Proper procedure as laid down in statute and the constitutional documents of the company ought to be followed: that is the trade-off between the benefits of incorporation, such as limited liability and separate legal personality, as against the obligations to ensure proper management and the balancing of interests of the members. The lack of proper management decision-making through the failure to appropriately

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95 Transcript (24 February 2021), p 61 lines 7–9.

96 Transcript (24 February 2021), p 59 lines 20–23.

97 Transcript (24 February 2021), p 90 line 21–p 92 line 7.

98 Liang's AEIC, para 4 and Liang's Supplementary AEIC, para 4; Transcript (3 March 2021), p 43 lines 2–13.

99 Transcript (23 February 2021), p 97 line 23–p 99 line 4.

convene Board meetings was really a usurpation of the proper decision-making process by a faction within the Company, and could not be tolerated even if that faction constituted the majority. The ability to consider, to voice opinions before deliberation, and if necessary, call for a vote, lies at the core of decision-making within a corporate entity. The Company failed in this requirement.

63 AGMs were also not held, in contravention of s 175 of the CA and Article 24 of the Company's Articles of Association.[100] No such general meeting was held for the members to adopt the financial statements of the Company for the years 2011, 2012 and 2013, which contravened ss 201 and 203 of the CA and Article 49 of the Company's Articles of Association.[101] This was even though the issue was raised at five Board meetings from 6 November 2013 to 20 January 2015, and it was proposed that a team comprising Mr Foo and five members would convene a special general meeting.[102] Furthermore, by the time of the Board meeting on 25 February 2014, the Company had received a letter from the Accounting and Corporate Regulatory Authority informing it to approve those accounts to avoid being fined.[103] I note however that Mr Foo had proposed holding an AGM at a Board meeting on 3 June 2014 and the Plaintiff was the only director who opposed this, although he stated that there was no objection to having an Extraordinary General Meeting ("EGM") to approve the accounts.[104] I also accepted that the subsequent inability of the Company to hold any AGM or EGM arose out of the current impasse in the implementation of

100 AB Vol 1, p 18.

101 AB Vol 1, p 20.

102 AB Vol 6, p 2059.

103 AB Vol 6, p 2013; Transcript (23 February 2021), p 125 lines 19–22.

104 AB Vol 6, p 2049.

the Consent Order, which was a matter for OS 789.[105] This was since the Company was thus unable to verify its membership, pending an implementation of the membership review process which was envisioned by the Consent Order.[106]

(2) Financial procedures

64 The Plaintiff argued that there was a lack of accountability and transparency by Mr Foo and his faction in relation to the financial matters of the Company. Given that there were no Board meetings held after 20 January 2015, the financial reports for 2015, 2016 and 2017 were not approved through them, but via circular resolutions that were sent to the directors. Furthermore, the relevant financial statements were not sent together with the circular resolutions, and the Company did not respond to three letters sent by Mr Cheng requesting for the statements as well as that a Board meeting be held to discuss them.[107] This was on top of multiple requests Mr Cheng made from June 2013 for information on various expenses and monies received by the Company before the 29 June 2013 EGM, and for the Company to furnish such information to its members.[108] However, the information was not provided to him. His requests in 2013 to inspect the accounting books and records of the Company also met with no response.

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105 Defendant's Reply Submissions, paras 134 and 157.

106 Foo's AEIC, paras 165–166.

107 Plaintiff's Closing Submissions, paras 358–362.

108 Cheng's AEIC, paras 42–43.

65 The Defendant argued that the directors nevertheless signed the circular resolutions after viewing the financial statements at the Building.[109] It also submitted that Mr Cheng's letters were designed to harass the directors and staff of the Company and that the information requested therein was not in any event similarly requested by the Plaintiff, nor was it made on behalf of the members of the Company.[110]

66 As noted in relation to the general meetings (at [63] above), there was non-compliance with various other requirements concerning financial matters. For example, it was shown that the Company did not file annual returns for several years, in contravention of s 197 of the CA.[111] In general, I found that these financial matters were not properly deliberated and considered: although the passing of resolutions by circulation can sometimes allow for discussion and debate, what occurred in the present case, with individuals turning up to be shown the documents, and for them to sign without anything more, fell far short of the engagement and scrutiny required.

67 The Company argued that as statutory consequences have been laid out for non-compliance, such non-compliance should not give rise to a winding up.[112] However, while each infringement could give rise to culpability and possible punishment, these penalties did not in my view preclude such infringement from also being a basis for winding up. What mattered was the

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109 Defendant's Reply Submissions, para 139.

110 Defendant's Closing Submissions, paras 202–229.

111 AB Vol 12, pp 4192–4193.

112 Defendant's Closing Submissions, para 351.

scale and extent of such breach; where these were wide-ranging, as in the present case, winding up may indeed be appropriate.

68 The Company also argued that the subject of some of the Plaintiff's complaints, in particular the abovementioned letters sent by Mr Cheng to request for information, were not genuine. I found that even if Mr Cheng was acting for some other purpose, this did not rob his requests of their legitimate basis, and they should have been responded to. Even if these were only intended to harass, other avenues of redress should have been pursued by those running the Company, as opposed to ignoring the letters. The appropriate provision of information is also part and parcel of the proper management and control of a corporate entity. This would not by itself normally be an indication of unfairness, as various reasons could have lain behind the non-response. But taken together with the lapses surrounding the holding of meetings and the failure to properly discuss financial documents, the non-response took on a different hue: it indicated a blatant disregard for the interests of others, especially those not part of the majority.

69 I thus found that the Company's various arguments did not support its defence in respect of this ground.

Conclusion on unfairness ground

70 From all of the above, I was satisfied that there was ample evidence to show that those in control of the Board of the Company preferred their own interests over those of the members as a whole, and that this was in a manner unfair or unjust to the other members. Under the CA, the Board is the decision making body within a company. Anything that circumvents the authority and proper functioning of the Board undercuts proper governance, and can only

damage the company. Here, the holding of the informal meetings in place of proper Board meetings not only deprived the minority Board members of the opportunity at least to voice their positions and attempt to convince other Board members, but also by doing so denied the Company appropriate governance, as required under the law. Similarly, the truncated consideration of the financial matters circumvented the proper process for determining such issues. From this, I found that the controlling group within the Company was not exercising its powers for the benefit of the Company as a whole, and overrode and disregarded the interests of the minority group without justification.

71 The two factual situations above also amounted to unfair or oppressive conduct giving rise to a justifiable loss of confidence in the management of the Company, such as would justify winding up pursuant to s 254(1)(*i*) of the CA.

Arguments that were not accepted

72 While I found a number of matters against the Company and its management, the Plaintiff was not successful in all his arguments. In particular, the failure of the Company to fund the Society, the exclusion of the Society from the Building, the removal of the signboard and the failure to implement the Consent Order did not support the Plaintiff's claims in relation to unfairness, insofar as it was open to the Company to have come to the conclusion that none of those things were in the Company's interests.

73 For example, it would have been reasonable for the Company to have concluded after the fact that implementing the Consent Order in the manner sought or interpreted by the Society was not in the interests of its membership as a whole. Whether other consequences should follow from non-compliance was a separate matter. Additionally, the premise underlying all of the complaints

was that there was a special relationship between the Company and the Society, and I found that this was either not made out or was irrelevant to the running of the Company. Indeed, the Plaintiff's allegations concerning the Company's funding of the Society as well as the exclusion of the Society from the Building and the removal of the signboard did not touch on the minority interests claimed by the Plaintiff in the activities of the Company, but really concerned the Society's interests. However, the Society was not a member of the Company, and how its interests were affected was irrelevant.

Society representing the Hainanese community

74 I must note that while the Plaintiff claimed that the Society represented the interests of the Hainanese community, the Courts would be very slow to accept such an argument, unless the organisation in question has a clear basis for the assertion, together with an appropriate framework for consultation and deliberation by the community as a whole. The best indication of this would have been a statutory framework, but the Society was not a statutory organisation. Although the Rules of the Society provided that it was established to, *inter alia*, represent the Hainanese community in matters affecting their common interests and rights,[113] such a belief, however strongly held by its members that it represented a community as whole would not be enough: no group is monolithic, or homogenous in its views. In the present case, the Society potentially represented no more than the views of its members for the time being, and would not then be representing the whole section of the public that was the Hainanese community. In any event, as argued by the Company, the Society was not a party to these proceedings.

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113 Phua's AEIC, p 631.

75 On that note, I also did not accept the argument by the Plaintiff that Mr Foo and his faction had "replaced" the Society with Hainan Federation, which was set up by Mr Foo and several others, and similarly purported to be "responsible for connecting [the] Hainan [c]ommunity and develop[ing] Hainanese culture".[114] It was argued that this amounted to a loss of substratum, as the Hainan Federation "displace[d]" the Society as the organisation with which the Company cooperated and functioned as "two-in-one". The Plaintiff submitted that this was also a failure by the directors to act in the interests of the members of the Company.[115] The Plaintiff argued that the Hainan Federation had held its inauguration ceremony jointly with the Company's anniversary celebration dinner, whereas the Society had previously held joint anniversary celebrations with the Company; furthermore, the Company's secretariat carried out work for the Hainan Federation. However, there was no evidence showing that these were authorised by the Board of Directors of the Company. The Plaintiff submitted that as the Hainan Federation was open to other dialect groups (as opposed to the Society, which was only open to Hainanese), this was an instance of Mr Foo and his faction attempting to admit more of their supporters as members of the Company, in order to "establish a stronghold over the management of the [Company]".

76 As noted above, I did not accept the existence of any such substratum as alleged by the Plaintiff, such that his argument on a loss of substratum could not succeed. In any event, insofar that the Company supported many other organisations in accordance with its objects (as mentioned at [45] above), the Company's apparent support of the Hainan Federation could not have amounted

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114 Plaintiff's Closing Submissions, para 19 and 489–498; AB Vol 13, p 4630.

115 Plaintiff's Reply Submissions, para 329.

to a loss of substratum. Additionally, although directors may be held to have acted in their own interests where they have acted in the interests of another company of which they are also directors and shareholders (*Cumberland Holdings* at 375), what was raised did not rise to the level of being contrary to commercial morality or integrity (see [51] above; *Re Weedmans Ltd* [1974] Qd R 377 at 397–398; *Cumberland Holdings* at 375–376). It was difficult to see how the holding of joint celebrations with Hainan Federation and the fact that the Company secretariat did work for the Hainan Federation was unfair and unjust to the members of the Company (as opposed to the Society).[116]

77 The Plaintiff's contention that Mr Foo and his faction intended to thereby entrench their control over the Company was also speculative and tenuous. It was not shown, for example, that members of the Hainan Federation would also be members of the Company, such that Mr Foo and his faction could enjoy wider support in the Company. Indeed, it seemed that the Hainan Federation was intended to cooperate with the Society, with the possibility of merger between the two raised by Mr Foo and confirmed by one Mr Ngiam Seng Wee, a member of both the Company and Society and the Secretary-General of the Hainan Federation.[117]

Company limited by guarantee

78 Additionally, the fact that the Company was limited by guarantee rather than shares was not, to my mind, a material difference in the present case. Obligations were still owed to the members, who were entitled to expect to be treated fairly. As observed by the Plaintiff, non-profit driven organisations such

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116 AB Vol 12, p 4352; Transcript (4 March 2021), p 6 lines 16–20.

117 AB Vol 13, 4630; Transcript (2 March 2021), p 43 line 13–p 44 line 11.

as the Defendant which choose to incorporate themselves generally adopt the form of a company limited by guarantee rather than shares because "what is important is the participation of the members and not the raising of capital" (Jean Warburton, *Unincorporated Associations: Law and Practice* (Sweet & Maxwell, 2nd Ed, 1992) at pp 6–7).[118]

79 The Defendant argued that in the instance of a company limited by guarantee, the process of becoming a member ordinarily includes lower financial barriers to entry such as a membership fee, and there is no concept of investing in the company as such.[119] Members may also simply leave if they wish to end their association with the company. It submitted that it was therefore unlikely that members of such companies could suffer unfairness from a loss of substratum. Furthermore, it submitted that an argument on a loss of confidence in the management of a company ought not apply in this context, since there was no "minority" shareholder to speak of and similarly, any members who wished to leave could do so without any issue of being locked in.[120]

80 This argument appeared to posit that members in a company limited by guarantee have a different interest than shareholders in a company limited by shares.

81 It is true that shareholders may appear to have a financial interest in their shares, through contribution to the capital, and the possibility of gain therefrom, while members of a company limited by guarantee do not. This difference in interest however does not translate into a difference in treatment for the

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118 Plaintiff's Reply Submissions, paras 24–25.

119 Defendant's Closing Submissions, paras 34–35.

120 Defendant's Closing Submissions, paras 262–263.

purposes of s 254 of the CA. There is nothing in the language of that section which would lead to such a conclusion.

82 It is also entirely conceivable that members of a company limited by guarantee may suffer prejudice or unfairness in the same way as shareholders. Thus, in *Re Ingleburn Horse and Pony Club Ltd and the Companies Act* [1973] 1 NSWLR 641, Street J held that the remedy of winding up for oppression under s 186 of the Companies Act 1961 (NSW) could also apply in the case of a company limited by guarantee. This was as "disputes can arise and flourish, and oppression can hold sway as freely" in both types of companies, and to deny such a remedy merely due to the fact that the members of a company had not put up a monetary sum by taking shares in the company was an "insubstantial distinction" (at 645). Street J found that oppressive conduct was established, as the committee which managed the company had, amongst other things, resolved to expel several members from the club without providing reasons for such expulsion. However, a winding up order was ultimately not ordered, and the petition was stood over to enable the parties to decide what should be done within the company.

83 On the other hand, winding up was ordered on the just and equitable ground (there, a loss of confidence) as well as on account of oppression in *Macquarie University v Macquarie University Union Limited (No 2)* [2007] FCA 844 ("*University Union*"), concerning a company limited by guarantee ("MUU") which operated as a student union, with the purpose of promoting the welfare of Macquarie University ("the University") and its members. It was found that certain of the company directors had caused transfers to be made from its bank account and that of its subsidiary (at [38]). These were to ensure that the assets were placed beyond the reach of the University and into their

control, contrary to the objects of MUU and in breach of their director's duties. There had also been unfairness on their part. Appointments to the Board of Directors were made without the knowledge of a director, one Mr Alfonso Maccioni ("Mr Maccioni") (at [35]). Moreover, they arranged to remove Mr Maccioni and the financial controller of MUU as signatories to certain bank accounts, without the knowledge of the latter (at [36]). In exercising his discretion to wind up the company, Lindgren J found relevant, amongst other factors, that the University intended to restructure the provision of services to students by amalgamating the operations of MUU and its subsidiaries along with other entities (at [43]). He also took the view that it would not be a satisfactory solution for a fresh election of directors to be held, since the directors who had caused these illegitimate transfers could well be re-elected and embark on a similar course of action (at [44]).

84 I note as well that a non-profit company limited by guarantee which was formed for religious purposes was wound up on the just and equitable ground in *Gregor and Another v British-Israel-World Federation (NSW)* (2002) 41 ACSR 641 ("*Gregor*"), on account of, *inter alia*, the practical impossibility of carrying on the activities of the company due to a bifurcation in its board, which could not be remedied by its members. That was therefore primarily a case of an irretrievable breakdown in relationship amongst its members (see [14(b)] above). Austin J found that there was "bitter conflict in which each side has endeavoured to use the rules of the organisation, frequently mistakenly, to achieve its objectives"; and what was material was that the board of the management of the company "comprise[d] bitterly opposed factions who clearly [could not] work together and make sensible decisions for the future of the company" (at [138] and [141]).

85 While I did not accept the Plaintiff's argument on a loss of substratum, the argument may similarly apply to support a just and equitable winding up of a company limited by guarantee. It has been observed that where a company that is not run for profit has no realistic prospect of being able to provide certain services in keeping with its objects, winding up may be ordered on the just and equitable ground (*University Union* at [43]; Derek French, *Applications to Wind Up Companies* (Oxford University Press, 4th Ed, 2021) at para 8.263). Winding up was therefore also ordered in *Re United Medical Protection of Queensland* [2004] NSWSC 14, in relation to a medical defence company limited by guarantee, following a merger with other companies; with the result that, amongst other things, it ceased to provide services to its members or otherwise act in accordance with its objects (at [28]). Ultimately, although the fact that a company is limited by guarantee may impact the degree of unfairness at hand and therefore the exercise of the Court's discretion in deciding whether to order a winding up (see *Re Calabria Community Club Ltd* [2013] NSWSC 998 at [127]–[130]), it cannot be said that any unfairness suffered by its members (whether due to unfair conduct on the part of the directors or loss of confidence; or a loss of substratum, as the case may be) will never justify winding up.

Discretion of the Court

86 Returning to the present case, the circumstances considered above supported a winding up. The unfairness occasioned to the Plaintiff and his faction appeared to be a continuing state of affairs, and their exclusion from the matters concerning the Company bore some resemblances with the circumstances in *University Union*, where it was not clear how any re-election of the directors would resolve matters. The impasse over implementing the Consent Order was also somewhat akin to the situation in *Gregor*, such that it

was doubtful that the Company could continue to be managed effectively. While the Court's discretion to consider whether a winding up should be ordered is a broad one, I did not see any reason why my discretion should be exercised against winding up. The reasons supporting the making of a winding up order were not attenuated in any way by any countervailing arguments. Evidence of member support for a winding up of the Company was also inconclusive, with members both in favour of[121] and against winding up.[122]

87 The Defendant made the general point that winding up was not necessary and that other consequences, including statutory penalties, should be applied. While such penalties were perhaps available through enforcement action, these would not directly vindicate the right to participation that should have been accorded to the members, through voting by their chosen directors, or through scrutiny by the directors of the financial documents.

88 The degree of the disregard for minority interests, leading to subversion of the requirements for meetings and consideration of financial documents, evinced an almost contemptuous attitude towards fair dealing with those who were not aligned with the majority. While fairness does not require the majority or those in control to give in to the minority, it does call for at least proper procedure, and that the latter be given the opportunity to try to persuade.

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121 AB Vol 8, pp 2844–2847; AB Vol 11, pp 3706, 3709, 3760, 3715, 3756, 3712, 3733, 3719, 3760, 3737, 3750, 3734, 3751, 3707, 3741, 3736 and 3710; Plaintiff's Reply Submissions, paras 316–317.

122 Foo's AEIC, paras 185–193; Lim's AEIC, para 32; Ngiam's AEIC, paras 8–18; Defendant's Closing Submissions, paras 358(a)–(b); Defendant's Reply Submissions, para 170(b).

89 The possible availability of other remedies was therefore not a bar to winding up: whether a winding up should be ordered depended on the extent, scope, and persistence of the conduct complained of. Where such misconduct had persisted for a long period of time, and confidence on the part of the minority members was understandably lacking, the fact that other remedies might be provided for was not enough to stave off winding up. Neither did I find that there was any scope here for the operation of s 254(2A) of the CA, which allows the Court to make an order for the interests in shares of the members to be purchased by the company or other members on terms.

90 The main argument that could possibly point against winding up was the fact that the Company served both a social function as well as a religious one. However, such concerns did not bar an order for winding up. Rather, they required that the liquidation be carried out in a sensitive and careful manner. The dissolution of such a company must be carried out in a manner that best preserved, as far as feasible, these functions and allowed them to be transferred, if need be, to another entity.

91 Thus, winding up was ordered, but this was stayed, first in the interim, pending any formal application by the Company for a stay pending appeal. I ordered the stay on the condition that without leave of Court, there would be no disposal or transfer of its property or monies other than in the ordinary course of the running of the Company. If the Company found this onerous, it could apply to the Court, pending appeal, for variation.

Consequential Remedies

92 I come to the question of the consequential remedies sought in addition to the winding up of the Company.

93 Specifically, the Plaintiff asked for a declaration to be made that the balance property should be transferred to the Society. This application by the Plaintiff misconceived the winding up process. The winding up of the Company involved liquidation of the assets, that is, a liquidator would be appointed to bring in the proceeds of assets for distribution first. It was premature to pre-empt what would happen in liquidation.

94 Furthermore, there is no right to specific assets in a liquidation. Even creditors do not have any proprietary interest until the completion of liquidation (*Buchler v Talbot* [2004] 2 AC 298 at [28]). Members too do not have any property interest in the assets of the company. The Plaintiff relied upon clause 9 of the Company's Memorandum of Association, which stipulated that any balance remaining on the winding up or dissolution of the Company was to be transferred to an institution with similar objects to the Company as agreed upon by the members, or by an order of the High Court giving effect to the same, or to some charitable object.[123] However, this clause did not and could not circumvent the insolvency process. It did not bind the Court, and only bound the members between themselves. Furthermore, the application of the *cy-pres* doctrine by the Court may result in some entity or purpose other than the Society being found appropriate to receive the property or funds.

95 A declaration as sought was also not appropriate as not all necessary parties, in particular the Society, had been brought before the Court, as required by *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 at [14]. There might have been other views about how the property should be disposed of, and how clause 9 of the Company's

123 AB Vol 1, p 11.

Memorandum of Association should operate, particularly by the Commissioner of Charities, who is entrusted under the Charities Act (Cap 37, 2020 Rev Ed) with the supervision of charities. The Court also has a broad jurisdiction over charitable trusts, and it is the Court's determination of what is a proper application *cy-pres* that would result in any transfer of property, and not necessarily the Company's M&A. The status and claim of the Society should be properly tested, and it should seek to appear if it wished to assert any claim.

96 Therefore, in the present case, a liquidator should first be appointed under the order for winding up. Given that the property involved the Temple and other assets for the benefit of a section of the public, I was inclined to invite the Official Receiver and Public Trustee to be heard on the possible appointment of a suitable liquidator. The Commissioner for Charities should also be invited at the appropriate juncture to make arguments about any transfer of the Temple and other assets to another charity. I thus brought my decision to the attention of the Attorney-General, as well as the Official Receiver and Public Trustee.

Costs

97 Cost directions were given separately.

Conclusion

98 I must note here what I said in the earlier action which culminated in the Consent Order that came to nought: the needs of the community have not been well served by the disputes between the parties. Mediation did not resolve matters, and even the involvement of eminent persons did not help. I feared that the present legal proceedings would not be the end of things, even when the matter was disposed of on appeal. There was every danger that there would be

a downward spiral, with the depletion of resources that were meant to be for the good of the community. Whether that downward trajectory could be arrested was a matter for the persons involved, who claimed to be leaders of that very same Hainanese community.

Aedit Abdullah
Judge of the High Court

Hee Theng Fong, Selvaratnam Sharmini Sharon, Poon Pui Yee and Zhuang Changzhong (Harry Elias Partnership LLP) for the plaintiff; Adrian Tan, Ong Pei Ching, David Aw and Feng Chong We (TSMP Law Corporation) (instructed), Tan Joo Seng, Valerie Ho and Chan Chan Leong (Tyto LLC) for the defendant.