

Chenet Finance Ltd v Lim Poh Yen (alias Lim Allene) and others and another suit
[2012] SGHC 158

Case Number : Suit No 781 of 2009 consolidated with Suit No 796 of 2009
Decision Date : 03 August 2012
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Isaac Tito Shane, Chan Yew Loong Justin, and Ho Seng Giap (Tito Isaac & Co LLP) for the plaintiff; Manjit Singh and Sree Govind Menon (Manjit Govind & Partners) for the first defendant; R S Bajwa (Bajwa & Co) for the second defendant; Sankaran Karthikeyan (Toh Tan LLP) for the third defendant.
Parties : Chenet Finance Ltd — Lim Poh Yen (alias Lim Allene) and others

Contract – Mistake

Tort – Conspiracy

3 August 2012

Judgment reserved.

Woo Bih Li J:

Introduction

1 Suit No 781 of 2009 (“Suit 781”) has been consolidated with Suit No 796 of 2009 (“Suit 796”) for trial. In Suit 781, Chenet Finance Ltd (“Chenet”) is the plaintiff. The first defendant is Lim Poh Yen @ Allene Lim (“Allene”). The second defendant is Abu Bakar bin Ismail (“Abu Bakar”). The third defendant is Berlian Ferries Pte Ltd (“Berlian”). In Suit 796 Abu Bakar is the plaintiff. Chenet is the first defendant. Berlian is the second defendant, whom I consider to be a nominal defendant.

2 The consolidated suits are primarily a tussle between Chenet and Abu Bakar over his alleged purchase of 24,017,983 shares in Berlian (“the Shares”) which are held by Chenet. Thus in Suit 796 Abu Bakar is seeking an order for specific performance of the purchase, while in Suit 781 Chenet’s primary allegation is that there is an unlawful act conspiracy between the three defendants to cheat it of the Shares. There is also a claim in Suit 781 by Chenet against Allene for delivery up of various items and a counterclaim by Allene for various reliefs including damages for being unable to secure a job as a result of this action against her.

Background

3 For easy reference, a list of individuals and companies featured in the two actions is attached as Annexure A of this judgment.

[LawNet Admin Note: Annexure A is viewable only to LawNet subscribers via the PDF in the Case View Tools.]

4 Berlian’s main business is the operation of the ferry route between HarbourFront Centre in Singapore and Harbour Bay Terminal in Batam (an island of the Republic of Indonesia), over which it enjoys a monopoly. [\[note: 1\]](#) The details of the shareholding in Berlian are as follows: [\[note: 2\]](#)

	Name	Number	Percentage
1	Chenet	24,017,983	88.91%
2	Abu Bakar	2,587,770	9.58%
3	Others	407,939	1.51%
Total :		27,013,692	100%

5 Chenet is essentially a holding company [\[note: 3\]](#) of which Tan Yeang Tze Bobby ("Tobby") is the sole director and registered shareholder. [\[note: 4\]](#) Tobby is a 36 year old who was educated up to the Malaysian equivalent of the GCE "O" Levels. [\[note: 5\]](#) In 2002 he began working for a prominent Malaysian businessman, Tan Sri Amin Shah ("Amin Shah"). [\[note: 6\]](#) Over the years Tobby became one of Amin Shah's trusted men.

6 Each of the defendants alleges that the true beneficial owner of Chenet is Amin Shah. In turn, he and Chenet allege that the true beneficial owner is a Shah family trust ("Trust") set up many years ago. However, no documentary evidence was produced to establish the existence of the Trust. As Amin Shah was made a bankrupt in Malaysia by order of court on 9 October 2007, it is unsurprising that he disavows any beneficial ownership of Chenet. Except for an argument about the piercing of the corporate veil of Chenet which I will come to later, it is immaterial for present purposes whether Amin Shah or the Trust is the true beneficial owner. It was not really disputed that Chenet acts on the wishes of Amin Shah, irrespective of the true identity to the beneficial owner of Chenet, although Eranur Shahda ("Eranur"), Amin Shah's daughter, sought to suggest that an uncle was in control of the Trust together with Amin Shah.

7 The furore over the Shares emerged in late August 2009. However, I have to go back to May 2009 to explain how the dispute arose. A plan was hatched sometime around May 2009 [\[note: 7\]](#) for Chenet to transfer the Shares specifically to Hopaco Properties Limited ("Hopaco") in a way that Hopaco would not acquire the beneficial ownership of the Shares. The reason for the plan was in some dispute, as I shall elaborate on later, but it involved deceiving third parties into believing that, after the transfer to Hopaco was achieved, Hopaco was the true owner of the Shares.

8 Allene was involved in the preparation of documents to transfer the Shares to Hopaco. She had been an employee of Venture Asia Holdings Pte Ltd ("VAH"), a company which provided corporate services for Chenet and Hopaco, since 2002. [\[note: 8\]](#) VAH was closely affiliated to Amin Shah, and Allene's role was to provide administrative support to Berlian and Chenet. [\[note: 9\]](#) Although Amin Shah was not Allene's formal superior, she began taking instructions directly from him after April 2009. [\[note: 10\]](#) Allene would liaise with Reggine Peh ("Reggine"), an employee of Agenda Corporate Services Pte Ltd ("Agenda"), which was Berlian's professional corporate secretarial agent, for the preparation of documents to carry out the instructions of Amin Shah.

9 Apart from being the Chairman and a director of Berlian, Abu Bakar is also a shareholder of Berlian with the second largest stake (after Chenet) of about 2,587,770 shares, *ie*, about 9.58% (see [4] above). More importantly, he was a long standing acquaintance of Amin Shah, having known him since the late 1980s [\[note: 11\]](#) although the exact relationship was of some dispute. Abu Bakar was to later play a pivotal role. I should add that Chenet disputes that Abu Bakar is the beneficial owner of

the shares registered in his name.

10 By a letter purportedly dated 15 July 2009 and signed by Toby, Chenet gave notice to Berlian that it wished to transfer the Shares to Hopaco for \$2.2m ("the Sale Notice") [\[note: 12\]](#). The price was a significant undervalue, as I shall explain later. Indeed under the plan, Hopaco would not really be paying anything for the Shares. The Sale Notice purportedly triggered Art 22 of Berlian's Articles of Association ("Art 22"). Art 22 conferred upon the other shareholders a pre-emption right. Berlian then purportedly sent a letter dated 22 July 2009 to each of the other existing shareholders to say that Chenet wished to sell the Shares to Hopaco ("Transfer Notice"). Each Transfer Notice was purportedly accompanied by a letter of waiver to be signed by the shareholder who did not wish to exercise the pre-emption right. The price of \$2.2m was stated in the letter of waiver although not in the Transfer Notice itself. [\[note: 13\]](#) The defendants say that the Shares were offered to the other shareholders at the price of \$2.2m by the Transfer Notices (read together with the letters of waiver) ("the Offer").

11 Art 22 states: [\[note: 14\]](#)

(a) Subject to Article 20(a), every Member who desires to transfer any share or shares (hereinafter called "the vendor") shall give to the Company notice in writing of such desire [the "Sale Notice"]. Subject as hereinafter mentioned, a Sale Notice shall constitute the Company the vendor's agent for the sale of the share or shares specified therein (hereinafter called "the said shares") in one or more lots at the discretion of the Directors to the Members other than the vendor *at a price to be agreed upon by the vendor and the Directors or, in case of difference, at the price [certified by the company's auditor as a fair value]*. A Sale Notice shall not be revocable except with the sanction of the Directors.

(b) Upon the price being fixed as aforesaid the Company shall forthwith by notice in writing inform each Member, other than the vendor, of the number and price of the said shares and invite each such Member to apply in writing to the Company within twenty-one days of the date of dispatch of the notice ...

(c) If the said Members shall within the said period of twenty-one days apply for all or (except where the Sale Notice provides otherwise) any of the said shares, the Directors *shall* allocate the said shares ... to or amongst the applicants and in case of competition pro rata (as nearly as possible) ... and the Company shall forthwith give notice of such allocations ... to the vendor and to the Members to whom the shares have been allocated and shall specify in such allocation notice the place and time ... at which the sale of the shares so allocated shall be completed.

(d) The vendor shall be bound to transfer the shares comprised in an allocation notice to the purchasers named therein at the time and place therein specified ...

(e) During the six months following the expiry of the said period of twenty-one days ... the vendor shall be at liberty to transfer to any person and at any price (not being less than the price fixed under paragraph (a) of this Article) any share not allocated by the Directors in an allocation notice ...

[emphasis added]

12 Only Abu Bakar purportedly accepted the Offer by a letter dated 28 July 2009 ("the Acceptance Letter"). [\[note: 15\]](#) He purportedly handed the Acceptance Letter to Chan Siew Eng @ Carina Chan

("Carina") for safekeeping on 28 July 2009 as he could not find Allene. On 11 August 2009, he purportedly retrieved the Acceptance Letter from Carina and handed it to Allene who in turn handed it to Reggine. The purported acceptance threw Chenet's plan into disarray. In fact Chenet was initially unaware about Abu Bakar's acceptance.

13 Although Abu Bakar had purportedly told Carina on 28 July 2009 that he was accepting the offer and had handed the Acceptance Letter to her for safekeeping because he could not find Allene, Carina did not disclose to Amin Shah, Eranur or Toby (collectively referred to as "the Amin Shah camp") that Abu Bakar was going to accept the offer. In Carina's email of 7 August 2009 to Eranur and copied to Amin Shah, she referred to various matters. One of them was the proposed transfer of the Shares to Hopaco. She said, "Till now still No news from the minority shareholder and No return mail from all the notice that we had sent out".

14 Furthermore, after Abu Bakar had purportedly retrieved the Acceptance Letter from Carina on 11 August 2009 and handed it to Allene, Allene also did not disclose the Acceptance Letter to the Amin Shah camp. Instead, on 18 August 2009, Allene sent an email to Reggine with a copy to Eranur and Carina to state to the contrary. That email stated:

Further to sale notice to all the shareholders dated 22 July 2009. We only received from Chua Qian-Xi Olivia on the consent to transfer, no response from rest of the shareholders.

Kindly prepare resolution and the necessary documents to effect the transfer of shares from Chenet to Hopaco immediately.

15 Chenet alleged that it came to learn about Abu Bakar's purported acceptance in late August or early September 2009 after attempts to contact Allene and others were unsuccessful. It alleged that it did not receive a letter dated 27 August 2009 from Berlian which informed it that Abu Bakar had agreed to purchase the Shares and stipulating the completion date of the purchase to be 15 September 2009 ("the Completion Notice"). I will elaborate later on Chenet's allegation as to how it came to learn about Abu Bakar's purported acceptance.

16 Once Chenet got over its shock, it started to discern a conspiracy involving Allene, Abu Bakar and Berlian to injure it. Chenet issued a stop notice on 7 September 2009 to stop the transfer of the Shares to Abu Bakar. Later, it filed the writ of summons in Suit 781 on 14 September 2009. On the same day, it obtained an interim injunction order to stop all the defendants from transferring the Shares to Abu Bakar. Three days later, on 17 September 2009, Abu Bakar filed the writ of summons in Suit 796. The two actions were consolidated by consent on 31 March 2010.

Chenet's case

17 Chenet's key witnesses at the trial were Amin Shah, Toby and Eranur.

The plan to transfer the Shares to Hopaco

18 The reason for Chenet's plan in 2009 to transfer the Shares to Hopaco is detailed most in Amin Shah's affidavit of evidence-in-chief ("AEIC"). [\[note: 16\]](#) According to Amin Shah, the aim was to provide acceptable security for an outstanding loan that Berlian owed to its major creditor, Caterpillar Financial Services Asia Pte Ltd ("Caterpillar").

19 In 2000, Berlian obtained a loan of \$20,160,000 from Caterpillar ("the loan"). This money was to help pay for six new ships bought from a Western Australian company Wavemaster International Pte

Ltd ("Wavemaster"). [\[note: 17\]](#) These ships were to be used for Berlian's ferry business. At Amin Shah's behest, his good friend and fellow Malaysian businessman Andrew Lee Choong Lim ("Andrew Lee") further injected a sum of \$2.5m into Berlian, and also assumed its debts of \$1.8m. In return, Andrew Lee received 55% of Berlian's shares. [\[note: 18\]](#) However, at that time, Andrew Lee did not wish to hold the Berlian shares in his own name, [\[note: 19\]](#) so he accepted Amin Shah's recommendation of a loyal servant – Abu Bakar – to act as his nominee. [\[note: 20\]](#) According to Amin Shah, that was how Abu Bakar, a man of little means, came to hold those shares registered in his name, and that also explained why he was made the Chairman and a director of Berlian. Abu Bakar was further made a guarantor for the loan.

20 Problems began around 2006 after Chenet defaulted on loan instalment payments to Caterpillar. The outstanding amount of instalment payments and interest owed was \$2.2m. Caterpillar threatened to recall the outstanding loan of \$9m to 11m [\[note: 21\]](#) if Berlian remained in default. [\[note: 22\]](#) Berlian turned to Chenet, which injected \$2.2m in exchange for 22 million shares in Berlian – working out to \$0.10 a share. [\[note: 23\]](#) Chenet was now the majority shareholder in Berlian, eclipsing Abu Bakar's shareholding by a considerable margin.

21 But that was not the end of Berlian's troubles with Caterpillar. Caterpillar was also concerned with the low net worth of both Abu Bakar (the guarantor of the loan) and Toby (the registered owner of Chenet, which was in turn the registered majority owner of Berlian). [\[note: 24\]](#) Hence there was a risk that Caterpillar would recall the loan at any time. That would in turn have meant a possible seizure of Berlian's ferry ships, which would have been disastrous for Berlian. [\[note: 25\]](#)

22 Sometime in early 2009, Amin Shah decided that Chenet should transfer the Shares to Hopaco, a company owned by Andrew Lee. The idea was that Andrew Lee's high net worth would be enough to comfort Caterpillar. The initial plan devised in early May 2009 by Amin Shah's Malaysian lawyer Thanggaya was to have a loan agreement under which Hopaco would purportedly lend \$2.2m to Chenet, with the Shares acting as security. [\[note: 26\]](#) The loan agreement would be backdated to 19 April 2007 and Chenet would then "default" on the loan in 2009, resulting in the transfer of the Shares to Hopaco. Eranur admitted on the witness stand that it was not meant to be a genuine transfer: [\[note: 27\]](#)

Court: [The transfer to Hopaco] is not supposed to be a true transaction, it was meant to be a sham transaction because Hopaco is not supposed to be the real owner of the shares. It's just supposed to show to Caterpillar that now one of our shareholders is Hopaco, who has got a high net worth individual, [Andrew Lee].

A: Yes.

Court: So even this 2.2 million deal is not really meant for Hopaco to acquire the shares, but it's just a sham to satisfy Caterpillar's enquiry.

A: Yes.

It was also planned that Abu Bakar's shares in Berlian, being held on trust for Andrew Lee, would be transferred to Hopaco via the same mechanism. [\[note: 28\]](#)

23 The mechanics to implement the charade were jettisoned sometime in mid-May to July 2009.

According to Amin Shah, this was because Allene had suggested the more straightforward approach of an outright sale of the Shares to Hopaco. [\[note: 29\]](#) However, an outright sale to Hopaco would trigger Art 22. The effect of Art 22 was to confer upon existing shareholders a pre-emptive right to purchase the Shares at a certain price. Berlian would be made an agent for Chenet, and would offer the Shares to the existing shareholders on Chenet's behalf.

24 On 12 July 2009 Amin Shah convened a meeting at the Crowne Plaza Hotel at Changi Airport Terminal 3 ("Crowne Plaza Changi Airport"). In attendance were Allene, Abu Bakar, Eranur and Carina among others. [\[note: 30\]](#) The transfer of the Shares to Hopaco was discussed and approved. According to Amin Shah's AEIC, all the people present at the meeting "knew the purpose and reasoning behind the proposed transfer". [\[note: 31\]](#) He was later to add during cross-examination that Abu Bakar had *orally confirmed* that he would not exercise his pre-emptive right to buy the Shares. [\[note: 32\]](#) However, I accept that Abu Bakar did not provide such a confirmation as such an important allegation was not pleaded or mentioned in his AEIC. Eranur also did not mention such a confirmation in her evidence.

25 At this point, another inconsistency in Chenet's account of the facts should be noted. Amin Shah's AEIC gave the impression that he had been involved in the plan to transfer the Shares to Hopaco right from its inception. [\[note: 33\]](#) However, he later insisted on cross-examination that the *first time* he had heard of that plan was only on 12 July 2009 [\[note: 34\]](#) – when the meeting at Crowne Plaza Changi Airport was held. Significantly, his oral evidence was contradicted by the AEIC evidence of Eranur, which suggested that the transfer of the Shares to Hopaco had been Amin Shah's idea from the start. [\[note: 35\]](#) In my view, the weight of evidence established that Amin Shah initiated the plan.

The alleged conspiracy

26 It is Chenet's case that sometime soon after 12 July 2009, active steps were taken to further a conspiracy against it. The first step was the removal of Amin Shah's friend, Alle Pasau ("Pasau"), from Berlian's board of directors on 20 July 2009. This was allegedly done so that Allene, Abu Bakar, and Berlian could execute the conspiracy without notice to anyone in Amin Shah's camp.

27 Unfortunately for Chenet, Pasau gave contradictory accounts of how he had been removed. His initial story, as stated in his AEIC, was that Allene had got him to sign his own resignation letter on a false pretext. [\[note: 36\]](#) He arrived at Berlian's offices for the Annual General Meeting on 10 July 2009 ("AGM"). He was late, and the meeting appeared to be over by the time he got there. After small talk with some people like Abu Bakar and Carina, he was left alone in the meeting room with Allene. He was allegedly handed a stack of about seven documents among which was an undated letter of resignation. He was told by Allene that Bobby wanted him to pre-sign the letter of resignation in case he was required in the future to terminate his directorship. He signed the documents without giving them much thought and headed back to Batam.

28 But in cross-examination, Pasau said that he did not know he had pre-signed a resignation letter. [\[note: 37\]](#) Neither had Allene told him to do so. [\[note: 38\]](#) She had indeed handed him a sheaf of seven documents to sign, and he signed two of them, believing them to be the minutes of the meeting he had just missed. [\[note: 39\]](#) When he was confronted with the inconsistency with his AEIC evidence, he was unable to provide an explanation.

29 Indeed, Pasau even denied signing a statutory declaration before a Commissioner for Oaths on 4 September 2009 although that document was part of the agreed bundle of documents at 3AB 761-

769. That statutory declaration also alleged that he had pre-signed a resignation letter.

30 According to Chenet, the second step after the removal of Pasau was for the conspirators to consolidate its hold on Berlian's board of directors. On the same day that Pasau's resignation letter [\[note: 40\]](#) was tendered and accepted (*ie*, 20 July 2009), Carina and an ally, Wong Nyuk Fong ("Wong"), were purportedly appointed as Berlian directors with immediate effect (although the notice was formally lodged with ACRA only on 28 August 2009). [\[note: 41\]](#) Three days later, on 23 July 2009, [\[note: 42\]](#) Berlian purportedly sent out to every existing shareholder a Transfer Notice dated 22 July 2009. [\[note: 43\]](#) A pre-prepared letter of waiver of pre-emption for each shareholder to execute was attached to the Transfer Notice. [\[note: 44\]](#) The waiver stated the price at which Chenet proposed to sell the Shares to Hopaco: \$2.2m. I would mention that Chenet did not accept that the Transfer Notices had been posted to all the shareholders of Berlian even though Berlian produced the originals of registered receipts, with the names and addresses of the shareholders. Chenet took the point that such evidence did not establish the contents of the document that was sent to every shareholder. However, Eranur accepted that the Transfer Notices had been sent as alleged by Berlian. [\[note: 45\]](#)

31 The nub of Chenet's case in respect of events up to 23 July 2009 was that the Art 22 mechanism was not properly triggered. A Transfer Notice could be sent only if the Sale Notice had *first* been lodged with Berlian before 22 July 2009 (see [11] above). It is true that there is a Sale Notice dated 15 July 2009 signed by Toby, [\[note: 46\]](#) but Chenet alleged that this was invalid in two aspects.

32 First, Chenet alleged that the Sale Notice was backdated. It was Toby's evidence in cross-examination that he had signed the Sale Notice only on 15 August 2009, *ie*, after the Transfer Notices had been dispatched to other shareholders. [\[note: 47\]](#) Yet he had earlier indicated in his AEIC that he had signed the Sale Notice in early to mid July 2009 when he had been in transit in Singapore from London to Jakarta. [\[note: 48\]](#) Allene had informed him she had several documents he had to sign. Among them was an undated Sale Notice. As he had previously pre-signed similar documents, he complied with her request without much thought. [\[note: 49\]](#) Toby explained the disparity in dates by saying that he had made a mistake in his AEIC. [\[note: 50\]](#) He discovered the mistake only after he had checked his passport which showed that he had not been in Singapore in June or July 2009. [\[note: 51\]](#)

33 There were also a few emails that Chenet relied upon to show that the Sale Notice was backdated. One was an email dated 20 July 2009, sent by Allene at 9.37am to Reggine. It read: [\[note: 52\]](#)

...

- 1) You failed to deliver your promised [*sic*] to let us have the documents before 10 July
- 2) documents received on 13 July 2009 but without enclosure and letter of waiver. This was highlighted in my replied email but you re-sent the same. We sent another emailed [*sic*] on 15 July but no response from you since.
- 3) *SALE NOTICE should be issue* [*sic*] by Chenet, why Hopaco?

...

[original emphasis removed, emphasis added]

According to Chenet, this email proved that it had *yet* to issue the Sale Notice as of 20 July 2009. [\[note: 53\]](#)

34 Another email that Chenet relied upon was one that Reggine had sent to Allene on 22 July 2009. [\[note: 54\]](#) In this email, Reggine acknowledged receipt of the earlier email that Allene had sent to her on 20 July 2009 at 9.37am. The obvious inference (given the same day, time, and recipients) that Chenet wished the court to draw was that the email Reggine was referring to was *the same email* in which Allene had complained about her tardiness (see [33] above). The importance of this inference was that from Reggine's email, it was apparent that Allene's email of 20 July 2009 9.37am had two attachments, one of which Chenet said was the draft copy of the Sale Notice. [\[note: 55\]](#)

35 Chenet also tried to rely on two emails that Allene had allegedly sent to Toby on 22 July 2009. Chenet's contention was that they showed that Toby had not signed the Sale Notice on 8 June 2009. [\[note: 56\]](#) The authenticity of these two emails was not admitted by Allene. The position that she had taken in her pleadings was that she had not seen these documents until they were exhibited in an affidavit of Toby filed on 1 August 2011 to support Chenet's application to amend its Statement of Claim ("SOC"). [\[note: 57\]](#) During cross-examination, these emails were shown to her and she denied having sent them. [\[note: 58\]](#) After the close of Chenet's case, Chenet's counsel then orally applied for the court's leave to prove these documents by adducing additional evidence from Toby, and perhaps also from Angeline d/o Benjamin Anthony ("Angeline"), who is Toby's personal assistant, and by directly accessing Allene's email account to determine whether the tendered emails had indeed been sent from her email account. [\[note: 59\]](#)

36 Allene's counsel Mr Manjit Singh ("Mr Singh") objected to the oral application because Chenet had been given notice that she was not admitting the authenticity of these emails. She had already taken that position in her affidavit to resist Chenet's application to amend its SOC. After Chenet's application to amend was allowed and it had filed and served its SOC (Amendment No 2), Allene reiterated her position on the two emails in her Defence (Amendment No 2) and Counterclaim filed on 28 November 2011. When the trial resumed on 18 January 2012, Toby was still on the witness stand. Chenet should have asked for leave to introduce evidence through Toby on the two emails. It did not. Chenet then closed its case and Allene opened hers. Mr Singh also submitted that the question of hacking into Allene's email account would have to be considered.

37 I noted that the issue about the backdating of the Sale Notice had been raised before the trial started. Chenet's witnesses had plenty of time to check for documentary evidence to establish that Allene's version that the Sale Notice was signed on 8 June 2009 was untrue. The point was raised again during Chenet's application to amend its SOC in the midst of trial and it knew that Allene was not accepting the authenticity of the emails. Yet, Chenet did not seek to introduce evidence on them until after Allene had started to give her oral evidence. I was of the view that it was too late for Chenet to do so and I dismissed its oral application to adduce such evidence.

38 The second aspect of complaint by Chenet was that the price of \$2.2m had been inserted *after* Toby had signed it. \$2.2m was a significant undervaluation, given that Berlian had made more than \$5.8m profit in 2008. [\[note: 60\]](#) For the trial, Chenet had obtained a valuation report dated 16 March 2011 which had been prepared by a professional accountant Leow Quek Shiong. This report valued the Shares at the material time at a total of \$15,760,606, which worked out to about \$0.5834 per share. The valuation was not disputed by the defendants during the trial. It was Chenet's contention

that the \$2.2m figure was improperly inserted into the Sale Notice by Allene so as to give Abu Bakar an immediate gain upon buying the Shares. For these reasons, Chenet submitted that the Sale Notice was invalid.

39 Chenet also contended that Abu Bakar had not actually accepted the Offer in time. If the Transfer Notice to every shareholder was indeed posted on 23 July 2009, as alleged by Berlian, then the 21 day period to accept the Offer expired on 13 August 2009.

40 Abu Bakar had purportedly accepted the Offer by the Acceptance Letter (dated 28 July 2009) and handed it to Allene on 11 August 2009 who in turn handed it to Reggine on the same day. According to Abu Bakar, he had first passed the Acceptance Letter to Carina for safekeeping on 28 July 2009 as he could not find Allene in the office then and he was leaving Singapore that day. When he returned to Singapore, he retrieved the Acceptance Letter from Carina and handed it to Allene on 11 August 2009. [\[note: 61\]](#) Chenet's contention was that the date of 28 July 2009 was backdated and that Abu Bakar had not handed the Acceptance Letter to either Carina or Allene on the alleged dates. To back its claim up, Chenet relied upon the two emails which I mentioned above at [13]-[14], *ie*, the first dated 7 August 2009 from Carina and the second dated 18 August 2009 from Allene.

41 Allene's email of 18 August 2009 was obviously important. Chenet invited the court to take the matters stated therein as true – *ie*, as of 18 August 2009, no one had accepted the Offer.

42 On 27 August 2009, Berlian sent a letter to Chenet informing it that the Shares had been allocated to Abu Bakar pursuant to Art 22. [\[note: 62\]](#) This letter was addressed to Chenet's address in the British Virgin Islands ("BVI"), and not Chenet's Singapore address. Chenet claimed that this was done deliberately to buy the conspirators time to complete Abu Bakar's purchase of the Shares before Chenet had notice of what was going on and before it could react. On the same date, Abu Bakar terminated Eranur's employment as CEO with Berlian. [\[note: 63\]](#)

43 I now elaborate on Chenet's version as to how it came to learn about Abu Bakar's purported acceptance of the Offer.

44 According to Toby's AEIC, he was away from Singapore for most of July 2009. In August 2009, he fell ill and was resting in his hometown in Malaysia. Around 27 August 2009, he tried to contact Allene before coming to Singapore. He wanted to get hold of the Chenet kit which allegedly contained the common seal and rubber stamp of Chenet and other corporate documents. However, Allene did not take any of his calls or respond to his messages (apparently sent from his phone). He came to Singapore on 31 August 2009 and met Shirley Ho ("Shirley") who in turn contacted Allene. Shirley told him that Allene said that she had handed Chenet's documents to Bernadette Adeline Rankine ("BR") who was a director of VAH at the material time. BR was Amin Shah's former mistress. Toby found Allene's information unusual as he had not instructed Allene to hand Chenet's documents to BR and BR did not usually hold documents of Chenet. He was concerned that Allene had misused the Chenet kit in some way. On 31 August 2009, Toby went to the office of Heritage Fiduciary Services Pte Ltd ("Heritage"), a company that formerly provided Berlian with corporate secretarial services, to find out what Heritage had handed to Allene before Heritage had ceased to provide corporate secretarial services to Chenet. Heritage handed him a copy of a letter dated 7 April 2009 from Heritage to Allene which listed out various items including the Chenet kit handed by Heritage to Allene. Toby then made a police report about documents which he had pre-signed and handed to Allene whom he referred to as his personal secretary. Thereafter, he went to the office of Agenda to find out more. This was still on 31 August 2009. It was during this visit that he first saw documents relating to the Sale Notice

dated 15 July 2009. This included a 22 July 2009 Transfer Notice to a shareholder and Abu Bakar's Acceptance Letter. He was shocked. He tried to call Abu Bakar but the latter did not take his calls. He made inquiries of Abu Bakar and learned that the latter had moved out of his residence in Selangor. He also obtained from Agenda, a copy of Pasau's letter of resignation and called Pasau who said he had not resigned. He found out from Agenda that Berlian had fixed a board meeting on 15 September 2009 to approve the transfer of the Shares to Abu Bakar. He immediately instructed solicitors to take various steps including sending letters to Agenda and to Allene to stop the transfer. Eventually Chenet also issued a Stop notice on 7 September 2009 to Berlian to prevent the transfer from being effected. As mentioned at [16] above, Chenet also obtained an interim injunction against the various defendants.

Allene's version of events

45 Although Amin Shah alleged that Allene was the mastermind of the conspiracy to cheat Chenet of the Shares because she was in charge of the documentation to transfer the Shares, [\[note: 64\]](#) she denied all allegations of a conspiracy. Her counsel Mr Singh portrayed her as a simple employee who got caught in a dispute between shareholders and that she was a neutral party in the dispute.

The Sale Notice and Pasau's resignation

46 Allene said that up to July 2009, she was acting on the instructions of Amin Shah even though he held no formal position in VAH. Her previous superior Shirley had told her to act on Amin Shah's instructions and Allene considered him as her boss.

47 Allene said she met Amin Shah alone at the Crowne Plaza Changi Airport on the morning of 8 June 2009. [\[note: 65\]](#) She was sure of the date as she had on the same day also passed \$10,000 in cash to Amin Shah. She had recorded this on a piece of paper and he had signed for it. [\[note: 66\]](#) At the trial she produced a copy of the paper but not the original. Although one of the dates recorded on the paper was 8 June 2008, she explained that it was a mistake, as evidenced by other entries on the same paper that were dated 8 June 2009.

48 At this meeting Amin Shah told Allene that he was intending to transfer the Shares to Hopaco and instructed her to prepare the necessary documents, including the Sale Notice. So she returned to the office, prepared the Sale Notice and inserted the date 15 July 2009 onto the Sale Notice before printing it out. On the same day, she returned to Crowne Plaza Changi Airport to meet Toby as Amin Shah had also told her that Toby would be arriving in transit on that day and she should meet Toby and get him to sign the Sale Notice. She showed Toby the Sale Notice, which he read and signed. Amin Shah was also present and had witnessed Toby signing the Sale Notice. [\[note: 67\]](#) Thereafter she kept it and awaited further instructions from Amin Shah. Her position was that the Sale Notice was complete with the sale price and the date of the Sale Notice when Toby signed it.

49 Allene accepted that she met Pasau at Berlian's offices on 10 July 2009. However, she said that Pasau had knowingly signed the resignation letter, and that she had been acting under Amin Shah's instructions to process it. She denied that she wanted to get rid of Pasau to further a conspiracy against Chenet. [\[note: 68\]](#)

50 On 12 July 2009, Allene met Amin Shah and Eranur at the Crowne Plaza Changi Airport. Amin Shah indicated that Allene should proceed to issue the Sale Notice to Berlian. Allene did so. Under Art 22, that meant Berlian now had to make an offer of the Shares on Chenet's behalf to the rest of its shareholders. So the next step was to prepare the Transfer Notices for dispatch to the existing

shareholders. Reggine took some time with the preparations, and these were finalised only on 22 July 2009. On the same day Amin Shah and Eranur confirmed that the Transfer Notices were to be dispatched and that was done on the next day, ie, 23 July 2009. [\[note: 69\]](#)

51 Allene flatly denied Chenet's allegation that she had unilaterally inserted the \$2.2m sale price into the Sale Notice for the purpose of harming Chenet. She pointed to an exchange of emails between Amin Shah, Eranur and herself on 22 July 2009. [\[note: 70\]](#) In the first email, she wrote to Amin Shah saying:

Dear Tan Sri,

The company auditor [J K Medora] has advised that Chenet cannot transfer all the 24,017,983 [shares] to Hopaco.

Reason being the average share price of Berlian is SGD0.27 per shs that means Chenet can only transfer 8,148,148 shs equivalent to SGD2,200,000 pledged amount from Hopaco

...

Please advise should we proceed with the transfer to Hopaco

52 Eranur replied to Allene about 20 minutes later saying:

Allene *it has to be the whole of chenet*. The agreement says so. It is very clear in the agreement. It says that in the event chenet defaults it will surrender the collateral plus the new shares purchased. Highlight this to the auditor.

[emphasis added]

According to Allene, these emails showed that it was Chenet's own intention to transfer all the Shares to Hopaco for \$2.2m.

The role of BR

53 Allene said that Abu Bakar had handed the Acceptance Letter to her on 11 August 2009 and she in turn handed it to Reggine.

54 In the course of the trial, Allene's evidence took a dramatic twist. It all centred around the 18 August 2009 email in which she had effectively said that no shareholder had accepted the Offer and she had even given instructions for the preparation of documents to transfer the Shares to Hopaco immediately (see above at [14]). There was no mention of this email in her initial pleading or in her AEIC. I shall elaborate below on her new evidence and her omission to mention it earlier.

55 In the midst of the trial, Chenet filed Summons 3869 of 2011 on 31 August 2011 to amend its SOC (Amendment No 1) to include various allegations. One of the proposed amendments was to specifically refer to the 18 August 2009 email from Allene. I allowed Chenet's application on 14 November 2011. Chenet filed its SOC (Amendment No 2) on 21 November 2011 and presumably served it thereafter. In turn Allene filed her Defence (Amendment No 2) and Counterclaim. At para 9A(7)(c) – (d) of her amended pleading, she revealed for the first time that she had *lied* in the 18 August 2009 email and that BR had instructed her to do so. BR had also instructed her not to take instructions from anyone else: [\[note: 71\]](#)

... the 1st Defendant was directed by VAH to send the email dated 18 August 2009 and in particular, on the specific instructions of the then director Ms Bernadette Rankine; and

Ms Bernadette Rankine informed the 1st Defendant not to take instructions from anyone else except for herself and that the 1st Defendant need not concern herself about the 2nd Defendant's acceptance as the Plaintiffs would eventually be notified of the same.

56 This was then elaborated upon during her own cross-examination. [\[note: 72\]](#) Allene said BR had called her from London sometime in late July to early August 2009 to tell her that she was intending to break up with Amin Shah. BR reminded Allene that she (BR) was a director of VAH. She told Allene that henceforth she was to take instructions from her only. BR was also aware of the proposed transfer of the Shares to Hopaco. She told Allene to inform her if any shareholder decided to accept the offer.

57 On 11 August 2009 Allene received the Acceptance Letter from Abu Bakar. She called BR who told her to hand the Acceptance Letter to Reggine and to hide the information from Amin Shah. She passed the Acceptance Letter to Reggine. After 11 August 2009 she received calls from Eranur and Amin Shah asking if any of the existing shareholders had decided to take up the option. As she felt she had no choice but to obey BR, she lied to them that none had done so. Eranur was pressing Allene to "push through" the transfer of the Shares to Hopaco. It was BR who instructed Allene to inform Reggine and Eranur by email to go ahead with the transfer to Hopaco, but BR also told Allene to tell Reggine orally to ignore that written instruction. Allene then sent the email of 18 August 2009. Thereafter, Allene immediately called Reggine to tell her to ignore the email. Reggine's reply was that she had already received Abu Bakar's Acceptance Letter and would just act accordingly. [\[note: 73\]](#)

58 Carina was also aware of Abu Bakar's Acceptance Letter. She walked over to Allene's office to ask about the contents of the 18 August 2009 email. Allene said she told Carina that she was acting under BR's instructions, and that more information would be available once the latter returned to Singapore. BR met up with Allene towards the end of August 2009. She showed Allene photographs of her injuries from her beatings by Amin Shah. She also said that VAH was involved in money laundering activities for Amin Shah, and that the both of them might be implicated. Allene tendered her resignation to VAH by way of a letter dated 31 August 2009. Her last day was 16 September 2009.

Abu Bakar's version of events

Abu Bakar's background

59 Abu Bakar accepted that he had once worked as a technician with the Federal Employee's Provident Fund (EPF) for a salary of RM1,000/month. [\[note: 74\]](#) He said he had not resigned to work for Amin Shah and had never received income from him [\[note: 75\]](#) although he did admit to having once helped Amin Shah with his political campaigning in 1990. [\[note: 76\]](#)

60 Abu Bakar gave evidence of companies which he had incorporated. The first, Atlantic Range Sdn Bhd, was incorporated in 1991 with a paid up capital of RM1m. [\[note: 77\]](#) When questioned about where he had got the RM1m from, he answered that the money was from his profits from brokering contracts through his political contacts. He also started two other companies – Integrated Maker Sdn Bhd in 1993, with a paid up capital of RM1m; and Integrated Steel Industries Sdn Bhd in 2000, with a paid up capital of around RM20m. [\[note: 78\]](#)

61 Abu Bakar denied that he was holding his stake in Berlian as Andrew Lee's nominee. He said that he purchased the shares in his own right. [\[note: 79\]](#) 3,000,000 shares in Berlian were transferred to Abu Bakar for a consideration of \$1 but with him assuming debts of more than \$1m. He also paid an additional \$2,500,000 for 2,500,000 more shares [\[note: 80\]](#). Around 2006, Caterpillar demanded repayment of \$2.2m in loan arrears from Berlian. Abu Bakar approached Toby who agreed that Chenet would provide the sum to Berlian in return for 22 million shares in Berlian – making it the majority shareholder. Abu Bakar had no choice but to accept.

62 In his AEIC, Abu Bakar gave the impression that he had been a successful businessman in his own right and that he was not a henchman or lieutenant of Amin Shah. During the trial, Abu Bakar also alleged that he was more than a symbolic figurehead and that he had taken part in the executive decisions of Berlian. According to him, since he became Berlian's Executive Chairman in September 2000, he would travel to Singapore one to two times a month to visit the Berlian office, where he would sign cheques and invoices. He also chaired the annual general meetings and met with representatives from Caterpillar to discuss loan related issues [\[note: 81\]](#) and attended meetings with Berlian's business partners. [\[note: 82\]](#) On the other hand, he was unaware of the losses that Berlian incurred in 2002, 2004, and 2005. It was his position that such matters were left to the finance department. [\[note: 83\]](#) He was also unaware if the loan to Caterpillar had already been repaid at the present time, [\[note: 84\]](#) and was unfamiliar with the 2009 financial reports of Berlian. [\[note: 85\]](#) In any event, contrary to the impression given in his AEIC, he admitted during the trial that after Chenet assumed majority control of Berlian in 2006, he did as he was told by Amin Shah who told him to sign cheques and "don't talk so much". [\[note: 86\]](#)

Seizing his opportunity to regain control of Berlian

63 According to Abu Bakar, he met Amin Shah at the Crowne Plaza Changi Airport on the morning of 12 July 2009. Eranur and Carina were among the people present. The purpose of this meeting was to discuss the minutes of the AGM. It was at this meeting that Amin Shah mentioned in passing that Chenet would be transferring the Shares to Hopaco. In his mind, Chenet and Hopaco were companies controlled by Amin Shah. Amin Shah did not mention the reason for the transfer at the meeting. [\[note: 87\]](#) He also remembered Amin Shah saying that he would meet Allene that afternoon to instruct her to issue the Sale Notice to Berlian. [\[note: 88\]](#) Significantly, when he was asked by Chenet's counsel if it was right for him to take the Shares if he had already been told the transfer was to take place between Chenet and Hopaco, he accepted that it was "not right". [\[note: 89\]](#)

64 On 26 July 2009, Abu Bakar received the Transfer Notice that Berlian had dispatched to its shareholders. Together with the Transfer Notice were copies of the Sale Notice and Art 22, and a pre-prepared letter of waiver. [\[note: 90\]](#) He saw his opportunity to regain majority control of Berlian cheaply. He knew that the price of \$2.2m was too low. He himself said that from the AGM, he knew that Berlian's profit (for 2008) was \$5.8m and that meant that the Shares were worth \$5.8m or more. [\[note: 91\]](#) In the evening of 27 July 2009, he prepared a letter of acceptance which he dated 28 July 2009. [\[note: 92\]](#) The next day he went to Berlian's office to hand the Acceptance Letter, which he had put in an unsealed envelope, to Allene. However, she was not in the office. I should mention that VAH and Berlian were sharing office premises. He handed the envelope over to Carina, told her he wanted to buy the Shares and that she was to hold the Acceptance Letter for him until he returned from a meeting overseas. [\[note: 93\]](#) He returned on 11 August 2009, retrieved the Acceptance Letter from

Carina and passed it to Allene on the same day.

65 On 27 August 2009, Abu Bakar was notified by Berlian that the Shares had been allocated to him. He was at Berlian's office and asked Carina what that meant. She replied that now the Shares belonged to him and he was "the boss". [\[note: 94\]](#) Hearing that, he ordered the termination of Eranur's employment with Berlian. [\[note: 95\]](#)

66 It was undisputed that Abu Bakar himself did not have the money to pay the \$2.2m. The completion of the sale of the Shares to Abu Bakar was scheduled for 15 September 2009. Abu Bakar obtained a cashier's order dated 14 September 2009 [\[note: 96\]](#) for \$2.2m from the Development Bank of Singapore Ltd ("DBS") to establish that he would have been able to complete the purchase had Chenet not issued a stop notice or obtained an injunction order in the meantime. As the purchase was not completed on 15 September 2009, the cashier's order was cancelled thereafter. The gist of Abu Bakar's oral evidence was that he had two friends in Indonesia, Pak Lufdi and Pak Kharif. On or about 6 August 2009, he went to meet them in Jakarta where they agreed to lend him the \$2.2m with an annual interest of \$330,000. [\[note: 97\]](#) He signed an agreement containing the terms of the loan but did not retain a copy of the agreement. He was unable to produce any documentary evidence to support his allegation about this loan.

Berlian's version of events

67 Berlian denied being part of a conspiracy against Chenet and claimed that it had always been neutral. It tendered two of its directors as witnesses: Yong Kian Chin ("Yong") and Carina.

68 Yong's evidence related to two important areas. The first was about the Transfer Notices. [\[note: 98\]](#) It was his evidence under cross-examination that Allene had showed him the signed and dated Sale Notice when she brought him the Transfer Notices for his signature on 22 July 2009. The second important area was that it had been *his* idea to appoint Wong and Carina to Berlian's board of directors on 20 July 2009. [\[note: 99\]](#) According to him, he was told by Allene after Berlian's AGM on 10 July 2009 that Pasau was going to resign. That left Berlian with only three directors, so he proposed that Wong and Carina be appointed.

69 Carina was Berlian's main witness. She did not agree that the purpose of the transfer of the Shares to Hopaco was to placate Caterpillar. She said that the true reason was an attempt by Amin Shah to place the Shares out of reach of liquidation proceedings in Australia. [\[note: 100\]](#) According to her, Caterpillar's queries about Abu Bakar's net worth arose only after the plan to transfer the Shares to Hopaco had been hatched.

70 On the other hand, Wavemaster had filed a claim in 2006 against JR Marine Systems Pte Ltd ("JR Marine") in the Supreme Court of Western Australia. JR Marine was substantially owned by Chenet. JR Marine's only asset was a vessel known as Wavemaster 10. In order to put this vessel out of reach of Wavemaster in case Wavemaster was successful in its claim, Amin Shah instructed that Berlian purchase Wavemaster 10 from JR Marine. However, Amin Shah was also concerned about the shares which Chenet held in JR Marine and in Berlian. As Chenet was a substantial shareholder of those two companies, Amin Shah was concerned that Wavemaster might seize Chenet's shares in Berlian by virtue of Chenet being a common shareholder of the two companies. Amin Shah then planned to transfer the Shares to Hopaco to put the Shares out of the reach of Wavemaster.

71 Carina even obtained advice from Berlian's auditor to the effect that Wavemaster could not go

after the Shares even though Chenet was a common shareholder in Berlian and in JR Marine. She was also advised that if however the intention was to proceed with the intended transfer of the Shares, this should be done in 2009. She sent an email dated 27 May 2009 to Eranur and Amin Shah to set out the above advice.

72 While it is true that Carina agreed during her cross-examination that the advice of the auditors should have allayed Amin Shah's concern, [\[note: 101\]](#) this did not mean that Amin Shah was content to rely on the advice. Carina still seemed to think that the reason for the transfer of the Shares to Hopaco was the concern about Wavemaster's reach.

73 Furthermore, her email of 7 August 2009 (see [13] above) also stated that Caterpillar had found out that Abu Bakar's net worth was only worth \$737,498 and Caterpillar was considering calling back all outstanding amounts owing to it. This email supported Carina's point that it was only in August 2009 that Caterpillar became concerned about Abu Bakar's net worth.

74 Carina was one of the persons who attended the meeting in the morning of 12 July 2009 at Crowne Plaza Changi Airport. She said that Amin Shah had not told Abu Bakar specifically that he was not to exercise his pre-emption right. She said that the main purpose of the meeting had been to discuss the AGM and Amin Shah had only perfunctorily mentioned the transfer of the Shares to Hopaco. [\[note: 102\]](#)

75 On 22 July 2009 Carina met Allene who was on the way to meet Yong with a stack of documents for his signature. Allene told her that these documents were about the transfer of the Shares to Hopaco, and that Amin Shah had instructed her to proceed. Carina then asked for a copy of all the documents for Berlian's records. The requested documents were delivered later that day, and included the Sale Notice, the Transfer Notices, a copy of Art 22, and a pre-prepared letter of waiver. [\[note: 103\]](#)

76 After receiving the Sale Notice (which had been signed by Bobby and dated 15 July 2009), [\[note: 104\]](#) she called Berlian's auditor at J K Medora & Co ("Auditor") to tell him that Chenet was intending to transfer the Shares to Hopaco for \$2.2m. She was informed by the Auditor that the \$2.2m was an inadequate value for the Shares. She then called Eranur, who was at that time still the CEO of Berlian, to tell her of the Auditor's advice. Eranur did not seem very interested in what the Auditor had to say and simply told her to proceed with the transfer of all the Shares at \$2.2m. [\[note: 105\]](#)

77 Carina then informed Allene that she (Allene) should bring the Auditor's advice to the attention of Amin Shah. [\[note: 106\]](#) An email was accordingly sent by Allene to Amin Shah on 22 July 2009. [\[note: 107\]](#) That same day, Carina was informed by Allene that Eranur had replied to her email, and had told her to proceed with the transfer of all the Shares at \$2.2m (see [52] above). The Transfer Notices were signed on 22 July 2009 and dispatched the day after on 23 July 2009.

78 Carina corroborated Abu Bakar's account of how he had passed the Acceptance Letter to her on 28 July 2009. This meant she had to explain her email of 7 August 2009 [\[note: 108\]](#) (see [13] above) in which she had told Eranur and Amin Shah that there had been "no news" from the minority shareholders in respect of the Transfer Notices. That email was not mentioned in her AEIC and an explanation only surfaced during her cross-examination. [\[note: 109\]](#) The essence of her answer was that although Abu Bakar had told her that he intended to purchase the Shares, she had not seen it as

a formal or serious acceptance. [\[note: 110\]](#) I set out her evidence below:

Court: So is it your evidence that you believe he wants to buy --

A: Yes.

Court: -- but you are not sure whether in fact he will buy?

A: Yes, yes, yes, yes, yes.

Court: So you believe he is serious about buying, but you are not sure whether he will go ahead with it; is that a fair summary of your evidence?

A: Actually, at the point in time when he tell me that ... I don't know whether he is serious to buy or he don't serious to buy. He just tell me to hold on. I just take it that -- okay, I just chuck aside. I didn't take it seriously.

Court: You did not take it seriously?

A: I did not take it seriously.

79 I come next to Allene's email of 18 August 2009 where Allene instructed Reggine to proceed with the transfer of the Shares to Hopaco on the basis that no one had accepted the offer [\[note: 111\]](#) (see [14] above). In fact, according to the defendants, Abu Bakar had already accepted the offer on 11 August 2009 when he handed the Acceptance Letter to Allene. Carina had been copied on Allene's email of 18 August 2009 and she would have known that the email was a blatant lie.

80 Carina said that as she had been on leave in the afternoon of 18 August 2009, she discovered Allene's email only in the morning after. She then walked across to Allene's office to ask about it. Allene replied that she was simply acting on BR's instructions. Carina's response was that that still did not excuse the lie. Allene then said she would explain later once she met BR upon the latter's return from London. Carina told Allene to "make sure you inform Chenet that Bakar is taking out the offer", [\[note: 112\]](#) to which Allene said Chenet would indeed be informed. [\[note: 113\]](#)

81 Carina said she *herself* did not tell Amin Shah or Eranur that Abu Bakar had exercised the option because she feared to do so: [\[note: 114\]](#)

Court: Carry on ...

A: ... I know, if you ask me, I supposed to inform Eranur about these things, about this, but at that point in time I am just so scared, I dare not to call either ... Amin Shah or Eranur to tell them about this...

Court: Why not?

A: Because Bakar took out the offer. The reason is I very scared of Amin Shah, he is very hot-tempered. If I call him I know I will surely get scolding from him.

Court: Because?

A: Because his plan of transferring from Chenet share to Hopaco does not work out ... You see, then if I will be the first one to call him I will assure get it from him and get scolding, because I know he have -- he has already not very happy with me over some money issues.

Court: Okay, so therefore what happened?

A: So therefore I -- I very scared. I dare not to call him. I dare not to inform him. I just pray very hard that -- I just pray that he don't call me, no one call me and ask me. I just hope that -- because Allene will inform him; ultimately Allene told me that ... she will inform them. Company ... will send the official notice to inform them.

82 She told herself that it was for Allene to inform Amin Shah since she was in charge of financial matters only. The illusion of safety lasted for about two weeks, after which she received a call from Amin Shah: [\[note: 115\]](#)

A: He spoke to me. He called me. "Did Bakar took out those share?" Then I said, "Yes, Bakar took out the share." ... Then he started scolding me already ... Then I quickly -- I so scared, because he start using all the bad words on me, you see, so I quickly hang up the phone.

Then he call me back again. Then he start telling me, he say "Oh, I'm sorry, I'm sorry for using all those words, I'm really sorry", he told me, "but can you please help me?" Now he sounds very nice: "Can you please help me?"

I say, "How to help you? I cannot help you." He said, "You are a director; you can void this whole transaction." ... I say, "I don't think I can do this. I'm so sorry." I just hang off the phone.

You see, then he called me back and scold me again, you know, using all those kinds of bad words.

83 Carina also gave her version of the circumstances surrounding Eranur's termination. Elaborating on her AEIC evidence [\[note: 116\]](#) in cross-examination, [\[note: 117\]](#) she said that somewhere around 30 July 2009 she received a call from Amin Shah. He told her that Eranur was no longer the CEO of Berlian, and would be re-designated as Berlian's business development manager. Carina found this surprising as Eranur had only started working as CEO in April 2009. So she called Eranur on Skype (an internet service that allows calls to be made) and asked if she was aware of her re-designation. Eranur was indeed aware and apparently expressed her helplessness at her father's caprice.

84 However although Eranur had been removed as a CEO, she was still employed as a business development manager of Berlian. That was why subsequent emails sent by Carina and Allene like those on 7 and 18 August 2009, were still sent to her. But no *new* employment contract had been issued to reflect this change in Eranur's position. That explained why it was that when Abu Bakar later issued the order to terminate Eranur's employment on 27 August 2009, the termination letter [\[note: 118\]](#) still referred to her as the CEO. [\[note: 119\]](#)

The court's findings of fact

85 It will be apparent from the accounts set out above that there were many factual disputes. However the importance of each dispute varies and it will not be necessary for me to decide on all of them to dispose of the two suits before me.

Reason for the intended transfer of the Shares to Hopaco

86 For present purposes, I do not find it necessary to decide what the real reason for the intended transfer of the Shares to Hopaco was. Whether the reason was to placate Caterpillar with a new shareholder of substantial worth or to place the Shares out of reach of Australian liquidation proceedings, it is clear to me that the intended transfer to Hopaco was a sham. As mentioned above at [22], Eranur accepted that it was a sham. Toby also accepted this fact. [\[note: 120\]](#) Hopaco was not going to pay for the Shares and Amin Shah would still be calling the shots in respect of the Shares after the transfer to Hopaco was effected.

When was the Sale Notice signed and when was the date of 15 July 2009 therein inserted?

87 Chenet contended that Abu Bakar's exercise of his option to purchase the Shares was void because Toby had signed the Sale Notice only on 15 August 2009, *after* the Transfer Notices were dispatched on 23 July 2009. Chenet also alleged that the Sale Notice was not dated when Toby signed it. To support its first contention, Chenet relied upon the oral evidence of Toby upon cross-examination, and a few emails.

88 In relation to the emails sent by Allene to Reggie (see above at [33]), I find them to be at best merely supportive of Chenet's position. Taken on their own, there was insufficient context or detail for them to prove on a balance of probabilities that the Sale Notice was not prepared even by 20 July 2009. Turning to the evidence of Toby, I do not find Toby to be a reliable witness. It was apparent right from the start that he was, at best, easily confused about his evidence. Within twenty minutes into his cross-examination, he was asked a simple question by counsel for Allene: [\[note: 121\]](#)

Q: ... and would I be right to say it was Mr Amin Shah who asked [you to] be the registered owner [of Chenet]?

A: No.

He was then taken to his AEIC where he had stated the opposite and asked again:

Q: Mr Toby Tan, don't waste my time if you can. I put my question to you again: it was Mr Amin Shah who asked you to become the registered owner of Chenet Finance. "Yes" or "no" please?

A: Yes.

89 On the issue of when he had signed the Sale Notice, his AEIC evidence was that he had *pre*-signed it sometime in the middle of July 2009. [\[note: 122\]](#) He changed his position under cross-examination, when he said he had realised after checking his passport that he had not been in Singapore during June or July 2009. [\[note: 123\]](#) He then said he had signed it on 15 August 2009 instead. [\[note: 124\]](#) This meant that, contrary to what he had said in his AEIC, he was changing his evidence to say that he had *post*-signed the Sale Notice. Toby's evidence that he had not come to Singapore in June 2009 turned out to be false. Exhibit P2 is independent evidence from the Immigration and Checkpoints Authority on his travel movements in and out of Singapore from 1 May to 30 September 2009. It showed that he arrived in Singapore by air on 7 June 2009 and left Singapore by road on 8 June 2009. He also came into Singapore on other days in June 2009. This must mean that the passport he had referred to was not the only travel document which allowed him entry into Singapore and he must have known that.

90 What else was there to support Chenet's contention that the Sale Notice had been signed on

15 August 2009? It also relied on documentary evidence in the form of two emails sent from Allene's email account on 22 July 2009 (see [35] above). [\[note: 125\]](#) However, as mentioned above, I disallowed Chenet from adducing evidence to prove these emails.

91 Allene's evidence was that Amin Shah had told her that Toby would be arriving in Singapore in transit on 8 June 2009 and she was to meet him and get him to sign the Sale Notice then. In accordance with Amin Shah's instructions, she prepared the Sale Notice and inserted the date 15 July 2009 into the Sale Notice and printed it out for Toby to sign. She met Toby at Crowne Plaza Changi Airport on that day and he signed it the same day. She remembered the date of 8 June 2009 as that was the date inserted on the piece of paper on which she had made a note that she had handed \$10,000 cash to Amin Shah (see [47] above). She also said that Amin Shah had witnessed Toby signing the Sale Notice (see [48] above). However, the cross-reference to the note was not mentioned in her AEIC but later in her oral evidence. Likewise she did not mention in her AEIC that Amin Shah had himself witnessed Toby signing the Sale Notice. This was mentioned in her oral evidence only. Furthermore, Exhibit P2 showed that Toby had arrived at Changi Airport Terminal 3 on 7 June 2009 and not on 8 June 2009. He cleared immigration at 8.02pm. He then left Singapore by road on 8 June 2009 and cleared immigration at 10.19pm. The mistake about Toby arriving on 8 June 2009 at the airport in transit might have been Amin Shah's or Allene's. The evidence as to when and where Allene met Toby for him to sign the Sale Notice was not clear to me.

92 Allene did not elaborate why she had inserted the particular date of 15 July 2009 in advance beyond saying that she had acted on Amin Shah's instruction. It is unusual for documents to be post-dated by about five weeks. How would Amin Shah know what future date to insert so far in advance when he had no particular deadline for the transfer to be effected?

93 If I accept Allene's evidence that Abu Bakar had handed the Acceptance Letter to her on 11 August 2009, this would mean that she lied in her 18 August 2009 email when she said that no one had accepted the offer. Indeed, she herself said that that email was a lie. Notwithstanding this and her unsatisfactory conduct in revealing the lie and the reason for the lie so late in the proceedings (on which I will say more later) and her continued loyalty to BR (on which I will also say more later), I find from her demeanour, that, generally speaking, she was an honest witness in the sense that she did not deliberately lie while on the witness stand, even though she was not entirely forthcoming. In other words, she would not volunteer evidence unless asked specifically. However, when she did answer, she was generally honest although her memory might not always be correct.

94 I refer to the evidence of Yong. He was a steady witness and even Chenet's counsel did not suggest to him that he was lying on the witness stand. According to Yong, he had signed the Transfer Notices on 22 July 2009 just as [he] was going home [\[note: 126\]](#) and he was certain that he had seen the signed Sale Notice by then. [\[note: 127\]](#) Yong's evidence was corroborated by Carina who said that a copy of the signed Sale Notice had been despatched together with the Transfer Notice on 23 July 2009.

95 I also note that while the Amin Shah camp was pressing for the transfer of the Shares to Hopaco to be effected, there was nothing to indicate that the Transfer Notices *had* to be despatched by 23 July 2009. If there was a conspiracy at this stage, I do not think that the conspirators would have been so foolish as to send the Transfer Notices before receiving the signed Sale Notice from Toby.

96 Taking the evidence in its totality, I accept Allene's evidence that the Sale Notice was signed by Toby before 12 July 2009 which is the date when she met Amin Shah again at the Crowne Plaza

Changi Airport but I have some doubt that the date of 15 July 2009 was already inserted in the Sale Notice when Toby signed it. It may have been inserted on or after 12 July 2009 when Amin Shah told Allene to proceed with the Sale Notice (see [50] above). I accept that the date was inserted in the Sale Notice by 22 July 2009. However, I need not decide whether the date was inserted at the time Toby signed the Sale Notice or on some date on or before 22 July 2009.

97 Even if Allene had inserted the date of 15 July 2009 in the Sale Notice after Toby had signed it, this did not invalidate the Sale Notice. I find that she would have done so in accordance with instructions from Amin Shah to proceed with the transfer of the Shares using the Sale Notice. I also find that Toby was prepared for her to act on Amin Shah's instruction.

Did Chenet approve the sale price of \$2.2m?

98 Chenet alleged that Allene had unilaterally inserted the sale price of \$2.2m into the Sale Notice and this rendered the Sale Notice void. In my view, there is no merit to this allegation.

99 As mentioned above (at [52]), there was an email from Eranur dated 22 July 2009 insisting that the Shares be transferred to Hopaco for \$2.2m.

100 Chenet sought to deflect the clear intention of Eranur by relying on Eranur's reference to "the agreement" in her email. Chenet submitted that that was a reference to the intended loan agreement with Hopaco and not to an intended transfer pursuant to Art 22. I am of the view that Chenet was conflating the issues.

101 The first point is whether Chenet had decided to use the figure of \$2.2m to transfer the Shares to Hopaco, whether the transfer was pursuant to a loan agreement or to Art 22. Quite clearly it had. As reflected in Eranur's email, she was insisting that the Shares be transferred to Hopaco for \$2.2m after Allene sent an email alerting Amin Shah that, according to the Auditor, only 8,148,148 shares should be transferred to Hopaco for \$2.2m.

102 It seems to me that Eranur's reference to the loan agreement might have been caused by Allene's inadvertent reference in her earlier email (see [51]) to "SGD2,200,000 *pledged* amount from Hopaco" [emphasis added]. However, whether the transfer was to be pursuant to a loan agreement or to Art 22 is a separate question which I now come to.

103 As I mentioned, the original intention was to create a loan by Hopaco to Chenet of \$2.2m. This was to be done by the back-dating of various agreements. The loan was to be secured by a pledge of all the Shares from Chenet to Hopaco. Chenet was supposed to default on payment of the loan whereby Hopaco would exercise its rights under the pledge and obtain all the Shares as payment for the loan. However, somewhere along the line, this route was changed and the route under Art 22 was to be used instead.

104 The very existence of the Sale Notice dated 15 July 2009 signed by Toby was based on the premise that the Art 22 route would be used. Otherwise there would have been no reason for Toby to sign the Sale Notice. It is also clear to me from other emails both before and after 22 July 2009 that Amin Shah's camp knew and agreed that Allene was to use the Art 22 route. References to Art 22 or to a Sale Notice or to Transfer Notices being sent to other shareholders would be meaningless otherwise. For example, after the Transfer Notices were posted to the other shareholders, Allene sent an email dated 23 July 2009 to inform Amin Shah and Eranur of this (although she referred wrongly to "the Sale Notice" instead of to "the Transfer Notices") and there was no protest or query in response as to why that route was being used. It may be that the figure

of \$2.2m was inserted by Allene in the Sale Notice after Toby had signed it because after 8 June 2009, there were still discussions on the sale price. Allene did not say to Eranur or to anyone else in the Amin Shah camp that if a different figure was used, Toby had to sign another sale notice. However, I need not decide whether the figure was inserted after Toby had signed the Sale Notice because, even if that was the case, this did not invalidate the Sale Notice. He would have signed it on the premise that Allene would insert a figure as dictated to her by the Amin Shah camp and that would be what had happened. She did not insert it unilaterally as contended by Chenet.

Were the Transfer Notices sent to other shareholders of Berlian?

105 As mentioned above at [30], Berlian produced the original receipts of items sent by registered post to each of the other shareholders on 23 July 2009. Chenet, however, submitted that this did not establish what was actually sent to the other shareholders.

106 It is true that no one gave specific evidence as to who inserted each Transfer Notice into each envelope for each shareholder and as to who brought the envelopes to the post office. However, the burden of proof is on a balance of probabilities only.

107 It is quite clear to me that Allene and Carina did intend to send the Transfer Notices to the other shareholders whether this was done *bona fide* or pursuant to a conspiracy to injure Chenet. If it was the latter, they would not have been so foolish as to send a Transfer Notice to Abu Bakar only as that would undermine their efforts since it would not be difficult to establish that the other shareholders did not receive a Transfer Notice. Even Eranur accepted that the Transfer Notices were sent on 23 July 2009. [\[note: 128\]](#)

108 I find that the Transfer Notices were sent to other shareholders of Berlian on 23 July 2009.

When did Abu Bakar accept the offer?

109 Chenet's and the defendants' version of events as to when Abu Bakar accepted the Offer have been narrated above. Chenet's position was simply that as of 18 August 2011, Abu Bakar still had not accepted the Offer. It follows that if his acceptance was made after 18 August 2011, it would be invalid as it was made after the 21 day period imposed by Art 22 (which ended on 13 August 2009). The primary foundation of Chenet's position was the 18 August 2009 email sent by Allene (see [14] above) although the earlier 7 August 2009 email from Carina is also relevant. I note that Abu Bakar did not call Reggie as a witness to confirm that she did receive the Acceptance Letter from Allene on 11 August 2009. *Prima facie*, she would have been an independent witness on the point. Nevertheless, the omission was not necessarily fatal to Abu Bakar's claim. Whether I accept Chenet's or the defendants' version of events depends very much on whether I accept the evidence of Carina and Allene on the point including their explanations about their emails.

110 It will be remembered that Carina and Allene's explanations for their respective emails, in which they had informed Amin Shah and/or Eranur that they had *not* received any notifications of acceptance from the other shareholders, was that as of 7 August 2009 Abu Bakar had not *formally* accepted the offer, and as of 18 August 2009, Allene was lying in accordance with BR's instructions. Chenet challenged what Carina and Allene said on the basis that these explanations were not found in their AEICs and that they were too convenient to help Abu Bakar to acquire the Shares after he missed the deadline to do so.

111 I am of the view that if Carina and Allene were lying to help Abu Bakar who had missed the deadline, there would have been no need for Carina and Abu Bakar to give the laborious explanation

as to how he had handed the Acceptance Letter to her first on 28 July 2009 and then retrieved it on 11 August 2009 and handed it to Allene. Such an explanation exposed Carina to attack as to why she had sent the email of 7 August 2009 to say that there had been "no news" from the minority shareholders when Abu Bakar had already informed her that he was accepting the offer. It would have been simpler and neater for Abu Bakar to say that he had handed the Acceptance Letter to Allene on 11 August 2009 without mentioning that he had first handed it to Carina and also for Carina to avoid mentioning that.

112 I find Carina to be basically an honest witness although her AEIC gave the impression that she was not entirely forthcoming too. In other words, while her AEIC was lacking in elaboration, she did not lie when faced with direct questions.

113 I accept that when she was told on 28 July 2009 that Abu Bakar was going to accept the offer, she should not have said in her email of 7 August 2009 that there was "no news". That was misleading. Yet even in cross-examination she still did not realise this. Furthermore, having sent the 7 August 2009 email, she did nothing to update the Amin Shah camp when Abu Bakar retrieved the Acceptance Letter from her. She must have known he was going to hand it to Allene as he said he would.

114 I also accept that Abu Bakar did hand the Acceptance Letter to Allene in time on 11 August 2012 and she in turn handed it to Reggine that day. It would not have made any sense for Abu Bakar to retrieve it from Carina on 11 August 2009 and yet hand it to Allene after the 13 August 2009 deadline.

115 As for Allene's email of 18 August 2009, I agree that it might well be that that email was not the lie. It might be that the real lie was in her now saying that Abu Bakar had handed in the Acceptance Letter in time.

116 In addition to the evidence of Carina and Abu Bakar, I had to consider whether I should believe Allene on this important point. Unfortunately for her, her earlier defence and AEIC made no mention of her email of 18 August 2009 and the reason for sending it until her Defence (Amendment No 2) and Counterclaim was filed on 28 November 2011.

117 Her counsel, Mr Singh, sought to justify the omission and the late amendment by arguing that there was no reason for her to mention her email and her reason for sending it because Chenet's initial SOC made no mention of her email in the first place. However, when Chenet amended its pleading and filed its SOC (Amendment No 2) on 21 November 2011 to include, *inter alia*, a specific reference to Allene's email of 18 August 2009, that was when Allene sought to give her explanation and she did so in her Defence (Amendment No 2) and Counterclaim filed on 28 November 2011.

118 While Mr Singh was technically correct that the email was not specifically mentioned in Chenet's initial SOC, it is important to bear in mind that para 7(l) of the initial SOC states:

(l) The Plaintiff further avers that as of 18 August 2009, the Purported Offer had not been taken up or accepted by anyone, and the 2nd Defendant attempted to do so only after that date by fraudulently sending a back-dated letter to the 3rd Defendant dated 28 July 2009. The Defendants acted in collusion in accepting the back-dated letter as purportedly being in compliance with Article 22 of the Articles of Association. The Plaintiff avers that the Purported Acceptance is therefore invalid in the circumstances.

119 Therefore, although the email of 18 August 2009 was itself not specifically identified, the date

of 18 August 2009 had already been raised specifically. Chenet was not obliged to plead the evidence it was relying on. In addition, Toby had already executed an affidavit in support of the application for an injunction order. That affidavit did refer specifically to Allene's email of 18 August 2009. At that time, Chenet believed, quite understandably, that the email of 18 August 2009 was true and that Abu Bakar had missed the deadline of 13 August 2009. It was not suggested for Allene that she was unaware of Toby's affidavit when her initial defence was filed.

120 Even if Allene was unaware of that affidavit, she and her then solicitors could not be unaware of the basis for the reference to the date of 18 August 2009 in Chenet's initial SOC. The basis was obviously her own email of that date.

121 Furthermore, if, as she was now suggesting, she had been compelled to send the email of 18 August 2009 to deceive the Amin Shah camp, then surely she ought to come clean as soon as possible after she had left VAH on 16 September 2009 since Mr Singh was portraying her as a neutral party who was caught between the real litigants, *ie*, Chenet and Abu Bakar.

122 When M/s M&A Law Corporation who were then acting for Toby and Chenet, did send letters dated 7 and 9 September 2009 to Allene to stop the transfer of the Shares to Abu Bakar, she did not reply.

123 By the time she filed her initial defence on or about 26 October 2009, she had enough time and opportunity to come clean about that email. She ought to have disclosed her version but she did not. Furthermore, in para 9 of her initial defence filed by Gopal Perumal & Co, she even denied that she had abused her position of trust and confidence. On this point, it was suggested for her that she has discharged her duty to VAH and to BR as its director. In my view, that is a disingenuous suggestion which ignores the complete picture. It was Allene's own case that she considered Amin Shah as the boss even though he held no formal position in VAH. She had been taking instructions from Amin Shah and not BR in the past until BR told her to take instructions from BR only. Even if she felt compelled by BR not to volunteer any information to Amin Shah about this latest development, it was quite a separate matter for her to send a false email even though it was on BR's instruction. Indeed, her oral evidence was that prior to the false email, she had also given false answers orally to the Amin Shah camp (see [57] above). BR's instruction does not exonerate Allene from her wrong conduct. At most, it is a mitigating factor and I hope she realises the gravity of what she has done.

124 She continued this denial and also still did not disclose her version in her Defence and Counterclaim (Amendment No 1) filed on 5 November 2009 even though this pleading was filed by her new and current solicitors.

125 Indeed when she affirmed her AEIC on 27 December 2010, she also carefully avoided any reference to her 18 August 2009 email even though this was an important document. If its contents were true, then Abu Bakar would not have accepted the offer before 18 August 2009. That would have resolved the dispute as to whether he had accepted the Offer in time. Since she was alleging that Abu Bakar did in fact accept the Offer in time, it was incumbent on her to explain her 18 August 2009 email and set the record straight especially since, as mentioned above, she was being portrayed as a neutral party. She did not do so in her pleadings or in her AEIC until her latest amended pleading was filed on 28 November 2011.

126 I also note that Eranur's AEIC did refer specifically (at para 125) to Allene's 18 August 2009 email to support Chenet's contention that Abu Bakar had not accepted the Offer in time. Yet when Mr Singh cross-examined Eranur (before the latest round of amendments in November 2011), he did not put Allene's version about the 18 August 2009 email to Eranur. [\[note: 129\]](#) In my view, this was not an

oversight. Unfortunately, Berlian also did not set the record straight in its pleadings or Carina's AEIC even though Carina knew that the 18 August 2009 email was a lie and Berlian's counsel, Mr Sankaran Karthikeyan ("Mr Karthikeyan"), was also portraying Berlian as a neutral party. Neither did Mr Karthikeyan set the record straight when he was cross-examining Eranur.

127 On another point, I note that Mr Singh pointed out to Eranur during cross-examination that there were no details about the alleged phone calls from the Amin Shah camp to Allene in late August 2009 and that there was no email from them showing that they were trying to contact Allene then. [\[note: 130\]](#) This line of questioning gave the impression that Allene was not trying to avoid contact with the Amin Shah camp in late August 2009 and that she was disagreeing that they had tried to contact her. Indeed, para 36(7) of her AEIC (at p 20) denied that she had deliberately become uncontactable to the Amin Shah camp.

128 However, in her Defence (Amendment No 2) and Counterclaim, Allene was asserting that BR had told her not to take instructions from anyone else (see [55] above). So, Allene's latest position was not so much a denial that the Amin Shah camp had tried to contact her but that she was avoiding them because BR had told her not to take instructions from others.

129 In the circumstances, I do not accept Mr Singh's submission to explain Allene's omission to disclose the truth earlier. I am of the view that Allene's omission was because she wanted to protect BR. It also seems to me that Berlian was content to adopt a similar approach of non-disclosure for its own reasons.

130 I am mindful that Allene did not call BR as her witness to corroborate her evidence that BR had told her to lie. I accept the submission from Mr Tito Isaac ("Mr Isaac"), counsel for Chenet, that it was for her to do so. However, I do not accept his suggestion that BR's involvement was as surprising to Chenet as Chenet wanted me to believe. Amin Shah had testified that the conspiracy against Chenet started after BR had returned from London (where she was with him) to Singapore in August 2009. BR then began to disassociate herself from him. She had even caused a property, in which he or his Trust had some sort of interest, to be sold without his consent resulting in another legal action being commenced although it is not clear to me who all the parties in that action are. [\[note: 131\]](#) Amin Shah was vacillating between identifying BR or Allene as the mastermind of the conspiracy (see [45] above also).

131 It seems to me that, like Allene, Chenet has its own reason for not involving BR as a party or as a witness. If it believed that there was a conspiracy, surely BR would come to mind as a likely conspirator more readily than Allene who was just an employee. Yet, Chenet excluded BR as a defendant in the present action. That is of course its prerogative, but it is not open to Chenet to feign surprise at BR's possible involvement.

132 After considering Allene's demeanour carefully, I find Allene to be basically an honest witness notwithstanding various unsatisfactory aspects of her conduct. While it is true that Allene said in cross-examination that it was more important to obey BR (at that time) than to tell the truth, [\[note: 132\]](#) I am of the view that this response illustrated her simple mind more than a dishonest one.

133 There is also another aspect of Allene's conduct which is regrettable. Although her current position is that it was BR who instructed her to lie, she blamed Amin Shah for Chenet's action against her. She seemed to be oblivious to the fact that she herself had to take some of the responsibility because she had lied to them orally and in her email. Furthermore, in doing so, she had in fact sided with BR. She continued to side with BR when she did not disclose the truth thereafter at the earliest

opportunity. Even while she was on the witness stand, she did not assign any blame to BR for her predicament beyond saying that BR had instructed her to lie. It seems to me that she still retained some loyalty to BR, perhaps because BR was assisting her in other litigation which I have mentioned.

134 In the circumstances, I accept Allene's version as to how the 18 August 2009 email came to be sent and that Abu Bakar did accept the Offer on 11 August 2009.

Miscellaneous

135 It will be convenient here to address some miscellaneous factual issues. It will be remembered that Chenet sought to portray Abu Bakar as an ungrateful family flunkey who had been plucked from obscurity by Amin Shah in the mid 1990s, when he had been hired to help with Amin Shah's political campaigns. [\[note: 133\]](#) He had previously been earning a salary of about RM 1,000/month working as a technician. As part of Amin Shah's entourage, he would do menial tasks like help to carry Amin Shah's bags and accompany him on his overseas trips. [\[note: 134\]](#) Until recently, he had also rented his home from the Shah family. [\[note: 135\]](#) Conversely, Abu Bakar sought to portray himself as an independent tycoon of considerable personal means. However, his demeanour on the witness stand left me unconvinced that he was the captain of industry he sought to portray himself as. The fact that Amin Shah could tell him not to talk too much after Chenet acquired a majority stake in Berlian (see [62] above) and that he was prepared to do as he was told supported Chenet's contention on the point.

136 On the related issue of how Abu Bakar had secured the \$2.2m needed to pay for the Shares, he said that he had secured a loan from two Indonesian friends (see above at [66]). However, he did not produce any document to support his allegation. It was also Abu Bakar's evidence that the money had been deposited into his DBS bank account by Pak Lufdi, who had come to Singapore, which was then used to procure the cashier's order. [\[note: 136\]](#) However, he did not produce any bank document to support the allegation that the money came from Pak Lufdi.

137 Abu Bakar's failure to produce any bank document to support that allegation was not due to a lack of time to obtain the document but from his refusal to do so for lack of relevance, as enunciated by his counsel to the court, even though I had allowed questions to be asked about such a document. In the circumstances, I draw an adverse inference against Abu Bakar from the refusal to do so. I reject Abu Bakar's allegation that the availability of funds came from the two Indonesian men he had mentioned, viz, Pak Lufdi and Pak Kharif. He was not able to produce a scrap of documentary evidence to establish the purported loan agreement with them. Neither did he explain why these two men were prepared to lend him \$2.2m without more. Neither did either of these two men give evidence to corroborate his version of the events.

138 Interestingly, Mr Isaac belatedly suggested that the money came from yet another Indonesian man Pak Hartono or his friends with whom Berlian had had dealings with in the provision of ferry services between Batam and Singapore. At a late stage of the proceedings, Mr Isaac suggested to Carina that Pak Hartono or his friends were the ones who raised the \$2.2m for Abu Bakar. However, Mr Isaac did not provide any particulars about this late piece of information. Who was the source of the information? When was it provided? Why should the information be accepted as true? It seemed to me to be an irresponsible and belated attempt by the Amin Shah camp to drag someone else's name into the fray without basis. Not surprisingly, Carina disagreed with that late suggestion from Mr Isaac. [\[note: 137\]](#)

139 In my view, the money was not provided by the two men mentioned by Abu Bakar or Pak Hartono or his friends but by a person behind Abu Bakar who was trying to injure Chenet and,

specifically Amin Shah, and also to make a gain from the windfall in acquiring the Shares for \$2.2m. However, it is not necessary for me to conclude who that person was.

140 As for Pasau's removal, I am unpersuaded that his removal from Berlian's board of directors was done to consolidate the conspirators' control on Berlian's board. As described above (at [27]–[28]) Pasau's testimony as to the circumstances of his removal was inconsistent and I find his evidence to be unreliable. Further, Yong's evidence that it was *his* idea to appoint Wong and Carina to Berlian's board of directors weakened Chenet's contention that it had all been part of the conspiracy between the defendants. Finally, Allene has consistently maintained that in this regard she had merely been complying with Amin Shah's instructions. This is to some extent corroborated by the fact that Amin Shah's AEIC made no complaint whatsoever about Pasau's removal as a director.

The issues

141 My findings of fact have addressed various issues about the Sale Notice and the Transfer Notices and whether Abu Bakar had accepted the Offer in time. There are various issues remaining:

- (a) whether there was an unlawful act conspiracy by the defendants against Chenet to deprive it of the Shares;
- (b) whether the price mechanism under Art 22 was complied with;
- (c) whether an allocation notice under Art 22(c) was sent;
- (d) whether Chenet is entitled to rely on unilateral mistake and unconscionable conduct;
- (e) whether Chenet is entitled to rely on *non est factum*;
- (f) whether there was a valid contract for the transfer of the Shares between Chenet and Abu Bakar;
- (g) whether Allene has wrongfully interfered with Chenet's items; and
- (h) whether Allene has established her counterclaim against Chenet under the tort of abuse of court process.

Each issue will now be addressed.

Was there an unlawful act conspiracy between the defendants to deprive Chenet of the Shares?

142 The tort of conspiracy has two limbs: lawful and unlawful act conspiracy. In the present case Chenet is relying only on unlawful act conspiracy. The elements of this tort are well-established (see *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 at [45]):

- (a) an agreement or combination between two or more people;
- (b) to commit an unlawful act;
- (c) that has caused injury.

The question now is whether the elements of unlawful act conspiracy are satisfied on the facts as I

have found them. On this point, Chenet's submissions were of little help. This is because it proceeded on a single case theory based on its version of facts up to 23 July 2009 which I have substantially rejected. To summarise my findings very briefly:

- (a) the intended transfer of the Shares by Chenet to Hopaco was a sham;
- (b) Pasau was not removed from Berlian's board of directors under false pretences;
- (c) the Sale Notice was signed by Toby before the Transfer Notices were dispatched;
- (d) Chenet knew and agreed to the use of the Sale Notice pursuant to Art 22 for the intended transfer of the Shares to Hopaco for a false consideration of \$2.2m; and
- (e) the Transfer Notices were dispatched as alleged by Berlian.

143 I conclude that up to the time when the Transfer Notices were dispatched on 23 July 2009, there was no conspiracy, let alone a conspiracy between the defendants to injure Chenet. The Transfer Notices were sent pursuant to Chenet's own intention to effect the share transfer to Hopaco. Amin Shah's camp were dishonest in their evidence in suggesting that the Sale Notice was signed after 22 July 2009 or that the use of Art 22 and the price of \$2.2m were adopted without their consent. Indeed, I reiterate that Carina and Allene had specifically alerted Eranur to the auditor's opinion that the \$2.2m price was too low for all the Shares but she insisted on using that figure. If Allene and Carina were conspiring to injure Chenet at that time, surely they would not have alerted Eranur to the Auditor's opinion.

144 However, I accept that there was a conspiracy to injure Chenet after 23 July 2009 although the conspiracy was not between the defendants but between Abu Bakar and another person. In my view, Abu Bakar did not have the intellect or the character to act on his own to initiate the plan to accept the Offer for the Shares and to thwart the plans of Amin Shah.

145 As for Allene and Carina, they were only employees of VAH and Berlian respectively. These two women had nothing to gain from the acquisition of the Shares nor did they have any particular axe to grind, notwithstanding any views they might have about Amin Shah's character. They are simple persons and were not parties to any conspiracy even if they were used or involved in the steps to carry out the conspiracy. In my view, the person who provided Abu Bakar with the funds was the one who had initiated the plan to hijack the Shares. However, it is not necessary for me to conclude or say who that person was.

146 The price of \$2.2m for the Shares was clearly at an undervalue. The Auditor thought so. Chenet's expert also thought so. As I mentioned, the expert's evidence was unchallenged by all the defendants. Indeed, that was one of the few facts which were undisputed during the trial. Even Abu Bakar said that he knew that the Shares were worth more and hence he wanted to take up the offer at \$2.2m (see [64] above). Yet, surprisingly, Mr Singh submitted rather belatedly that perhaps the \$2.2m price tag was not an undervalue as no account had been taken of the lapse of certain contracts which Berlian had enjoyed. [\[note: 138\]](#) It is not necessary for me to discuss the contracts as it was clearly too late for Mr Singh to introduce this argument in the circumstances.

147 The unlawful act in this case is the sending of the false email of 18 August 2009 but that act occurred only after Abu Bakar had already accepted the Offer. The unlawful act did not in itself cause any injury as such. It came about because Amin Shah's camp was chasing for the transfer to be effected to Hopaco and upon learning this from Allene, BR instructed her to send the false email.

148 My findings above might have led to a conclusion that there was a lawful act conspiracy as at 11 August 2009 (when Abu Bakar accepted the Offer) between Abu Bakar and another person with the predominant intention to injure Chenet by acquiring the Shares in the circumstances for \$2.2m. However, Chenet did not plead a conspiracy to injure by lawful means. Accordingly, its claim based on unlawful act conspiracy fails.

Whether the price mechanism under Art 22 was complied with

149 I come now to Chenet's argument that Art 22 was not complied with even if Toby had signed the Sale Notice before 22 July 2009 and even if the \$2.2m price was inserted in the Sale Notice with Chenet's consent. According to Chenet, even if the \$2.2m price was inserted in the Sale Notice with its consent, Berlian's directors were required under Art 22 to agree with the price of \$2.2m and they did not do so. Neither was the price determined by the Auditor as alternatively required under Art 22. I am of the view that the reference in Art 22(a) to "a price to be agreed upon by the vendor and the Directors" and the reference in Art 22(b) to "Upon the price being fixed as aforesaid" were on the premise that the vendor had not stipulated a price in his notice to Berlian. If he did not do so, then he and the directors were supposed to agree upon the price and, failing such an agreement, then the price was to be certified by the Auditor. On the facts before me, the price was already stipulated in the Sale Notice. It was not for the directors to suggest a different price.

150 Even if Art 22 still required the directors to agree on the price, I am of the view that they had impliedly agreed with the \$2.2m figure as evidenced by the fact that Yong signed the Transfer Notices pursuant to the Sale Notice.

151 Therefore I reject Chenet's argument that the price mechanism under Art 22 was not complied with.

Whether an allocation notice under Art 22(c) was sent

152 Under Art 22(c), if any member of Berlian accepts the Offer, the directors are to allocate the Shares to him and give notice of allocation to Chenet and to the member accepting and shall specify in the allocation notice the place and time at which the sale of the Shares is to be completed.

153 In p 10, para 7(m)(ii) of Chenet's SOC (Amendment No 2), Chenet pleaded that no allocation notice was given to it. However, during the trial and in Mr Isaac's submission, [\[note: 139\]](#) Chenet took a different point, *ie*, that an allocation notice from Chenet dated 17 August 2009 to Chenet was sent to Chenet's address in the BVI and not to its Singapore address. Chenet made an issue of this as it suspected that this was done deliberately so that the letter would reach its attention later rather than sooner as compared to addressing the letter to its Singapore address.

154 According to Allene, the BVI address was the address of Chenet stated in Berlian's records and it was BR who instructed that the letter be sent to Chenet's BVI address. It is not necessary for me to make a finding whether this instruction was given deliberately to hide the truth from Amin Shah for as long as possible because Chenet's pleaded case was that no such notice was sent at all. Furthermore, Mr Isaac's submission did not pursue the pleaded allegation.

Whether Chenet is entitled to rely on unilateral mistake and unconscionable conduct

155 Chenet pleaded that because it did not intend the right of pre-emption under Art 22 to apply even if it had authorised Allene to send the Sale Notice to Berlian, the Sale Notice would have been sent by mistake. As Abu Bakar was aware that the price of \$2.2m was extraordinarily low, he must

have known that the Transfer Notice was also sent by mistake and it was therefore unconscionable for Abu Bakar to hold Chenet to the alleged agreement for the sale of the Shares to him. It is quite clear to me that there was no mistake when Tobby signed the Sale Notice and there was no mistake when the Amin Shah camp insisted that the price for the Shares in the Sale Notice be \$2.2m. They knew that the Art 22 process was being used. They knew what the process entailed. Their mistake was in deliberately using a low price for the Sale Notice and assuming that no shareholder would accept the Offer. The Amin Shah camp was complacent but there was no mistake that would vitiate a contract if one had been created.

Whether Chenet is entitled to rely on non est factum

156 Chenet pleaded that because the Sale Notice did not contain the price of the Shares when Tobby signed it, it was not bound by the Sale Notice because of *non est factum*. In view of my findings of fact, Chenet's reliance on *non est factum* was without merit.

Whether there was a valid contract for the transfer of the Shares between Chenet and Abu Bakar

157 The transfer of the Shares has not been completed yet. The status quo is that the Shares are still registered in the name of Chenet. I am of the view that the substantive plaintiff is Abu Bakar and not Chenet. That is why Abu Bakar filed Suit 796 to seek an order to compel specific performance. Abu Bakar pleaded and had to establish that there was a valid contract for his purchase of the Shares.

158 From what I have said above, I am of the view that Abu Bakar knew that the intended transfer was from Chenet to Hopaco and he had believed that both these companies were controlled by Amin Shah. He knew that the price of \$2.2m was too low. He must also have known that the intended offer by Chenet pursuant to Art 22 was but a step to complete one of Amin Shah's schemes even though I accept that he might not have known the reason behind the scheme. He knew Chenet never intended its offer to be acted upon by the other shareholders. That is why he said it was not right for him to acquire the Shares (see [63] above). The person who initiated the plan to hijack the Shares must also have known all these things. There would be no need for Allene to give false oral answers or send a false email if everything was above board. I am of the view that there was no genuine offer for Abu Bakar to accept. In the circumstances, I am of the view that there was no valid contract between Chenet and Abu Bakar for the Shares. Accordingly, Abu Bakar is not entitled to claim specific performance. Although the genesis for using the Art 22 mechanism was the dishonest motive of Amin Shah to deceive third parties, two wrongs do not make a right.

159 For completeness, I mention that Chenet also sought to argue that Abu Bakar had no *locus standi* to accept the Offer because he was adjudged a bankrupt in Malaysia on or about 14 October 2009. Article 20(b) of Berlian's Articles of Association stipulates that, "No share shall in any circumstances be transferred to any ... bankrupt ...". However, this contention falls away as the adjudication order was in any event annulled on or about 28 January 2010.

Whether Allene has wrongfully interfered with Chenet's items

160 This aspect of Chenet's claim related only to Allene. It alleged that Allene has in her possession certain items belonging to Chenet. The items were listed in a letter dated 7 April 2009 from Heritage to Allene when Heritage was doing a handover exercise. A copy of the letter was attached as Annex A to the SOC (Amendment No 2). For easy reference, I also attach a copy to my judgment as Annexure B. Chenet sought an order that Allene return the items, and damages for her alleged

wrongful interference with them. It was not disputed that Allene took possession of the items in her capacity as an employee of VAH and she did bring the items to VAH's office then. [\[note: 140\]](#) Neither was it disputed that Allene left the employment of VAH on 16 September 2009. However, Chenet took and maintained the position that Allene had taken and kept the items with her when she left VAH's employment even though Shirley told Bobby that Allene had told Shirley that she had handed Chenet's documents to BR (see [44] above). Again, Chenet was content to make this claim against Allene only and to exclude BR, for its own reasons.

[LawNet Admin Note: Annexure A is viewable only to LawNet subscribers via the PDF in the Case View Tools.]

161 Chenet based this claim on the following. First, unlike the time when Heritage did a formal handover of the items to Allene in April 2009, there was no formal handover from Allene to anyone else in VAH when she left VAH.

162 Secondly, Allene's list of documents filed in the present action showed that she was still in possession of documents of Chenet.

163 Allene agreed that she did not do a formal handover of the items. However, she said that there was no reason for her to keep the items. As for the documents in her list for the actions which Chenet was relying on as evidence of her continued possession of the items, she said that such documents were provided to her by BR.

164 It was not disputed that in September and/or October 2009, various parties were claiming possession of items and/or documents which were kept in 28 boxes and three safes at the office shared by Berlian and VAH. As an interim compromise, the boxes and safes were moved on or about 27 October 2009 to a "Lock and Store" facility at Tanjong Pagar Distripark ("the Facility") for safekeeping pending resolution of the competing claims. There were two locks and two keys, one kept by solicitors for one claimant and the other by solicitors for another claimant. I am not aware of the full details of the identity of the claimants although I gather from the AEIC of Angeline that the opposing claimants were from Amin Shah's camp and BR's camp. The competing claims are the subject of a separate action.

165 According to Angeline, the 28 boxes and three safes were opened in February 2010 to allow one of the claimants to look for a loan agreement. The three safes were empty save for some empty inserts and secretarial files of various BVI companies whose documents Allene had been in charge of. Angeline did not elaborate in her AEIC about the contents of the 28 boxes.

166 It seemed to me that the sensible thing to do was for Chenet to gain access to the Facility to verify whether the items it was claiming in its present action were in fact in the Facility. If there was no agreement by the parties in the separate action to allow Chenet access to carry out that verification exercise, Chenet could apply for a court order to allow such access. Yet, apparently it did not do so. No explanation was given for this omission. It seems to me that Chenet was contented to wait for Allene to disprove its claim. [\[note: 141\]](#) The only concession that Chenet eventually made was to withdraw its claim for items 1 and 2 of the letter from Heritage.

167 The burden of proof was on Chenet to establish that Allene took and kept the remaining items.

168 I do not think that the omission of Allene to carry out a formal handover carries much weight. It must be remembered that everything had come to a head by the time she tendered her letter of resignation. She had been pushed to take the side of BR and to send the false email of 18 August

2009. Amin Shah's camp was trying to contact her to find out what was going on. It was a very trying time for her and I understand why she wanted to leave as soon as possible. Furthermore, there was no reason for her to take and keep the remaining items.

169 As for the documents which she allegedly received from BR, Chenet did not try to match any of such documents with those listed in Annex A of its SOC (Amendment No 2).

170 I find that Chenet has failed to prove its claim against Allene for the remaining items.

Allene's counterclaim

171 Allene's counterclaim ("c/c") was as follows:

(a) She has been put to very substantial loss and expense by way of legal costs in defending the action by Chenet (para 16 of her c/c).

(b) The action was brought in bad faith and maliciously to damage her name rather than to further any legitimate interest of Chenet (para 17 of her c/c).

(c) She has been injured in her reputation and put to considerable trouble, inconvenience, anxiety and expense and has suffered loss and damage (para 18 of her c/c). However, the particulars of special damage did not specify the quantum. Instead, they referred to:

(i) her legal costs and disbursements in respect of Chenet's claim and her c/c; and

(ii) her loss in income to attend to all matters to give effect to (i) above.

(d) Amin Shah is the *alter ego* directing Chenet's proceedings and she seeks a lifting of the corporate veil of Chenet (para 19 of her c/c).

172 Allene was seeking a lifting of the corporate veil to show that Amin Shah, and not the Trust, is the *alter ego* of Chenet. She alleged that Amin Shah was adjudged a bankrupt by a Malaysian court since October 2007.

173 Mr Singh relied on ss 151 and 152 of the Bankruptcy Act (Cap 20, 2009 Rev Ed) in Singapore and a relevant notification in the Gazette dated 1 February 1950 (as mentioned in *Law and Practice of Bankruptcy in Singapore and Malaysia* by Kala Anandarajah *et al* (Butterworths Asia 1999 Issue) at pp 479-480 to submit that Amin Shah's bankruptcy also applies in Singapore and that by virtue of s 38(1)(a) of the Bankruptcy Act 1967 (Act 55 of 1967) (M'sia), he is incompetent to maintain Suit 781 through Chenet, without the sanction of the Director General of Insolvency in Malaysia.

174 It appears undisputed that Amin Shah was made a bankrupt in Malaysia in October 2007. Even then, the purpose of lifting the corporate veil should be part of Allene's defence. It has nothing to do with a counterclaim. Indeed, it has been pleaded as part of her defence.

175 Ironically, if the corporate veil is lifted, it may be that, in turn, Abu Bakar cannot maintain his action in Suit 796 for the Shares unless he has obtained sanction of the relevant authority to do so. Although Chenet did not rely on this point, any lifting of the corporate veil would have to cut both ways.

176 No further reason was given by Mr Singh to persuade the court to lift the corporate veil. It is not the case that the corporate veil should be lifted every time a person is shown to be in absolute

control of a corporate entity. The general rule is still that a company is a separate legal entity from its owner. I reject the attempt to lift the corporate veil here. Accordingly, it is unnecessary for me to decide whether Amin Shah or the Trust (if it really exists) is the true owner of Chenet.

177 Mr Singh also submitted that a pronouncement that Amin Shah is the *alter ego* of Chenet will provide an additional reason for the court to order costs on an indemnity basis. [\[note: 142\]](#) However, the submission did not say who the indemnity costs should be against – Chenet or Amin Shah? In any event, I am of the view that it is unnecessary to formally lift the corporate veil in my consideration whether to grant indemnity costs or not and against whom on the totality of the facts before me. Indeed, any claim for indemnity costs need not be the subject of a c/c as such a claim may be made in Chenet's action.

178 In so far as Allene was counterclaiming loss of income for resisting Chenet's claim, she gave no evidence about the loss of income beyond suggesting that she could not be employed because of Chenet's claim. Mr Singh's closing submissions for her did not even deal with this alleged loss of income. Neither did it deal with her inconvenience, anxiety and expenses, aside from claiming indemnity costs.

179 I come now to Allene's c/c that Chenet's action is brought in bad faith and maliciously. Allene's pleading had alleged in para 17 that Chenet's action was brought "in bad faith and maliciously and with the ulterior motive of damaging [Allene's] name ...". Mr Singh's submission clarified that he was referring to a tort of abuse of civil process. [\[note: 143\]](#) He also asserted that this is a recognised tort in Singapore. Reference was then made to Bullen & Leake & Jacob's, *Precedents of Pleadings* (Sweet & Maxwell, 13th Ed, 1990) and to the case of *Eng Hui Cheh David v Opera Gallery Pte Ltd* [2009] SGHC 121 ("*Eng Hui Cheh*") at [131] to support that proposition.

180 However, the textbook which Mr Singh relied on states, at p 644, that for such a tort, the plaintiff must prove special damage. In the present case, Allene did not even plead any special damage.

181 Furthermore, the same textbook also states, in the same page, that the existence of this tort was doubted by the Court of Appeal in *Metal and Rostoff v Donaldson Inc* [1989] 3 WLR 563 at 609-615.

182 I note that *Clerk & Lindsell on Torts* (Michael A Jones gen ed) (Sweet & Maxwell, 20th Ed, 2010) ("*Clerk & Lindsell*") states at para 16-62:

Abuse of civil process The decision of the House of Lords in *Gregory v Portsmouth City Council* makes it clear beyond doubt that in England no *general* tort of maliciously instituting civil proceedings exists. Lord Steyn conceded that the justification often advanced to reject such a broad tort, that the judgment in the case brought against the claimant rectified any injury to reputation, no longer held good. Nonetheless he considered that any injury to the claimant was remediable in other torts and for "essentially practical reasons" declined to extend the ambit of the tort beyond a closed category of special cases involving abuse of the legal process.

Thereafter, the textbook discusses the closed category of special cases.

183 Mr Singh had assumed that the tort of abuse of civil process does exist in Singapore. However, he did not elaborate on the scope of the tort or its elements. Neither did he attempt to bring Allene's counterclaim within the closed category of special cases mentioned in *Clerk & Lindsell*. In my view, it

was not sufficient to assert that Amin Shah was the *alter ego* of Chenet and that there was no basis to sue Allene. [\[note: 144\]](#)

184 As for the finding in *Eng Hui Cheh* at [131], all the learned judge in that case said was that an abuse of process was not specifically pleaded in the counterclaim. She did not elaborate as to whether such a tort exists in Singapore, or decide on its scope or elements.

185 In the circumstances, even if Singapore courts recognise a tort of abuse of civil process, that does not help Allene and her c/c on that tort fails.

186 Allene should not have made her c/c in the circumstances. It was a distraction.

Possible conflict of interest

187 As mentioned above, it was only when Allene's Defence (Amendment No 2) and Counterclaim was filed that she disclosed that it was BR who instructed her to send the false email of 18 August 2009 and not to communicate with the Amin Shah camp.

188 The trial continued from 18 January 2012. On 27 January 2012, Amin Shah commented that Mr Singh had also acted for BR in the disputed sale of a property [\[note: 145\]](#) (see [130] above). By then, Allene had mentioned BR's instruction to send the false email of 18 August 2009. In fact, Angeline had earlier referred to Mr Singh in her AEIC as both BR's solicitor and friend. At that time, that comment appeared gratuitous since Allene had not yet revealed BR's instructions to her as discussed above.

189 On the same day when Amin Shah made his comment, I invited counsel for all parties to consider whether Mr Singh was in a conflict of interest. If he was BR's solicitor and friend and Allene was alleging that it was BR who instructed her to do what she did, might he not be in a conflict of interest? In the meantime, Mr Singh confirmed orally that it was BR who brought Allene to see him.

190 On 30 January 2012, Mr Isaac informed me that, without casting any aspersion on Mr Singh, he saw the potential for conflict but that in his opinion would arise only if BR was joined as a party or called as a witness. His stand was essentially that if Allene did not object, he was in no position to do so. Counsel for Abu Bakar and for Berlian also confirmed that they had no objection for Mr Singh to continue to act for Allene.

191 Mr Singh explained that Allene's initial defence had been filed by her previous solicitors. He explained that he had known BR for about 15 years but there had been little or no communication between them in the intervening period, although they remained friends. He informed me that he had raised the issue with Allene and explained it to her over the weekend (after I had raised it) and that she had had no objection to his continuing to act on her behalf. As none of the parties had any objection to Mr Singh representing Allene, I did not pursue the matter further.

192 However, I would like to sound a word of caution for general guidance. If Mr Singh knew that Allene was alleging that BR had given her instructions to hide the truth about Abu Bakar's acceptance and, later, to send the false email, it seems to me unwise for him to have agreed to act for Allene in the circumstances since he was both BR's solicitor and friend and he had recently acted for her in the disputed property transaction (which also involved Amin Shah). Furthermore, according to Angeline's AEIC, Mr Singh accompanied BR to the Facility in (as late as) February 2010 when he was apparently acting for VAH. By then, he was also already acting for Allene as her Defence (Amendment No 1) and Counterclaim re-dated 5 November 2009 was filed by his firm. In such circumstances, how would he be able to objectively advise Allene as to what disclosure to make or stance to take, if making the

disclosure or taking a certain stance would point the finger at BR? It was only much later when I raised the issue (see [189] above) that he spoke to Allene about a potential conflict of interest and she agreed to his continuing to act. Even then, such a late discussion may not always exonerate the solicitor or counsel concerned.

193 On another point, I note that Mr Singh enclosed with his closing submission a copy of a letter dated 27 January 2012 from Chenet's solicitors, Tito Isaac & Co LLP, to BR's solicitors, Eldan Law LLP. That letter enclosed a copy of Allene's Defence (Amendment No 2) and Counterclaim (which includes her allegation that the false email was sent on BR's instruction) and states that her pleading implicates BR as a conspirator against Chenet. Accordingly, it appears that BR is aware of Allene's allegation about her instructions to Allene but BR has chosen not to refute it in any manner at present. For completeness, I also mention that Allene disputes that she has implicated BR as a conspirator but I need not say any more on this.

Conclusion

194 For the above reasons:

- (a) I dismiss Abu Bakar's claim for specific performance of an alleged contract for the purchase of the Shares.
- (b) As between Abu Bakar and Chenet, I declare Chenet to be the legal and beneficial owner of the Shares. This declaration does not affect the rights of persons who are not parties to the actions herein. I say this because I have been informed by counsel that BR and JR Marine each have a judgment in other actions in her and in its favour for one million shares in Berlian.
- (c) I dismiss Chenet's claim for unlawful act conspiracy against Allene, Abu Bakar and Berlian.
- (d) I dismiss Chenet's claim against Allene for various items set out in Heritage's letter dated 7 April 2009 to Allene (save for items 1 and 2 which Chenet has withdrawn in any event).
- (e) I dismiss Allene's counterclaim against Chenet.

195 I will hear the parties on costs.

[\[note: 1\]](#) 4BAEIC 1217 at [185]; 3BAEIC 857 at [53]

[\[note: 2\]](#) 3BAEIC 722,723

[\[note: 3\]](#) 4BAEIC 1212 at [154]

[\[note: 4\]](#) 3BAEIC 689 at [27]

[\[note: 5\]](#) 3BAEIC 685 at [1]

[\[note: 6\]](#) 3BAEIC 686 at [5]

[\[note: 7\]](#) 3BAEIC 861 at [8] *et seq*; 4BAEIC 1226 at [234] *et seq*

[\[note: 8\]](#) 1BAEIC 8 at [21]

[\[note: 9\]](#) 1BAEIC 8 at [21] – [22]

[\[note: 10\]](#) 4BAEIC 1216 at [178]

[\[note: 11\]](#) 4BAEIC 1207 at [126]

[\[note: 12\]](#) PBD 11

[\[note: 13\]](#) Eg. PBD 13 ad 14

[\[note: 14\]](#) 1AB 15 *et seq*

[\[note: 15\]](#) PBD 29

[\[note: 16\]](#) 4BAEIC 1220 at [199] *et seq*

[\[note: 17\]](#) Controlled by Amin Shah at that time: 4BAEIC 1210 at [141]

[\[note: 18\]](#) 4BAEIC 1221 at [205] – [206]

[\[note: 19\]](#) His apparent reason was that he is not resident in Singapore: 4BAEIC 1222 at [211]. This is slightly odd, since neither was Abu Bakar

[\[note: 20\]](#) 4BAEIC [1222] at [211] – [212]

[\[note: 21\]](#) 4BAEIC 1224 at [223]

[\[note: 22\]](#) 4BAEIC 1223 at [218]

[\[note: 23\]](#) 4BAEIC 1223 at [220]

[\[note: 24\]](#) 4BAEIC 1224 at [226] – [227]

[\[note: 25\]](#) NE 19/7/2011, p 132 line 23 *et seq*

[\[note: 26\]](#) 3BAEIC 863 at [92] – [95]; 1AB 237

[\[note: 27\]](#) NE 19/7/2011, p 133 lines 13–23

[\[note: 28\]](#) 4BAEIC 1226 at [237]; NE 30/1/2012, p 134 line 6 *et seq*

[\[note: 29\]](#) 4BAEIC 1227 at [243]

[\[note: 30\]](#) 4BAEIC 1228 at [247]

[\[note: 31\]](#) 4BAEIC 1228 at [246], [248]

[\[note: 32\]](#) NE 26/1/2012, p 41 line 7

[\[note: 33\]](#) 4BAEIC 1225 at [230] – [244]

[\[note: 34\]](#) NE 27/1/2012, p 57 line 7 *et seq*

[\[note: 35\]](#) 3BAEIC 863 at [90] – [91]; NE 19/7/2011 p 91 line 25–p 92 line 5

[\[note: 36\]](#) 2BAEIC 607 at [30] – [35]; PBD 12

[\[note: 37\]](#) NE 20/1/2012, p 28 line 13 *et seq*

[\[note: 38\]](#) NE 20/1/2012, p 30 line 7

[\[note: 39\]](#) NE 20/1/2012, p 35 line 8; p 39 line 23 *et seq*

[\[note: 40\]](#) 3AB 720

[\[note: 41\]](#) Exhibit P4

[\[note: 42\]](#) PBD 26

[\[note: 43\]](#) PBD 13

[\[note: 44\]](#) PBD 14

[\[note: 45\]](#) NE 20/7/2011, p 16

[\[note: 46\]](#) PBD 11

[\[note: 47\]](#) NE 28/7/2011, p 21 line 1 *et seq*

[\[note: 48\]](#) 3BAEIC 694 at [57]

[\[note: 49\]](#) 3BAEIC 695 at [58] – [59]

[\[note: 50\]](#) NE 28/7/2011, p 21 line 4

[\[note: 51\]](#) 2 PSBD 331, NE 28/7/2011, p 23 line 6 to p 24 line 16

[\[note: 52\]](#) 2PSBD 156

[\[note: 53\]](#) NE 2/2/2012, p 45 line 20

[\[note: 54\]](#) 2PSBD 158

[\[note: 55\]](#) 2PSBD 160

[\[note: 56\]](#) NE 2/2/2012, p 46 line 1 *et seq*

[\[note: 57\]](#) NE 2/2/2012, p 47 line 10 *et seq*; D1's defence [9A(3)(c)]

[\[note: 58\]](#) NE 2/2/2012, p 55 line 18 to p 56 line 16

[\[note: 59\]](#) See NE 2/2/2012, p 56 *et seq*

[\[note: 60\]](#) 3BAEIC 697 at [75]

[\[note: 61\]](#) PBD 29

[\[note: 62\]](#) PBD 34

[\[note: 63\]](#) AB 743

[\[note: 64\]](#) NE 26/1/2012, p 35 line 7

[\[note: 65\]](#) 1BAEIC 13 at [35(6)] *et seq*

[\[note: 66\]](#) 1DBD 1

[\[note: 67\]](#) NE 3/2/2012 p 8 line 4 to p 9 line 4

[\[note: 68\]](#) 1BAEIC 17 at [35(14)–(15)]

[\[note: 69\]](#) 1BAEIC 16 at [35(11) – (12)]; 2PSBD 156

[\[note: 70\]](#) 3AB 718

[\[note: 71\]](#) D1 defence [9A(7)(c) – (d)]

[\[note: 72\]](#) NE 2/2/2012, p 30 line 19 *et seq*

[\[note: 73\]](#) NE 2/2/2012, p 36 line 2

[\[note: 74\]](#) NE 6/2/2012, at p 23 line 23

[\[note: 75\]](#) NE 6/2/2012, at p 24 line 15

[\[note: 76\]](#) NE 6/2/2012, at p 30 line 14

[\[note: 77\]](#) NE 6/2/2012, at p 24 line 19 *et seq*

[\[note: 78\]](#) NE 6/2/2012, at p 29 line 4 *et seq*

[\[note: 79\]](#) 1BAEIC 144 at [9]

[\[note: 80\]](#) 2BAEIC 321 at [23]

[\[note: 81\]](#) NE 6/2/2012, at p 70 line 15 *et seq*

[\[note: 82\]](#) 2PSBD 206

[\[note: 83\]](#) NE 7/2/2012, at p 19 line 12 *et seq*

[\[note: 84\]](#) NE 7/2/2012, at p 44 line 12

[\[note: 85\]](#) NE 7/2/2012, at p 52 line 24

[\[note: 86\]](#) NE 6/2/2012, at p 77 lines 23 – 25

[\[note: 87\]](#) NE 7/2/2012, at p 66 line 5

[\[note: 88\]](#) 1BAEIC 147 at [17] – [18]

[\[note: 89\]](#) NE 7/2/2012, at p 72 line 5 to p 73 line 177

[\[note: 90\]](#) NE 7/2/2012, at p 76 line 18 *et seq*

[\[note: 91\]](#) NE 8/2/2012, p 19 line 16-21

[\[note: 92\]](#) PBD 29

[\[note: 93\]](#) NE 7/2/2012, at p 87 line 14 *et seq*

[\[note: 94\]](#) NE 8/2/2012, at p 28 line 5

[\[note: 95\]](#) NE 8/2/2012, at p 28 line 9

[\[note: 96\]](#) AB 857

[\[note: 97\]](#) NE 6/2/2012, p 47 line 22 *et seq*

[\[note: 98\]](#) Eg PBD 15

[\[note: 99\]](#) NE 8/2/2012, p 69 line 20 *et seq*

[\[note: 100\]](#) 2BAEIC 333 at [50]

[\[note: 101\]](#) NE, 9/2/2012 p 149 lines 1-9

[\[note: 102\]](#) NE 9/2/2012, p 14 line 6 *et seq*

[\[note: 103\]](#) 2BAEIC 340 at [62] – [64]

[\[note: 104\]](#) 2BAEIC 341 at [65] – [66]

[\[note: 105\]](#) 2BAEIC 342 at [67] – [68]

[\[note: 106\]](#) 2BAEIC 343 at [69]

[\[note: 107\]](#) 3AB 718

[\[note: 108\]](#) PBD 31

[\[note: 109\]](#) NE 9/2/2012, pp 70 *et seq*

[\[note: 110\]](#) NE 9/2/2012, p 75 line 10 *et seq*

[\[note: 111\]](#) PBD 32

[\[note: 112\]](#) NE 9/2/2012, p 79 line 3 *et seq*

[\[note: 113\]](#) See excerpt in next paragraph

[\[note: 114\]](#) NE 9/2/2012, p 80 line 9 *et seq*

[\[note: 115\]](#) NE 9/2/2012, p 82 line 9 *et seq*

[\[note: 116\]](#) 2BAEIC 316 at [16]

[\[note: 117\]](#) NE 9/2/2012, p 36 line 17 *et seq*

[\[note: 118\]](#) 3AB 743

[\[note: 119\]](#) NE 9/2/2012, p 104 line 3

[\[note: 120\]](#) NE 27/7/2011 p 59 line 9

[\[note: 121\]](#) NE 27/7/2011, p 10 line 21 to p 11 line 24

[\[note: 122\]](#) 3BAEIC 695 [57] – [59]

[\[note: 123\]](#) NE 28/7/2011, p 23 line 6 to p 24 line 16

[\[note: 124\]](#) NE 28/7/2011, p 21 line 8

[\[note: 125\]](#) PSBD 186 – 189

[\[note: 126\]](#) NE 8/2/2012, p 61 line 24

[\[note: 127\]](#) NE 8/2/2012, p 62 lines 1 – 25

[\[note: 128\]](#) NE 20/7/2011 p 17 line 16

[\[note: 129\]](#) NE 20/7/2011, p 35-37

[\[note: 130\]](#) NE 20/7/2011, p 34-35

[\[note: 131\]](#) NE 27/1/2012, p 44 line 10 – p 45, line 22, p 95 line 22 – p 97 line 15

[\[note: 132\]](#) NE 1/2/2012, p 75 lines 7-15

[\[note: 133\]](#) 4BAEIC 1208 at [127] – [131].

[\[note: 134\]](#) 4BAEIC 1209 at [136].

[\[note: 135\]](#) NE 6/2/2012, at p 20 line 14

[\[note: 136\]](#) NE 3/2/2012, p 86 *et seq*

[\[note: 137\]](#) NE 10/2/2012, p 35 line 24 to p 36 line 10

[\[note: 138\]](#) 1st Defendant’s Closing Submissions paras 41-49

[\[note: 139\]](#) Plaintiffs’ Closing Submissions para 160

[\[note: 140\]](#) Plaintiffs’ Reply Submissions para 221

[\[note: 141\]](#) Plaintiffs’ Closing Submissions para 281

[\[note: 142\]](#) 1st Defendant’s Closing Submissions para 290

[\[note: 143\]](#) 1st Defendant’s Closing Submissions para 295

[\[note: 144\]](#) 1st Defendant’s Closing Submissions para 295

[\[note: 145\]](#) NE 27/1/2012 p 96 line 13 & 14 and line 21 and 22

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**Chenet Finance Ltd v Lim Poh Yen (alias Lim Allene)
and others and another suit
[2012] SGHC 158**

Annexure A

Individuals

Abu Bakar (“Abu Bakar”)	Second defendant in Suit 781 and Plaintiff in Suit 796. Director and Chairman of Berlian since 23 September 2009. Presently holder of 9.58% of Berlian shares.
Alle Pasau (“Pasau”)	Former director of Berlian who was removed from the board on 20 July 2009 in disputed circumstances. Friend of Amin Shah.
Tan Sri Amin Shah (“Amin Shah”)	Malaysian businessman. Alleged owner and mastermind of Chenet and Hopaco.
Angeline d/o Benjamin Anthony (“Angeline”)	Employed by Coraledge Resources Ltd as Bobby Tan’s personal assistant from about July 2007.
Andrew Lee Choong Lim (“Andrew Lee”)	Malaysian businessman and Amin Shah’s close friend. Alleged owner of Hopaco. Allegedly invested in Berlian when he helped with a \$5m downpayment to Wavemaster in April 2001.
Bernadette Adeline Rankine (“BR”)	Amin Shah’s former mistress. Director of VAH until 26 November 2010.
Chan Siew Eng also known as Carina Chan (“Carina”)	Venture Asia Publishing Pte Ltd’s finance manager from 2001 to October 2002. VAH’s finance and administrative manager from October 2002 to 2005. Berlian’s senior finance and administrative manager from June 2005. Appointed as a director of Berlian from 22 July 2009.
Eranur Shahda (“Eranur”)	Amin Shah’s daughter. Chief executive

	officer of Berlian from May 2009 to 27 August 2009.
Hartono (“Hartono”)	Berlian’s business partner. Developer in Bintan. Granted Berlian a monopoly on ferry routes from Singapore to Bintan.
Lim Poh Yen also known as Allene Lim (“Allene”)	First defendant in Suit 781. Confidential administrative assistant of VAH from 1 May 2002 to 16 September 2009.
Reggine Peh (“Reggine”)	Employee of Agenda and a company secretary of Berlian.
Shirley Ho (“Shirley”)	Personal assistant of Amin Shah. According to Carina, Shirley was the <i>de facto</i> CEO of Berlian till Shirley’s retirement on 30 April 2009.
Tan Yeang Tze Tobby (“Tobby”)	Sole director and shareholder of Chenet. Alleged front for Amin Shah.
Wong Nyuk Fong (“Wong”)	Director of Berlian from 22 July 2009 onwards.
Yong Kian Chin (“Yong”)	Berlian’s technical officer and director.

Companies

Agenda Corporate Services Pte Ltd (“Agenda”)	Berlian’s professional corporate secretarial agent. Affiliated with JK Medora & Co.
Berlian Ferries Limited Pte Ltd (“Berlian”)	Third defendant in Suit 781.
Caterpillar Financial Services Asia Pte Ltd (“Caterpillar”)	Berlian’s creditor. Lent Berlian \$20,160,000 on 11 April 2001.
Chenet Finance Limited (“Chenet”)	Plaintiff in Suit 781.

Coraledge Resources Ltd	A company registered in the British Virgin Islands. Said to be part of Amin Shah's group of companies.
Heritage Fiduciary Services Pte Ltd	A company that provided Berlian with corporate secretarial services up to April 2009.
Hopaco Properties Limited ("Hopaco")	Intended recipient of Chenet's shares in Berlian.
JK Medora & Co	Berlian's auditors since September 2000.
JR Marine Systems Pte Ltd ("JR Marine")	Company substantially owned by Chenet. Sued by wavemaster in Australia and placed under liquidation.
Venture Asia Holdings Pte Ltd ("VAH")	Provided corporate services for Chenet and Hopaco.
Wavemaster International Pte Ltd ("Wavemaster")	A company incorporated in Australia. Sold six vessels to Berlian. Amin Shah was the former chairman.

HERITAGE
TRUST GROUP

SELF COLLECTION

Our ref: RC/Chenet/c

7 April 2009

Ms Allene Lim
1 Maritime Square
#09-45
HarbourFront Centre
Singapore 099253

Dear Allene

CHENET FINANCE LIMITED (the "Company")
- Cessation of Nominee Services

We write to you in respect of the above captioned matter and further to our correspondence in this connection.

Please find enclosed the company kit comprising the following items for your attention:-

1. Common Seal and Rubber Stamp;
2. Memorandum in Writing signed by the Sole Director on Initial Secretarial Matters;
3. Memorandum in Writing signed by the Sole Director on Opening of Bank Account with Credit Suisse, Singapore Branch;
4. Memorandum in Writing signed by the Sole Director on Application of Credit Facilities with Credit Suisse, Singapore Branch;
5. Memorandum in Writing signed by the Sole Director on Opening of Bank Account with Morgan Stanley Private Wealth Management, Singapore;
6. Memorandum in Writing signed by the Sole Director on Appointment of Corporate Representative - Berlian Ferries Pte Ltd;
7. Memorandum in Writing signed by the Sole Director on Appointment of Secretary;
8. Memorandum in Writing signed by the Sole Director on Sale and Purchase Agreement;
9. Memorandum in Writing signed by the Sole Director on Sale and Purchase Agreement;
10. Memorandum in Writing signed by the Sole Director on Appointment of Corporate Representative - JR Marine Systems Pte Ltd and Berlian Ferries Pte Ltd;

11. Memorandum in Writing signed by the Sole Director on Appointment of Corporate Representative - JR. Marine Systems Pte Ltd and Berlian Ferries Pte Ltd;
12. Memorandum in Writing signed by the Sole Director on Sale Agreement and Assignment Agreement;
13. Memorandum in Writing signed by the Sole Director on Appointment of Director;
14. Memorandum in Writing signed by the Sole Director on Resignation of Director, Transfer of Shares and Change of Correspondence Address;
15. Memorandum in Writing signed by the Sole Director on Acquisition of Shares;
16. Memorandum in Writing signed by the Sole Director on Authority to Sign Documents;
17. Memorandum in Writing signed by the Sole Director on Sale and Purchase of Shares Agreement;
18. Certificate of Appointment of Corporate Representative;
19. Memorandum in Writing signed by the Sole Director on Appointment of Corporate Representative - PT Anugrah Tambak Perkasindo Tbk;
20. Memorandum in Writing signed by the Sole Director on Beneficial Owner;
21. Memorandum in Writing signed by the Sole Director on Change of Authorized Signatories with Credit Suisse, Singapore Branch;

We also enclose the following documents for your attention:-

- a) Share Transfer Form
- b) Consent to Act as Director
- c) Memorandum in Writing signed by the Sole Director on Appointment of Director
- d) Share Certificate no. 3 for 1 share of US\$1.00 each issued to Tan Yeang Tze Bobby
- e) Letter of Resignation as Director
- f) Letter of Resignation as Secretary
- g) Memorandum in Writing signed by the Sole Director on Resignation of Director, Resignation of Secretary, Transfer of Shares and Change of Correspondence Address

Please arrange for the necessary signature for item (d).

We trust the aforesaid meets with your requirements and if you have any queries on the above, please do not hesitate to contact the undersigned at 6324 9473 or Ms Rekel Chia at 6324 9542.

Yours sincerely
For and on behalf of



Chwee Chong Boon
Senior Manager