IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 96

Suit No 1177 of 2018

Between

See Eng Siong Ronnie

… *Plaintiff*

And

(1) Sassax Pte Ltd
(2) Cheang Tsu-fei

… *Defendants*

JUDGMENT

[Companies] — [Oppression] — [Minority shareholders]
[Companies] — [Winding up]
[Contract] — [Formation]

TABLE OF CONTENTS

See Eng Siong Ronnie
v
Sassax Pte Ltd and another

[2020] SGHC 96

High Court — Suit No 1177 of 2018
Kannan Ramesh J
4–6, 10 March, 30 April 2020

12 May 2020 Judgment reserved.

Kannan Ramesh J:

Introduction

1 This suit arises from a dispute between the plaintiff, Ronnie See Eng Siong ("See"), and the second defendant, Cheang Tsu-fei ("Cheang"), as shareholders of the first defendant, Sassax Pte Ltd ("Sassax"), a Singapore incorporated company. Cheang and See hold the entire shareholding in Sassax in a ratio of 60:40 respectively. Cheang is also a director of Sassax. See was a director until 8 August 2018. Due to an unfortunate and acrimonious breakdown in their working and personal relationships, See brings this suit against Sassax, as a nominal defendant, and Cheang. See claims that: (1) Cheang breached an alleged oral investment agreement ("the oral investment agreement") between them; (2) he was a victim of Cheang's mismanagement of Sassax, which constituted oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act"); and (3) it is just and equitable for Sassax to be wound

up under s 254(1)(*i*) of the Companies Act. He primarily seeks, as relief, damages for Cheang's alleged breach of the oral investment agreement, and the winding up of Sassax (either on the basis of oppression or on just and equitable grounds), or alternatively the purchase of his shares in Sassax by Cheang. While See initially also commenced a derivative action against Cheang under s 216A of the Companies Act, claiming that Cheang was in breach of trust vis-à-vis Sassax, this was eventually not pursued at trial.

2 There are three issues that require determination. They are:

(a) Whether the oral investment agreement between See and Cheang exists, and if so, whether it was breached ("the oral investment agreement issue").

(b) Whether See's allegations of oppression have been made out ("the oppression issue").

(c) Whether the just and equitable ground under s 254(1)(*i*) of the Companies Act has been made out and, if so, whether Sassax ought to be wound up ("the just and equitable winding up issue").

I will address the issues in the aforementioned order. To the extent that several narrower lines of inquiry have been identified by the parties, these may be subsumed under the three main issues listed above.

3 Having considered the evidence and the parties' submissions, I find that (1) there was no oral investment agreement as alleged; (2) the allegations of oppression have not been made out; and (3) Sassax ought not to be wound up on just and equitable grounds. Accordingly, I dismiss this suit with costs to Cheang. In this judgment, I canvass the reasons for my decision.

The facts

The parties and the background facts

4 Cheang incorporated Sassax on 3 July 2015. Sassax is in the business of physical commodities trading with specific emphasis on the trading of biodiesel, methyl esters and soap noodles. It has an issued share capital of US$500,000, to which Cheang and See made equal contributions. However, as noted earlier, the shares in Sassax are held in a 60:40 ratio by Cheang and See respectively. Both See and Cheang were directors of Sassax, up until 8 August 2018 when See was removed during Sassax's annual general meeting ("AGM").

5 When See and Cheang agreed to work together, Cheang, on See's behest, employed one Phoa Mei Mei ("Mei Mei") as Sassax's operations manager. Mei Mei was in charge of Sassax's shipping and cargo documentation, accounts and finances, and ensuring that Sassax had the requisite certification to conduct its trade. She had a "long working relationship" with See, having worked with him for eight years and 11 years separately in two different companies. In fact, while she was employed by and receiving salary from Sassax, she continued to work in two other companies which were both owned by See. These companies were namely Litrocom Global Trading Sdn Bhd ("Litrocom") and Edo Chemical Sdn Bhd ("Edo"). Both companies were incorporated in Malaysia.

6 It is common ground that the parties came together as shareholders to grow the business of Sassax. The parties had distinct roles in Sassax; See was primarily to source for raw materials for biodiesel production, such as cooking oil and waste palm oil, whereas Cheang was to be in charge of the day-to-day sales, management and operation of the business. It appears that business was initially smooth. Between 28 October 2015 and 29 July 2016, See sourced for

3,055.09mt of used cooking oil for Sassax to trade (though it should be noted that this was only a fraction of Sassax's total business – see [26] below). In the same period, Cheang managed to close sizeable deals with foreign clients.

7 On 24 July 2017, Sassax entered into a loan facility agreement with TransAsia Private Capital Limited ("TAPCL"); this loan facility ("the TAPCL Facility") was for US$3m and was jointly and severally guaranteed by See and Cheang in their personal capacities. Cheang was given the sole mandate to operate the TAPCL Facility. The parties disagree over whether the TAPCL Facility was renewed on or about 8 August 2018 and whether Cheang had wrongfully applied See's signature to the personal guarantee that was to support the renewed facility. Sassax used the TAPCL Facility to make payments to its suppliers. All drawdowns on the TAPCL Facility were authorised by Cheang as the sole account signatory. It is common ground that drawdowns on the TAPCL Facility have to be supported by invoices from Sassax's supplier *and* purchaser, and the proceeds thereof were channelled through Cantrust (Far East) Limited ("Cantrust"). Cantrust is a company used by TAPCL to ensure that the relevant proceeds of drawdowns are made to the proper parties, *ie*, TAPCL uses Cantrust to make payments directly to the relevant suppliers. This is pertinent to See's allegations against Cheang concerning one of the transactions that See seeks to impugn (see [15] below).

8 Additionally, in August 2017, Sassax had brought a suit in the Taiwan courts against a forwarder of its goods, and obtained judgment for the sum of US$525,000 (the "Taiwan judgment sum"). An appeal was then brought against the said judgment; however, Sassax did not prevail in this appeal. The parties disagree as to whether the Taiwan judgment sum was recovered by Sassax and what has become of it. This forms part of See's claims against Cheang.

The breakdown in the parties' relationship

9 The parties' relationship soured over time. Cheang became increasingly disgruntled with what she perceived as See's lack of contribution towards Sassax. Cheang was of the opinion that See had been spending more time on his other businesses (see [27] below), neglecting Sassax in the process. She held a similar view of Mei Mei, her discontent fuelled by the fact that Mei Mei at that point was still an employee of and receiving salary from Sassax. Both Cheang and See agree that the significant damage that Sassax's cargo on board the vessel *Maersk Honam* suffered as a result of fire on 8 March 2018 ("the *Maersk Honam* fire") marked a turn for the worse in their relationship. See asserts in his affidavit of evidence-in-chief that the *Maersk Honam* fire and the parties' fallout thereafter was "the final nail in the coffin" for the parties' relationship; Cheang described it as the "straw that broke the camel's back". Cheang was unhappy that Mei Mei had insured Sassax's cargo with a policy that lacked a "seller's interest" clause, which effectively meant that the cargo was not covered for the loss caused by the fire. When Cheang discovered this, she desperately attempted to remedy the situation by reaching out to her contacts in the insurance industry; See accused her of being careless in these attempts, and asserted that she had compromised Sassax's interests as a result. This naturally did not go down well with Cheang who saw Mei Mei's failure to adequately insure the cargo as the real issue.

10 The increasing strain in the relationship between See and Cheang is evident from a series of WhatsApp messages exchanged between them on 13 March 2018 where harsh words were used. It was in these WhatsApp messages that See first proposed the winding up of Sassax.

11 The relationship reached a tipping point on or about 20 April 2018 when Cheang terminated Mei Mei's employment because of *inter alia* her belief that Mei Mei was at fault in failing to sufficiently insure the cargo. Cheang did not consult See. This deepened the rift between the parties. The multiple acrimonious events which occurred subsequently, and which led to the eventual commencement of this suit, will be stated briefly here; I will address them in greater detail at various parts of this judgment when describing their relevance to See's claims.

12 Acumen Bizcorp Pte Ltd ("Acumen") had been engaged by Cheang on behalf of Sassax to oversee the preparation and management of its accounting and other financial records. Upon See's request to view certain portions of Sassax's financial records, on or about 25 April 2018, one Yeap Wen Haur ("Yeap"), an accountant in Acumen, had them sent to him. See discovered several transactions that he regarded as suspicious. The transactions identified by See related firstly to QHFOXX Limited ("Limited"), a company registered in the British Virgin Islands ("BVI") on 21 July 2017. Cheang was the sole director and shareholder of Limited from 21 July 2017 to 28 July 2017. Upon her resignation as director, she transferred her shares to one Milton Leong Eng Hai ("Leong"), who then became the sole director and shareholder of Limited.

13 See discovered that money had been transferred to Limited from Sassax's bank accounts – there were five alleged transactions, the details of which will be discussed later in this judgment (see [50] below). Cheang alleges that these payments were made to discharge debts owed by Sassax to Jaykem Sdn Bhd ("Jaykem") for goods sold; these debts had been allegedly assigned by Jaykem to Limited.

14 Upon discovering these payments, See carried out a search on Limited with the Accounting and Corporate Regulatory Authority ("ACRA") thinking that it was a Singapore incorporated company. Inevitably, the search on Limited drew a blank as it was a BVI registered company. However, the search revealed another company by the name of QHFOXX Pte Ltd ("Pte"); Cheang was listed as the sole director and shareholder. Pte was incorporated on 22 March 2018.

15 See also discovered several invoices relating to three entities: Biocom Energia SL ("Biocom"), Van Wijk & Olthius BV ("Van Wijk") and Hung Da Green Energy Co Ltd ("Hung Da"). Biocom and Van Wijk are purchasers of Sassax's goods and Hung Da is one of its suppliers. These invoices were as follows:

(a) an invoice dated 25 May 2018 issued by Sassax to Biocom bearing invoice number 2018/0018 for the sum of US$311,000.00 ("the Biocom invoice");

(b) an invoice dated 25 May 2018 issued by Sassax to Van Wijk bearing invoice number 2018/0018 for the sum of US$52,042.74 ("the Van Wijk invoice"); and

(c) an invoice dated 23 May 2018 issued by Hung Da to Sassax bearing invoice number 180523PISSX for the sum of US$295,000.00 ("the Hung Da invoice").

16 In the same period, on 24 May 2018, there was a drawdown on the TAPCL Facility for the sum of US$51,554.24. The drawn down sum was paid to Hung Da ("the Hung Da drawdown") by Cantrust. See found it suspicious that the Biocom invoice and the Van Wijk invoice bore the same invoice

number, and that the dates of the three invoices and the Hung Da drawdown were proximate in time.

17 On 8 August 2018, during Sassax's AGM, Cheang voted against re-electing See as a director of Sassax and he was thus removed as a director. See was absent at this AGM. While there is disagreement over the circumstances preceding the AGM and whether they rendered the situation unfair for See, there is no allegation that the meeting was improperly conducted or in contravention of Sassax's Articles of Association.

18 At all material times, See had access to Sassax's Dropbox folder. He continued to have access even after he was removed as a director of Sassax. The Dropbox folder is a virtual folder created by Acumen and hosted on an online cloud storage software, in which Sassax's financial documents such as its invoices were stored. See discovered in the Dropbox folder an invoice dated 17 September 2018 issued by Jiangsu Ying Hui Energy Technology Co Ltd ("Jiangsu") to Pte ("the Jiangsu invoice"). This invoice was for the purchase of used cooking oil by Pte from Jiangsu, and the invoice amount was for US$256,692.40. The figures in the Jiangsu invoice, such as the amount of cooking oil purchased, bore close resemblance to the figures in a separate invoice issued by Sassax to Mavaser SL ("Mavaser") dated 17 September 2018 for US$257,520.44 ("the Mavaser invoice"). See alleges that the sum of US$265,000 was drawn down from the TAPCL Facility and paid to Jiangsu to discharge Pte's debt to Jiangsu under the Jiangsu invoice.

The parties' cases

The plaintiff's case

19 As mentioned (see [1] above), See's three primary claims are that: (1) Cheang breached the oral investment agreement; (2) he was oppressed as a shareholder of Sassax; and (3) it is just and equitable for Sassax to be wound up.

20 See has gone to some lengths in characterising the business relationship between the parties. He asserts that prior to the incorporation of Sassax, it was Cheang who proposed working together. Cheang purportedly went to See's residence to seek his input and assistance on the business. Cheang purportedly told him that given their "long-term friendship and… cooperation on small projects, it would be best to incorporate [their] own business and operate as partners". See agreed to Cheang's proposal, and Sassax was then incorporated.

21 See argues that Sassax's incorporation was on the basis of the oral investment agreement which he asserts he and Cheang had entered into. He also claims that the oral investment agreement contains several terms. I reproduce the relevant ones here:

> …
>
> 7.2 That each party shall disclose the nature and extent of his material interest in any transaction or arrangement with the 1st Defendant or in any body corporate in which the 1st Defendant is otherwise interested.
>
> 7.3 That each party shall act in good faith and in the 1st Defendant's best interests.
>
> 7.4 That each party shall manage, conduct and administer the affairs of the 1st Defendant honestly, diligently and fairly in the interests of both shareholders.
>
> …

> 7.6 That each party was to have an equal say in employee rights and the handling of staff in general.

22 See claims that Cheang, through various acts and transactions in 2017 and 2018, breached the terms of the oral investment agreement. Notably, See relies on these same acts and transactions for his case on oppression and winding up on just and equitable grounds. These are as follows:

(a) the incorporation of Pte;

(b) the payment of monies by Sassax to Limited;

(c) the diversion of monies drawn down on the TAPCL Facility to Limited in relation to the transactions involving Biocom, Van Wijk and Hung Da;

(d) the renewal of the TAPCL Facility without See's approval and the forging of See's signature on the personal guarantee that was required to support the renewed facility;

(e) wrongfully drawing down on the purportedly renewed TAPCL Facility to make payment for the purchase of used cooking oil by Pte from Jiangsu;

(f) Cheang's wrongful retention of the Taiwan judgment sum; and

(g) the termination of Mei Mei's employment (these seven events are collectively referred to as "the transactions in question").

23 For the oppression claim under s 216 of the Companies Act, See argues that he and Cheang were in a quasi-partnership, and that Cheang was in "material breach… of a fundamental legitimate expectation that his financial investment in the 1st Defendant would not be mismanaged". In essence, this is an archetypal oppression claim brought by a minority shareholder on the basis

that a director or majority shareholder of a company has been liable for mismanagement of the company. Specifically, See argues that the transactions in question, which constitute breaches of the oral investment agreement (see [22] above), also constitute acts of oppression. As relief for this claim, See seeks the winding up of Sassax. Alternatively, See seeks an order for Cheang to purchase his shares in Sassax.

24 See also seeks the winding up of Sassax on just and equitable grounds under s 254(1)(*i*) of the Companies Act. His argument is predicated on Sassax being a quasi-partnership between him and Cheang that was run on the basis of mutual trust and confidence. This mutual trust and confidence broke down as a result of Cheang's oppressive acts, as mentioned above, as well as other events demonstrating a "fundamental change" in their relationship. These other events include his ouster as director of Sassax, and Cheang refusing him access to financial documents that would have shown that Sassax was being properly run. As a result of these events, Cheang "would [have] essentially become the directing will and mind of the company behind future wrongdoings", and See would hence "continue to suffer prejudice in being locked in a business relationship that ha[s] [been] completely eroded". See accordingly argues that the business relationship has "irretrievably broken down", and this merits winding up on just and equitable grounds.

The defendants' case

25 Cheang disagrees with See's characterisation of events. Cheang claims that Sassax began as her personal project, and she initially had no intention of entering into business with See. Before she incorporated Sassax, Cheang had sent See a WhatsApp message on 27 May 2015 informing him of her intention to start a business. She did so as they were friends. However, See did not reply.

Subsequently, on or about 6 October 2015, See contacted Cheang indicating an interest in working together. Thereafter, See and Cheang agreed to enter into business together, with See taking an equity interest in Sassax.

26 Cheang claims that despite See's initial enthusiasm, he had barely contributed to Sassax's business. Between 28 October 2015 and 29 July 2016, See only managed to source for 3,055.09mt of used cooking oil. He did not procure any more raw materials for Sassax after that. The used cooking oil that he had procured constituted a mere 4.37% of the total amount of goods purchased by Sassax from 2015 to 2018. Apart from this, See did not contribute any further to Sassax's business.

27 Cheang also claims that instead of focussing on Sassax, See devoted almost all of his time to his other businesses, which included:

(a) Litrocom (wherein See was a director and shareholder at all material times), which traded in used cooking oil, soap noodles, biodiesel, animal fat and tallow;

(b) Edo (wherein See was a director and shareholder at all material times), which manufactured and stored soap noodles;

(c) An unidentified drinks business in China; and

(d) An unidentified business in payment systems.

28 Further, Cheang argues that Mei Mei, who was employed full time by and received salary from Sassax, had similarly undertaken work for Litrocom and/or Edo at the expense of her work at Sassax. Sassax's funds were also used to cover Mei Mei's expenses for trips made for these businesses.

29 Cheang also argues that See had in fact placed Litrocom's and Edo's interests ahead of Sassax's in several transactions. She claims See conducted secret deals to the detriment of Sassax: See had reneged on their plan to allow Sassax to buy a consignment of palm fatty acid distillate ("PFAD") from a client and on-sell it to Edo. Instead, See went ahead to directly procure the PFAD for Edo without going through Sassax, and as a result caused Sassax to suffer a loss of profit. She also claims that See had placed Litrocom and Edo "in-between" Sassax and its suppliers. This allowed Litrocom and Edo to profit by marking up the price at which Sassax purchased the goods, thereby reducing Sassax's profits.

30 Cheang contends that there is no documentary evidence supporting the existence of the oral investment agreement, with See's entire case in this regard built on his bare allegations.

31 In the alternative, even if the court finds that the oral investment agreement exists, Cheang denies all of See's claims. See is put to strict proof on all his assertions, and Cheang's arguments on this issue largely mirror her arguments on oppression (see [32] below), *ie*, that the transactions in question are neither breaches of the oral investment agreement nor oppressive acts.

32 On the oppression issue, Cheang first argues that she is not precluded from owning and managing another company in the same business as Sassax, *ie*, Pte. Cheang points out that See likewise owns entities in the same business, namely, Litrocom and Edo. Second, Cheang denies the three allegations on diversion (pertaining to the fund transfers from Sassax to Limited, the Hung Da drawdown, and the alleged diversion of sums drawn down on the TAPCL Facility to Pte in relation to the Jiangsu invoice respectively). She also asserts that Sassax did not renew the TAPCL Facility after it expired on 31 July 2018.

Accordingly, Cheang denies that Sassax had drawn down on the TAPCL Facility to make payment to Jiangsu (which See alleges took place in September 2018). As regards the allegation of forgery, Cheang's position is that while she had affixed See's electronic signature to the personal guarantee which had been prepared, the personal guarantee was never executed. On the Taiwan judgment sum, she argues that no such judgment sum has been paid to Sassax, because Sassax lost the appeal to the High Court of Taiwan – thus, Cheang could not have misappropriated the sum. Further, on Mei Mei's termination, Cheang argues that Mei Mei had a less-than-satisfactory work ethic and poor work performance. Her dismissal was premised on these considerations and done in accordance with her employment contract, which stipulated a three-month notice period for termination or payment of three months' salary in lieu of notice.

33 On the just and equitable winding up issue, I note that in the Defence, Cheang did not specifically plead any facts to directly address See's allegation on the loss of mutual trust and confidence, having interpreted See's allegation as one of management deadlock and loss of substratum. The focus in Cheang's closing submissions was similarly on management deadlock and loss of substratum. Regardless, Cheang did deny the aspects of See's Statement of Claim that pertain to this issue, and has pleaded sufficient particulars to make out her case in this regard. Specifically, these are the facts canvassed above at [25]–[29], which have been pleaded in the Defence and relate to the events which led to the breakdown in the parties' relationship. As for See's allegation that he was denied access to Sassax's financial documents, Cheang denies this and asserts that See had ample opportunity to review Sassax's accounts.

The oral investment agreement issue

34 I shall first address the oral investment agreement issue, *ie*, See's claim that Cheang had breached the oral investment agreement between them. The threshold question is of course whether there is such an agreement in the first place. I am not persuaded that there is one.

35 I do not accept that any agreement as alleged was formed between See and Cheang. I find that the elements for the formation of a contract are not made out on the evidence. In particular, I do not see a valid offer and unequivocal acceptance, and an intention to form legal relations.

36 It is significant that See is unable to refer to a single piece of documentary evidence that supports the conclusion that a contract was concluded between the parties. It is telling that there was no correspondence in the second half of 2018 (when the parties' relationship had crossed the inflection point and was rapidly deteriorating) that made any reference to such a contract – See never once in his emails or WhatsApp conversations with Cheang asserted that Cheang had breached the oral investment agreement. The first occasion such an agreement was asserted and its terms spelt out was in the Statement of Claim. It should be noted that Cheang was not cross-examined on the existence of the oral investment agreement, and See's case in this respect was not put to her.

37 See relies on the Court of Appeal's statement in *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 (at [83]). He asserts that companies that are managed on the basis of mutual trust and confidence tend to operate without documentation:

> … Ironically, often these understandings are not documented, let alone spelt out in legal terms, as it might be perceived that

> the very documentation of the understanding might betray a lack of trust. This might seem naïve but unfortunately this behaviour is not infrequent, even today, in commercial dealings; relationships thin in words but thick in trust underpinned by the implicit belief that each will do right by the other without the need to spell out in embarrassing detail what is expected or needed. …

38 The excerpt above does not aid See. The Court of Appeal was observing that business relationships might be thin on words and thick on trust, *ie*, that parties might not formalise their relationship or understanding in a concluded agreement. But that is not the position here. See's position is not that the understanding between the parties was never reduced to an agreement. To the contrary, his position is that the parties negotiated and concluded a contract – the oral investment agreement – containing specific terms. What they had failed to do was to reduce it into writing. Thus, the analysis remains as to whether there is any documentary evidence that supports the existence of the oral investment agreement. If an agreement had been in fact been concluded, one would expect to see some reference to its existence in the documentary material particularly after the parties' relationship deteriorated and the exchanges between them became vitriolic. However, there is nothing in this regard. All we have is See's bare assertion.

39 It is also telling that the terms of the oral investment agreement asserted in the Statement of Claim and in See's affidavit of evidence-in-chief are not the same. In the latter, he alleges an additional term – that "[n]either person would be unilaterally ousted by the other". This only speaks to the fact that there was no oral investment agreement as alleged.

40 As there is no oral investment agreement, the question of breach does not arise.

The oppression issue

41 The defendants have not contested See's standing to bring a minority oppression claim. This is correct as See is a 40% minority shareholder in Sassax. Further, while he had been a director of Sassax with managerial powers, he arguably "lack[ed] the power to stop the allegedly oppressive acts" (see *Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] SGCA 14 ("*Ascend Field*") at [32]). This is because the transactions in question had been performed without See's knowledge and prior approval. That being the case, it is difficult to see how See could have stopped them or availed himself of any self-help remedies that would have obviated the need for an oppression claim.

Applicable principles on oppression of minority shareholders

42 The principles relating to oppression of minority shareholders are uncontroversial and have recently been comprehensively restated by the Court of Appeal in *Ascend Field* at [28]–[29]:

> 28 … s 216 encapsulates four limbs: (a) oppression; (b) disregard of a shareholder's interests; (c) unfair discrimination; and (d) prejudice. ***The common element supporting these four limbs is commercial unfairness***, which is found where there has been "a visible departure from the ***standards of fair dealing … which a shareholder is entitled to expect***": *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [77].
>
> 29 In assessing commercial unfairness, the court should bear in mind that the essence of a claim for relief under s 216 lies in upholding the commercial agreement between the shareholders of the company, irrespective of whether the agreement is found in the formal constitutional documents of the company, in less formal shareholders' agreements or, in the case of quasi-partnerships, ***in the legitimate expectations of the shareholders***…
>
> [emphasis added in bold italics]

43 It would be useful to restate the business arrangement between the parties and what each would have been legitimately "entitled to expect". It is only against this backdrop that one will be able to assess whether Cheang's alleged conduct was commercially unfair.

Whether there was oppression

44 I note that See has constantly characterised his business relationship with Cheang as a quasi-partnership. This is a fair argument. The correspondence between Cheang and See, in particular their WhatsApp conversations, revealed the nature of their dealings before the commencement and during the course of the business. They had been childhood friends and operated on a rather informal basis. Business was regularly discussed over messaging applications rather than through formal email exchanges. The parties also did not extensively lay down the rules governing their business relationship in any legal document such as a shareholders agreement. This follows from my conclusion that there was no oral investment agreement. Only the standard form Memorandum and Articles of Association found in Table A of the Fourth Schedule of the Companies Act was used to incorporate Sassax. These point towards there being a relationship of mutual trust and confidence between Cheang and See.

45 As mentioned (see [6] above), See's role was to source for raw materials for biodiesel production. On the other hand, Cheang was in charge of the day-to-day sales, management and operation of Sassax's business. While there exists disagreement over the true extent of obligations that See and Cheang owed to each other, the aforementioned division of labour is undisputed by both sides. Given my earlier rejection of the existence of the oral investment agreement, it is clear that the parties' legitimate expectations were for each other to, *at the very least*, diligently undertake their respective duties in relation to the agreed

roles. Accordingly, the question before me is whether Cheang was guilty of mismanagement of Sassax such that the transactions in question (see [22] above), individually and collectively, were oppressive. I will address each of the transactions in question in turn.

46 In my analysis, I will not be addressing the issue of Cheang's alleged misappropriation of the Taiwan judgment sum. Cheang clarified in her pleadings and affidavit of evidence-in-chief that Sassax had not received payment of the Taiwan judgment sum as it had lost the appeal that was brought against the judgment. See has not disputed or pursued this at trial.

The incorporation of Pte

47 See argues that Cheang's undisclosed incorporation of Pte was itself an oppressive act. Absent any evidence that there has been diversion of Sassax's corporate opportunities to Pte, I struggle to see how the mere incorporation of Pte can be an act of oppression. See's case in this regard is not that Cheang had diverted business opportunities to Pte (that is the substance of his allegations vis-à-vis the Jiangsu invoice, which is a separate and independent argument that will be addressed at [63] below). The allegation is thus a non-starter. In any event, it is notable that See himself has been running the businesses of Litrocom and Edo, which are in the same business as Sassax. In fact, if Cheang's evidence that See had placed Edo's and Litrocom's interests ahead of Sassax (see [29] above) was true, that would only underscore the hollowness of See's allegation. I note that Cheang's evidence in this regard was not challenged during cross-examination. This being the case, it seems strange that See would object to the incorporation of Pte. I therefore see nothing *per se* objectionable about Cheang incorporating Pte.

48 See's position changed slightly at trial – he stated that it was not the incorporation of Pte *per se*, but Cheang's failure to disclose the incorporation that was the basis of his complaint. This is an even more contrived position. If the incorporation of Pte is itself not an act of oppression, I struggle even more to understand why there would be an obligation to disclose that fact or for that matter how the failure to do so might be regarded as oppressive. Cheang did not cause any actual prejudice or commercial unfairness to See by way of her non-disclosure. I accordingly do not consider her failure to disclose the incorporation of Pte as oppressive.

Payments made to Limited

49 See alleges that Cheang had wrongfully diverted payments to Limited. The evidence does not bear this out.

50 Following the deterioration of the parties' relationship, between 21 and 25 April 2018, Yeap, at See's request, had sent him *inter alia* Sassax's balance sheet, profit and loss statements and general ledger as at 28 February 2018. From Sassax's general ledger, See identified five entries which he claims were five separate transactions where monies had been wrongfully transferred from Sassax's various bank accounts to Limited. These entries were dated between 5 December 2017 and 13 February 2018. They are listed in the table below, and some of the currencies are deliberately left unindicated for reasons that will be made clear shortly (see [53] below):

Sassax's Bank Account Number	**Date**	**Amount**
DBS Current SGD Account No: 033-	20 December 2017	$66,304.34
	2 February 2018	$68,054.72

931287-3	2 February 2018	$1,750.38
	Total:	$136,109.44
DBS Current USD Account No: 0003-02455-01-1-022	5 December 2017	US$39,913.38
	13 February 2018	US$3,133.62
	Total:	US$43,047.00

51 Cheang does not dispute these entries. She explained first that two of these entries were not payments to Limited:

(a) The entry for an amount of $66,304.34 on 20 December 2017 was not a payment. It was an entry that simply *indicated the value on the date of issue* of an invoice from Jaykem to Sassax. This particular invoice was issued on 20 December 2017 and was numbered C0002 ("invoice C0002").

(b) The entry for an amount of $1,750.38 on 2 February 2018 was the difference between the 20 December 2017 entry for $66,304.34 and the 2 February 2018 entry for $68,054.72 (the latter two entries are collectively referred to as "the duplicate entries"). While the former was the value of the invoice on the date of *issue*, the latter was the value of the invoice on the date of *payment* – the difference was due to fluctuations in foreign exchange rates.

52 As for the remaining three entries, Cheang accepts that these were payments to Limited. However, she explains that they were payments for debts due from Sassax to Jaykem which Jaykem had assigned to Limited. The debts were represented by three invoices issued by Jaykem to Sassax, namely: (1) an invoice dated 8 November 2017 and numbered C0001; (2) invoice C0002 (see

[51(a)] above); and (3) an invoice dated 11 February 2018 and numbered C0003 (collectively, the "Jaykem invoices"). Cheang justified this arrangement on the basis that Jaykem, unlike Limited, did not have a Singapore bank account into which the relevant payments could be made. Thus, the assignment of the debts to Limited enabled payments to be made by Sassax to a Singapore bank account.

53 Cheang was cross-examined on the five entries in Sassax's general ledger, and how the duplicate entries, on their face, did not correspond with invoice C0002. Her response was as follows: (1) despite being an entry tagged to a Singapore dollar account, the 20 December 2017 entry for $66,304.34 was actually an entry in United States dollars, and it corresponded with the price on invoice C0002, which was S$89,245.65; and (2) she reiterated her position in her affidavit of evidence-in-chief that not all the entries were payments (see [51] above).

54 I accept Cheang's explanation. Cheang's testimony is corroborated by Leong, who as mentioned earlier, is the sole director and shareholder of Limited (see [12] above). Leong affirmed that Sassax's debts to Jaykem had indeed been assigned to Limited. Crucially, this position is further buttressed by the Jaykem invoices, which expressly indicate that they have been assigned to Limited. See did not challenge the authenticity of the Jaykem invoices in cross-examination.

55 While See suggested at trial that Cheang had a beneficial interest in Limited, there is no evidence of that. On the contrary, Leong adduced evidence of the payment he had made for the incorporation of Limited. Further, while Cheang had been the one who incorporated Limited (before transferring shareholding to Leong), she testified that she was just doing Leong a favour due to the difficulties he would have faced in attempting to incorporate a BVI company in Malaysia. Leong provided an identical explanation. See did not

challenge their explanations. I therefore conclude that Limited is in fact beneficially owned by Leong. As such, the assignment of the Jaykem invoices to Limited to enable payment to be made was explicable: payment was simply being channelled to another company (*ie*, Limited) beneficially owned by Leong because that company had a Singapore bank account.

56 I make one further point: given my finding that Cheang does not hold any beneficial interest in Limited, it makes little sense for her to divert Sassax's funds there. Sassax, by Cheang's own case, is her "main source of personal income". Cheang lives off her earnings from Sassax. There is no good reason why Cheang would undermine Sassax's financial position.

57 Based on the above, this allegation of oppression has not been made out.

Transactions with Biocom, Van Wijk and Hung Da

58 See also alleges that funds drawn down on the TAPCL Facility have been diverted to Limited. As mentioned, See found it suspicious that the Van Wijk invoice and the Biocom invoice had the same invoice number (see [15] above). He alleges that the Biocom invoice was never sent to Biocom, but was "rather used to support a corresponding invoice from Hung Da". In essence, See's claim is that the Biocom invoice was fabricated and used to enable the drawdown on the TAPCL Facility in order for payment to be made to Hung Da. The Biocom invoice was necessary as the TAPCL Facility required both a supplier invoice and a purchaser invoice as a precondition to drawdown. See claims that the funds drawn down on the TAPCL Facility were then diverted to Limited. He justifies this on the basis that the multiple invoices related to this transaction were found in a Dropbox folder owned by Sassax named "actual all QF", which meant "actually all QHFOXX Limited".

59 Three aspects of the evidence present significant problems for See's argument. First, for the argument to succeed, See must preliminarily establish that Limited was beneficially owned by Cheang. I have already concluded that this is not the case.

60 Second, See accepted at trial that whenever there is a drawdown on the TAPCL Facility, TAPCL, through Cantrust, pays Sassax's vendors *directly*. The money never passes through Sassax's hands. That being the case, it would have been impossible for Cheang to divert the drawn down funds to Limited unless the vendor, in this case Hung Da, to whom the drawn down funds were paid, was complicit. See accepted on the stand that he was not alleging this.

61 Third, and in any event, there is absolutely no evidence of Hung Da's complicity. If the Hung Da drawdown was fraudulent and an act of diversion by Cheang, Hung Da *must* have been part of a conspiracy to divert the payment to Limited. The drawn down funds were paid directly into Hung Da's account by Cantrust. Absent any evidence of Hung Da's complicity in the purported diversion, I am unable to accept See's argument. It is also for this reason that I do not consider as relevant See's allegation that the circumstances surrounding the transactions are suspicious primarily on the basis that the invoices issued to Biocom and Van Wijk bore the same number. The allegation does not take See anywhere given that Hung Da's complicity and Cheang's beneficial ownership of Limited are necessary elements for there to be diversion of funds.

62 Finally, I do not discount the possibility that Limited might have sold the goods in question to Hung Da which had in turn sold them on to Sassax. But that is not the case that See makes. In any event, this argument will also flounder given that Leong and not Cheang beneficially owns Limited.

Purported renewal of the TAPCL Facility and the Jiangsu invoice

63 On this issue, See's argument is twofold and cumulative – that the TAPCL Facility had been renewed, and that Cheang had drawn down on the renewed TAPCL Facility in order to divert payment to Pte. Therefore, if the TAPCL Facility was not in fact renewed, the entire allegation will fail *in limine.*

64 There is no evidence that the TAPCL Facility had in fact been renewed. Cheang's evidence in this regard has not been challenged. In her affidavit of evidence-in-chief, Cheang points to an email dated 29 January 2019 which shows that while the documents for the renewal of the TAPCL Facility had been prepared, they were never sent to TAPCL. This was not challenged by See at trial. See in fact accepted during cross-examination that the TAPCL Facility had not been renewed.

65 Given that the TAPCL Facility was not renewed, and therefore expired on 31 July 2018, the allegation concerning the Jiangsu invoice must fail. The invoice is dated 17 September 2018 which is *after* the termination of the TAPCL Facility. That being the case, there could have been no drawdown on the TAPCL Facility. It follows that no funds could have been diverted to Pte.

66 In any case, I note that See has not pointed to any corresponding purchaser invoice for this transaction. As noted earlier (see [58] above), TAPCL requires both a supplier *and* a purchaser invoice before approving a drawdown. While there was a supplier invoice, *ie*, the Jiangsu invoice, there was no corresponding purchaser invoice. Further, there is no evidence of any complicity on Jiangsu's part, similar to the situation in the Hung Da drawdown (see [61] above). As I observed, complicity on the relevant supplier's part would be necessary for any diversion of drawn down funds, given that payments under

the TAPCL Facility are made by Cantrust *directly* to the relevant supplier. See's claim in this respect is accordingly untenable on multiple counts.

Terminating Mei Mei's employment

67 I do not find the termination of Mei Mei's employment to be an act of oppression. The requirements for the termination of Mei Mei's employment were delineated in her employment contract, and the termination was done in accordance with that. See's claim is that the termination was *wrongful* because of a term in the oral investment agreement that gave him and Cheang "equal say in employee rights". This is effectively an assertion of a right of veto on any decision to terminate Mei Mei's employment. As I have found that such an agreement does not exist, this argument must fail.

68 Further, Cheang alleges that Mei Mei *inter alia* had a less-than-satisfactory work ethic and neglected her duties in Sassax (see [9] and [28] above). Mei Mei has strenuously denied most of these accusations. In this regard, one of the reasons given was Mei Mei's alleged failure to discharge her duties by adequately insuring Sassax's cargo on board the *Maersk Honam*. It is for See to show that this allegation is incorrect and he has failed to do so. It is therefore difficult to see why Cheang was not entitled to summarily terminate Mei Mei's employment. In fact, any effort by See to interfere with the aforesaid termination would raise the question as to whether he was acting properly.

Conclusion on oppression

69 Given that none of the alleged acts of oppression have been made out, I find that the claim based on oppression is without merit. Consequently, See is not entitled to any of the relief he seeks on grounds of oppression, *ie*, a buy-out of his shares in Sassax or the winding up of Sassax based on oppression.

The just and equitable winding up issue

70 At the heart of s 254(1)(*i*) of the Companies Act is the notion of unfairness. The test for whether a company ought to be wound up under this provision is whether the prevailing circumstances, such as a loss of mutual trust and confidence, make it "unfair that one shareholder should insist upon the continuance of the association" (*Sim Yong Kim v Evenstar Investments* [2006] 3 SLR(R) 827 ("*Sim Yong Kim*") at [31], citing *O'Neill and another v Phillips and others* [1999] 1 WLR 1092 at 1101). See's case in this regard (see [24] above) is that there has been an irretrievable breakdown in the parties' relationship. Cheang, as noted (see [33] above), cites multiple facts that illustrate See's culpability in this regard. It should be noted that Cheang is not running a defence based on See's failure to exercise the exit mechanisms in Sassax's Articles of Association.

71 While I accept that the parties' relationship has broken down, I am unable to allow See's claim under s 254(1)(*i*) of the Companies Act. This is because the breakdown in the relationship was caused by See. This follows from the earlier conclusion that there have been no acts of oppression on the part of Cheang. Thus, the present level of distrust to a large measure was self-induced by See. The Court of Appeal's decision in *Sim Yong Kim* makes it clear that s 254(1)(*i*) of the Companies Act does not allow a member to exit from a company *at will*. A shareholder cannot rely on the just and equitable ground of winding up simply because there exists an irretrievable breakdown in relationship – such a breakdown must have been *caused by the other party*. The claim will not be allowed in cases where the shareholder's loss of trust and confidence in the other members was self-induced. The Court of Appeal noted (at [31]) that:

> … s 254(1)(*i*) of the [Companies Act]… does not allow a member to "exit at will", as is plain from its express terms. Nor does it apply to a case where the loss of trust and confidence in the other members is self-induced. It cannot be just and equitable to wind up a company just because a minority shareholder feels aggrieved or wishes to exit at will. …

72 See was the significant cause of the breakdown in the relationship. See has adduced no evidence to show that he had indeed contributed to Sassax's business beyond what Cheang had described in her evidence (see [26] and [27] above). He has not refuted Cheang's claims that he has spent, and continues to spend, a sizeable amount of time on his other businesses – in fact, in his evidence, he states quite clearly that "I have been incorporating and managing a number of business enterprises and have spent a considerable amount of time and energy towards building them up". See has adduced no evidence to refute Cheang's allegations that he had been "hands off", and has not provided documents to prove that he contributed more to Sassax than what Cheang alleges (see [26] above). See has also not challenged Cheang's evidence that he had placed his other businesses' interests over Sassax's (see [29] above).

73 Against this backdrop, Cheang's frustration with See is understandable. Even though Cheang appeared hostile in certain recorded conversations, these were after the *Maersk Honam* fire, which, by both parties' admissions, was the tipping point after which the relationship deteriorated irreparably. Cheang's reaction, in that light, is explicable and not wilful.

74 See has thus not convinced me that Cheang was the cause of their relationship fracturing. As mentioned earlier, I do not accept any of his allegations against Cheang. Accordingly, it is not Cheang but See who contributed to the breakdown of the relationship.

75 I lastly address the issue of See's access to Sassax's financial documents. He alleges that he has been wrongfully denied access, and claims that Acumen wrongfully imposed a S$5,000 fee on him when he requested to inspect some of Sassax's financial records. Specifically, these records were the details and underlying documents for certain transactions involving Sassax's various bank accounts. See further claims that he had to bear this cost personally.

76 There are two difficulties with See's contention. First, this was a fee imposed by Acumen, not Sassax or Cheang. The managing director of Acumen, one Looi Yong Kean ("Looi"), testified that this additional fee was imposed on top of Acumen's annual fees (which were borne by Sassax). This fee was calculated based on a "charge-out rate", which was a standard operating procedure of Acumen. Looi also testified, when questioned, that Cheang had not given him instructions to impose this fee on See. The imposition of the fee was Acumen's standard company practice in the circumstances, due to the additional labour and costs that had to be incurred in retrieving the records and details that See had sought. Looi further explained that the 14-day delay between the request being made and the financial documents being delivered was time that Acumen inevitably required to retrieve the requisite documents – there was no deliberate or wilful delay on Acumen's part. Looi's evidence in this regard was unchallenged by See.

77 That being the case, it is contrived for See to suggest that Acumen's actions were unfair acts on Cheang's part. I found nothing objectionable about the imposition of the S$5,000 fee.

78 Second, that See was required to personally pay for the fee was beside the point. See's pleaded case is that Cheang had *deliberately refused to provide*

him with Sassax's financial records. Based on Looi's evidence as canvassed above, I see no such attempt by Cheang. Any other director of Sassax who had requested the same documents would likely also have been made to pay a fee. In any event, it is difficult to understand how it might be said that Cheang refused to provide the financial records when See could have had them if he had paid the fee of S$5,000. Further, See made no attempt to resolve the issues of access to the financial records and Acumen's imposition of a fee with Cheang. If he did not do so, it is contrived to suggest that having to bear the fee personally was an unfair act on Cheang's part. Accordingly, I reject See's argument that Cheang unfairly denied him access to Sassax's financial records.

79 Accordingly, I dismiss See's claim based on the just and equitable ground. On a final note, while Cheang, in closing submissions, has elaborated at length on why Sassax ought not to be wound up on grounds of loss of substratum and management deadlock, I do not propose to address these grounds given that they have not been pleaded by See. In any event, any loss of substratum would have been self-induced by See, and thus cannot be relied on by him in a winding up claim. I say no more on this issue.

Other relief sought by See

80 As a final observation, I note that See also seeks a back-to-back indemnity with respect to all financial documents under which he has undertaken personal liability and which he signed in his capacity as director of Sassax. I see no basis for such relief. For documents that See himself agreed to (such as him guaranteeing the TAPCL Facility on 23 March 2018), there is no reason to release him from liability. In so far as See has alleged that his signature had been forged for the alleged TAPCL Facility renewal, as explained, no such renewal occurred. Thus, this claim must also be rejected.

Conclusion

81 I therefore dismiss See's claim and order costs against See in favour of Cheang to be taxed if not agreed.

Kannan Ramesh
Judge

Singh Navinder and Farah Nazura binte Zainudin (KSCGP Juris LLP) for the plaintiff;
Kirpalani Rakesh Gopal and Oen Weng Yew Timothy (Drew & Napier LLC) for the defendants.