Tan Ging Hoon v MMI Holdings Ltd and Another Suit
[2008] SGHC 57

Case Number : Suit 176/2007, 177/2007

Decision Date : 14 April 2008

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Foo Maw Shen, Daryl Ong and Yeoh Mun Shern (Rodyk & Davidson LLP) for the plaintiffs; Ang Cheng Hock and Ramesh Selvaraj (Allen & Gledhill LLP) for the defendants

Parties : Tan Ging Hoon — MMI Holdings Ltd

Companies – Share options – Employees of subsidiary granted options in parent company – Whether company exercising its discretion properly in rejecting ex-employee's requests for option to be exercised early or for options to be retained until they were vested when subsidiary sold

Companies – Share options – Employees of subsidiary granted options in parent company – Whether share option scheme granted by parent company governed by rules of scheme or by other documents circulated to some employees – Whether employees of subsidiary entitled to early exercise of unvested options in parent company after subsidiary sold – Whether parent company owing contractual duty to ensure that employees retained benefit of unvested options after subsidiary sold

14 April 2008 Judgment reserved.

Lai Siu Chiu J:

1 These consolidated actions were claims by employees under share option schemes granted by MMI Holdings Limited ("the defendants") which was a public company incorporated in Singapore. Tan Ging Hoon ("Tan") the plaintiff in Suit No. 176 of 2007 ("the first suit") was the defendants' former general manager while Ong Chuan Ho the first plaintiff in Suit No. 177 of 2007 ("the second suit") and his twenty three co-plaintiffs were former employees of the defendants' Malaysian subsidiary Alliance Contract Manufacturing Sdn Bhd ("ACM"). (Hereinafter Ong Chuan Ho and his co-plaintiffs will be referred to collectively as "the plaintiffs in the second suit" while they and Tan will be referred to as "the plaintiffs" where the context so requires).

2 The defendants' principal activities were/are the manufacture and sale of precision machining and assembly of components and its group of companies has manufacturing facilities in Singapore, Malaysia, Thailand and the mainland China. The company was listed on the main board of the Singapore Exchange ("SGX") between April 1997 and 11 July 2007. The defendants were delisted from SGX after it was wholly acquired by Precision Capital Pte Ltd, a special purpose vehicle set up by a private equity firm from the United States known as KKR. Precision Capital Pte Ltd made a joint announcement with the defendants on 5 April 2007 that the former was taking over the latter, by way of a scheme of arrangement under s 210 of the Companies Act (Cap 50, 2006 Rev Ed).

3 Tan first commenced his employment with the defendants in June 1998 as the general manager of operations of its Penang plant. He was also appointed the executive director of ACM from the date of its incorporation on 4 August 1998. ACM was a joint venture between the defendants and Tan and was incorporated *inter alia* to carry out contract manufacturing, specialising in electro-mechanical assemblies and the machining of value-added assemblies. Tan managed the operations of ACM since its incorporation. Initially, the defendants held 80% of the shares in ACM while Tan held the remaining 20% shares. Over the years, Tan acquired part of the defendants' shareholdings and eventually came

to own 45% of the shares in ACM before 4 July 2005. In 2000, Tan relinquished his position as general manager of the defendants' Penang plant so as to focus his attention on growing ACM.

4 Over the years, management conflicts arose between Tan and the defendants because of the competing nature of ACM's business with the operations of a new subsidiary that the defendants had acquired in the state of Johor.

5 In an effort to resolve the conflict, Tan offered to sell his shares in ACM to the defendants in 2004. Negotiations broke down due to disagreement over the price. However, sometime in October 2004, the defendants approached Tan to inquire if he was interested to buy over their stake in ACM instead. Tan expressed interest and he eventually purchased the defendants' 55% shareholding in ACM through a Malaysian company Alliancecorp Manufacturing Sdn Bhd ("Alliancecorp"), by a sale and purchase agreement dated 4 July 2005 ("the Agreement"). Tan became a director of Alliancecorp and executed the Agreement on the company's behalf. After 4 July 2005, ACM ceased to be a subsidiary of the defendants.

6 The plaintiffs in the second suit are all Malaysians and save for the twenty-second to twenty-fourth plaintiffs (who were directors), they are mainly IT engineers while a few are executives or managers. After 4 July 2005, the plaintiffs ceased working for ACM and became employees of Alliancecorp.

7 While ACM was a subsidiary of the defendants, its employees including the plaintiffs participated in the company's various share option schemes starting with the 1998 employee share option scheme ("the 1998 scheme"). The scheme at issue in these proceedings was the 2001 employee share option scheme (hereinafter referred to as "the Scheme"). It would be appropriate at this juncture to look at the genesis of the Scheme.

8 On or about 22 February 2002, a circular was issued to the shareholders of the defendants providing information on the Scheme, explaining its objectives and seeking their approval. The Rules of the Scheme ("the Rules") were attached to the circular as Appendix A. Copies of the documents were also forwarded to SGX by the defendants.

9 On 11 March 2002, the Scheme obtained the necessary approval from the defendants' shareholders at an extraordinary general meeting of the defendants and was duly adopted. The Scheme was designed to replace the 1998 scheme which was terminated upon receipt of shareholders' approval for the Scheme. The termination did not affect the rights of holders of options held under the 1998 scheme, including Tan and the plaintiffs.

10 There were two types of options that were granted under the Scheme. The first was market price options. As its name implies, the subscription price for each option to be exercised was fixed at a price which was equal to the average of the last done market prices for the defendants' shares for the three consecutive trading days immediately prior to the date of the grant of an option. Market price options could be exercised for the period commencing after the first anniversary (*viz* 12 months) from the date of the grant of the option until the 8th anniversary thereof. The vesting date was therefore on the first anniversary of its grant.

11 The second option granted under the Scheme was discounted options. For this type of option, the subscription price of shares in the defendants was at a discount to the subscription price which was based on the market price as set out above. Discounted options could be exercised commencing from the 2nd anniversary (*viz* 24 months) of the date of the grant of the option until the 8th anniversary thereof. The vesting date was therefore the second anniversary of the grant.

12 Letters offering options were sent to the defendants' employees as well as to employees within the defendants' group of companies ("the Group") who were eligible. ACM's employees came within the Group to whom the Scheme was extended. Employees who received letters of offer were given copies of a document headed Summary of Procedure for Employee Share Option Scheme ("the Summary Procedure document") but not the Rules. The plaintiffs in the second suit however did not receive the Summary Procedure document although Tan received a copy.

13 Under cl 12.1 of the Rules, the Scheme was to be administered by a Remuneration Committee ("the RC") which comprised of certain directors of the defendants who were in turn authorised and appointed by the Board of Directors of the defendants. At the material time, the members of the RC were Tan Chang Chai (the non-executive chairman of and a director of the defendants), John Wong and Ong Seow Yong ("Ong"). Both latter gentlemen were independent directors of the defendants while Ong was also the chairman of the RC. The RC set the criteria for eligibility of options under the Scheme by employees of the defendants and its subsidiaries. Under cl 12.4 of the Rules, any decision of the RC made pursuant to any provision of the Scheme was to be final and binding.

14 Under cl 4 of the Rules, the selection of participants and their entitlement regarding share options under the Scheme was to be determined by the RC. Offers of share options to grantees under the Scheme were to be accepted within 30 days and upon acceptance, the grantee was to pay a consideration of $1.00. The method of calculating the subscription price for discounted options was set out in cl 7 of the Rules.

15 The defendants issued Tan two letters of offers, one was dated 30 January 2004 ("the first letter of offer") and the second was dated 3 January 2005 ("the second letter of offer"). Under the first letter of offer, the defendants offered Tan discounted options to subscribe for 287,000 shares in the defendants at the price of $0.3024 per share. Under the second letter of offer, the defendants offered Tan discounted options to subscribe for 320,000 shares in the defendants at $0.291 per share. I would add that although the first and second letters of offer were headed "discounted price options", the contents of both letters referred to the offers as "market price options". This must have been a mistake as the offers in both documents stated that Tan could exercise the options twenty-four months from the dates of the grant of the options; this would not be the case if they were market price options. I should point out that the same error was committed in the case of the letters of offer for discounted price options extended to the twenty-second, twenty-third and twenty-fourth plaintiffs.

16 With the exception of the twenty-second, twenty-third and twenty-fourth plaintiffs (who being assistant director and directors respectively received identical letters of offer as Tan did for discounted price options), the remaining plaintiffs in the second suit received a common letter of offer dated 3 January 2005 ("the plaintiffs' letter of offer") from the defendants. The plaintiffs' letter of offer granted them market price options at $0.363 per share. This meant that the plaintiffs in the second suit could exercise the options twelve months later from 3 January 2006 onwards. Henceforth the first and second letters of offer as well as the plaintiffs' letter of offer will be referred to collectively as "the letters of offer".

17 All the options granted by the defendants pursuant to the letters of offer were duly accepted by Tan and the plaintiffs in the second suit. Most of the plaintiffs had previously been granted other share options under the 1998 scheme; these had vested in them as of July 2005. I shall return to the options granted under the 1998 scheme later.

18 A clause that is very relevant to this dispute is cl 8 of the Rules which sets out how the rights

to the options were to be exercised. Clause 8.2 then sets out the circumstances under which options would lapse; it states:

> An Option shall, to the extent unexercised, immediately lapse without any claim against the Company:-
>
> (a) subject to Rules 8.3, 8.4 and 8.5, upon the Participant ceasing to be in the employment of the Group for any reason whatsoever, or (in the case of an Independent Director) the Participant ceasing to be a director of the Company; or
>
> (b) upon the bankruptcy of the Participant or the happening of any other event which results in his being deprived of the legal or beneficial ownership of such Option; or
>
> (c) in the event of any misconduct on the part of the Participant as determined by the Committee in its discretion.
>
> For the purpose of Rule 8.2(a), the Participant shall be deemed to have ceased to be so employed as of the date the notice of termination of employment is tendered by or is given to him, unless such notice shall be withdrawn prior to its effective date.

Clause 8.3 states:

> If a participant ceases to be employed by any Group Company by reason of his
>
> (a) ill health, injury or disability (in each case, evidenced to the satisfaction of the Committee):
>
> (b) redundancy;
>
> (c) retirement at or after the legal retirement age or:
>
> (d) retirement before the legal retirement age with the consent of the Committee
>
> or any other reason approved in writing by the Committee, he may, at the discretion of the Committee, exercise any Option in respect of such number of Shares comprised in that Option and within such period after the date of such cessation of employment as may be determined by the Committee in its absolute discretion (but before the expiry of the Exercise Period in respect of that Option), and upon the expiry of such period, the Option shall lapse. The Committee may, in exercising such discretion, allow the Option to be exercised at any time, notwithstanding that the date of exercise of such Option falls on a date prior to the first day of the Exercise Period in respect of such Option.

while cl 8.4 states:

> If a Participant, ceases to be employed by any Group Company:-
>
> (a) by reason of the company by which he is employed ceasing to be a company within the Group or the undertaking or part of the undertaking of such company being transferred otherwise than to another company within the Group; or
>
> (b) for any other reason, provided the Committee gives the consent in writing,

he may, at the discretion of the Committee, exercise any unexercised Option(s) in the manner and at the times provided in the Vesting Schedule applicable to that Option.

19 I turn next to the Agreement executed by Alliancecorp and the defendants. Alliancecorp paid the defendants Malaysian Ringgit ("RM") 38.5m to buy over their 550,000 shares or 55% equity in ACM. As agreed between the parties, the Agreement was drafted by Tan's Penang lawyers while the defendants appointed Kuala Lumpur solicitors to advise them on the terms thereof as drafted by Tan's lawyers. For his own as well as the benefit of ACM's then employees (who included the plaintiffs in the second suit), Tan requested of the defendants who agreed, to the inclusion of cl 9 in the Agreement. That clause (after negotiations) read as follows:

> For the avoidance of all doubt, all rights accruing to the staff/employees of the Company [ACM] pursuant to the Vendor's [the defendants'] Employee Share Option Scheme (hereinafter referred to as "the ESOS") shall continue to be governed by the by-laws of the vendor's ESOS scheme and shall lapse one(1) month after the end of the completion period.

20 Under cl 9, Tan and the plaintiffs had until 4 August 2005 in which to exercise the options that had vested in them, due to the deadline stated in cl 5 at [21].

21 Even though payment of the balance (90%) consideration under the sale and purchase was to be made within 30 days from the completion date *viz* by 5 August 2005, cl 5 of the Agreement stipulated:

> For the purpose of accounting between the parties herein, the sale and purchase of the said Shares shall be deemed to have been completed on 4/7/2005 (hereinafter referred to as "the Completion Date") notwithstanding that by the Completion Date, [Alliancecorp] may not have settled the Balance Purchase Price [RM38,115,000]. For the avoidance of doubt, [ACM] shall cease to be a subsidiary of [the defendants] as of the Completion Date.

22 There was no dispute between the parties on the events leading up to the letters of offer and their acceptance thereof by Tan and the plaintiffs. What was in dispute was the interpretation of the terms of the letters of offer read in conjunction with the Rules and the events prior to the execution of the Agreement.

23 Between 8 and 20 July 2005, Tan and the plaintiffs attempted to exercise the options by sending their respective Exercise Notice Forms to the defendants through ACM's Ms Chong Saw Leng ("Chong" who is the sixth plaintiff in the second suit). Upon her receipt of the Forms on 20 July 2005, Lily Ong ("Lily") the Human Resource ("HR") Manager of the defendants emailed Chong to say that the grantees could only exercise those options that had already vested. Therefore they could not exercise the options that were offered in January 2005 as those had not yet vested.

24 Tan emailed the defendants' Finance Director Shermin Fock ("Shermin") asking for clarification of Lily's statement, pointing out that cl 9 of the Agreement gave him and the plaintiffs the right to exercise the options early. Tan also cited cl 3.3 of the Summary Procedure document as giving him and the plaintiffs the right to early exercise of the options. Clause 3.3 states:

> Early exercise of Option is permitted in the event of any of the following occurrences:
>
> 3.3.1 a take-over of the Company;
>
> 3.3.2 the winding up of the Company;

3.3.3 the amalgamation of the Company with another company

25 In her email reply, Shermin clarified that cl 9 meant that rights that had accrued to the staff of ACM would continue to be governed by the Scheme but those options that had not been vested would not result in a right. Shermin indicated she would check with the lawyers who drafted the Scheme's byelaws to confirm her views. She concluded her message with these words:

> In order not to hold up the exercise, the staff can send in their bank draft first. If there is excess cash, we will remit it back to the staff.

26 There were further exchanges of emails between Tan and Shermin over their differing interpretations of the right to exercise options by the plaintiffs. On 21 July 2005, Tan emailed Shermin to confirm the manner in which the option holders should submit their bank drafts. Between 21 and 25 July 2005, Lily received the bank drafts of the plaintiffs which she apparently credited into the defendants' bank account.

27 On 25 July 2005, Shermin informed Tan that on the advice of the defendants' solicitors, the defendants' options offered on 30 January 2004 and 3 January 2005 were not exercisable by ACM's staff and that she would arrange to refund moneys paid to the defendants in the exercise of the options. The moneys paid were accordingly refunded to the plaintiffs on or about 11 August 2005.

28 Ong received a telephone call from Tan in late July 2005 informing him of the defendants' refusal to allow the plaintiffs to exercise options that had not yet vested. Tan sought clarification from Ong in that regard. Ong explained that under the Rules (see cl 8.2 at [18]) the plaintiffs' options under the Scheme had in fact lapsed and the only exception was unexercised but vested options which had to be exercised within 30 days of 4 July 2005 pursuant to cl 9 of the Agreement. Ong drew Tan's attention to cl 9 of the Agreement and inquired why Tan had not raised the issue of the unvested share options at the time the Agreement was being drafted. Tan conceded (which he denied in court) that he and/or his lawyers had made a mistake in the drafting.

29 The twenty-fourth plaintiff ('Saw") wrote a letter dated 18 August 2005 ("Saw's letter") addressed to the defendants' managing-director B L Teh ("Teh") signed by most of the plaintiffs in the second suit (but not Tan), requesting that the defendants reconsider its decision not to allow the plaintiffs to exercise the options granted in 2004 and 2005 due to the change in ownership of ACM. Saw said that the plaintiffs should not be penalised for the private deal between the defendants and the purchaser and asked that the defendants provide an alternative for affected employees like the plaintiffs to enjoy their option entitlement.

30 Teh replied to Saw's letter on 31 August 2005 informing him that the RC was responsible for all policies under the Scheme and that the matters raised in Saw's letter had been brought to the attention of the RC. Saw's letter was circulated to the defendants' board of directors for their consideration.

31 On receiving Saw's letter Ong decided to and did, convene a meeting of the RC on 6 September 2005 to consider the issues raised therein. Ong as the chairman of the RC presided over the meeting. He invited some management staff of the defendants to attend the meeting (including Shermin) as well as the company's legal counsel to seek their views.

32 After careful consideration, the RC decided not to exercise its discretion to allow the plaintiffs to retain their unvested options and to exercise them. Ong said the RC felt the Rules did not allow for the early exercise of unvested options on the facts of the plaintiffs' case. The RC further noted that

out of goodwill, the defendants had already given the plaintiffs an opportunity to continue to exercise their vested options for one month after they ceased to be employees of ACM. The RC's recommendations were duly conveyed to the Board of Directors of the defendants and subsequently to the plaintiffs.

33 On 11 September 2005, Teh sent a letter to Saw informing Saw that the RC had met and considered his request (to allow employees of ACM to exercise their unvested options under the Scheme) and it had been rejected. Teh received Saw's reply dated 24 November 2005 seeking clarification on one point – that although the employees of ACM were not allowed to exercise their unvested options early, the defendants would allow such employees to retain and to exercise their options at the relevant times when the options vested, notwithstanding that the defendants had divested their shareholding in ACM.

34 Teh referred the matter in turn to Ong. On 3 December 2005, Ong responded to Saw in his capacity as chairman of the RC. Ong explained that just as the Rules did not allow for early exercise of unvested options by employees of ACM and the RC could not exercise its discretion in the employees' favour in that regard, the RC similarly did not have the discretion to allow the employees of ACM to retain their unvested options and to exercise them within the relevant option periods.

35 Saw expressed disappointment in the RC's decision in an email that he sent to Ong on 18 December 2005 and requested that the RC furnish grounds for its decision. Ong did not see the need to furnish the RC's grounds for its decision given the confidential nature of the meetings of the RC and given that he had already explained to Saw the reasons previously. Consequently on 5 January 2006, Ong replied to reject Saw's request.

36 Saw responded to Ong by email on 12 January 2006 expressing unhappiness over the RC's refusal to give the grounds for its decision and requested that the RC reconsider its position. On 17 January 2006, Ong replied to Saw's email again rejecting his request.

37 On 6 March 2006, the plaintiff's solicitors wrote to the defendants to state that the latter's stand amounted to a breach of contract between the parties as embodied in the Scheme and required the defendants to rectify the situation within seven days. The defendants' solicitors responded on 20 March 2006 reiterating the defendants' stand that the plaintiffs were not entitled to exercise the unexercised options that had not yet vested. (Contrary to both plaintiffs' pleaded case at [46] below, the defendants' solicitors did explain why the RC rejected the plaintiffs' request to allow holders of unexercised options who were no longer employees within the defendants' group to continue to have the benefit of the options like employees).

The pleadings

38 On 21 March 2007, Tan and the plaintiffs in the second suit filed these actions against the defendants. Their statements of claim were worded in similar if not the exact same terms. Hence, I need only refer to the statement of claim generally. The plaintiffs averred that the terms of the Scheme were embodied in letters of offer from the defendants as well as in the Summary Procedure document that was given to them together with the letters of offer (this was incorrect vis a vis the second suit as can be seen from [54] below).

39 The plaintiffs relied on cl 3.3 in the Summary Procedure document (supra [24]) for their plea that they were permitted thereunder to exercise the options early. They alleged that in correspondence between the plaintiffs and the defendants between August 2005 and 20 March 2006, the defendants took a position which deprived the plaintiffs of the benefit of the Scheme and denied

them the right to exercise the unexercised options after August 2005, whether in whole or in part.

40 The plaintiffs alleged that by the defendants' above conduct, the defendants had evinced an intention to be no longer bound by the Scheme and were in repudiatory breach of the same. The plaintiffs averred that the defendants' stand was inconsistent with cl 3.3 of the Summary Procedure document. The plaintiffs pleaded that on their part they had affirmed the Scheme and they required the defendants to perform the defendants' obligations pursuant thereto, in particular by allotting to each of the plaintiffs the relevant number of shares in the defendants in respect of the unexercised options pertaining to each plaintiff.

41 The plaintiffs prayed for a declaration that each of them was entitled to exercise the unexercised options and that the defendants be directed to allot the applicable number of shares to each of the plaintiffs.

42 The defendants filed defences in similar terms for both suits. I shall therefore refer to the defence generally. While admitting that the letters of offer expressly referred to the Scheme, the defendants denied that the terms of the Scheme were also contained in the Summary Procedure document. The defendants contended that the Summary Procedure document was issued by the defendants to its subsidiaries merely to guide the latter in administering the Scheme. The defendants averred that the terms of the options granted to the plaintiffs were contained in:-

(a) the MMI Holdings Limited circular to shareholders in relation to the Scheme;

(b) the letters of offer (inclusive of the Acceptance Forms signed by the plaintiffs) issued by the defendants to the plaintiffs.

43 The defendants pleaded that in accordance with the terms of the letters of offer, the plaintiffs were only entitled to exercise their options after the date of vesting of the options. Given that ACM ceased to be a subsidiary of the defendants on 4 July 2005, the defendants contended that the plaintiffs were not entitled to exercise their unvested options as the same had lapsed under the Rules.

44 The defendants averred that on or about 6 September 2005, the RC appointed to administer the Scheme had considered the plaintiffs' request to exercise their unvested options and had decided not to accede to the request, which decision was final and binding as per the Rules.

45 In their Reply, the plaintiffs contended that cl 8.4 of the Rules (supra [18]) was inapplicable. Further, cl 8.4 would be applicable only insofar as each of the plaintiffs ceased to be under the employment of the company upon the company ceasing to be part of the Group (as defined in the Scheme).

46 The plaintiffs averred that the options were granted in respect of the years 2004 and 2005 in recognition of the plaintiffs' efforts and hard work which contributed to the defendants' success. They alleged that the effect of the RC's decision was to deprive the plaintiffs of the legitimate fruits of the reward and/or recognition which the very award of the options was meant to achieve. The plaintiffs further alleged that the RC did not appear to have given sufficient regard to the issue of the exercise of the unexercised options by the plaintiffs. The plaintiffs also relied on the fact that the RC had been invited to explain the bases for its decision not to allow the plaintiffs to exercise the unexercised options but had declined to do so.

The evidence

(a) The plaintiffs' case

47 Besides Tan (PW1), the only other witness for the plaintiffs' case was Saw (PW2). The parties had agreed, with the court's approval, that it would be expedient to dispense with the oral testimony of the first to twenty-third plaintiffs in the second suit as their written testimony was in similar if not the exact same wording. Saw testified on behalf of the plaintiffs in the second suit as he was more involved in the dispute than his co-plaintiffs, having authored the letter and email to Ong referred to in [29] and [35] respectively.

48 The plaintiffs' written testimony focussed on only one of the objectives of the Scheme (see [73] below), asserting that they had earned (and therefore should not be deprived of) the options granted to and accepted by them; they had worked hard for ACM and contributed to the profits made by ACM for the defendants.

49 It was Tan's contention (see N/E 46/47) that the word "Company" in cl 3.3 (supra [24]) of the Summary Procedure document referred to ACM and not to the defendants. He maintained his stand even though in the course of cross-examination, counsel drew Tan's attention to the fact that in the first and second letters of offer, the defendants were referred to as the "company". It was also noted that when Shermin in her email to him dated 20 July 2005 stated that "company" in cl 3.3 referred to the defendants, Tan in his email reply on the same evening said:

> Yes, the Company in cl 3.3 refers to MMI Holdings in strict sense. However, for all intended (sic) and purposes shouldn't it cover the subsidiaries as well as the staffs of the subsidiaries are granted the share options with the same procedure? I believe the spirit of the scheme is intended to cover all share options granted and hence none of the staffs that received the options should be prejudiced.

Shown his above email message, Tan maintained that the reference to "company" in cl 3.3 referred to ACM and not the defendants. He denied (at N/E 53) that he was dishonest in this regard.

50 It was also Tan's contention that cl 9 of the Agreement at [19] allowed the plaintiffs to exercise both the vested and the unvested options. He claimed at one stage of his testimony (at N/E 79-80) that he had raised to the defendants at the time the parties were negotiating the Agreement, that he wanted the defendants to allow the plaintiffs to exercise both vested and unvested options but conceded after some prevarication, that this fact was not mentioned in his affidavit evidence nor did he refer to this alleged request in his communications with Shermin after 5 July 2005.

51 At this juncture I need to digress and refer to the 1998 Scheme. It was common ground that a number of the plaintiffs (eight, tenth, fourteenth, fifteenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-third plaintiffs) in the second suit were issued share options under the 1998 scheme. These plaintiffs had successfully exercised the options granted to them under the 1998 scheme (which had vested on 18 November 2001) within the one month period stipulated under cl 9 of the Agreement. However none of the plaintiffs mentioned the 1998 scheme in their written testimony, nor the fact that they had exercised their options granted thereunder.

52 I should add that some of the plaintiffs (*viz* the eight, tenth, fifteenth and twenty-first plaintiffs) either did not exercise or only partially exercised some of the options granted to them under the 1998 scheme (those which vested on 25 January 2000) because the exercise price was $0.565 whereas the market price was lower.

53 However, when the two suits were commenced on 21 March 2007, the price of the defendants'

share had risen to between $1.57 and $1.61 (see 1AB797). This is to be contrasted with the defendants' share price on 5 July 2005 when its price ranged from $0.43 to $0.46 (see 1AB794) and 5 August 2005 when the price was slightly higher at $0.49-$0.50 (see 1AB793). Tan however claimed that he never kept track of the defendants' share price, denied in cross-examination that the rising share price prompted his actions and disagreed he had not acted in good faith in commencing the first suit. Tan also claimed that initially, he was unaware that Precision Capital Pte Ltd (supra [2]) intended to take over the defendants until he was informed by his lawyers. Counsel for the defendants pointed out that Tan's lawyers had in fact appeared in court to object (which objections were dismissed) to the scheme of arrangement whereby Precision Capital Pte Ltd acquired the defendants.

54 When he took the stand, Saw confirmed that he and the other plaintiffs in the second suit were not given the Summary Procedure document with the plaintiffs' letters of offer. The Summary Procedure document was not referred to in the Acceptance Forms the plaintiffs signed nor did Saw refer to it in his written testimony. In his affidavit of evidence in chief, Saw had also not mentioned that he had exercised (on 8 July 2005) 100,000 of the 153,000 market price options allotted to him in the defendants' earlier letter of offer dated 28 April 2003, subscribing for the defendants' shares at $0.195 per share. Saw revealed that his letter dated 24 November 2005 at [33] was written in consultation with lawyers and clarified that when Ong rejected his request to exercise the unvested options, he wanted to be allowed to retain his unvested options (154,000 and 180,000) and to exercise them when they vested on 30 January 2006 and 3 January 2007 respectively.

55 Saw disagreed with counsel for the defendants that the plaintiffs' letter of offer was subject to the Rules. He explained that the plaintiffs' letter of offer was passed to him together with the Acceptance Form and according to his HR department the plaintiffs were given a Summary Procedure document. Saw claimed he was unaware there were Rules and that under the Rules, any unvested options he had would lapse once the defendants sold off ACM. However he conceded that after the defendants disposed of its stake in ACM, the defendants would not be concerned with whether ACM aimed for or achieved higher standards of performance and efficiency, as set out in objective (a) of the Scheme (at [73] below).

(b) The defendants' case

56 Ong (DW1) and Shermin (DW2) were the defendants' two witnesses. Ong was first appointed to the defendants' board of directors in late 1999-early 2000 and he assumed the chairmanship of the RC some years later. Ong explained that the Summary Procedure document was merely a document prepared and disseminated by the defendants' HR department to assist employees in the exercise of share options. He said the Summary Procedure document merely highlighted the important administrative procedures that needed to be followed as well as the respective deadlines that needed to be met. It was never meant to form and it did not form part of the terms and conditions of the Scheme.

57 When he was cross-examined (at N/E 166), Ong agreed that under cl 8.4 (supra [18]) of the Rules, it was open to the RC to exercise its discretion to allow ex-employees to retain part of the options that had been granted to them by the defendants, once the grounds in cl 8.3 were satisfied. Ong revealed that the RC's rejection of the plaintiffs' request to retain the unvested options was not only due to the fact that the plaintiffs did not come within the ambit of cl 8.3; it was also because the RC could not find any other circumstances that would support the plaintiffs' request.

58 Ong explained that in order to accommodate the plaintiffs' request, it would have been necessary to make changes to the Scheme which in turn required fresh approval from the SGX and

the defendants' shareholders. Questioned by the court, Ong revealed that there was opposition from shareholders when the Scheme was proposed. Further, none of the members of the RC (including Ong himself) were aware of any precedents to such a request in other listed companies in which they held directorships. He clarified that cl 9 of the Agreement was presented to the board of directors of the defendants as one of Tan's conditions for his purchase of ACM and it was accepted. It was not presented to the RC as a modification of the Scheme. (In her affidavit of evidence-in-chief, Shermin (at para 51) had deposed that the defendants allowed the plaintiffs one month's grace period to exercise the vested options after they ceased employment with ACM, as a "goodwill" gesture).

59 Counsel for the plaintiffs drew Ong's attention to the minutes of the meeting of 6 September 2005 (at 1AB559-560). As there was no mention therein, he questioned Ong's claim that the RC had indeed discussed the issue of allowing the plaintiffs to retain the unvested options. Ong explained he rejected Saw's request for the grounds for the RC's decision (supra [35]) because confidentiality of board meetings was of paramount importance to Ong, both as an independent director of the defendants and as chairman of the RC.

60 The defendants' other witness Shermin was highly critical of the plaintiffs' conduct and questioned their motives in commencing these actions. In her written testimony (at para 68-69) Shermin deposed that the defendants' share price on 8 July 2005 when the plaintiffs attempted to exercise their options was $0.46 but it rose steadily thereafter until it reached $1.56 on 20 March 2007, one day before the plaintiffs filed the first and second suits.

61 Shermin had attended and recorded the minutes of the meeting on 6 September 2005 of the RC along with the defendants' legal counsel who was present to advise the RC on the terms and effect of the Scheme and also on Saw's request to allow the plaintiffs early exercise of the options.

62 Nothing much turns on Shermin's cross-examination save that counsel made much of the fact that none of the plaintiffs were given a copy of the Rules with the letters of offer, even though they were said to be bound by the same and the omission was a non-compliance of cl 6.2 of the Rules (see [74] below). Shermin explained that it was because the defendants (she, the HR manager and the in-house legal counsel) did not think the Scheme was a change from the 1998 scheme, which answer seemed to suggest that participants in the 1998 Scheme would have received a copy of the Rules. Shermin pointed out (at N/E 265) that in any case the plaintiffs being employees knew that they could/should go to their respective HR departments if they needed details or the Rules.

63 During cross-examination, counsel for the plaintiffs sought to show that Shermin's evidence (that Tan had admitted to her that he/his lawyers made a mistake in the drafting of the Agreement) was not reflected in any of her email exchanges with Tan or with anyone else. Counsel also drew Shermin's attention to the fact that for 2003, ACM's contribution to the consolidated net profits of the defendants was more than 100% whereas the defendants suffered a loss for that year. Shermin also agreed that the defendants obtained a remarkable return on equity of more than 100% in seven years for their initial investment of RM400,000 in ACM.

The issue

64 The only issue the court has to determine is which terms governed the plaintiffs' options – those in the Summary Procedure document as the plaintiffs contended or those in the Rules as the defendants asserted? A subsidiary issue is whether the RC had properly exercised its discretion under cl 8.4 of the Rules when it: (i) disallowed the plaintiffs from exercising the options early and (ii) rejected the plaintiffs' alternative request to be allowed to retain those options until they vested whereby the plaintiffs could then exercise those options.

The submissions

65 The gravamen of the plaintiffs' case was that the issue of the retention of the unvested options was not raised and discussed at the meeting held on 6 September 2005 (supra [31]) and the RC could not have exercised its discretion on a reasonable and rational basis, given its fundamental misconception on the terms and effect of cl 8.4.

66 The plaintiffs' closing submissions argued that the defendants (by its RC) had wrongly circumscribed their obligation to exercise their discretion properly under cl 8.4 of the Rules by relying on cl 9 of the Agreement. The plaintiffs submitted that there was clear evidence that the RC did not consider cl 9 at all not to mention that it was not referred to in the defendants' pleadings. Consequently, the defendants' reliance on cl 9 was irrelevant for this case and was at best an ex-post facto justification of their position. More importantly, cl 9 did not bind any of the plaintiffs as the contracting parties to the Agreement were Alliancecorp and the defendants. Further, while the defendants repeatedly referred to the "Rules" under cl 9, the clause itself referred to "bye-laws". The defendants had not shown that the bye-laws meant the Rules. If indeed the clause applied, the plaintiffs submitted that cl 9 was intended to cover both vested and unvested options.

67 The plaintiffs submitted they were entitled to rely on cl 3.3 of the Summary Procedure document. They argued that as the issue of retention of unvested options (according to the recorded minutes) was not discussed at the RC meeting on 6 September 2005, Ong's testimony to the effect that the discussion did take place after the meeting was an afterthought and should be ignored. It was submitted that Ong's testimony was also inconsistent with his email to Saw dated 3 December 2005 (supra [34]) where Ong said (see 1AB565) "*in the course of the abovementioned meeting, the Committee also considered but, after careful deliberation, decided that there was no justification on which to exercise its discretion to allow holders to retain their unvested options….*".

68 The plaintiffs further criticised Ong's understanding of cl 8.4 as misconceived. Ong had testified that the RC considered the following five factors at the meeting on 6 September 2005:

(a) the plaintiffs were sick/unable to work;

(b) as ACM had been divested, the plaintiffs were not entitled to the options;

(c) there was no justification to treat the plaintiffs differently from other employees in the defendants' Group;

(d) the RC felt the Scheme had to be modified in order for the plaintiffs' request to be acceded to and for which approval from shareholders and SGX was required;

(e) there was no known precedents for the plaintiffs' request

when it ruled against the plaintiffs. The plaintiffs asserted that factors (a) and (d) arose due to a fundamental misconception of the scope, ambit and effect of cll 8.3 and 8.4. The plaintiffs submitted that it was equally clear that the RC did not consider objectives 2.1 (a) to (h) (see [73]) either on 6 September 2005 or on any other occasion.

69 The defendants on the other hand submitted that the terms and conditions of the Scheme had been incorporated into the letters of offer (including the Acceptance Forms signed by the plaintiffs). The defendants noted that none of the plaintiffs referred to the Acceptance Forms in their written and/or oral testimony. By unconditionally accepting the letters of offer, the plaintiffs had agreed to be

bound by the terms of the Scheme. The plaintiffs therefore cannot claim not to be bound by the Rules on the basis that their attention was not specifically drawn to the Scheme documents containing the Rules.

70 The defendants argued that while copies of the Rules were not physically handed over to the plaintiffs together with the letters of offer (save in the case of Tan), the Rules were readily available and could have been inspected by the plaintiffs upon request to the HR department of the defendants or any companies within the Group. The defendants argued that it was clear from Shermin's evidence (in re-examination at N/E 295-296) that none of the plaintiffs had requested to see or had asked for a copy of the Rules.

71 The defendants pointed out that both Tan and Saw had accepted that they were aware that there was a share option scheme and that it was the 2001 scheme that was then in operation (referring to N/E 44 and 123).

72 As for the plaintiffs' argument that the defendants had breached the Rules in its issue of the letters of offer (as the Scheme documents/the Rules were not attached therewith), the defendants pointed out that the prescribed format of the letter of offer (see 1AB 379) in Schedule A-1 and A2 to the Rules differed from the actual wording in the letters of offer as the sentence "*The option shall be subject to the terms of the Scheme, a copy of which is enclosed herewith*" was not in the letters of offer. However the defendants argued, the omission was not fatal as cl 6.2 of the Rules (see [74]) made it clear that it was sufficient if the letters of offer substantially complied with the format set out in Schedule A-1 and A2 of the Rules. Indeed, under cl 6.2, the RC even had the discretion to modify the Scheme.

The decision

73 It would be useful to look at the objectives of the Scheme before I make my findings. According to cl 2.1 of the defendants' circular to its shareholders dated 22 February 2002, the objectives were as follows:

> The Company proposes to implement a share option scheme for the following reasons:-
>
> (a) to encourage participants towards higher standards of performance and efficiency;
>
> (b) to motivate and incentivise participants to achieve performance targets;
>
> (c) to provide additional means for the Group to attract, retain and motivate talented individuals and key personnel whose contributions are essential to the long-term growth and profitability of the Group;
>
> (d) to promote greater dedication, long-term commitment, loyalty and a sense of identification with the Group;
>
> (e) to promote cohesiveness and team spirit through a common ownership of the Company;
>
> (f) to allow the Company to give recognition to the achievements and contributions of participants to the Group through ownership in the equity of the company; and
>
> (g) to align the interests of the participants with those of the Shareholders, which in turn is expected to contribute towards future growth, profitability and enhancing the value of the

Company and the Group in the long term.

The Scheme is designed to provide the Company with flexibility in the structuring and grant of Options, including the timing for the grant of Options. The latter will facilitate the Company's use of share options as a means to reward and give recognition to participants for their hard work and/or contributions, or as a tool for motivating and encouraging participants' performance. The Scheme complies with the Company's Articles of Associations.

However, the plaintiffs only referred to subclause (f) to support their case.

74 As Shermin had conceded during cross-examination that the defendants failed to comply with Rule 6.2 of the Scheme, I shall also set out that rule; it states:

The Committee shall decide at its absolute discretion, whether to grant a Market Price Option or a Discounted Price Option. The Letter of Offer to grant the Option shall be in, or substantially in, the form set out in Schedule A-1 (in relation to a Market Price Option) and in the form set out in Schedule A-2 (in relation to a Discounted Price Option), subject in each case to such modification as the Committee may from time totime determine.

75 It would also be helpful to look at the terms of the letters of offer at this juncture. The first letter of offer (at 1AB455) to Tan stated:

Dear Sir/Madam

ESOS Grant for Year 2003

We have the pleasure of informing you that you have been nominated by the Board of Directors of MMI Holdings Limited (the "**Company**") to participate in the MMI ESOS 2001 (the "**Scheme**"). Terms as defined in the Scheme shall have the same meaning when used in this letter.

Accordingly, in consideration of the payment of a sum of $1.00, an offer is hereby made to grant you a Market Price Option (the "**Option**"), to subscribe for and be allotted **287,000** Shares at the price of **$0.3024** for each Share.

The option shall be exercisable 24 months from the date of grant and ending on the 8th anniversary of the grant.

The Option is personal to you and shall not be transferred, charged, pledged, assigned or otherwise disposed by you, in whole or in part, except with the prior approval of the Committee duly authorised and appointed to administer the Scheme.

If you wish to accept the offer, please sign and return the enclosed Acceptance Form with a sum of $1.00 not later than **5.00 p.m.** on **1 March 2004** failing which this offer will lapse.

76 The plaintiffs' letter of offer (save for the twenty-second to twenty-fourth plaintiffs) stated the following:

Dear Sir/Madam

ESOS Grant for Year 2003

We have the pleasure of informing you that you have been nominated by the Board of Directors of MMI Holdings Limited (the "**Company**") to participate in the MMI ESOS 2001 (the "**Scheme**"). Terms as defined in the Scheme shall have the same meaning when used in this letter.

Accordingly, in consideration of the payment of a sum of $1.00, an offer is hereby made to grant you a Market Price Option (the "**Option**"), to subscribe for and be allotted…Shares at the price of **$0.363** for each Share.

The option shall be exercisable 12 months from the date of grant and ending on the 8th anniversary of the grant.

The Option is personal to you and shall not be transferred, charged, pledged, assigned or otherwise disposed by you, in whole or in part, except with the prior approval of the Committee duly authorised and appointed to administer the Scheme.

If you wish to accept the offer, please sign and return the enclosed Acceptance Form with a sum of $1.00 not later than **5.00 p.m.** on **2 February 2005** failing which this offer will lapse.

77 In the course of cross-examination, Ong had pointed out to counsel for the plaintiffs that the defendants had multiple companies in its Group and what applied to one company in the Group should apply to all. There was no reason therefore to treat employees of ACM any differently from other employees who had left the Group's employment. Consequently, the plaintiffs could not be allowed to exercise options that would only vest on 3 January 2006 nor could they be allowed to retain those options after they ceased to be employed by ACM. Such preferential treatment Ong testified (at N/E 244), would be unfair to employees of other subsidiaries that had been divested by the defendants. However, this was exactly what the plaintiffs attempted to do by the first and second suits – to ask the court for preferential treatment.

78 I noted from the evidence that none of the plaintiffs save for Tan received a copy of the Summary Procedure document. That being the case, the plaintiffs cannot be heard to say that their rights were governed by that document more so when the letters of offer and the Acceptance Forms made no reference to it. Further, the plaintiffs' reliance on cl 3.3 (supra [24]) therein was misconceived. The reference to "the Company" in that clause clearly meant the defendants and it was mischievous of Tan to contend that it referred to ACM and/or the defendants' Group when his own email to Shermin of 20 July 2005 (at [49]) agreed that it referred to the defendants. I would add that I was not impressed with Tan as a witness. He was less than forthright and had the tendency (like the other plaintiffs) to put the blame on the defendants for what happened.

79 It was the common refrain in the affidavits of evidence-in-chief of all the plaintiffs in the second suit that they were awarded the options because of their contributions to the success and development of ACM and consequently the defendants. As I had alluded to earlier of [73], the plaintiffs focussed their attention only on the objective in cl 2.1(f) in this regard and conveniently overlooked the six other objectives for which the Scheme was established and which included aligning the interests of participants of the Scheme with those of the defendants' shareholders under objective (g) of cl 2.1.

80 In the process of cross-examination by their counsel, the plaintiffs also made much of the fact that the defendants had profited tremendously from their initial investment of RM400,000.00 in ACM. Did that mean that the defendants were beholden to the plaintiffs so much so that they owed the plaintiffs a duty to ensure that the latter were allowed to retain the benefit of unvested options when they left ACM's employment? With respect, I think not. The defendants owed neither a moral nor a

contractual duty to the plaintiffs with regard to such unvested options, just because their investment in ACM turned out to be a goldmine. On the authority of *Thompson v Asda-MFI Group PLC* [1988] Ch 241 cited by their counsel, the defendants owed no duty to the plaintiffs not to sell ACM at the expense of the latter's options. I should add that in this case it was not a third party but Tan himself who bought out the defendants' interest in ACM.

81 I shall next address the plaintiffs' submission that the Agreement only bound the contracting parties and not the plaintiffs. Notwithstanding that submission, the plaintiffs took advantage of cl 9 in the Agreement to exercise the options that had vested in them under the 1998 Scheme, a significant benefit which they omitted to mention in their evidence. The plaintiffs cannot therefore approbate and reprobate at one and the same time. As they took the benefit of cl 9, they cannot disavow the Agreement. As an example of the extent of the benefit the plaintiffs obtained from cl 9, I refer to Tan's exercise of 80,000 options at $0.39 per share on 18 July 2005. He paid $31,200 for 80,000 shares in the defendants when the market value as of 8 July 2005 was $0.46 according to Shermin.

82 Saw on his part exercised 100,000 options at $0.195 per share on 8 July 2005. He, Tan and the other plaintiffs reaped an even greater windfall when the defendants' share price rose to $1.57-$1.61 on 20 March 2005 (supra [53]). In Saw's case, he had joined ACM in January 2001 as its director of program management. Had he sold his 100,000 shares in the defendants on 20 March 2007, he would have made a gross profit of at least $137,500 ($1.57 less $0.195 x 100,000). By any standards, that was a handsome reward for a person who had been employed for just over 4½ years (January 2001 to 4 July 2005) by ACM. It therefore did not lie in any of the plaintiffs' mouths to complain (in their affidavits of evidence-in-chief) that they had been deprived of the benefit for which the grant of the options was intended to provide. All the plaintiffs had benefited to a greater or lesser extent, from the previous options granted to them by the defendants under the 1998 scheme. I disbelieve as incredible, Tan's assertion that he did not keep track and was unaware, of the rising trend of the defendants' share price from July 2005 to March 2007. Tan did concede (albeit only after some prevarication) that he was aware of the defendants' takeover by Precision Capital Pte Ltd.

83 I turn now to the plaintiffs' complaint that the RC failed to exercise its discretion in a reasonable and proper manner under cl 8.4 (supra [18]). I disagree with the plaintiffs' interpretation that the clause allowed the RC to exercise its discretion (which it should have) to allow the plaintiffs to exercise the unvested options. On a plain and purposive reading of cl 8.4, the words there "in the Vesting Schedule applicable to that Option" can only mean that options must first have vested in the grantee before the RC can exercise its discretion in favour of the grantee.

84 In this regard the case of *Mallone v BPB Industries plc* [2002] EWCA Civ 126 relied on by the plaintiffs can be easily distinguished. There, the directors of the defendant company cancelled the plaintiff's share options following his dismissal as the managing-director of the defendants' subsidiary. Mr Mallone was not dismissed due to misconduct but on "performance" grounds. The options granted to Mr Mallone had a three year vesting period and lapsed after ten years from the date of the grant. The options had already vested in the plaintiff when he attempted to exercise them not knowing that the defendants' directors had cancelled them. Under the rules of the option scheme, grantees' exercise of their options differed depending on the manner of termination of their employment. For termination due to performance reasons as in Mr Mallone's case, he could exercise the options in a certain proportion based on a formula. The directors however purported to cancel all of the plaintiff's share options in full, by determining the fraction that could be exercised to be zero. Not surprisingly, the English Court of Appeal held that no reasonable employer would have exercised his discretion in the manner that the directors had done.

85 Our case is a far cry from that of the unfortunate Mr Mallone. Counsel for the plaintiffs had

sought to show during his cross-examination of Ong, that the RC did not even raise let alone discuss, the issue of the unvested options. Consequently, there was nothing to suggest the RC had exercised its discretion under cl 8.4 of the Rules. In my view, it would not make one iota of difference to the plaintiffs' case whether the issue of unvested options was or was not discussed by the RC. Failure of the RC to address the issue did not mean that the RC failed to act reasonably and rationally. If the plaintiffs' options had not yet vested and no rights had accrued to them, neither cl 8.4 nor any other clause in the Rules nor cl 9 of the Agreement could assist the plaintiffs. What was there for the RC to consider? It bears noting too that under cl 12.4 (supra [13]) of the Rules, the RC's decision was final and binding.

86 What the plaintiffs chose to ignore, in their zealous pursuit of their claims, was the fact that the defendants were not the party at fault and were not responsible for their predicament. Their counsel's submission that the plaintiffs were laymen does not detract from the fact that Tan had legal advisers who in fact drafted the Agreement. He and/or his lawyers overlooked the issue of the unvested options in the negotiations for Alliancecorp's purchase of ACM. Despite Tan's denial that he had not done so, it was equally clear from the minutes of the meeting on 6 September 2005 (at 1AB 559) that Tan had indeed admitted to Ong that either he or his lawyers had made a mistake in not clarifying the issue of unvested options.

87 Contrary to the plaintiffs' interpretation, I am of the view that cl 9 of the Agreement (supra [19]) cannot refer to unvested options because of the words "all rights *accruing* to the staff/employees of [ACM] pursuant to the [defendants'] employee share option scheme…". Unless the options were already vested, no rights could have accrued to the plaintiffs.

88 I believe in any event that no amount of skilful drafting could have assisted the plaintiffs to preserve their rights in the unvested options. It bears repeating that the letters of offer were granted to the plaintiffs as employees of ACM, which was part of the defendants' Group at the material time. Once ACM ceased to be part of the Group, the plaintiffs could no longer enjoy any benefits that were extended to employees only. This is clear from cl 8.2 of the Rules. In this regard, I adopt the sentiments expressed by Ong in [77] that there was no reason to treat the plaintiffs on a different footing from other employees of other subsidiaries which had been divested by the defendants or grantees of options that had left the defendants' employment/the employment of any of its subsidiaries.

89 The plaintiffs did not come within the ambit of cl 8.4 because the options had not yet vested in them. One possible solution would have been to delay the sale and/or completion of the sale to Alliancecorp of ACM until the options awarded under the Scheme vested in the plaintiffs but such a delay may not have been in Tan's interests.

90 Another alternative would have been to modify the Scheme to allow the plaintiffs to retain unvested options. However to do that, the defendants would have had to obtain approval again from both its shareholders and SGX. Given that the defendants' shareholders had opposed the Scheme when it was first proposed (according to Ong), it is highly unlikely that the shareholders would be minded to approve a modification of the Scheme to benefit ex-employees, leaving aside the views of SGX.

Conclusion

91 On the evidence, I find that the terms governing the plaintiffs' options were to be found in the Rules and the plaintiffs were aware of the fact. Even if they did not know what the Rules contained, they could easily have requested for a copy and/or ascertained the contents of the Rules from their

respective HR departments.

92 In the light of my findings, I hold that Tan and the plaintiffs in the second suit had no basis at law to apply for declaratory relief that they were/are entitled to exercise the unexercised options which they received under the letters of offer. Accordingly, I dismiss both the first and second suits with costs to the defendants on a standard basis.