Ng Chee Weng *v* Lim Jit Ming Bryan and another
[2014] SGHC 77

Case Number : Suit No 453 of 2009

Decision Date : 16 April 2014

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Geraldine Andrews, Q.C. and Vijay Kumar (Vijay and Co.) for the plaintiff; Cavinder Bull, S.C., Woo Shu Yan and Lin Shumin (Drew & Napier LLC) for the defendant.

Parties : Ng Chee Weng — Lim Jit Ming Bryan and another

Contract – Formation – Whether there was a binding settlement agreement

Contract – Repudiation – Whether plaintiff repudiated the settlement agreement

Trusts – True beneficial ownership

16 April 2014 Judgment Reserved

Judith Prakash J:

Introduction

1 In November 1995, Mr Ng Chee Weng, the plaintiff in this law suit, became one of the founding shareholders of a company called SinCo Technologies Pte Ltd ("SinCo"). The plaintiff held his shares on trust for his friend, Mr Bryan Lim Jit Ming, ("Mr Lim"), because SinCo had been set up to provide a vehicle for a new business to be undertaken by Mr Lim. In later years, the plaintiff also acquired shares for himself. At all times Mr Lim was the man in charge of SinCo and he built it up into a dynamic and successful business. The plaintiff remained a shareholder on the books until 2002 when he transferred all his shares to Mr Lim. He remained a director until 2005.

2 In 2009, the plaintiff approached Mr Lim and asked for payment of his share of the dividends declared by SinCo during the financial years from 2003 until and including 2006. The plaintiff claimed that the share transfer form he had executed in 2002 was only a paper transfer. It was not till 2007 that he had actually sold his shares to Mr Lim. Rather, between 2002 and 2007 Mr Lim had held those shares on trust for the plaintiff. Thus Mr Lim was liable to account to the plaintiff for dividends declared and paid during the material period. Discussions were held and Mr Lim made the plaintiff various offers to settle the claim. According to the plaintiff, on 31 March 2009, he agreed to accept $4.5m in full settlement of his dividend claim.

3 This action was started in May 2009, principally against Mr Lim. The second defendant is the wife of Mr Lim. She took no part in the business of SinCo and did not participate in any discussions with the plaintiff. She has only been sued on the basis that if she has received any part of the dividends which the plaintiff claims, she would be under a duty to account for the same to the plaintiff.

4 Mr Lim's position is that he purchased the plaintiff's shares in 2002. The shares belonged

entirely to him thereafter; there was no trust. Therefore, the plaintiff was not entitled to any dividends paid after that date. Secondly, Mr Lim says that there was no concluded settlement agreement between him and the plaintiff. Alternatively, even if there was, the plaintiff repudiated this agreement and Mr Lim accepted the repudiation.

5 Initially, the plaintiff sued for the dividends in full. The claim did not mention the settlement agreement. This was amended subsequently. As the plaintiff's claim now stands, the settlement agreement is its main plank. The plaintiff emphasises that he is entitled to receive $4.5m under the settlement agreement. The plaintiff's alternative cause of action, which arises only if it is found that there is no binding settlement, is that Mr Lim holds dividends amounting to $11,414,250 on constructive trust for the plaintiff and is obliged to pay them to the plaintiff.

6 There are numerous disputes of fact but the two main issues can be stated briefly. They are:

(a) Did the plaintiff and Mr Lim conclude a binding settlement agreement on 31 March 2009 under which Mr Lim was to pay the plaintiff $4.5m and if so, was this agreement later repudiated?

(b) Did Mr Lim buy all the plaintiff's shares in 2002 or were these shares transferred to Mr Lim on trust and held on trust until the actual sale took place in 2007?

7 In the discussion that follows, I will refer to the first defendant either as such or as "Mr Lim". As for the plaintiff, I will continue to use that nomenclature as there are too many Ngs involved in this case.

The first main issue: Was there a binding settlement agreement on 31 March 2009?

8 Both parties are agreed that on 31 March 2009, they met, together with a mutual friend, Mr Roy Ng, to discuss the plaintiff's dividend claims. During the discussion, Mr Lim offered to pay the plaintiff $4.5m in full settlement of his claim. The plaintiff and Roy Ng say that the plaintiff accepted the offer immediately. Mr Lim, however, maintains that the plaintiff did not accept it. No document was signed to evidence this alleged agreement. What I have to decide is thus whether I accept the plaintiff's version or Mr Lim's version as being the truth.

The plaintiff's version

9 The plaintiff and Mr Lim first met in 1985. They became good friends and did some business together. In 1995, Mr Lim asked the plaintiff to help him set up a new company. The plaintiff agreed and SinCo was incorporated in November 1995. The plaintiff was one of the subscribers and held his share on trust for Mr Lim. The other subscriber share was held by one Shirley Quek Pey Sung ("Quek Pey Sun") on trust for her husband, Terence Ng Chee Khoon ("Terence Ng"). Terence Ng was one of the key people working with Mr Lim in SinCo. From the beginning, the plaintiff did not play an active part in the running of SinCo. Mr Lim was in control of the company and he made all the decisions.

10 In the years that followed, the plaintiff became a substantial shareholder in the company and also lent money to others, including Mr Lim, to acquire shares in it. In 2002, the plaintiff transferred all his 112,500 shares in SinCo to Mr Lim. The plaintiff said that this was not a sale but that Mr Lim held the shares on trust for him until 2007 when an actual sale took place.

11 In relation to the settlement, the plaintiff's version of how this came about was as follows.

12 In early March 2009, Terence Ng, who was still a shareholder of SinCo, visited the plaintiff. He

told the plaintiff that he was having a dispute with Mr Lim over the management of the company. In the course of the discussion that followed, Terence Ng said that dividend payments made by SinCo between 2003 and 2006 amounted to more than $5m. The plaintiff was surprised: he had not received a single cent in dividends. Terence Ng in turn was surprised that the plaintiff had disposed of his shareholding to Mr Lim in 2007 without offering him the chance to acquire any part of the same. Terence Ng wanted to confront Mr Lim regarding his purchase of the plaintiff's shares.

13 On 16 March 2009, the plaintiff met Mr Lim. He warned Mr Lim that Terence Ng had found out about the sale of the plaintiff's shares and had indicated that he was going to commence legal proceedings against Mr Lim. The plaintiff did not raise the topic of the dividends at that meeting.

14 The next day, the plaintiff had another discussion with Terence Ng. He was given details of the dividends declared and paid for the financial years 2003 up to 2006. These apparently amounted to $11,660,000. The plaintiff was upset that the dividends were so high and yet he had not been paid anything. Subsequently, it turned out that the figures that Terence Ng had given him were incorrect and the actual dividends paid amounted to slightly over $24m.

15 On 18 March 2009, the plaintiff and Terence Ng met Mr Lim. They discussed the dividends and why Terence Ng had not been given the chance to purchase the plaintiff's shares in SinCo. The plaintiff also asked Mr Lim why he had cheated him of his dividend payments. Mr Lim did not comment or say that the plaintiff was not entitled to any dividends. Nor did he assert that the plaintiff had sold him the shares in 2002. The plaintiff asked Mr Lim to compensate him for the amount due. Mr Lim's response was simply to say that he would get back to the plaintiff.

16 By 23 March 2009, the plaintiff had not received a response from Mr Lim on the subject of the dividends. He then decided to enlist the assistance of Roy Ng. He visited Roy Ng at the latter's office and complained that Mr Lim had withheld his dividends. Roy Ng called Mr Lim to convey this complaint and shortly thereafter, Mr Lim arrived at Roy Ng's office. Roy Ng told Mr Lim that the plaintiff had said that dividends had been declared for the period 2003 – 2006 and that the amount of dividends paid out was about $11.66m. Mr Lim did not contradict this statement. Roy Ng also said that the plaintiff had worked out that his share of dividends was around $5.427m. Mr Lim said nothing. He did not ask how the dividends had been calculated.

17 The three men then went out for lunch together. After lunch, Mr Lim told the plaintiff that a large amount of the dividend payment had been used to pay a commission to one of SinCo's clients. He offered to pay the plaintiff $3.5m to settle his claim for dividends, implying that this was the plaintiff's share of what was left after the commission payment. The plaintiff accepted that offer straightaway.

18 About a week later, the plaintiff had second thoughts. He spoke to Terence Ng and found out that commission had not been paid out of the dividends. Thus, the plaintiff thought that he was entitled to much more than $3.5m. At some point, the plaintiff did a computation and came up with the figure of $5.4m. On 31 March, he told Roy Ng that he was turning down Mr Lim's settlement offer. Roy Ng conveyed this to Mr Lim and the three men then had another meeting. Towards the end of the meeting, Mr Lim offered the plaintiff $4.5m. The plaintiff said that he accepted this offer then and there. The plaintiff wanted this agreement committed to writing but Mr Lim was not agreeable. He said that there was no need to put the agreement into writing because Roy Ng was a witness to it. He proposed that all payments be made in cash and to Roy Ng as the witness.

19 On 14 April 2009, the plaintiff received the message from Roy Ng that Mr Lim was ready to make a partial payment. On 15 April 2009, however, the plaintiff sent a text message ("SMS") to Roy Ng

instructing him to tell Mr Lim that he was rejecting the $4.5m offer. He said

> "Good morning roy, pls let Bryan know that I am rejecting his offer of 4.5m. I accepted because of friendship but as more infors (*sic*) given to me I feel he had done me a lot of things against me. Likely leave a lawyer to advice me unless he can come out proposal acceptable. Sori to trouble you. Thanks"

20 The plaintiff then called Roy Ng and told him that he wanted $6.5m payable within a month. Sometime later that day, Roy Ng telephoned the plaintiff and told him that Mr Lim had rejected the new proposal.

21 On 24 April 2009, the plaintiff had another meeting with Roy Ng and told him that he had not heard any further from Mr Lim. Subsequently, there was a telephone conversation between Roy Ng and Mr Lim. When the call ended, Roy Ng said that Mr Lim had stated that he had done nothing wrong.

22 On 13 May 2009, Mr Lim sent the plaintiff an email in which he said, among other things, that he could not understand why the plaintiff was alleging that Mr Lim held shares for the plaintiff from 2002 to 2007. He asserted that this allegation was absurd. It was clear to the plaintiff from that email that there was no hope of resolving the matter by negotiation and he therefore consulted lawyers. This led to the commencement of the present action on 23 May 2009.

23 Roy Ng's affidavit of evidence-in-chief ("AEIC") contained an account of the events between 23 March 2009 and end April 2009 that was substantially similar to the one given by the plaintiff. In relation to the offer of $4.5m made by Mr Lim on 31 March 2009, Roy Ng stated that Mr Lim said he would make a part payment towards the sum of $4.5m to Roy Ng within two weeks. He did not recall Mr Lim saying how much the part payment was going to be. When the trial started, Roy Ng produced a copy of his desk calendar for 2009. On the space provided for 31 March 2009, he had handwritten "Patrick, Bryan 2 pm meet 4.5 m agreed by year end".

24 Roy Ng gave evidence about what had happened in April 2009. On 14 April 2009, in the afternoon, he received a call from Mr Lim who said he was ready with the partial payment in cash. He had not been able to contact the plaintiff about the payment arrangements. Roy Ng then offered to do so. Roy Ng was not able to speak to the plaintiff, however, and therefore sent him an SMS to tell him that Mr Lim was ready to make the first part payment. The next morning, 15 April 2009, Roy Ng received the plaintiff's SMS rejecting the $4.5m offer. He forwarded this message to Mr Lim the same day and called him later to repeat the plaintiff's decision. That evening, he also sent Mr Lim a detailed email setting out how the plaintiff had arrived at $6.5m.

25 After that, Roy Ng and Mr Lim talked again. Mr Lim said he was disappointed with the plaintiff for changing his mind. During the first meeting, he had offered the plaintiff $3.5m which the plaintiff accepted but later rejected. Then at the second meeting, he had offered him $4.5m which he accepted but later rejected. The plaintiff now wanted $6.5m and Mr Lim wanted to know how the plaintiff had arrived at that figure. It subsequently became clear to Roy Ng that Mr Lim was not prepared to agree to the $6.5m.

Mr Lim's version

26 Mr Lim ascribed the whole claim for dividends made by the plaintiff to the instigation of Terence Ng. From the beginning of 2009, Mr Lim believed that Terence Ng wanted to sell his shares in SinCo to Mr Lim in order to set up a competing business in China. He refused to buy Terence Ng's SinCo shares

and it was only after this rejection that Terence Ng approached the plaintiff. Mr Lim believed that Terence Ng's purpose was to add pressure on him.

27 On 16 March 2009, the plaintiff called Mr Lim and asked for a meeting as he needed to talk to Mr Lim about Terence Ng. When they met later that day, the plaintiff appeared quite normal and friendly. He told Mr Lim that Terence Ng was not happy because Mr Lim had refused to buy his shares. Mr Lim responded by explaining his problems with Terence Ng to the plaintiff. The plaintiff revealed that Terence Ng wanted a statement from him but he assured Mr Lim that he was not going to work with Terence Ng. He went so far as to warn Mr Lim against working with Terence Ng.

28 The next day, Terence Ng sent Mr Lim a friendly sounding message asking for a meeting on 18 March 2009 to settle their disputes. The defendant agreed. No third party was mentioned so when the plaintiff turned up with Terence Ng on 18 March 2009, Mr Lim was shocked. The two visitors sat down in Mr Lim's office and glared at him silently. He did not know what to say. The plaintiff then asserted that he was entitled to all dividends paid before 2007. Terence Ng jumped in and claimed that if dividends up to 2007 were due to the plaintiff, he was entitled to 45% of the shares and Mr Lim had to pay him $25m. Both spoke fiercely and intimidatingly.

29 Mr Lim had no idea what his visitors were talking about. He did not understand the basis for the demands. He kept quiet for a while as he was shocked and did not know why suddenly the plaintiff was taking Terence Ng's side or why both of them were acting so aggressively towards him. Mr Lim was frightened and after a while, he told the plaintiff and Terence Ng to leave his office and they did. Mr Lim was very surprised that the two men would try to concoct such absurd allegations. The plaintiff had been kept informed of all dividends declared by SinCo from 2003 to 2005 and had signed copies of the directors' resolutions which approved the dividends.

30 Two days later, Terence Ng sent Mr Lim an email asserting that he had asked Mr Lim many times about the plaintiff's shares and, each time Mr Lim had assured him that he had paid the plaintiff. These assertions were lies. Prior to 18 March 2009, neither the plaintiff nor Terence Ng had ever made the false claim that Mr Lim held shares on trust for the plaintiff. In the same email, Terence Ng offered to buy 50% of the plaintiff's shares for $2.5m.

31 That same evening, Mr Lim met the plaintiff and asked why the plaintiff was working with Terence Ng. He was told that Terence Ng had approached the plaintiff for help in making a claim against Mr Lim. Terence Ng had provided the plaintiff with some documents and wanted a statement from the plaintiff. The plaintiff refused to reveal details of these documents and statement. The plaintiff then said that he could make a claim for the dividends because Mr Lim had only paid for his shares in 2007. The plaintiff assured Mr Lim that he did not want to work with Terence Ng against Mr Lim but some payment should be made to him. Mr Lim rebutted the suggestion saying that there was no reason for him to pay the plaintiff anything because he did not owe the plaintiff or Terence Ng anything.

32 On 23 March 2009, Mr Lim went to Roy Ng's office to meet the plaintiff. On his arrival, the first thing that Roy Ng said to him was that the plaintiff had asserted that Mr Lim owed him dividends. Roy Ng said that Mr Lim should pay the plaintiff the money owed. Mr Lim responded that he did not owe the plaintiff anything. The plaintiff then said that the transfer of his shares had taken place in 2007, so dividends declared prior to 2007 belonged to him. Mr Lim contradicted this – he asserted that the plaintiff had sold him the shares in 2002.

33 The conversation continued for a while and Roy Ng then suggested that Mr Lim pay the plaintiff $5m. No details of how this figure was derived were given to Mr Lim, who was alarmed at the amount.

At that point in time, Mr Lim knew he was in a fight with Terence Ng; it was clear to him that the plaintiff had joined in the fray. He thought the plaintiff and Terence Ng were going to make up claims against him and were going to gang up against him. Under severe stress, Mr Lim thought of putting out a number to see how serious the plaintiff was in his desire to hurt him. He also wanted to try and bring an end to the pressure. Mr Lim then mentioned the figure of $3.5m as he believed that he could afford that amount and was willing to pay it to rid himself of the plaintiff's and Terence Ng's vexatious claims. The plaintiff did not accept the offer of $3.5m, insisting on $5m. Finally, the plaintiff said that he would think about the offer.

34 On 31 March 2009, Roy Ng called Mr Lim and asked him to meet the plaintiff again. At the ensuing meeting, the plaintiff told Mr Lim that $3.5m was unacceptable. Terence Ng had provided him with more information about SinCo's finances and informed the plaintiff that Mr Lim could afford to pay more. Mr Lim was alarmed that Terence Ng was giving the plaintiff confidential financial information, including its profit margin, about the company. If the plaintiff released this information to SinCo's suppliers and customers, it might have negative repercussions on SinCo's business. The thought that the plaintiff and Terence Ng were teaming up to fabricate claims against him was extremely upsetting. Both the plaintiff and Roy Ng pressured Mr Lim to increase the figure of $3.5 m.

35 Mr Lim was feeling "incredibly stressed" over the prospect of having to deal with both Terence Ng and the plaintiff. Although their claims were baseless, it would be his word against theirs and he was uncertain of how that would turn out. He wanted one less problem to deal with and thus mentioned the figure of $4.5m to the plaintiff. The plaintiff made it clear that the sum was unacceptable and asked Mr Lim to name a higher figure. No agreement was reached.

36 On 14 April 2009, Mr Lim called Roy Ng and asked whether $4.5m was acceptable to the plaintiff. He also asked how payment should be made. He just wanted to know if there was a conclusion to the matter. Roy Ng said he would check with the plaintiff. However, the next day, Roy Ng informed Mr Lim by SMS that the plaintiff had rejected the sum of $4.5m. Roy Ng followed this up with a telephone call in which he said that the plaintiff had issued an ultimatum to Mr Lim to pay him $6.5m within one month. Mr Lim rejected the ultimatum immediately. It was obvious to him that every time he suggested a figure, the plaintiff would ask for more money and it appeared that there was no limit to the plaintiff's demands.

37 In the afternoon of 15 April 2009, after sending Mr Lim an email with the plaintiff's computation of the amount of dividends which were due to him, Roy Ng telephoned him again. Roy Ng repeated the demand that he pay the plaintiff $6.5m. Mr Lim replied that he would not pay a single cent and would not discuss the matter any further.

38 On 16 April, the plaintiff sent Terence Ng an email concerning the settlement negotiations. In this email, he wrote that from 2003 to 2006, $11.66m was paid in dividends but none was paid to him. He continued that on 31 March, Mr Lim had offered him a sum of $4.5m "which I eventually turned down". Mr Lim said that the plaintiff's email confirmed his understanding that there was no settlement agreement.

Analysis of the evidence

39 As can be seen from the discussion above, there are hardly any documents to show whether there was an agreement between the parties. The only matters in writing are a text message, some notations on a calendar and some emails sent after 31 March 2009. In this situation, the credibility of the witnesses comes to the fore. For this reason, the parties made long and detailed submissions on the creditworthiness of the three main witnesses: the plaintiff, Mr Lim and Terence Ng. Whilst the

evidence of the plaintiff and Roy Ng is not free of difficulties and there were some inconsistencies, overall I prefer their evidence on this issue to that of Mr Lim.

40 The plaintiff's account was consistent throughout as regards the main factual elements. His version of events was also supported by Terence Ng, who had no reason to help him claim dividends. Mr Lim was not able to come up with any explanation as to why Terence Ng approached the plaintiff in 2009 if it was not to find out when he sold his shares, or why Terence Ng should have been so angry and upset about that sale on 18 March 2009 if he had known all along that the shares were sold in 2002 and had declined to buy them at that time. Mr Lim's story that he felt threatened by Terence Ng and the plaintiff because the plaintiff would help Terence Ng make a massive claim against him seems exaggerated. The email correspondence showed that by 20 March 2009 Terence Ng wanted to buy over half of the plaintiff's shares for $2.5m. Even if as alleged by Mr Lim, he had earlier made a claim for $25m, that bigger demand had been dropped by 20 March. So when the settlement discussions took place, Mr Lim really could not have been as intimidated as he wanted me to believe.

41 Further, the defence case was implausible. The defendants had maintained that when the offer of $3.5m was made, the plaintiff had not completely rejected it but had indicated that he would think about this. Yet when the plaintiff rejected the new offer of $4.5m on 31 March 2009, Mr Lim's position was that he did not ask why the plaintiff was turning it down. That was inherently implausible, especially if positive indications had been given by the plaintiff about his willingness to accept it. Mr Lim also disagreed that a reason for the rejection was given, namely that the plaintiff said that he had discovered that no commission was paid out of the dividends. Mr Lim's evidence was that he had never said anything at any time to Roy Ng or to the plaintiff about having to pay commission to agents out of dividends. He was lying about this as proved by the contemporaneous documentation.

42 Roy Ng was cross-examined on the basis that Mr Lim never mentioned commissions to him on 15 April 2009. In the plaintiff's email of 16 April 2009, he stated that he had been told by Roy Ng that Mr Lim rejected the proposed figure of $6.5m for the reason that a huge sum had been paid out as commission to one Philip Tan. This email showed that the commissions excuse was conveyed by Roy Ng to the plaintiff. As the plaintiff submitted, this excuse could only have been conveyed by Roy Ng to him if it was something that Mr Lim had said to Roy Ng on 15 April, as Roy Ng testified it was. The only other possibility was that Roy Ng made up a story on 15 April 2009 about Mr Lim telling him he had paid commissions out of dividends to an agent called Philip Tan and passed the story onto the plaintiff. That would be a fanciful story as there was no reason for Roy Ng to tell the plaintiff that Mr Lim had given him that excuse for refusing to pay the $6.5m. Further, the defendants did not explain where Roy Ng got the name Philip Tan from.

43 The plaintiff submitted that once it is established that Mr Lim's denial that he made the commissions excuse is untruthful, the credibility of the rest of Mr Lim's account of the settlement negotiations starts to unravel. If Mr Lim did make the commission excuse on 23 March 2009 as a ground for offering less than the plaintiff said he was entitled to, then it is more likely than not that the plaintiff did have a telephone conversation with Terence Ng on this subject on or around 30 March 2009, just to check the position. It is likely that during the conversation, Terence Ng would have said that it was his understanding that commissions to agents had been paid by SinCo and not from the shareholders' dividend (this being what he said in his email of 21 April 2009). Therefore, the plaintiff and Roy Ng were truthful when they said that on 31 March 2009, the plaintiff told Mr Lim that he was turning down the offer of $3.5m because he had discovered that the commissions excuse was a lie.

44 In addition to the above argument, which is convincing, I find Mr Lim's admission that he was

upset on 15 April 2009 when Roy Ng told him about the plaintiff's new demand to be telling. Mr Lim said that the two earlier meetings had been a waste of time and that the plaintiff was blackmailing him and he did not want to deal with him anymore. If neither of Mr Lim's previous offers had first been accepted and then rejected, I do not believe that his reaction would have been so extreme. After all, if on both occasions all that the plaintiff had said was that he would think about the offer that had been made and come back to Mr Lim on it, there was no reason for Mr Lim to expect an acceptance. He knew that the plaintiff wanted more money and would likely make more enquiries in order to decide if either offer was a good one. Mr Lim's strong reaction to the plaintiff's rejection of the $4.5million offer was more probably due to the fact that on two occasions he thought the matter had been resolved, only to find the plaintiff trying to wriggle out of the agreement and get more money. In fact it was the defendants' own submission that it was not probable that the plaintiff would have accepted the offer of $3.5m immediately on 23 March 2009 without first checking out Mr Lim's excuse.

45 The defendants submitted that Roy Ng tailored his evidence to suit the plaintiff's case. They raised a number of points. First, when the plaintiff was trying to resist the defendants' application to strike out parts of the plaintiff's pleadings and affidavits which referred to the "without prejudice" meetings, Roy Ng filed an affidavit to state that the meetings were not for purpose of settlement of dispute. In his affidavit however, Roy Ng said that those meetings were settlement meetings where he "volunteered to mediate".

46 The plaintiff responded that the argument that the plaintiff put forward to resist the striking out application was that the discussions were not "without prejudice" communications because there was no dispute between the parties to be settled. The argument was centred on the factual premise that Mr Lim did not deny that dividends were due (the first time he alleged that he did deny it at the 23 March 2009 meeting was in his AEIC). It was in that context that Roy Ng said that the meetings "were not made for the purposes of settlement of a dispute". I agree that there is no reason to characterise that as a deliberately false statement on oath. From Roy Ng's perspective, there was no dispute because he had not been told that Mr Lim was disputing the plaintiff's entitlement to the dividends. The purpose of arranging the meeting was to bring about the payment of the debt by getting Mr Lim and the plaintiff together to discuss the matter. Roy Ng's description that he "volunteered to mediate" was a legitimate description of what he was doing – he was trying to resolve the claim by one old friend against another old friend by bringing the parties together to discuss the matter and hopefully reach agreement. Mediators can and do resolve situations where one party has put forward no defence to the claim. The substance of Roy Ng's evidence as to the nature of what he was doing or the underlying facts did not change. The label he attached to what he was doing was consistent with the legal characterisation by the court of what was going on at the time.

47 Secondly, the defendants noted that in his first affidavit of May 2009, Roy Ng said that the plaintiff had "agreed in principle to the proposed sum of $3.5m" but in his AEIC he said that the plaintiff had "categorically accepted" the proposal. The defendants claimed that Roy Ng changed his evidence to suit the plaintiff's case. The plaintiff responded and contended that Roy Ng's evidence on the facts was always consistent because he had always said that the offer of $3.5m was accepted at the meeting. Moreover, the phrase "agreed in principle" in the first affidavit was open to being interpreted as meaning that the plaintiff had said something falling short of an acceptance of the offer. It was therefore unsurprising that Roy Ng clarified this ambiguity in court. That was not a change of evidence I accept this submission.

48 The defendants pointed out that Roy Ng had not been able to produce a copy of the text message he sent the plaintiff on 14 April 2009. They cross examined him with the intention of establishing that there was no such message and that he had made it up for the purpose of his AEIC.

The plaintiff replied that the evidence had to be tested against the inherent probabilities.

49 It is common ground that Mr Lim telephoned Roy Ng on 14 April 2009, exactly two weeks after the meeting on 31 March, at which the plaintiff and Roy Ng said that it was agreed that the first instalment of $4.5m would be paid in two weeks through Roy Ng. Mr Lim's evidence about that conversation is that he asked Roy Ng whether the figure of $4.5m was acceptable to the plaintiff, and if so, how the payment should be made, and Roy Ng said that he would check with the plaintiff. Roy Ng's evidence is that Mr Lim told him that he was ready to make a partial payment, but that he (Mr Lim) had not been able to get in touch with the plaintiff. Roy Ng said he would contact the plaintiff to tell him. Subsequently (still on 14 April 2009), he called Mr Lim back and said he had not been able to get hold of the plaintiff either.

50 Even on his own account of the reason for the call, the fact that Mr Lim contacted Roy Ng on 14 April 2009 is consistent with his continuing to regard Roy Ng as an honest and impartial intermediary. After the call, Mr Lim's expectation must have been that Roy Ng would try to contact the plaintiff straight away. Logically, Roy Ng could do so either by calling the plaintiff or by sending him an SMS. The plaintiff sent Roy Ng an SMS the following morning. The likelihood is that the SMS from the plaintiff was sent in response to a prior communication from Roy Ng. This must have been either a voicemail or a text message since if the two men had spoken there would have been no need for the text from the plaintiff. The defendants did not put the case to Roy Ng that the SMS sent by him to the plaintiff had asked the plaintiff if he was willing to accept Mr Lim's offer to settle at $4.5m. Instead the defendants' case is that the SMS of 14 April 2009 did not exist. Since it is objectively likely that the SMS did exist, it follows that it must have said what Roy Ng and the plaintiff testified it said.

51 The defendants pointed to Roy Ng's evidence that some parts of his first affidavit had been copied from the plaintiff's and that some of his evidence was mixed up with the plaintiff's- Roy Ng had explained that when his affidavit was being prepared there was a cut and paste job from the plaintiff's affidavit. After the draft was flashed on a screen for him to review, he signed it without reading it again. The defendants asserted this showed that Roy Ng had no regard for the accuracy of his evidence. However, I found Roy Ng to be a generally straightforward witness. There was no reason for him to support the plaintiff rather than the first defendant since he was friends with both parties. Although the defendants tried, they were unable to come up with any good reason why Roy Ng would side with the plaintiff rather with the first defendant. I agree with the plaintiff's rebuttal that the defendants were making too much out of Roy Ng's attempt to correct an obvious mistake in his earlier affidavit. It was not his fault that the previous lawyers were cutting and pasting parts of the plaintiff's affidavit to save time when putting Roy Ng's affidavit together. Roy Ng was not trying to blame the lawyers for the mistake but rather to explain how the evidence was put together and the oversight occurred.

52 At this juncture, it is appropriate for me to say that I accept Roy Ng's evidence in relation to his desk calendar. I believe that the notations on the calendar with regard to the agreement for payment of $4.5m within one year were made on 31 March 2009. I also accept his evidence as to the reason why he forgot that he had done this and did not produce the complete entry on the calendar earlier.

53 I found that Mr Lim's story was undermined by his behaviour. According to him, during the first meeting with the plaintiff and Roy Ng, he had explained to Roy Ng that he did not owe the plaintiff anything because he had bought the plaintiff's shares in 2002. Yet if that had been Mr Lim's stand from the very beginning, it was odd that the parties still had so much to discuss that they went out for lunch together, with Mr Lim driving. Mr Lim's version was that amongst other things discussed

during lunch, he told the plaintiff and Roy Ng his side of the story regarding his dispute with Terence Ng and aired some of his grievances. By then, on his own story, Mr Lim was thinking that the plaintiff was ganging up with Terence Ng. He had also told Roy Ng quite clearly that the plaintiff's claim was bogus. It is unbelievable that if all that had happened, Mr Lim would have driven the other two men to lunch and discussed his problems with Terence Ng with them.

54 I also noted during the cross-examination of Mr Lim on this part of the case that he was frequently evasive. He seemed at times to deliberately misunderstand questions. He had to be told on more than one occasion to listen to the question before answering it.

55 On balance, I find that the evidence supports the plaintiff's case that he accepted the settlement offer of $4.5m made on 31 March 2009 by the first defendant. This is notwithstanding the plaintiff's own frequent references to turning down the offer when he was trying to get more money out of Mr Lim. The SMS itself showed that the plaintiff used that expression incorrectly because he applied it to a situation where he was changing his mind about an offer that he had already accepted. The plaintiff's version is supported by Roy Ng's evidence, the SMS message of 15 April 2009 and the emails which the plaintiff wrote thereafter, as well as the calendar notations. Thus I find that there was a binding settlement agreement on 31 March 2009. The fact that exact payment dates were not agreed does not, in this case, affect the certainty of the settlement. I accept that what was agreed was a part payment within two weeks and the rest by the end of the year. In the light of the parties' long relationship during which money had often been owed by one to the other for long periods of time, such an arrangement would have been acceptable and regarded as workable.

Was the settlement agreement repudiated by the plaintiff?

56 The defendants submitted that if the court were to find that the plaintiff and the first defendant had agreed to settle their dispute for $4.5m, the plaintiff had thereafter repudiated this settlement agreement.

57 In relation to the repudiation argument, I have to consider the following:

(a) Whether the defendants are entitled to run an alternative argument that the settlement agreement if formed had been repudiated;

(b) If so, whether the plaintiff had evinced a clear intention not to abide by any agreement to settle; and

(c) Whether Mr Lim accepted the plaintiff's repudiation so as to discharge the settlement agreement.

Are the defendants entitled to argue that the settlement agreement was repudiated?

58 The plaintiff submitted that it was not open to the defendants to argue that the settlement agreement, if formed, was repudiated. The basis of this submission is the proposition of law that an alternative statement of fact is not permitted if one statement or the other must, to the knowledge of the pleader, be false. The plaintiff said that a party could not both approbate and reprobate. The defendants' argument was akin to someone seeking to defend a charge of assault by claiming that he was nowhere near the scene of the crime on that date, but if he was, he was not involved in the fight.

59 I do not accept the above submission. It is founded on the flawed premise that the defendants

were arguing in one and the same breath that the plaintiff had not accepted *and* had accepted $4.5m offer. That was not the position taken by defendants. Rather their case is that *in the event* that the court is persuaded that there was factual acceptance and valid formation of the contract, which the defendants denied, such agreement was subsequently repudiated by the plaintiff. As the defendants submitted, they were relying on alternative grounds and not on inconsistent facts. I accept this submission and hold that the defendants are entitled to make this argument.

Did the plaintiff's actions show an intention not to abide by the settlement agreement?

60 The defendants relied on the following facts to substantiate the contention that the plaintiff repudiated the settlement agreement:

(a) Roy Ng's evidence that on 15 April 2009, he told Mr Lim that the plaintiff was no longer willing to settle at $4.5m and had issued an ultimatum that Mr Lim should pay the plaintiff $6.5m within one month, non-negotiable;

(b) The plaintiff was present when Roy Ng made this telephone call to Mr Lim and had never distanced himself from this message;

(c) In his SMS of 15 April 2009, the plaintiff said that he was likely to consult a lawyer unless Mr Lim could come up with an acceptable proposal. The plaintiff was clearly threatening legal proceedings unless Mr Lim proposed a higher figure than $4.5m and this showed that the plaintiff did not consider himself bound by any agreement for $4.5m;

(d) In the plaintiff's subsequent emails to Terence Ng and Mr Lim, he stated that he had turned down the proposal of $4.5m;

(e) On 26 May 2009, the plaintiff commenced this suit for the full dividends and filed an affidavit in which he said that he had offered to accept $6.5m but Mr Lim refused to accept his offer. Hence he was compelled to commence the lawsuit.

61 The plaintiff argued that his ultimatum did not amount to a repudiation of the settlement agreement because there was no evidence that had Mr Lim tendered $4.5m, he would have rejected it, or that he would have sued on the original claim which he had agreed to forbear regardless of whether any payment was made. The plaintiff argued that his ultimatum was merely an attempt to vary the terms of settlement. It is hard to accept that argument. In his SMS to Roy Ng, the plaintiff stated that his ultimatum was non-negotiable. The plaintiff's obligation under the settlement agreement was two-fold; first, to accept $4.5m as a settlement payment and next to refrain from suing on the original claim. The plaintiff made it crystal clear that he would not accept $4.5m and that he would not refrain from making the original claim for dividends unless he was paid $6.5m.

62 The plaintiff argued that his reference to consulting a lawyer was not a threat to sue for the dividends but rather an indication that he would seek legal advice on his position should his effort to re-negotiate be unsuccessful. This is not convincing. The plaintiff had no need to tell the first defendant that he was going to consult a lawyer on his legal position if that was all that was in his mind. Rather, by mentioning the lawyer, he must have intended to produce an effect: to tell the defendant he was serious in his rejection of the previously agreed sum and the matter would move beyond a discussion between old friends if the new figure was not agreed. The whole tone of the message was extremely tough.

63 In any event, attempts to re-negotiate a contract can amount to repudiation of the contract.

The Court of Appeal has observed that continued negotiations may disclose an agreed rescission of the concluded contract: see *Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] 2 SLR(R) 332 at [53]. Further, in an English case, *Stocznia Gdanska v Latvian Shipping Co and others* [2001] 1 Lloyd's Rep 537, a shipyard had entered certain contracts to build vessels for a shipowning company and its subsidiary. The market declined and the shipowning company and its subsidiary attempted to re-negotiate the contracts. The negotiations having failed, the shipyard commenced proceedings for breach of the contracts. It was held that the shipowning company and its subsidiary's conduct during the negotiations amounted to a repudiation of the contracts because they made it clear that they had no intention of performing the contracts.

Did Mr Lim accept the plaintiff's repudiation of the settlement?

64 The plaintiff having indicated that he was not willing to abide by the settlement agreement, Mr Lim had the choice of accepting that repudiation or rejecting it. The defendants argued that Mr Lim accepted the plaintiff's repudiation in his telephone conversation with Roy Ng on 15 and 24 April 2009 when he said that he was not going to pay the plaintiff anything. The same was communicated to the plaintiff himself in Mr Lim's email sent on 13 May 2009. The defendants submitted that Mr Lim's rejection of the plaintiff's ultimatum and insistence that he would not pay the plaintiff a single cent was plainly inconsistent with the continued existence of a settlement agreement.

65 On the evidence, I agree that the plaintiff repudiated the settlement agreement by showing a settled intention not to abide by it. His intention was further demonstrated by his lawsuit which did not mention the settlement agreement at all, not even as an alternative claim.

Conclusion on first main issue

66 I have found that there was an agreement on 31 March 2009 that the parties would settle the plaintiff's claim for dividends by payment of a sum of $4.5m. I have also found that the plaintiff subsequently repudiated this settlement agreement and that such repudiation was accepted by Mr Lim. In the circumstances, I hold that the plaintiff cannot enforce the settlement agreement.

The second main issue: Is the plaintiff entitled to dividends?

67 The answer to the question posed by the second issue depends on whether the plaintiff was the true beneficial owner of a 45% stake in SinCo until mid- 2007. This in turn depends on whether I believe the plaintiff's story that he transferred his shares to Mr Lim in 2002 on trust or whether I believe the defendants' story that the transfer followed an outright sale of the shares.

Undisputed facts

68 There are a few undisputed facts. At the beginning of 2002, there were 250,000 issued shares in SinCo. The plaintiff held a total of 175,000 shares of which 62,500 shares were held on trust for Mr Lim and 112,000 belonged to him beneficially. The two other shareholders held 37,500 shares each, on trust for their respective husbands, Terence Ng and Perry Ong.

69 On 15 March 2002, the plaintiff wrote to the company secretary of SinCo and sent a copy of this letter to all the other directors, that is, Mr Lim, Terence Ng and Perry Ong. In the letter, he said that he wished to relinquish 112,500 shares in SinCo to the highest bidder at a minimum price of $1.2m. He also set out certain conditions which he wanted the buyer of his shares to fulfil. These included terms that the buyer had to ensure that all personal loans made by the plaintiff in relation to SinCo would be returned and that all guarantees given by him would be discharged.

70 On receipt of the plaintiff's letter, the company secretary, Chow Kwei Fong, wrote to the other registered shareholders asking them whether they wanted to buy a proportion of the plaintiff's shares at $10 per share, or all the shares if the other shareholder did not take up her proportion. Perry Ong's nominee, Cheng Ai Toong, was offered 56,250 shares. Perry Ong replied to say he was not interested in buying. Terence Ng's wife was offered the other 56,250 shares. She did not accept the offer.

71 Shortly thereafter, the plaintiff signed a share transfer form. The plaintiff says that this transfer form was blank when he signed it. The transfer form that was adduced in evidence showed that by it, the plaintiff transferred 175,000 ordinary shares to Mr Lim in consideration of the sum of $875,000. The transfer form was dated 17 April 2002. At the same time, Terence Ng's wife transferred the shares she was holding on trust for him into his name. On 17 April 2002, a company resolution was passed approving the transfer of 175,000 shares from the plaintiff to Mr Lim and 37,500 shares from Quek Pey Sung to Terence Ng. This resolution was signed by the plaintiff, Terence Ng and Mr Lim.

The conflicting positions

2002 share sale

72 Mr Lim says that in March 2002, he purchased the plaintiff's 112,500 shares in SinCo at the price of $4,875,000. The plaintiff agreed that because this price included a premium, he would allow Mr Lim to make deferred payment for the shares: the sum of $875,000 would be paid first in various instalments and the balance of $4m would be paid later when the first defendant was in a position to make payment. The plaintiff agreed that the shares would be transferred to Mr Lim in 2002 itself despite the non-payment.

73 The defendants submitted that the initial $875,000 payment was made in various instalments from 2002 to 2006, usually by way of cash or cheque. Mr Lim, however, could only recall specific details of three payments:

	Date	Amount
(a)	3 January 2003	250,000.00
(b)	20 September 2004	33,000.00
(c)	26 July 2005	20,500.00

As for the balance $4m, he agreed with the plaintiff that that was paid in June 2007 by way of cashier's order though he gave the date as 18 June 2007 rather than 22 June 2007.

2007 share sale

74 The plaintiff says that between April 2002 and June 2007, Mr Lim was holding 112,500 shares on trust for him. He says that it was only in April 2007 that he agreed to sell these shares to Mr Lim for $5m. This sum was paid to him in three instalments:

(a) $500,000 in cash sometime in April 2007 at his home;

(b) A further $500,000 in cash sometime in May 2007 at Thomson Plaza;

(c) The balance of $4m was paid by cashier's order on 22 June 2007.

The sale allegedly made in 2007 shall be referred to as the 2007 Share Sale.

The circumstances leading up to the 2002 transfer

Was there a plot to oust Perry Ong?

75 The plaintiff's case is that in 2002 there was a plan to oust Perry Ong as a shareholder and director of SinCo. This was to be done through a sham sale by the plaintiff of his 45% stake in SinCo in order to create the false impression that the plaintiff wanted to sever all his connections with the company. The reasoning was that this impression would persuade Perry Ong to sell out because he had differences with Mr Lim and would not be confident of his position once the plaintiff was no longer around to support him. On this point, the defendants' case is the exact opposite: there was no plot to give Perry Ong that false impression. The plaintiff genuinely wanted to sell his shares in SinCo.

76 The available evidence does not support the plaintiff's claim that there was a plan aimed at achieving Perry Ong's resignation. There might have been some general unhappiness between Perry Ong and Mr Lim but it is too much of a stretch for me to accept that this tension caused the concoction of an elaborate plan to convince Perry Ong that the plaintiff was cutting his ties with SinCo.

77 The plaintiff submitted that his letter of 15 March 2002 was a sham. All the parties knew that the conditions of sale demanded by the plaintiff could not be met by Terence Ng and Perry Ong. None of them had the requisite funds to purchase their pro-rata share of the plaintiff's stake which was being offered at a minimum price of $1.2m or $10 per share. The plotters knew that the end result would be that Mr Lim "acquired" the plaintiff's shares. The plaintiff had fashioned his offer as a sale to the highest bidder because he wanted to give Mr Lim the chance to outbid the others.

78 The defendants responded with four main arguments. First, at the time when he made the offer, the plaintiff was a director of SinCo. However, he did not tell the other shareholders that he was going to resign as a director (and he did not do so until 2005). The defendants argued that this was evidence that the plaintiff's allegation that there was a plot was fictitious. If such a plot had indeed existed, the terms of the sale would have indicated that the plaintiff would resign as a director upon the final disposition of his shares. This would have shown Perry Ong that the plaintiff was indeed severing all ties with SinCo.

79 Secondly, the defendants submitted that cl 2 of the offer, dealing with the discharge of the company's indebtedness to the plaintiff, worked against rather than in furtherance of the alleged plot. Perry Ong owed the plaintiff money (which the plaintiff had lent him to help him purchase his SinCo shares) and it did not make sense for the plaintiff to impose a condition that would require Perry Ong to pay the plaintiff back if the plaintiff's real aim was to urge Perry Ong to leave SinCo. Further, by refusing to repay the loan at that time, Perry Ong could easily have thwarted the sale since his refusal would have meant that one of the conditions of the sale would not be met.

80 The third submission was that the offer did not make sense—if it was part of the alleged plot—because it offered Perry Ong the opportunity to buy more shares in SinCo which was the exact opposite of the aim of the plot. Had Perry Ong accepted the offer made to him to buy 56,250 shares, he would have ended up owning 37.5% of SinCo's shares which was larger than Mr Lim's own stake of 25% (then being held by the plaintiff on trust). The defendants argued that the plaintiff's submission – that it was plain that Perry Ong did not have the funds to purchase the additional shares – was speculative and not borne out by any evidence. The defendants added that there was no reason why Perry Ong could not have taken out a loan.

81 Last but not least, if the plan was to create the impression that Perry Ong's biggest ally was disassociating himself from the company, such that Perry Ong would feel alone in his ongoing disagreements with Mr Lim, there was a more effective alternative available to the plotters. The plaintiff could simply have transferred to Mr Lim the 62,500 shares held on trust for the latter. After this Mr Lim would have been a member of the company and the plaintiff could, in accordance with Art 28 of SinCo's Memorandum and Articles of Association, have freely transferred his own shares to Mr Lim. Perry Ong would have learnt of the change of Mr Lim's status and his acquisition of the plaintiff's shares from the directors' resolutions which would have had to be passed. The plaintiff had no answer to this point.

82 The reasons put forward by the defendants are not the only ones that make it unlikely that the offer from the plaintiff was part of a calculated design to create a false impression that would ultimately serve to force Perry Ong to sell his shares. Another problem for the plaintiff is that what was supposed to be a grand plan was so poorly executed. The plaintiff's letter did not follow proper company procedure in several respects: it was addressed to the directors, not to the other shareholders; it stipulated a sale to the highest bidder as opposed to a sale of shares to existing shareholders in proportion to the latter's shareholdings; and the bidding process itself was novel and not provided for by the memorandum and articles. If indeed the plaintiff and his then cronies were plotting to be rid of Perry Ong, surely they could have come up with a better method than sending such an odd offer to the company secretary for circulation. The defects in the letter are more consistent with a unilateral decision by the plaintiff to sell his shares which he put into effect without seeking advice from others on proper procedure.

83 In fact, the company secretary did not pass on the plaintiff's proposal in the form in which it was made to the other shareholders. He sent out an amended proposal to the registered shareholders offering them each half of the plaintiff's shares. He did not make any offer to Mr Lim. This omission should have been expected since Mr Lim was not a registered shareholder then. However, if the whole point of the plot was that the plaintiff be seen to be selling out to Perry Ong's opponent, then the company secretary should have been informed that Mr Lim as a beneficial shareholder should be allowed to bid as well. Neither the plaintiff nor Mr Lim made any attempt to persuade the company secretary to allow such a bid. This undermined the whole "plot" because it meant that Mr Lim had no opportunity to disrupt the other bids.

84 The plaintiff suggested at one point during the evidence that either Mr Lim or Terence Ng would have made a higher bid should Mr Ong have agreed to purchase the shares offered to him. But how could Mr Lim do this if the company secretary did not make him any offer of shares? Further, as the defendants noted, Terence Ng did not seem to be aware that there would be a bidding process if Perry Ong showed an interest in buying the plaintiff's shares. When he was asked why he was so sure that Mr Ong would not scupper their plans by taking up the shares offered to him, Terence Ng did not say that this would trigger a counter-bid by either himself or Mr Lim. Instead, his response was that they all knew that Perry Ong did not have the funds, and in any event would not take up the offer if he knew that the plaintiff was distancing himself from SinCo.

85 The plaintiff's version is doubtful for two other reasons. First, during cross-examination the plaintiff put forward an explanation that the plan involved Terence Ng outbidding Perry Ong if necessary. If it was part of the plan that Terence Ng might end up holding the plaintiff's shares on trust for him, why did Terence Ng or his nominee not take up the 56,250 shares offered to him? The form sent out gave him the option to take up all available shares not taken up by the other shareholder, at $10 per share. If Terence Ng had ticked either or both of the options (ie his portion only or all available shares), the plan to deceive Perry Ong would have been executed perfectly. It really mattered not to the essence of the plan whether the plaintiff's shares were bought by Mr Lim or

Terence Ng; in either case, the plaintiff would have been out of the company and Perry Ong would have been left to deal with Mr Lim on his own. Yet Terence Ng did not bother to purchase even the portion of the shares offered to him.

86 Secondly, the company secretary offered the plaintiff's shares at $10 per share when the plaintiff's own price worked out to $10.67 per share. In his affidavit, the plaintiff said that he was unsure how the company secretary had ended up with the latter figure. The company secretary's evidence was that he must have changed the price on the plaintiff's instructions. He remembered asking the plaintiff about changing the price because it produced the odd figure of $10.67. He said that the plaintiff had agreed to lower his asking price to S10 per share.

87 The plaintiff, however, denied having so agreed. He said he did not know how or where the company secretary got the figure of $10 per share. This evidence means I have to infer either of the following: that the company secretary changed the figure of his own accord, or that the company secretary had consulted with someone else, for example Mr Lim, who instructed him to change the figure. The problem with the first possibility is that there is no logical reason why the company secretary would act on his own initiative and go against the wishes of the plaintiff. The problem with the second possibility is that the plaintiff did not allege that. Whichever way one looks at it, the plaintiff's story that he did not know why the price was reduced is less believable than the company secretary's. This in turn casts doubt on the veracity of the plaintiff's allegation that his letter of 15 March 2002 was part of a grand conspiracy.

Perry Ong's resignation as Director

88 The minutes of SinCo's annual general meeting (AGM) held on 6 September 2002 stated that it was unanimously resolved that Perry Ong who had offered himself for re-election as a director, would not be re-elected. The plaintiff submitted that the decision not to re-elect Perry Ong was further evidence of the plot to oust him. The argument was that if Perry Ong had truly wanted to step down as a director, he would not have offered himself for re-election in the first place. The unanimity of the resolution did not reflect Perry Ong's true desire. He had been outnumbered by the voting power of Terence Ng and Mr Lim.

89 The plaintiff's evidence was that Perry Ong had been forced to agree not to be re-elected. He was told this by Perry Ong who complained about the plaintiff conspiring with Terence Ng and Mr Lim to remove him as a director. The plaintiff averred that he had been sad to hear this complaint because he had helped one friend to remove another friend. This evidence however, may not be reliable. First, it was not in the plaintiff's AEIC where it might have been expected to be said since the plot to remove Perry Ong was an important part of the plaintiff's case. Second, there was no real evidence that the plaintiff and Perry Ong were friends. In 1999, because he did not know Perry Ong well, the plaintiff made him sign a document stating he had borrowed money from the plaintiff and would pay interest on it. There was no evidence that they had become friends subsequently.

90 The point that Perry Ong would not have offered himself for re-election if he had already decided to leave SinCo is a strong one. However, I agree with the defendants' rejoinder that, whatever Perry Ong had been thinking when he offered himself for re-election, ultimately he agreed with Mr Lim and Terence Ng and voted against his own re-election. Furthermore, if at that time he had a bad relationship with Mr Lim, it would have been consistent for him to vote for himself in order to voice his opposition to what was being done. Perry Ong did not do that. Further, according to the company secretary, the meeting went smoothly with no arguments. It would appear, therefore, that when Perry Ong realised that Mr Lim and Terence Ng were intent on removing him from the board, he decided that it was not worth fighting with Mr Lim and threw in the towel. This inference is supported

by the fact that he decided on 11 September 2002 to sell his shares.

Sale of Perry Ong's shares

91 Perry Ong's shares were sold on 6 January 2003. This, however, does not prove that the 15 March 2002 letter was part of the plan. If there was any plan to remove Perry Ong from SinCo, it was probably formulated around the time of the AGM in September 2002 rather than in March 2002. There is no obvious reason to link the 15 March 2002 letter with the removal of Perry Ong as a director on 6 September 2002. The two events just happened to take place one after another. The plaintiff's case was not that there was some general plan to oust Perry Ong but rather there was a specific plan which called for a sham offer by the plaintiff to sell on 15 March 2002. The plaintiff's case is damaged if the 15 March 2002 letter was not part of the plan because that letter was the genesis for the subsequent transfer of the plaintiff's shares to Mr Lim.

92 Perry Ong wrote to the company secretary on 11 September 2002 stating that he wanted to dispose of his entire shareholding in the company for $20 per share. The causal nexus between the loss of his directorship and the decision to leave the company is stronger than the plaintiff's case. On the plaintiff's case, Perry Ong should have disposed of his shares shortly after the transfer of the plaintiff's shares on 17 April 2002 but Perry Ong did not do that. He waited until it was clear that he was no longer wanted as a director. In fact, this sequence of events indicates how far-fetched the plaintiff's story of a plot is. Under Art 79 of SinCo's Articles of Association, the company was entitled to remove a director before the expiration of his term of office by passing an ordinary resolution to that effect. If Mr Lim and the plaintiff wanted to get rid of Perry Ong so badly, they could have called for an extraordinary general meeting and removed him. The plaintiff had sufficient votes for this purpose. It was not necessary for the plaintiff to transfer his shares to Mr Lim in order to get rid of Perry Ong. This was a very roundabout fashion of achieving an aim for which a more direct route was available.

Conclusion on the alleged plot

93 The plaintiff, having alleged that the 15 March 2002 letter was not a genuine offer to sell his shares but a sham aimed at ousting Perry Ong, has the burden of proving this allegation. The foregoing paragraphs show the difficulty that he has in this respect. I have concluded that he has not discharged the burden of proof. Having held this, however, I have still to consider whether the 2002 Share Sale or the 2007 Share Sale was the genuine sale. Although a part of the plaintiff's claim has not been established, that by itself does not prove that the 2002 Share Sale was the genuine one.

The relationship between the parties

94 To decide whether the sale of the plaintiff's shares took place in 2002 or 2007, a number of events which took place between 2002 and 2007 have to be considered. Whilst each party has given different explanations for those events, it must be remembered that before 2009, there was a great deal of trust between the plaintiff and Mr Lim. This degree of trust is central to the arguments in both their cases. On the plaintiff's case, there was no agreement in writing in 2002 that the shares transferred to Mr Lim would be held on trust for him; nor was there any agreement in writing in relation to the 2007 Share Sale.

95 The plaintiff said he trusted Mr Lim. On the defendants' case, there was no agreement in writing regarding the 2002 Share Sale which stated any of the terms of the sale, in particular the price and the method and period of payment. This reflected the trust that Mr Lim had in the plaintiff and vice versa. Thus, any suggestion that an event could not have taken place because it would require a

great deal of trust to be reposed by one person in the other cannot be given as much weight as in more ordinary circumstances.

The 2002 Share Sale

Is the price believable?

96 The 2002 Share Sale is advocated by the defendants and denied by the plaintiff. According to the defendants, Mr Lim agreed to pay the plaintiff $4.875m for 112,500 shares or $43.33 per share. This price was well in excess of the plaintiff's original asking price of $10 per share (or $10.67 per share pursuant to the offer in the 15 March 2002 letter). It was also a price that Mr Lim could not afford to pay in one lump sum. Further, this price was far in excess of the net asset value of SinCo shares at that time.

97 Mr Lim explained that he offered the plaintiff this higher sum because the plaintiff was his old friend and he therefore wanted to "do the right thing and pay him a fair value for his shares". Mr Lim calculated that the fair value was $3,308,000 and he added an additional $1m as a premium for deferred payment. Mr Lim arrived at this figure as follows. First, he applied a price/earnings ("PE") ratio of eight to SinCo's profit of $600,000 for the year ending 2001 to arrive at a value of $4.8m for the whole company and $2.16m for the plaintiff's shares. Secondly, Mr Lim added a 30% premium to account for the fact that the plaintiff's shareholding was a controlling stake. This brought the figure up to $2,808,000. Thirdly, he added a goodwill sum of $500,000, thus getting the fair value of $3,308,000. Throwing in an extra $1m to compensate for deferred payment, he offered the plaintiff a total of $4,308,000. The plaintiff then counter offered $5m and after Mr Lim revised his offer to $4.5m, the parties settled at $4.875m.

98 In his submissions, the plaintiff questioned why Mr Lim had applied a PE ratio of eight and suggested that a PE ratio of six would have been more appropriate. Had a lower PE ratio been used, the fair value of the plaintiff's shares would have been even lower, thus making the final purchase price seem more incredible. However, there does not seem to be much basis for suggesting that the PE ratio was incorrect.

99 Although Mr Lim could only point to one company as a comparable company which had a PE ratio of 8.6, that does not mean that the choice of a PE ratio of eight was inappropriate. Although the company named by Mr Lim differed in terms of operations, turnover and profitability and therefore was not a true comparator, his evidence also was that the number eight was finally chosen as it was an average PE ratio, meaning normal. On the facts of this case, it does not seem to have been too high. A PE ratio of eight means that if SinCo earned the same profit of $600,000 annually for eight years, the investor who bought the shares would recoup that investment at the end of the eight years. Eight years is a reasonable period in which to recover one's capital. SinCo was a growing company and Mr Lim obviously believed that it would be able to maintain the profit of $600,000 for the next eight years. As it turned out, the company's profits increased phenomenally over the next eight years.

100 Secondly, the plaintiff's criticism that Mr Lim's figure was plucked from the air can equally be levelled against his submission that six was far more appropriate PE ratio. No evidence was given to support that assertion. Further, there was no suggestion that SinCo's profit of $600,000 for 2001 was not sustainable. As noted above, it increased substantially and therefore the PE ratio of eight turned to be conservative. Thirdly, Mr Lim was best placed to estimate the future success of SinCo as he was running the company. He testified that the company was doing well and he knew it would continue to do well.

101 The plaintiff also submitted that the defendants' version of events was absurd because the plaintiff had no reason to demand a figure that was higher than the initial $4,308,000 offered by Mr Lim, let alone name a price of $5m. The plaintiff's original offer price was only $1.2m. The defendants did not respond to this strong argument.

102 The issue of pricing is a difficult one for the defendants. The process by which the price was arrived at is not obvious – on the defendants' case, Mr Lim came up with a figure which included a generous bonus for goodwill and deferred payment and then agreed, after some negotiation, to pay the plaintiff even more. There was nothing that was forcing him to buy over the plaintiff's shares let alone for such a large sum.

103 The plaintiff's case is that no price was agreed in 2002 because there was no sale in 2002. However, it is difficult to conclude that there was absolutely no discussion on the point and that the first defendant could not have made such an offer. After all, if the 15 March 2002 letter was genuine, it indicated an inclination on the plaintiff's part to cash in his investment. Mr Lim may very well have realised that he had better ensure that the plaintiff's shares went to himself and no one else so that he could continue to control the company. For the time being, I place this issue on one side while I go on to consider the other evidence.

Could the plaintiff have agreed to deferred payment with no fixed payment schedule?

104 On the defendants' case, the plaintiff had agreed to transfer his legal and beneficial interest in his shares to Mr Lim before receiving any payment for them. Mr Lim would then pay the plaintiff $875,000 in instalments, and a $4m lump sum when he was in a position to do so. The plaintiff submitted that this would have been a highly disadvantageous course for him to agree to. There were far too many uncertainties for Mr Lim to be able to predict in 2002 when he would have been able to pay off the plaintiff. The worst case possibility for the plaintiff was that he might never be paid the full sum. There was no guarantee that Mr Lim would be able to come up with $4m in one lump sum. The plaintiff argued that no seller, however trusting, would be foolish enough to strike that kind of bargain.

105 The above argument relies on the premise that the trust between the plaintiff and Mr Lim was not strong enough; hence the plaintiff as a businessman would never have agreed such terms with Mr Lim. However, as stated earlier, the plaintiff and Mr Lim were not just ordinary business partners; they were very good friends who did not bother with formalities. They trusted each other. Mr Lim had also been creditworthy, having repaid all personal loans that he had taken from the plaintiff. It is therefore possible that the plaintiff accepted Mr Lim's word and assumed that he would be able to amass $4m eventually by which time the plaintiff would have been paid $875,000. Even if it subsequently transpired that Mr Lim would never be able to pay him $4m, given that the plaintiff's initial investment in SinCo was only $112,500, then assuming he had received the initial $875,000, his total return on his investment would still be very good. On the other hand, if SinCo did well, Mr Lim would be able to pay the $4m in a lump sum and would be contractually obliged to do so. At $4.875m, the plaintiff would have gained more than $3.6m on his initial offer made in March 2002 to sell his shares for $1.2m.

106 In other words, the downside to Mr Lim's terms was limited while the upside was significant. All the plaintiff had to do was to have faith in Mr Lim's ability to manage SinCo and wait for the money to be paid. The plaintiff had great trust in Mr Lim's business ability as shown by the fact that he had bankrolled Mr Lim's plan to start SinCo. In that situation, it is plausible that the plaintiff could have agreed to Mr Lim's terms for the purchase of his shares.

107 The plaintiff also submitted that if it was true that Mr Lim had offered a price which he could not afford to pay immediately, the normal way out would be to compensate the plaintiff with interest. That had happened in respect of the personal loans which the plaintiff had made to Mr Lim, Terence Ng and Perry Ong. That may be the normal way of doing things but it does not rule out other forms of compensation for deferred payment. The plaintiff himself was not unduly fussed about interest. The personal loans he extended were extended without formal repayment dates and it was only some three years after they had been made that, no payment being forthcoming, he asked for interest.

108 On the whole it is plausible that the plaintiff might have agreed to a deferred payment scheme. It is also possible that he would not have insisted on specifying payment dates. The fact that payment was deferred therefore does not substantially assist the plaintiff's case.

Why was the price on the share transfer form $875,000?

109 The plaintiff submitted that Mr Lim chose the sum of $4.875m as the price of the shares after his dispute with the plaintiff arose in order to fit two incontrovertible facts: the price of $875,000 stated on the share transfer form executed by the plaintiff in his favour and, secondly, the $4m payment that he made to the plaintiff in June 2007. The plaintiff argued that it was inconceivable that any seller would knowingly sign a share transfer form which provided that the consideration for the shares was only $875,000 when the true figure was $4m higher. The defendants' version of events, namely that the plaintiff agreed to the figure being inserted in the form when they both signed it, required a plausible explanation which Mr Lim did not give.

110 Although Mr Lim is, strictly speaking, not obliged to give a plausible explanation for a factual situation which he is asserting actually happened, the explanation is implicit throughout his case. The plaintiff trusted that Mr Lim would pay him the price of $4.875m and therefore was not concerned with the actual price inserted in the transfer form. More importantly, the plaintiff's evidence that he was given a blank transfer form by Mr Lim which he signed is contradicted by the company secretary who signed the same form as a witness. The company secretary's evidence was that he witnessed the plaintiff and Mr Lim signing the form at the same time. He was certain of this though he could not remember the actual occasion because his practice, which he said he adhered to strictly, was that he would not sign any document as a witness without personally witnessing the actual signing by the signatories. There is no evidence that the company secretary did not adhere to this practice for this particular transfer. All the plaintiff could submit was that the company's secretary's evidence should be taken with a hefty pinch of salt. This is insufficient: as the defendants submitted, the company secretary was not even questioned about his practice of personally witnessing signatures when signing as a witness. There is no objective basis for me to reject the company secretary's evidence on this count.

111 Hence, the fact that the transfer form showed the price as being $875,000 does not assist the plaintiff.

Did Mr Lim pay the plaintiff various amounts between 2002 and 2007 for the alleged 2002 Share Sale?

The $700,000 or more received by the plaintiff

112 The defendants' case is that between 2002 and 2006, Mr Lim paid the plaintiff the $875,000 by way of cash and cheques in sums ranging between $10,000 and $200,000. If there was evidence to support this allegation, it would completely rebut the plaintiff's case and establish the defendants'.

113 The problem is that neither side was able to produce sufficient evidence to completely back up

his case. The documentary evidence from both sides cannot be reconciled fully with the numbers that each side asserts. It may therefore be prudent to rely more heavily on the figures that are undisputed. The plaintiff admitted that from 2002 to 2007, he received more than $700,000 in cash from Mr Lim. This included $583,000 paid monthly in cash by Mr Lim between 2005 and April 2007. It should be remembered here that the plaintiff resigned as a director of SinCo in November 2005.

114 The plaintiff's explanation for these payments is two-fold; some money went towards paying back the $207,500 in personal loans which Mr Lim had taken from the plaintiff; others such as the monthly payments from 2005 to 2007 were his salary payments (including his director's fees from November 2005 onwards). The plaintiff was asked how he could categorise such payments from Mr Lim as being salary payments since the salary, if any, was payable by SinCo and not by Mr Lim personally. The plaintiff's answer was that Mr Lim had told him that as part of the company's preparations for listing, SinCo could not make salary payments to a non-executive director.

115 In support of his allegation that some sums went towards repayment of the personal loans, the plaintiff provided a relatively comprehensive table of calculations to show how certain cash and cheque payments from Mr Lim went towards reducing the principal sums from the personal loans. The calculations also involved the addition of sums to the principal amount to reflect interest which was assumed to be unpaid for two periods, namely September 2001 to September 2004, and October 2004 to July 2005.

116 The defendants submitted that the plaintiff's allegations were untenable. They argued that the calculations which the plaintiff provided to the court were reverse engineered and contained several unproven assumptions. There are some problems with the calculations.

117 First, even on the plaintiff's calculations, Mr Lim still underpaid the loans by $425. That in itself is not fatal and there are several explanations for why the plaintiff might nevertheless have considered the loans discharged. However, the underpayment would have been larger but for an assumption in the calculations that interest on the outstanding principle was paid by Mr Lim between June and August 2001, even though there was no evidence of these payments. If the interest was assumed to be unpaid during the period as was assumed for the other two periods, the total underpayment would have been $1,137.50. Again, this is not a huge sum in the grand scheme of things. However, it does suggest that there was some attempt to reverse engineer the numbers and to assume matters where convenient.

118 Secondly, the plaintiff appeared to have suggested that both sides had records which would show that the personal loans were still not fully paid up as at 2005. If that were the case, he could have easily proven it by adducing his own records but he did not. The plaintiff's oral evidence was not helpful; although asserting that the loans were still outstanding in 2005, he could not remember how much was outstanding in 2005 or even if most of the loans had been repaid.

119 Thirdly, there was no evidence of interest payments after 28 August 2001. There was evidence that the plaintiff had been collecting the interest payments regularly from 1999. If the principal sum had not been fully paid up before 2002 (contrary to the defendants' case), then interest would still have been accruing in 2002 and one would have expected the plaintiff to indicate to Mr Lim that he was not keeping up with the interest payments and should either do so or repay the loan in full. There is no evidence that the plaintiff chased Mr Lim for any outstanding loan amounts or the interest in 2002 or 2003.

120 Fourthly, the defendants also said that if the calculations were right, it would suggest that Mr Lim had deliberately left $55,000 outstanding, with interest accruing, until 2004 even though Mr Lim

clearly had sufficient funds to repay $55,000 well before 2004. There was no reason for Mr Lim to have done that.

121 Fifthly, the plaintiff's own evidence appears to be that Terence Ng and Perry Ong paid off their personal loans after paying three years of instalments starting in 1999. If that was so, it would not be unreasonable to infer that Mr Lim would also have paid off his loans by 2002. There is no suggestion that Mr Lim could not have afforded to pay $207,500 to the plaintiff by 2002. On the plaintiff's own evidence, Mr Lim wrote a cheque for $72,500 in August 2001 in order to pay down the loan. Moreover, given that he was running SinCo, Mr Lim presumably had a higher salary than Terence Ng or the plaintiff. The plaintiff's evidence was that the sum of his annual remuneration for 1999, 2000, 2001 and 2002 was $431,001. Mr Lim probably earned more and should have had the means to repay the plaintiff's loans by the end 2002.

122 On a balance of probabilities, it is difficult to accept the argument that the monies received by the plaintiff were definitely for the repayment of the personal loans. However, the suggestion that at least $583,000 was for the plaintiff's salary and director's fees has to be considered. The defendants' argument was that there was no reason for Mr Lim to continue paying director's fees or salary to the plaintiff after he had resigned as director of SinCo in November 2005. They submitted strongly that it made no sense for Mr Lim to pay the plaintiff out of his own pocket.

123 The reason that the plaintiff gave was that Mr Lim made the arrangement in preparation for the listing of SinCo. This reason may sound strange, but it cannot be discounted altogether as being illogical. The coincidence that the sums which the plaintiff said he received for 2005 to 2007 correspond to his annual remuneration for 2003 and 2004 of around $250,000 is hard to ignore. In particular, the amount the plaintiff received for 2007 - $83,000 – corresponds to four months of his annual remuneration of $250,000 which fits the plaintiff's case that he sold his shares in April 2007. The defendants relied on this $83,000 as it bolsters the total sum received by the plaintiff to $583,000 though they did not give a reason why the payments stopped in April 2007.

124 I have, however, come to the conclusion that these payments cannot have been salary and director's fees. The plaintiff claimed that the agreement for Mr Lim to pay him his salary in cash came about at the end of 2004 and that the cash payments were made from 2005 onwards. Sometime in 2005, he had disagreements with Mr Lim over whether SinCo should be listed and over some accounting matters. As a result, the plaintiff resigned in November that year. If the plaintiff resigned voluntarily in November 2005, Mr Lim would have had no incentive to continue paying the plaintiff director's fees. However, on the plaintiff's case, he continued to receive the same total annual amount without questioning the propriety of these payments. Mr Lim also continued to pay the same figure monthly, in cash, without questioning whether it was necessary to continue paying him director's fees or salary for that matter, given that the plaintiff's resignation from his directorship was wholly voluntary. The defendants' submission that in this context, it made no sense for Mr Lim to continue personal payment of the plaintiff's annual remuneration carries more weight.

125 The onus of proof is on the plaintiff to satisfy me that the monies that he admitted receiving had nothing to do with the $875,000. As far as his receipt of $583,000 from Mr Lim is concerned, I am not satisfied that any money paid after November 2005 and up to April 2007 related to salary and fees and had nothing to do with the $875,000.

The Mercedes

126 The defendants submitted that another $100,000 ought to be credited to Mr Lim because he had set-off that sum against the remainder of the $875,000 when the plaintiff purchased a Mercedes

Benz motorcar ("the Mercedes") from Mr Lim at the end of 2002. There are however, some difficulties with this submission.

127 First, on Mr Lim's own version, he had sold the Mercedes – which he claimed to be his even though it was formally recorded as an asset in SinCo's books – to the plaintiff for approximately $120,000 to $140,000. It seems somewhat unlikely that Mr Lim would have sold the Mercedes for $120,000 when, according to him, he purchased it in 1999 for more than $200,000. In SinCo's accounts, the cost of the Mercedes was recorded as $220,000. Writing off around 45% of the value of the motorcar over three years is steep. It may be that because SinCo paid for the Mercedes, Mr Lim did not feel the pinch of selling it at such a low price.

128 In any event, at minimum, Mr Lim should have set-off $120,000 and not $100,000. When cross-examined on this point, Mr Lim's explanation was that that plaintiff paid him $2,000 for road tax and insurance, and $10,000 in January 2003 as a first payment prior to taking over the car and the combined sum of $12,000 went towards the purchase price. Even if that were true, there is still a shortfall of at least $8,000 which is unaccounted for. The plaintiff admitted to paying Mr Lim $12,000 but claimed that it was for his share of Perry Ong's shares and not for the Mercedes. His case is that he took over the Mercedes in October 2003, not at the end of 2002, and only did so because he was not asked to and did not pay anything towards the purchase price of the Mercedes. Mr Lim remained registered owner of the Mercedes at all times.

129 Secondly, there are further discrepancies with Mr Lim's explanation of the $12,000. If it was indeed counted towards the purchase price, why did Mr Lim not offer to set-off the amount against the remainder of the $875,000, just as he had allegedly done with the $100,000? It seems illogical to set-off $100,000, yet require the plaintiff to pay him two separate amounts of $10,000 and $2,000.

130 Thirdly, Mr Lim's claim that he had sold the Mercedes to the plaintiff because he was driving a BMW motorcar ("the BMW") which was purchased by him but registered under his wife's name is doubtful. From Mr Lim's evidence, his wife was the registered owner of the car from 17 December 2002 onwards. On the assumption that the date of registration is also the date of possession (which is a reasonable assumption), if the plaintiff had taken over Mr Lim's car in November 2002, it would mean that Mr Lim did not have a car to drive for at least three weeks if not more. Why would Mr Lim relinquish the Mercedes before taking possession of the BMW? Moreover, if Mr Lim wanted to change cars, why would he spend his own money to buy a replacement car? One would have expected SinCo to finance his next car, as the plaintiff alleged. Against all this is the evidence of Mr Lim's personal assistant who said that she saw the plaintiff drive the Mercedes around the same time that Mr Lim changed his car.

131 The plaintiff's version is, on its face, more compatible with what one might ordinarily expect. His evidence was that in August 2003, Mr Lim obtained a new car, a Jaguar, which SinCo paid for. Mr Lim transferred possession of the Mercedes to the plaintiff shortly thereafter in August or September 2003. That being said, the documentary evidence, viz, SinCo's financial statements for 2003 and thereafter do not mention that the company was holding any car other than the Mercedes as property on its books. It would seem therefore, that SinCo did not pay for the Jaguar.

132 It is undisputed that when the Mercedes was de-registered in April 2005, the tax rebates paid out by the Land Transport Authority were paid to the plaintiff even though Mr Lim was the registered owner of the Mercedes. The plaintiff submitted that under the rebates system, the plaintiff could not have obtained the rebates without Mr Lim's knowledge or involvement as the rebates are only granted to the registered owner who had to show prove of his identity. The plaintiff did not give any reason why Mr Lim agreed to transfer the rebates to him. Although neither party has provided actual figures,

the rebates were probably substantial given that the Mercedes had originally cost $220,000 in 1999. The reason for Mr Lim's transfer of the rebates to the plaintiff would therefore be relevant.

133 On the plaintiff's case, his retention of the rebates can only be explained by one of two reasons: either the rebates were intended to repay the existing personal loans which he said were still unpaid in 2005 or, they were a gift to him. The second reason is highly unlikely as the rebates were more than nominal. The first reason has not been referred to by the plaintiff as part of his case and, in any event, as I mentioned above the personal loans were probably repaid by the end of 2001. The silence by the plaintiff as to the justification for his retention of the rebates is significant. On the defendant's case, they are explained by the sale of the Mercedes to the plaintiff thus entitling him to keep the rebates. In this story of the Mercedes, neither the plaintiff nor Mr Lim comes out very well in relation to SinCo: on the one hand, there is no evidence that Mr Lim paid SinCo for the car he sold to the plaintiff, and on the other, if the plaintiff did not buy the car, he yet kept the rebates for himself instead of returning them to the company.

The $4m payment in 2007

134 It is common ground that the plaintiff received $4m from Mr Lim by way of a cashier's order in June 2007. However, the explanations for this payment differ. The plaintiff claimed that the $4m was part payment for the 2007 Share Sale purchase in April 2007. Mr Lim claimed that the $4m was the final instalment of the purchase price of $4.875m pursuant to the 2002 Share Sale.

135 The plaintiff submitted that Mr Lim could have used the $7.5m he received in dividends from SinCo in 2005 alone to pay the plaintiff the outstanding $4m. The fact that Mr Lim did not would suggest that he did not think he owed the plaintiff $4m in 2005, which in turn means that the 2002 Share Sale was not genuine. The defendants' response to that was that Mr Lim had already given the plaintiff $1m as premium for deferred payment. Furthermore, he was still paying the plaintiff the instalments for the $875,000 in 2005, and the plaintiff did not chase him for the $4m. Mr Lim therefore did not feel obliged to pay that amount in 2005 even though he had the means to do so.

136 If it is accepted that the plaintiff could have agreed to the deferred payment scheme, then Mr Lim's explanation is entirely coherent. The plaintiff's submission rests on the premise that the plaintiff could not have agreed to the deferred payment scheme. In that sense, the argument that Mr Lim did not pay the $4m in 2005 when he could have afforded to does not have any inherent probative value in relation to the question of whether the 2002 Share Sale existed.

The 2007 share sale

Pricing of the plaintiff's shares

137 The circumstances of the 2007 Share Sale are intriguing. The plaintiff claimed in court that when Mr Lim approached him in April 2007 with an offer to buy his shares, the plaintiff responded that Terence Ng must be given the chance to purchase the shares as well. Mr Lim replied that he would talk to Terence Ng and the plaintiff should not raise it to Terence Ng on his own. That evidence was, however, inconsistent with the plaintiff's evidence in his AEIC that he accepted Mr Lim's offer on the spot because he knew that Mr Lim had put a lot of effort and hard work into building SinCo and its business. If the plaintiff had told Mr Lim to ask Terence Ng about the purchase and Mr Lim's reply was that he would do so, the plaintiff would not have accepted Mr Lim's offer immediately. He would have waited to see whether Terence Ng wanted to buy a portion of his shares.

138 The plaintiff claimed that from 1996 to 2007, he had no intention of selling his shares in SinCo.

The defendants pointed out that the plaintiff had invested in SinCo so that he could get a good return. They submitted that in these circumstances, it was inconceivable that in 2007 the plaintiff accepted Mr Lim's proposal to purchase his shares for $5m "on the spot" without taking any steps to have an independent assessment of the actual value of the shares. Had the plaintiff enquired from Mr Lim about SinCo's profitability in 2007 alone, and had he been told the truth, namely that SinCo's net asset value was about $53m and its net profit was $28m, it would have been immediately obvious to the plaintiff that $5m was a ridiculously low price for a 45% share of SinCo. The plaintiff also admitted that he could have verified the company's profitability through ACRA but did not do so.

139 The plaintiff's only explanation for why he accepted the figure of $5m was that he assumed that Mr Lim was offering fair value. The difficulty with this explanation is that it is not rational. The plaintiff argued that he was a rational businessman who would not have accepted Mr Lim's deferred payment scheme without any kind of security. Yet he also wanted me to accept that he would trust Mr Lim so much that he would accept any offer for his shares without checking what a proper price should be. At the least, the plaintiff should have taken the step of asking Mr Lim why $5m and not some other figure. On his own case, he did not do so. The plaintiff is therefore asking me to accept that he made at least one important business decision arbitrarily with no rational basis for it.

The two cash payments of $500,000.

140 It is an integral part of the plaintiff's case that Mr Lim paid him $1m in cash by two instalments of $500,000 each. Mr Lim denied ever making those payments and has offered no alternative reason why they might have been made. Therefore, if it can be established on a balance of probabilities that the plaintiff did receive the two $500,000 payments, the only reason for the same must have been the 2007 Share Sale. I turn to consider the evidence.

141 The defendants disclosed Mr Lim's bank statements for April and May 2007, the months in which the two payments were allegedly made. These statements show that he did not withdraw $1m in cash in those months. Mr Lim claimed that the bank statements disclosed represented all his personal bank accounts. This assertion was not tested during cross-examination. Further, there was no evidence to show that Mr Lim kept such a large amount of money in cash outside the bank. The plaintiff did not assert that Mr Lim could have obtained the $1m from another source such as SinCo's accounts or loans from friends. In the state of the documentary evidence, it is not unbelievable that Mr Lim did not make these two payments.

142 The plaintiff's evidence did not deal with the source of Mr Lim's funds. He gave evidence of how he dealt with the funds to show that he had received them from Mr Lim. First, he provided bank statements from Oversea-Chinese Banking Corporation ("OCBC") and Hong Leong Finance ("HLF") showing that he deposited $200,000 and $300,000 into his accounts with these banks on 16 April 2007. These bank slips do not show, however, that the monies came from Mr Lim. Moreover, the evidence shows other large deposits made by him into the OCBC account: $40,000 in December 2006 and $60,000 in February 2007. The plaintiff admitted that he regularly deposited large sums of money, sometimes amounting to $100,000 and $200,000, into his bank accounts. The plaintiff therefore was a person who, not infrequently, acquired large sums of cash from sources other than Mr Lim which he would deposit into his bank accounts.

143 The plaintiff also claimed that he had problems in depositing the two instalments of $500,000 into his bank accounts. The first problem was when he tried to deposit $300,000 of the first sum of $500,000 into his HLF account. The teller wanted to know where the money came from and the plaintiff said that he called Mr Lim for advice and was told to instruct the teller that the money had come from the HSBC Bank. This version of events was not in his AEIC but was given during cross-

examination. The AEIC did not mention the plaintiff's problems relating to deposit of the cash in April 2007. Also, in respect of the $300,000 deposited into HLF, a document produced by that bank stated that the plaintiff had "withdrawn cash from HSB bank which is near to our branch". However, despite that description, the plaintiff claimed that he had not told the teller that the cash came from a particular HSBC branch. The document also noted that the plaintiff told the teller that he was self-employed with an income of $75,000. The plaintiff confirmed that he did say that to the teller. Therefore, the plaintiff's evidence requires me to accept that one part of the HLF document is true while another part is untrue. This is difficult to do: there was no basis for the teller to have recorded that the money came from a specific HSBC branch if he or she had not been told that.

144 Next, the plaintiff referred to the problems which he faced when he tried to deposit the second instalment of $500,000 into his ABN Amro account in May 2007. This time, he said Mr Lim accompanied him to the ABN Amro branch in Thomson Plaza. They were served by a female teller who asked for the source of the funds. The plaintiff replied that the source was Mr Lim. That was a strange answer given that when he was asked the same question by the HLF teller, he mentioned the bank as the source, and not a person, and that information was sufficient for the deposit to be accepted. Further, considering that the plaintiff's story was that Mr Lim had previously told him what to say to the HLF teller, there is no reason why Mr Lim who was present did not tell the plaintiff to say the same thing to the ABN Amro bank officer.

145 The plaintiff also said in his AEIC, that when he mentioned the source of funds being Mr Lim, the latter became unhappy and told the plaintiff not to deposit the cash into ABN Amro. The plaintiff said he complied because he saw that Mr Lim was unhappy. It is hard to understand why the plaintiff would decide not to put the money into the bank in which he was standing just because Mr Lim was unhappy. By this time, in May 2007, the plaintiff had resigned as a director and had ceased to receive his annual remuneration. He had very little to do with Mr Lim. The plaintiff gave no explanation for his compliance but during cross-examination, he retracted that assertion and said that he could not deposit the $500,000 in ABN Amro because the bank would not accept the funds unless he disclosed their source.

146 The defendants questioned why the plaintiff did not attempt to deposit the second $500,000 into his OCBC or HLF accounts as he had managed to do previously (on his case). The plaintiff did not explain these discrepancies in his reply submissions.

147 The plaintiff then had to give an account of what he had done with the second $500,000. He said he paid $225,000 of this amount into his UOB account in Malaysia over numerous trips to Johore; $200,000 was lent to his nephew, Lawrence Mah ("Mr Mah"), who returned it to him in three instalments a few months later after which he deposited the repayment into a bank account but could not remember which one; $25,000 was spent on furniture; and the remaining $50,000 was kept in his safe at home. I find these explanations far-fetched. The plaintiff could very well have made many deposits into his Malaysian UOB account; bought furniture and kept money in his safe as he said. But there is nothing to tie all these sums to Mr Lim. The plaintiff was a successful businessman with various sources of income and such sources could equally well have funded the Malaysian deposits and the furniture and provided cash for the safe.

148 On the loan to Mr Mah, the plaintiff's evidence was that Mr Mah had told the plaintiff sometime after June 2007 that he needed the money to buy a set of collectible currencies from a person whom he had met at his father-in-law's shop. His father-in-law used to sell second-hand watches and collectibles at Tekka Mall. On the stand, Mr Mah gave a materially different version. He said it was his father-in-law who informed him there was a walk-in-customer who wanted to sell some currencies, and that his father-in-law later drove him to meet the seller at a location which he thought was

around Joo Chiat. When asked about the discrepancy between his and the plaintiff's evidence, Mr Mah said he did not think it was "a very serious matter", and all he had said to the plaintiff was that he had a deal to buy some old currencies, and that he needed to borrow money from the plaintiff for this. Mr Mah also said that he returned the $200,000 a few months later, in instalments. However, the plaintiff's AEIC evidence suggests that the $200,000 was returned as one lump sum. I find this story unsatisfactory. Quite apart from the discrepancies in the evidence, there is no necessary connection between the alleged payment by Mr Lim and any loan given by the plaintiff to Mr Mah. The plaintiff did not give me a full picture of his financial position at the relevant time. Without this information, I am unable to conclude that the plaintiff could not have made the loan but for Mr Lim's payment.

Did the Plaintiff's conduct after 2002 support his version?

Plaintiff's attitude regarding SinCo's dividend policy

149 The defendants submitted that after 2002, the plaintiff's conduct was not compatible with that of a shareholder with a substantial stake in SinCo. First, the plaintiff never once asked whether the dividends that had been declared had been paid. Second, the plaintiff did not ask why SinCo was repeatedly declaring, but not paying out, millions of dollars in dividends. This was a highly irregular practice which any normal shareholder would have questioned. Third, if the plaintiff was a 45% shareholder, he would not have resigned as a director simply because of a disagreement with Mr Lim over whether SinCo should be listed. A listing would have benefitted the plaintiff the most (if he was a 45% shareholder) and it was not credible that he would have allowed a minority shareholder to undermine that by simply resigning from the company.

150 The plaintiff's answer to these arguments was that he was extremely trusting of Mr Lim's management of the company. Also, he was a sleeping shareholder who received substantial remuneration even though he played little part in the management of the company. Although he signed the director's resolution declaring dividends, he had assumed that the dividends had not been paid out as if they had been, Mr Lim would have transferred his share of the same to him upon the payment out. As the plaintiff point out, resolutions declaring dividends do not mean that immediate payment out as it is not unusual for companies to declare dividends without paying them out immediately.

151 The plaintiff however, was not consistent in his evidence as to his knowledge of SinCo's dividend policy. At some point, he said that although he had signed the resolutions regarding dividends, he did not know what he was signing because Mr Lim routinely gave him documents to sign at odd hours. He trusted Mr Lim and signed them without really reading them. However, at other points, the plaintiff stated that he knew that dividends had been declared but not paid; they were held in SinCo's accounts because the company was just beginning to grow. The plaintiff, however, expected Mr Lim to honour the terms of the trust by paying the plaintiff his share as and when the dividends were paid out. There were also times when the plaintiff gave the impression that he read and understood what he was signing.

152 The real question on the plaintiff's best case is whether it is plausible for him to have trusted Mr Lim to such a high degree. There is evidence that supports a high degree of trust: the plaintiff never chased Mr Lim for amounts owing and initially he did not even require written confirmation that he had made the loans. On the defendants' case, the plaintiff agreed to the 2002 Share Sale without recording that agreement in writing; without any agreement on the payment schedule for the first $875,000; and without any assurance that the $4m would be paid. The defendants further did not assert that the plaintiff ever once, between 2002 and 2007, asked Mr Lim when he would make the next instalment payment or pay the $4m.

153 However, I cannot accept the picture that the plaintiff sought to portray of himself as a simple and naïve man. When SinCo was incorporated, he had already been in business for many years and had been a director of several private limited companies. Between 1996 and 1997, the plaintiff helped SinCo obtain credit facilities by mortgaging one of his properties and agreeing to be a guarantor. In 1999 however, he asked to be compensated for these efforts. The shareholders of SinCo agreed and the plaintiff was paid $1,500 per month until 2003. Also, the plaintiff collected interest on the personal loans he made to Mr Lim, Terence Ng and Perry Ong, albeit, only three years after the loans were made. The plaintiff's conduct in relation to the settlement negotiations also showed that he was concerned about money and getting his fair share: I do not believe that if he thought he was entitled to dividends at the material time he would never once have asked Mr Lim when the payment out was going to be made and he could expect to receive his share.

Plaintiff's alleged meeting with Roy Ng in 2007

154 According to Roy Ng, the plaintiff visited him at his office in late April or early May 2007. In the course of their conversation, the plaintiff told Roy Ng that he had sold his shares in SinCo to Mr Lim. Roy Ng then remarked "where did Bryan get the $5m to pay you? It must be from SinCo …" According to Roy Ng, the plaintiff upon hearing that "was stunned … literally stunned". The importance of Roy Ng's testimony about this meeting to the plaintiff's case is that the mention of the 2007 Share Sale by Roy Ng supports the existence of that sale.

155 The difficulty here is that this account of Roy Ng is at odds with the plaintiff's version of events. First, the plaintiff's AEIC evidence and oral testimony did not refer to such a meeting. Second, the plaintiff's description of the way in which Mr Lim offered to buy the plaintiff's shares and the plaintiff's acceptance of this offer did not reveal that the plaintiff was concerned with the source of Mr Lim's funds. Indeed, the plaintiff's evidence was that he accepted the offer "on the spot" as he knew that Mr Lim had put a lot of work into SinCo and he assumed that Mr Lim was offering fair value for the shares. There was therefore no reason for the plaintiff to have been stunned. Third, if the plaintiff had been stunned during that meeting with Roy Ng in 2007, one would have expected him to have immediately confronted Mr Lim in 2009 when Terence Ng told him about the dividend payments. However, that was not how the plaintiff reacted.

First mention of trust and reaction to learning of the dividend payments

156 The first time that the plaintiff mentioned in writing to anyone that Mr Lim was holding SinCo shares for him was in his 17 March 2009 statement to Terence Ng's consultant, one Mr Dason Raj whom he had met on 15 March 2009. Actually, Terence Ng had informed the plaintiff a few days earlier about the dividend payments, and specifically, on the plaintiff's AEIC evidence, that the dividends paid out amounted to more than the 2007 Share Sale price of $5m.

157 Despite having been informed in early March 2009 about the dividend payments, the plaintiff only contacted Mr Lim on 16 March 2009. All he mentioned during that conversation was that he had been approached by Terence Ng who had found out about the 2007 Share Sale, and had indicated that he was going to sue Mr Lim. The plaintiff explained that he did not mention anything about the dividends to Mr Lim because he wanted Terence Ng to be present when the topic was broached. Additionally, the plaintiff said that he had not received full details of all the dividend payments and wanted some figures before confronting Mr Lim, despite having been told by Terence Ng that the dividends paid out amounted to more than $5m. In the end, the plaintiff only confronted Mr Lim on 18 March 2009 when he was accompanied by Terence Ng.

158 The plaintiff's explanations are difficult to accept as reflecting the behaviour of an ordinary

reasonable person. On his case, he had been drawing monthly payments for salary and director's fees for doing hardly anything. He must have known that SinCo was doing well. He then sold his 45% stake for $5m immediately when Mr Lim offered to buy the shares. Disregarding Roy Ng's evidence of a meeting shortly after the 2007 Share Sale, the plaintiff heard in early March 2009 that SinCo had been paying dividends from 2003 to 2006. By this time, he should have been alerted that there was a real possibility that SinCo was not just doing well, its business was highly successful. Even if he was not upset with Mr Lim for keeping the dividends and not disclosing that the $5m purchase price was easily covered by the dividends which Mr Lim had improperly retained – which an ordinary person would have been – he should have at least been curious. Yet he did not call Mr Lim immediately to find out what was happening. Instead, he only contacted him on 16 March 2009 to warn him about Terence Ng's plot. The plaintiff's behaviour at the 16 March 2009 meeting with Mr Lim was not consistent with the behaviour of a man who had good reason to believe that Mr Lim had kept back an extremely substantial sum of money which he should have paid the plaintiff.

159 In this connection, it is also questionable why the plaintiff needed Terence Ng to be present before he could ask Mr Lim about the dividends. The plaintiff did not need Terence Ng to corroborate that the dividends had been paid out. The plaintiff could easily have asked Mr Lim about the matter on 16 March 2009, and if he was not convinced by any denial from Mr Lim, he could have asked for a copy of the financial statements or obtained them from ACRA. Thus, the presence of Terence was not required to verify the fact of the dividend payment.

160 The question is why the plaintiff did not mention the dividends but only warned Mr Lim about Terence's plot. Only one explanation has been suggested and that is the defendants' suggestion that the plaintiff knew he had no claim to the dividends because he had already sold his shares in 2002.

Conclusion on the second main issue

161 I am guided by the basic rule that it is for the plaintiff to prove his case that he only sold his shares to Mr Lim in 2007 and is therefore entitled to dividends. On balance, I am not satisfied that the plaintiff has discharged this burden. There are too many gaps in his evidence and some of the propositions he wishes me to believe, like the assertion that Mr Lim paid him salary and fees from his own pocket and that he never thought of asking why dividends were being regularly declared but never paid out, are too far-fetched. Although the defendants' version has its unsatisfactory aspects as well, there is enough in their story to make me doubt that the plaintiff's case has a genuine basis.

Conclusion

162 For the reasons given above, both the plaintiff's main claim and his alternative claim fail. The plaintiff's case is dismissed with costs.