Ong Heng Chuan & Another v Ong Boon Chuan & Another
[2002] SGHC 285

Case Number : Suit No 178 of 2002

Decision Date : 28 November 2002

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean JC

Counsel Name(s) : Ranvir Kumar Singh and Leslie Phua (Kumar & Loh) for the plaintiffs; Andy Chiok and Ong Lee Woei (Michael Khoo & Partners) for the first defendant; Loy Wee Sun (Loy & Company) for the second defendants

Parties : —

Trusts – Constructive trusts – Constructive trusts – Common understanding that shares arising out of rights issue held on trust – Whether common understanding proved

Judgment

GROUNDS OF DECISION

1. This Amended Originating Summons is a sequel of unfortunate differences that have arisen amongst the Ong siblings from their inability to work together in the running of the family snack food business. The family business is carried on in the name of Tong Guan Food Products Pte Ltd ("Tong Guan"), the 2nd Defendant and its subsidiaries. The Plaintiffs, Ong Heng Chuan ("OHC") and Ong Teck Chuan ("OTC"), and 1st Defendant, Ong Boon Chuan ("OBC"), are brothers and shareholders of Tong Guan. Until OTC's resignation from the board in April 2001, all three brothers were, at all material times, directors of Tong Guan.

2. In this dispute, the main cause of the friction that developed between the Plaintiffs and OBC is over 520,000 shares in Tong Guan held by OBC. It appears that the Plaintiffs and OBC became estranged and are on unfriendly terms. The dissent amongst the brothers came about in or after August 2001, when OHC could not procure the registration of 260,000 shares in his name. At the same time or thereabouts, OBC declined OTC's cheque for the same number of shares. A ruling in favour of the Plaintiffs could eventually tilt the balance of control and management of the family business.

3. By prayer 1 of this Amended Originating Summons, the Plaintiffs are seeking a declaration that OBC holds on trust for them ordinary shares in Tong Guan that were allotted to OBC during the October 1999 rights issue but to which the Plaintiffs were entitled to subscribe in proportion to their respective existing shareholdings. It is agreed that if the Plaintiffs succeed at this limited hearing, the remainder of the reliefs sought in the Amended Originating Summons would be deferred until the final determination of summons-in-chambers entered no. 601186 of 2002 in Suit No. 1633 of 1999.

4. Counsel for the Plaintiffs submitted that there was a common understanding reached by the Plaintiffs with OBC, prior to convening the 2nd Defendant's EGM on 1 October 1999, that (i) the Plaintiffs would assent to Tong Guan raising its paid-up capital by $1 million through a rights issue in October 1999; (ii) the Plaintiffs would permit OBC to subscribe to the Plaintiffs' entitlement of 260,000 shares each with OBC raising funds for the rights issue; and (iii) OBC would transfer those shares to both the Plaintiffs upon being reimbursed the price of acquiring those shares.

5. The essence of the Plaintiffs' claim is that in the light of the arrangement or understanding

between the parties and the Plaintiffs' reliance on the fact that they need not do anything to pursue or protect their interest in the October 1999 rights issue shares, it is unconscionable for OBC to decline to return the shares to the Plaintiffs. It is said that such a refusal is sufficient to cause equity to intervene and the trust to arise.

6. The Plaintiffs' argument on constructive trust is based on what was described in *Banner Homes Group Plc v Luff Developments Ltd* [2000] Ch 372 as "*Pallant v Morgan equity*". Chadwick LJ said:

> "The equity is invoked where the defendant has acquired property in circumstances where it would be inequitable to allow him to treat it as his own; and where, because it is inequitable to allow him to treat the property as his own, it is necessary to impose on him the obligations of a trustee in relation to it. It is invoked because there is no bargain which is capable of being enforced; if there were an enforceable bargain there would have been no need for equity to intervene in the way it has done in the cases to which I have referred." [p.400]

7. *Pallant v Morgan* provides an illustration of this principle. The principal features of the "*Pallant v Morgan equity*" which Chadwick LJ identified are:

> (i) the existence of an arrangement or common understanding, before property is acquired by one party that the other should have some interest in it. The arrangement or understanding need not have contractual effect.
>
> (ii) the arrangement or understanding must be that one party will take steps to acquire the target property on the basis that the non-acquiring party will acquire an interest in it . If the acquiring party subsequently changes his mind, he must because of the changed situation inform the non-acquiring party of this in time for him to be able to adjust his position.
>
> (iii) the non-acquiring party must rely on the existence of the understanding. Reliance may take either one or two forms. This means he must either do something, or omit to do something, which is either to the advantage of the acquiring party or to his own detriment. The essential test is whether the circumstances are such that it is "inequitable for the acquiring party to retain the property for himself in a manner inconsistent with the arrangement or understanding on which the non-acquiring party has acted". [p.399]

8. OBC denied the common understanding as alleged. He denied that the shares allotted to him are subject to any trust or other obligation.

The Evidence

9. A total of seven affidavits were filed in these proceedings. Besides the Plaintiffs and 1st Defendant, Tan Cheng Yew ("TCY"), a legal practitioner, who was at the material time the company secretary of the 2nd Defendant, filed an affidavit. Ong Siew Ann ("OSA") who is a director of the 2nd Defendant also filed an affidavit.

10. The alleged common understanding was oral. There are no contemporaneous documents to test the credibility of the recollections of the parties that are conflicting. The contradictory evidence was tested by cross-examination of the deponents of affidavits filed in the proceedings. Both OSA and TCY were also cross-examined on their respective affidavits.

11. It is common ground that Tong Guan at the material time was in urgent need of funds to meet its obligations towards UOB Venture Investments Pte Ltd ("UOBVI"). UOBVI had at that time recalled its loan to the company. In October 1999, the company increased its paid-up capital from $2 million to $3 million through a one-for-one rights issue. None of the shareholders other than OBC subscribed to the rights issue shares. OBC made an offer for 900,000 rights issue shares which have not been subscribed for. The board of directors accepted OBC's offer. Thus, all of the one million October rights issue shares were bought by OBC. The $1 million raised through the October rights issue was used to pay UOBVI.

Terms of the common understanding

12. OHC deposed in his affidavit filed on 4 February 2002 (and OTC's affidavit is identical in substance) as follows:

> "8. Under the proposed rights issue, both the 2nd Plaintiff and I were each entitled to subscribe to 260,000 shares in the company at $1.00 per share. However, **both the 2nd Plaintiff and I needed time to raise funds to take up the shares which we were entitled to** for we had earlier, in May 1999, each paid the Company the sum of $260,000 to take up the 260,000 shares which we were each entitled to under the earlier rights issue made in May 1999.
>
> 9. **In view of the urgency facing the Company then to raise funds, the 1st defendant proposed to lend both the 2nd plaintiff and I the monies required to take up our rights issue on the basis that he would hold the shares in his name on trust for us until we were able to repay him the money**.
>
> 10. On that basis and trusting that the 1st defendant (who is our elder brother) would honour his words, both the 2nd Plaintiff and I assented to the proposed rights issue."
>
> [emphasis added]

13. 8 and 9 contemplate the existence of an express trust. OBC in his affidavit of 26 February 2002 denied that there was any conversation between the Plaintiffs and himself whereby he agreed to hold 260,000 shares each on trust for the Plaintiffs. OHC and OTC each filed a further affidavit on

9 March 2002. The Plaintiffs clarified that their case is founded on constructive trust. OHC explained:

> "4. My contention of the subsistence of the trust arises in the following way. The ***sole reason*** **for the 2nd plaintiff and I assenting to the calling of the rights issue in October 1999 was the common understanding reached between the 1st defendant, the 2nd plaintiff and I that the 1st defendant would provide the necessary funds to take up our rights issue on the basis that he would transfer to the 2nd plaintiff and I our entitlement of 260,000 shares each when we were able to reimburse him for the price of acquiring our shares. Pending the 2nd plaintiff and I making reimbursement to the 1st defendant, it was the 1st defendant's idea that the shares would be registered in his name as security.** I am advised and I verily believe that such a common intention results in the 1st defendant holding in trust for us our entitlement of the share.
>
> 5 . **Without such a common intention, both the 2nd Plaintiff and I would never have assented to the rights issue in October 1999** for (a) we would be relinquishing our majority control to the 1st defendant without any consideration and (b) we would be relinquishing such control for a song since the price paid for the rights shares was $1 per share while the value of each such share was much more than $1….
>
> 6. It was pursuant to such common intention that the 1st defendant went ahead to apply for 1 million shares to be issued to him."
>
> [emphasis added]

14. OTC agreed with 4 to 6 of OHC's second affidavit.

15. The oral evidence of OHC and OTC changed significantly the common understanding so definitively expressed in their respective affidavits. In the result, the terms of the common understanding are imprecise and the credibility of the Plaintiffs' case is undermined. It is necessary to identify the inconsistencies in the various conflicting accounts of the Plaintiffs' evidence.

16. In the course of cross-examination, both the Plaintiffs said that they would have been able to take up the shares in October 1999 because they could have borrowed from others. This is the first shift from the written testimony. Apart from that, two other matters were raised. Firstly, a "scheme" to show to Ong Leong Chuan ("OLC") that the October rights issue was not designed to oppress him and secondly, the plan to marginalise OLC by diluting his shares.

17. In oral evidence, OHC said that the pre-acquisition arrangement for the shares to be registered in OBC's name was to ensure that OLC could not complain that the October rights issue

was designed to oppress him as the Plaintiffs too did not have funds to subscribe to the rights issue. OHC said:

> Q: ….[S]o this plan to fool Mr Ong Leong Chuan was the real reason why the shares were put in Mr. Ong Boon Chuan's name, is that your evidence?
>
> A: This was a common understanding at that time."
>
> [VN 104]

18. The shift from the written testimony is evident from the series of questions put to OBC during cross-examination:

> "Q: Well, I'm putting it to you Mr. Ong, that both the Plaintiffs would have subscribed for the rights issue if not for the fact that you and the Plaintiffs had an understanding that all the shares would be put in your name to give an appearance to Mr. Ong Leong Chuan that both the plaintiffs could not take up the shares.
>
> A: I don't agree"
>
> [VN 609]
>
> ……
>
> "Q: I put it to you Mr. Ong, that the reason why you made payment for all the 900,000 extra shares by the deadline, was because of the scheme you had with the plaintiffs to have all the shares registered in your name in order to give Mr. Ong Leong Chuan the appearance that the plaintiffs were not able to pick up their shares.
>
> A: I don't agree, .."
>
> [VN 619]

19. According to OHC, the "scheme" was suggested by either OBC or TCY. This "scheme" or plan was not alluded to in the affidavits filed by the Plaintiffs nor was it addressed in the Plaintiffs' Opening Statement. OHC's earlier answers to Counsel for 1st Defendants expose the flaw in his own testimony:

> "Q. Did you agree to this suggestion?
>
> A . **We had this understanding, but I don't recall whether I agreed, I remember we had this understanding**.
>
> Q. What understanding are you talking about now?
>
> A. The understanding that I just mentioned.

Q. Which is?

A. We have no money to take out the shares, to show that we don't oppress Ong Leong Chuan.

Q. So you agree to it?

A. This is one of the suggestions and **I recall that the share was already registered under Ong Boon Chuan's name** as the director. As the security." [emphasis added]

[VN 37]

20. OBC has denied the existence of such a plot or plan. His denial is corroborated by TCY. TCY explained that this ex post facto argument was his idea for the minority oppression action that started in December 1999, well after the October 1999 rights issue. OLC in that action had complained that the affairs of the company were being conducted in a manner that was oppressive to him.

21. OTC in oral evidence said that the common understanding was to marginalise OLC by diluting his shares. Counsel for the Plaintiffs went on to suggest to the 1st Defendants that the "real reason" for proposing the rights issue in October 1999 was to dilute the shares of Ong Leong Chuan (see VN 594).

22. OTC conceded that there was a risk of the plan going awry. The common understanding as alleged would not marginalise OLC by diluting his shares. The way to go about achieving that objective, if true, would be for the Plaintiffs to take up their entitlement of the rights issue shares in their respective names.

23. The Plaintiffs say that they would not have assented to the October rights issue without the common understanding as it would have meant relinquishing majority control bears the hallmark of rationalised evidence. OHC's testimony is also unreliable for another reason. The 1st Plaintiff admits that at the time of pre-acquisition of the rights issue shares, he was not concern with voting rights and majority control. He only came to appreciate the importance of voting rights in July or August 2001 when he tried to get the board of Tong Guan to approve the transfer of shares from 1st Defendant to him.

24. Although OBC's shareholdings substantially increased after the October rights issue, it is not enough to give him majority control of Tong Guan. The Plaintiffs' contention of majority control by OBC is based on OBC acquiring both the Plaintiffs' October rights issue shares as well OLC's shares under the Tomlin Order in OS 1944 of 1999. I accept the submissions of Counsel for 1st Defendant that it is factually impossible for the 1st Defendant to take into account any purchase of OLC's shares in August or September 1999 when the Tomlin Order was only made in July 2000. Moreover, there is no proper evidence before me as to the value of the shares at the material time. The value of the shares then was, as Counsel for 1st Defendant argued, anybody's guess. It is quite clear from the minutes of the EGM on October 1999 that the Plaintiffs and 1st Defendant deferred discussion on OLC's proposal for a management buy-out as the accounts of the Malaysian subsidiaries were not available to the Plaintiffs and 1st Defendant to determine the fair value of the shares in Tong Guan.

When was the common understanding reached?

25. Counsel for the Plaintiffs submits that the common understanding was reached at different times with each of the Plaintiff and OBC. The evidence does not support this submission. It is not stated anywhere in their affidavits that they each separately reached the common understanding with OBC. In fact the impression given was that it was reached at the same time. In oral evidence, OCH stated that prior to the 1st October 1999 EGM, there were several discussions in August/September 1999. During those discussions, both he and OTC reached this common understanding with OBC. He mentioned that OTC, OBC, OSA and TCY were present when the common understanding was discussed in 1999. He gave the impression that OTC was also present when the common intention was reached.

> "Q. Was Mr Ong Teck Chuan part of this agreement between you and Mr Ong Boon Chuan?
>
> A. Yes, your Honour.
>
> Q. Did both of you agree to Mr Ong Boon Chuan's idea or proposal at the same time?
>
> A. Yes, your Honour." [VN 42]

26. However, during re-examination he said that when this common understanding was reached between himself and OBC, both OSA and TCY were present. He was not sure whether OTC was present.

27. OTC's evidence is that OBC had told him that he would put up funds for his rights issue and that the shares would be returned to him upon reimbursement. OHC was not present during this conversation but he is unable to recall whether anyone else was present.

28. TCY and OSA deny being present when the alleged common understanding was reached. If there were such an arrangement TCY would have recorded it in writing. He had no record of such a meeting or arrangement. TCY said that he was at meetings where the parties would talk about raising money to pay off UOBVI through the rights issue. I accept his evidence that he was not at any critical meeting where the brothers allegedly agreed on what and how they wanted to distribute the October right issue shares among themselves.

Was there a loan?

29. OHC, with whom OTC concurs, deposed in 4 of OHC's second affidavit, that the sole reason for agreeing to a rights issue in October 1999 was the existence of the common understanding of a loan. OHC contradicts himself during cross-examination:

> "Q: And you will also agree that the rights issue helped to pay UOBVI the October 1999 rights issue? It helped to pay UOBVI?
>
> A: That is one of the reasons
>
> Q: And you will also agree that **it is precisely because of this reason that you agree to the October 1999**

rights issue?

A: **Yes**, Your Honour." [Emphasis added]

[VN 87]

30. OBC denounces as untrue and incredible the Plaintiffs' contention that he had extended a loan to them to subscribe to the shares and the shares were held in his name as security. It is against logic and common sense to go ahead in this way. It would have been logical for OBC to loan the money directly to OHC and OTC and for them to handover the shares and duly executed blank transfer forms to OBC as security for the loan. Moreover, there was no discussion or agreement on the repayment period. Neither the Plaintiffs nor the 1st Defendant raised this question. The idea of an indefinite loan at a time when 1st Defendant had cash flow constraints would seem particularly unattractive, seeing that he did not think that his brothers would have difficulty raising funds from borrowings and had told them to raise their own funds. Overall, I find that the Plaintiffs have not established the existence of a loan as alleged.

31. Even if there was a loan, the loan arrangement is not acquisition of property within the *Pallant v Morgan* doctrine.

August 2000 meeting and purported sale of 260,000 shares to OHC

32. On 23 August 2000, at a meeting held at the offices of Tan Cheng Yew, OBC offered to sell to OHC and OTC an equal number of ordinary shares in Tong Guan, namely, 260,000 each. The minutes of that meeting tell against the Plaintiffs' case. The sale fits in with OBC's evidence that after settling with OLC in OS 1944 where he had offered to sell to OLC 380,000 October rights issues shares as part of the settlement, OTC had complained that OBC had not given him a similar opportunity to purchase shares. This testimony is unchallenged by the Plaintiffs. The sale of the shares was also to give the Plaintiffs a larger stake in the company in order to motivate them in the family business. Therefore, in August he made an offer to sell 260,000 shares to each of the Plaintiffs at a price of $290,000. The Plaintiffs were given an option to purchase 260,000 shares or a smaller quantity. The minutes of the family meeting confirmed the 1st Defendant's case. The minutes were prepared by TCY who testified that at the meeting the sale of shares was offered. TCY's attendance note reads:

> "260,000 right issue (Oct 1999) OBC paid, to be repaid by 31/10/01 (optional). Option to purchase the shares at a price, the price at which they [are to] purchase the shares $290,000 rateable and proportionate, don't have to pay all to get all."

He explained his attendance note:

> "A. You can buy a portion of the shares if you want. So you don't have to buy the whole 260,000 shares. If you wanted to buy for example 100,000 shares, you could buy it, but the price you pay is a proportion of $290,000."

[VN 458]

33. TCY's attendance note is contemporaneous documentary evidence. The option to purchase

part if not all of the 260,000 shares fits in with the 1st Defendant's case of a sale. If there was a trust as alleged, there could be no option to purchase part of the shares.

34. I accept the 1st Defendant's submission that the 40:30:30 distribution of OLC's shares pursuant to the Tomlin Order of July 2000 discussed on 23 August 2000 is consistent with OBC's desire to enlarge the shareholdings of both the Plaintiffs to motivate the management of Tong Guan. At that meeting the sale of 260,000 shares to each of the Plaintiffs coupled with the 30% purchase of OLC's shares under the Tomlin Order was made. If carried out, the Plaintiffs would have substantially more shares than OBC. TCY confirmed that OBC was trying to be the peacemaker and he felt that if everyone had a sizeable interest in the company, it would motivate them to work together for their mutual benefit.

35. The Plaintiffs took the position that no sale of shares was discussed. The discussion was on the return of shares for $290,000. Nevertheless, in a letter dated 17 August 2001 to TCY, M/s Kumar & Loh (AB 189), on instructions from OHC, referred to the shares as having been "bought" from OBC and wanted to know when the shares would be registered in the name of the 1st Plaintiff.

36. In the present matrix and particularly in the light of the corroborative evidence of TCY, the sale of shares is in harmony with the evidence of 1st Defendant and OSA.

37. The 1st Defendant's case is that the offer to sell was revoked when the outcome of the meeting held on 23 August 2000 was rescinded. TCY corroborates this evidence. He said that save for the matters pertaining to Suit No. 633 of 1999 and Suit No. 84 of 2000, all matters resolved on 23 August were rescinded. TCY's attendance note of 7 September 2000 reads:

> "All parties (majority of parties) agreed that the meetings held in my office are not valid. Not valid for TG [Tong Guan] and not valid for family."

38. The rescission arose from OTC's unhappiness with the corporate structure proposed and agreed at the meeting in his absence. As he had challenged the validity of the meeting, the 1st Defendant and Plaintiffs agreed to unravel everything that was agreed or decided at the meeting save for the items that were agreed to be still valid.

39. I also accept the evidence of TCY that it was he who had subsequently persuaded OBC to make a fresh offer to sell 260,000 shares to OHC. OHC paid for the shares in July 2001 and the share transfer form was signed by OBC. The shares were not registered in the name of OHC. OBC and OSA refused to approve the share transfer as there was at that time some doubt on the source of funds for OHC's purchase. There was concern that Article 6 of the Articles of Association may have been contravened. Moreover, OSA had objected to the sale on ground of pre-emption rights.

40. The question whether the purported sale and transfer which turns on the true construction of the pre-emption clause is defeasible is not before me. Neither is the question whether the company had acted properly in refusing to register the shares.

41. I accept the 1st Defendant's evidence which is corroborated by TCY that he did not revive the offer to sell 260,000 shares to OTC. The 1st Defendant had therefore no reason to accept the tender. TCY as company secretary in reply wrote to M/s Kumar & Loh on 24 August 2001 to explain that the company's inability to effect a transfer of shares to OTC "until Ong Boon Chuan agrees to sell

the shares currently registered with him." See AB 192.

December 2000 agreement

42. OTC relies on an agreement where he is to sell his entire interest in Tong Guan to OBC, OSA and OHC and in return the company sells its business in Thailand and the rest of Indo China to him as proof of his interest in the 260,000 shares held by OBC. It is said that in the recital to the agreement, OTC is acknowledged as the legal and beneficial owner of 780,000 ordinary shares in Tong Guan..

43. Both OBC and OSA testified that in that transaction, the consideration for the shares would be calculated based on a notional figure of 780,000 shares. This evidence is corroborated by TCY. The 2nd Plaintiff was unhappy and wanted to sell his shareholdings in Tong Guan and take over the Thai business of the group. TCY who prepared the document said it was agreed that the other shareholders would treat the 2nd Plaintiff as having 780,000 shares for the purpose of calculating the consideration for the shares. It was a notional number adopted as a compromise of the dispute and was to formalise an exit point for the parties on the basis of a clean break. TCY further testified that everybody knew that this agreement would not take effect straightaway. A valuation of the shares would have to be carried out and that would take time and money. His testimony is consistent with the existing facts.

44. Counsel for the Plaintiffs sought to exclude the evidence of OBC, OSA and TCY by relying on ss 93 and 94 of Evidence Act. In my view, the evidence of TCY, OBC and OSA is admissible as part of the objective framework of facts and circumstances within which the contract was made.

45. In any event, had I been confined to the agreement alone under the parol evidence rule, I would have been unable to draw a clear conclusion on its probative value argued for by the Plaintiffs. The agreement would not have been applicable to the existing facts. OTC only signed the agreement for the sale of shares in April 2001 well before the tender of his cheque to OBC in early August 2001. OTC would not have been able to sell and deliver the shares within 14 days of executing the agreement in accordance with clause 8. The facts in existence show that the recital is incorrect as only 520,000 shares are registered in the name of OTC and the balance 260,00 shares in the name of OBC.

Findings and Conclusion

46. As stated, the essential ingredient to the Plaintiffs' claim in constructive trust is an arrangement or shared understanding, however informal, about the way in which the shares will be acquired or dealt with.

47. I have compared the accounts given and assessed the credibility of the principal witnesses. The Plaintiffs' evidence is inconsistent and self-contradictory. There are also inconsistencies in their respective evidence when compared with the various accounts of some of the witnesses. Their testimony also conflict with logic and common sense. What also struck me is the Plaintiffs' constant parroting of the words "common understanding" in the witness box, which goes to show their tendentious view. I find the Plaintiffs' evidence inherently unreliable.

48. The 1st Defendant's evidence on the other hand is uncomplicated consistent and sensible. More importantly, his testimony is corroborated by TCY. Having listened to TCY carefully throughout his evidence, I find him a convincing and credible witness. He gave his evidence in a fair, moderate and convincing way. He is an independent party whose file notes provided contemporaneous written

evidence. His files notes provided an insight of the situation and position of the parties. The integrity of the transcripts of conversations with TCY is questionable. On any view, they are of no probative value. I am therefore satisfied that TCY's evidence supports the 1st Defendant's case.

49. I am not persuaded by the Plaintiffs' evidence and argument that, but for the common understanding (which in the light of the contradictory evidence is completely doubtful) they would not have voted in favour of the October rights issue. The Plaintiffs have strong commercial and personal reasons for the approving the rights issue. The thought of making payment, albeit of only part of indebtedness, would improve Tong Guan's negotiating position with UOBVI. The Plaintiffs are guarantors for banking facilities of the company and were concerned that if UOBVI sued the company, other banks may follow suit. The Plaintiffs were anxious to preserve their personal exposure or to prevent any enforcement of UOBVI's right against the Plaintiffs under the personal guarantees. OTC estimated his own personal exposure under the guarantee to UOBVI to be about $2 million or $3 million.

50. In my view, it was in the Plaintiffs' interest that $1 million be raised. It may well be that the company and its subsidiaries may have assets but that cannot be realised immediately to meet the urgent need of funds. It was not clarified whether the assets were unencumbered and freely disposable at the will of the company or its subsidiaries. OHC admitted that it was not possible for the Singapore operations alone to pay UOBVI in a short period. With the help of its subsidiaries, the loan could be repaid in full in 3-4 years. I find that the overriding motive for the October rights issue was to raise $1 million to pay UOBVI at least something.

51. Quite apart from this aspect, as I have earlier described, I find that the terms of the understanding are imprecise. It is also unclear when the common understanding was reached. Both Plaintiffs are unable to furnish details of where and when the common understanding was reached. I have found that there was no loan as alleged. I also found that there was an offer to sell 260,000 shares to each of the Plaintiffs on 23 August 2000 but the offer was subsequently revoked on 7 September 2000.

52. For all the above reasons, I find as a fact that there was at all material times no common understanding as alleged. It follows that the declaration sought in prayer 1 of the Amended Originating Summons is dismissed with costs.

Sgd:

BELINDA ANG SAW EAN

JUDICIAL COMMISSIONER