IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 81

Originating Claim No 235 of 2024

Between

(1) Shiju Varghese Joyce
(2) Leena Mathew

… *Claimants*

And

(1) Kidney Therapeutics Centre Pte Ltd
(2) Yang Wen-Shin

… *Defendants*

JUDGMENT

[Companies — Oppression]
[Contract — Formation — Oral agreement]

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Shiju Varghese Joyce and another
v
Kidney Therapeutics Centre Pte Ltd and another

[2026] SGHC 81

General Division of the High Court — Originating Claim No 235 of 2024
Sushil Nair J
5–8, 12–15, 19–22 August, 13 October 2025

10 April 2026 Judgment reserved.

Sushil Nair J:

Introduction

1 This case serves as a cautionary tale about the perils of conducting business on the basis of undocumented oral understandings. When parties establish businesses relying on informal agreements, they expose themselves to significant legal and financial risks if relationships deteriorate. Indeed, the absence of proper documentation can leave parties in the unenviable position of being unable to prove even the basic existence of agreements they may have considered settled.

2 The present dispute exemplifies these dangers. In this case, the parties find themselves in fundamental disagreement about the very foundation of their business relationship. The claimants assert that they entered into a comprehensive oral "founding agreement" with the second defendant in

May 2021, which allegedly established detailed terms governing profit-sharing arrangements, management roles, and operational control of the first defendant's kidney dialysis business. The second defendant, however, categorically denies the existence of any such "founding agreement".

3 The parties' relationship soured in 2022, and the claimants are now seeking relief for alleged breach of the "founding agreement", misrepresentation, and minority oppression. After considering the parties' written and oral submissions, I am not satisfied that the claimants have established their claims on a balance of probabilities. Accordingly, I dismiss HC/OC 235/2024 ("OC 235") in its entirety.

The parties

4 The first claimant, Shiju Varghese Joyce ("Shiju"), and the second claimant, Leena Mathew ("Leena"), are husband and wife. They are both nurses. I will refer to them collectively as the "Claimants".

5 The second defendant is Dr Yang Wen-Shin ("Dr Yang"), a nephrologist.

6 The first defendant, Kidney Therapeutics Centre Pte Ltd ("KTC"), is a Singapore company incorporated on 4 May 2021. It is in the business of providing dialysis services.[1] From on or about 15 June 2021 to 31 December 2023, KTC operated a kidney dialysis centre at 304 Orchard Road, #05-19,

[1] Core bundle dated 29 July 2025 ("CB") at pp 1078–1082.

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Lucky Plaza ("Premises").[2] KTC ceased operations after its lease at the Premises was terminated on 31 December 2023. It is now a dormant company.

7 At the time of KTC's incorporation, Dr Yang and Leena were named as its shareholders and directors. Dr Yang is the registered holder of 67% of the shares in KTC, while Leena is the registered holder of the remaining 33%.[3] At present, the directors of the company are Dr Yang and his wife, Li Jing. Leena is no longer a director of KTC. Li Jing is also currently the managing director of KTC. On top of being a shareholder and director, Dr Yang is the physician in charge of KTC ("Medical Director"). It is a regulatory requirement for every dialysis centre to have a nephrologist named as its Medical Director.[4]

8 Although Shiju was never a director or a registered shareholder of KTC, it is not disputed that he played a role in the incorporation of KTC and had meetings with Dr Yang prior to KTC being set up.[5] Shiju was also employed as a senior enrolled nurse with KTC from 28 August 2021 to 2 February 2023.[6] Moreover, Shiju was appointed as KTC's secretary from 19 May 2022 to 27 August 2022.[7]

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2 Bundle of affidavits of evidence-in-chief dated 29 July 2025 ("BAEIC") at pp 154 (para 2) and 171 (para 48).

3 Agreed chronology of key events dated 5 August 2025 ("ACKE") at p 2.

4 BAEIC at pp 12 (para 21(5)) and 174–175 (para 55).

5 ACKE at p 1.

6 ACKE at pp 2 and 4.

7 CB at p 1053.

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The parties' general positions

9 I begin by setting out the version of events as asserted by the various parties, with a focus on the facts that are material to the Claimants' claims.

The Claimants

10 The Claimants claim that they met with Dr Yang on 2 May 2021 at Lucky Plaza ("May 2021 Meeting"). This was one of the few meetings they had with Dr Yang – before KTC was incorporated – to discuss matters relating to the dialysis centre. At the May 2021 Meeting, the three of them entered into an oral agreement regarding the setting up and future administration of KTC ("Founding Agreement"). The Founding Agreement comprised, amongst others, the following undocumented terms:[8]

(a) **Shiju's role:** Shiju will be the company secretary and operations manager of KTC. He will play a key role in the development and operations of the dialysis centre. He will not be registered as a director or shareholder of KTC to avoid any issue of conflict of interest, given that he was then employed as a senior enrolled nurse with another kidney dialysis clinic, Fresenius Kidney Care Mt Elizabeth Dialysis Clinic, which was owned by Fresenius Medical Care ("FMC").

(b) **Leena's role:** Leena will be a director and a shareholder of KTC. She will own 33% of the shares in KTC for the benefit of herself and Shiju. She will not be removed as a director of KTC. She will assist Shiju in managing the day-to-day operations of KTC.

[8] BAEIC at pp 13–18 (para 23).

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(c) **Dr Yang's role:** Dr Yang will be a director and shareholder of KTC. He will own 67% of the shares in KTC. He will not be removed as a director of KTC and will be appointed the Medical Director of KTC. He will not be involved in KTC's operations or be paid a salary initially, and will not be required to attend to the management and/or operations of KTC.

(d) **Salary:** Leena and Dr Yang will not receive any salary and/or fees whatsoever until the business is profitable. Dr Yang will not receive any fee in respect of his role as Medical Director ("Medical Director Fee"). Shiju will be entitled to a modest salary once he leaves FMC and starts to work as a full-time nurse at KTC.

(e) **Sharing of profits:** Dr Yang and Leena will each be entitled to 50% of the profits (including dividends) from KTC, notwithstanding the manner in which KTC's shareholding was structured as between Leena and Dr Yang. Dr Yang agreed to this arrangement as he recognised that the Claimants were the ones who would be managing KTC's day-to-day operations.

(f) **Important decisions:** All important decisions regarding KTC will be discussed and must be agreed to by both Dr Yang and Leena.

11 KTC was incorporated a few days after the May 2021 Meeting. The Claimants' position is that KTC operated as a quasi-partnership that was based on mutual trust and confidence between the Claimants and Dr Yang. The Claimants also had legitimate expectations regarding how KTC was to be

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managed which were based on the Founding Agreement.[9] In this regard, I highlight that the Claimants' pleaded case in relation to the existence of a quasi-partnership rests substantially on the assertion that the terms of the Founding Agreement were never reduced to writing, as the Claimants trusted that Dr Yang would uphold the terms of the Founding Agreement.[10] Moreover, the Claimants' pleaded case in relation to the legitimate expectations which they held appears to be solely based on the assertion that the Claimants had the legitimate expectation that Dr Yang would comply with the terms of the Founding Agreement.[11] This is because the Claimants have not specifically particularised that they had other legitimate expectations which were independent of the Founding Agreement.

12 On 16 July 2022, the parties received KTC's draft financial statements for the financial year ending in April 2022 ("FYE April 2022"). Shiju and Dr Yang met in the evening on that same day.[12] Dr Yang then made, amongst others, the following requests:[13]

(a) Dr Yang wanted to be paid a Medical Director Fee. This should be backdated to when Shiju first started to receive his salary of $2,500 as a senior enrolled nurse with KTC (see [8] above).

(b) Dr Yang wanted to be paid 67% of KTC's profits.

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9 BAEIC at p 26 (paras 44–45).

10 Statement of Claim (Amendment No. 4) dated 26 August 2025 ("SOC(A4)") at para 70.

11 SOC(A4) at para 71.

12 BAEIC at p 27 (paras 46–47).

13 BAEIC at pp 27–29 (paras 48–51).

(c) Dr Yang wanted to be paid a salary that was proportionate to Shiju's salary, in the ratio of 67:33. In the alternative, Shiju should stop receiving a salary from KTC, so that Shiju and Leena can be paid 33% of KTC's profits in accordance with their shareholding.

Shiju, however, refused to agree to Dr Yang's requests, as they were contrary to the terms of the Founding Agreement.[14]

13 On 27 August 2022, KTC held its first annual general meeting ("First AGM"). The attendees of the meeting included Dr Yang, Shiju, Leena and Li Jing. At the First AGM, Dr Yang unilaterally declared, among other things, the following:[15]

(a) Dr Yang will receive a Medical Director Fee for FYE April 2022.[16]

(b) KTC's profit from FYE April 2022 will be divided between Dr Yang and Leena in accordance with the proportion of their shareholding.

(c) Dr Yang and Leena were retired as directors. Dr Yang will be re-appointed as the sole director of KTC. Leena will not be re-appointed as a director.

(d) Li Jing will be appointed as the managing director of KTC.

(e) Shiju will no longer be KTC's company secretary.

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14 BAEIC at p 29 (para 52).

15 BAEIC at pp 31–32 (paras 58–59).

16 ACKE at p 3.

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The above matters – which went against the Founding Agreement – were not detailed in the agenda of the First AGM, and were decided without any discussion or vote.[17]

14 After the First AGM, the Claimants were completely excluded from KTC's management, operations and finances by Dr Yang and Li Jing. They were denied access to KTC's financial documents,[18] and did not receive any dividends for the financial years ending in April 2023 ("FYE April 2023") and April 2024 ("FYE April 2024").[19] Moreover, whilst all that was happening, Dr Yang and Li Jing caused KTC to incur excessive costs that should not have been incurred.[20] They also paid themselves remuneration in excessive amounts:[21]

(a) Li Jing entered into an employment agreement with KTC on 29 August 2022, which entitled her to a monthly salary of $8,562.[22]

(b) Dr Yang entered into an employment agreement with KTC on 1 September 2022, which entitled him to a monthly base salary of $20,800 and $500 for every recorded acute dialysis treatment.[23] Moreover, he was paid a monthly Medical Director Fee of $3,500.[24]

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17 BAEIC at pp 32–33 (paras 60–63).

18 BAEIC at pp 35 (para 69) and 39 (para 81).

19 BAEIC at p 52 (para 113).

20 BAEIC at pp 55–62 (paras 121–135); Table of agreed issues and parties' positions filed 5 August 2025 ("TAIPP") at pp 8–9.

21 BAEIC at p 49 (para 103).

22 BAEIC at pp 52–53 (paras 114–115).

23 BAEIC at pp 49–50 (paras 104–106).

24 BAEIC at p 51 (para 110(3)).

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15 Subsequently, on 4 January 2023, Shiju received a warning letter from Dr Yang regarding his conduct as an employee of KTC.[25] On 2 February 2023, Dr Yang issued to Shiju another two warning letters and terminated Shiju's employment with KTC.[26]

Dr Yang

16 Dr Yang's position is that he never entered into the Founding Agreement with the Claimants (see [10] above).[27] However, at a meeting held on 27 April 2021, he did agree with Shiju on, among other things, the following matters before KTC was incorporated:[28]

(a) Dr Yang will hold 67% of the shares in KTC and Leena will hold 33%.

(b) The profits of KTC will be shared between the parties in accordance with the proportion of their shareholding in KTC.

(c) Dr Yang's primary role in KTC is to be its Medical Director. He will not draw a Medical Director Fee until KTC becomes profitable. The Medical Director Fee will be $3,500 monthly.

(d) Shiju will be employed as a senior enrolled nurse by KTC, with a monthly salary of $2,500. He will be paid an additional $1,000 per

25 BAEIC at pp 39–41 (para 83).

26 BAEIC at pp 41–42 (para 85).

27 BAEIC at pp 166–167 (para 36).

28 BAEIC at pp 163–165 (para 34).

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month for his technical skills in operating the dialysis reverse osmosis machine.

17 Furthermore, KTC did not operate as a quasi-partnership that was based on mutual trust and confidence between the parties. The Claimants did not have legitimate expectations regarding how KTC was to be managed that arose outside of KTC's constitution.[29]

18 After the draft financial statements for FYE April 2022 were sent to the parties (see [12] above), Shiju and Dr Yang agreed to Dr Yang drawing a monthly Medical Director Fee as KTC had become profitable. They also agreed that KTC's profits will be distributed to Dr Yang and Leena in accordance with the proportion of their shareholding of KTC.[30] Subsequently, they agreed that Dr Yang will be paid a Medical Director Fee of $40,600 for his services during the period from September 2021 to April 2022.[31]

19 In respect of the First AGM (see [13] above), the resolutions passed were valid as the First AGM was properly convened and conducted.[32] According to KTC's constitution, Dr Yang and Leena had to retire as directors of KTC.[33] The Claimants also did not object to any of the matters that were discussed.[34] At the close of the First AGM, Dr Yang informed the Claimants that only Li Jing and himself would have access to KTC's financial information moving forward.

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29 TAIPP at pp 3 and 11.

30 BAEIC at pp 186–187 (para 81).

31 BAEIC at p 190 (para 89).

32 TAIPP at p 12.

33 BAEIC at p 195 (para 98(c)).

34 BAEIC at p 196–197 (para 99).

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This is because there were rumours about, amongst others, KTC's confidential information being leaked. The Claimants did not object to this.[35]

20 Subsequently, Dr Yang and Li Jing were paid in accordance with their respective employment contracts, and they did not incur any unnecessary costs when managing the affairs of KTC.[36] The reason why KTC suffered a net loss later on in FYE April 2024 was because of the Claimants' actions.[37] For instance, on 14 April 2023, Shiju incorporated a competing kidney dialysis centre which commenced operations in the unit next to the Premises.[38]

21 As to why KTC did not declare any dividends for FYE April 2023 and FYE April 2024, no dividends could be declared for FYE April 2023 as KTC was unable to convene the annual general meeting scheduled for 13 October 2023 ("Second AGM"). This is because Leena had refused to attend the Second AGM.[39] Dividends could also not be declared for FYE April 2024 as KTC did not make any profit that year.[40]

22 Furthermore, Shiju's employment with KTC was validly terminated on 2 February 2023. The reason for the warning letters being issued to Shiju – and Shiju's employment being terminated – was because Shiju had breached his

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[35] BAEIC at p 197 (para 100).

[36] TAIPP at p 8.

[37] BAEIC at p 221 (para 162).

[38] BAEIC at pp 212–213 (para 138).

[39] BAEIC at pp 216 (para 149) and 218 (para 153).

[40] TAIPP at p 14.

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employment contract by acting in an unprofessional manner and committing misconduct.[41]

KTC

23 KTC takes no position on the following issues:[42]

(a) whether the Claimants and Dr Yang had entered into any oral agreement or the Founding Agreement;

(b) whether KTC operated as a quasi-partnership based on mutual trust and confidence between the Claimants and Dr Yang; and

(c) whether the affairs of KTC had been conducted by Dr Yang in an oppressive manner *vis-à-vis* the Claimants.

24 In respect of the First AGM, KTC claims that it was properly convened and conducted in accordance with KTC's constitution.[43] Furthermore, after the First AGM, KTC did not remunerate Dr Yang and Li Jing excessively and incur costs that should not have been incurred.[44] Also, the termination of Shiju's employment with KTC on 2 February 2023 was valid, and KTC was justified in issuing the three warning letters to Shiju.[45]

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41 BAEIC at pp 203 (para 118) and 209 (para 128).

42 TAIPP at pp 1, 3 and 12.

43 TAIPP at p 5.

44 TAIPP at p 8.

45 TAIPP at p 6.

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Issues to be determined

25 As previously highlighted, the Claimants are claiming against Dr Yang on three grounds: (a) breach of the Founding Agreement; (b) fraudulent or negligent misrepresentation; and (c) minority oppression under s 216 of the Companies Act 1967 (2020 Rev Ed) ("Companies Act") (see [3] above).

26 In light of the parties' respective positions and submissions, the relevant issues for my determination are as follows:

> (a) whether the Claimants and Dr Yang entered into the Founding Agreement, and if they did, whether Dr Yang breached the terms of that agreement ("Breach of Agreement Issue");
>
> (b) whether Dr Yang fraudulently or negligently misrepresented to the Claimants that he would adhere to the terms of the Founding Agreement ("Misrepresentation Issue"); and
>
> (c) whether Dr Yang conducted the affairs of KTC or exercised his powers as a director of KTC in a manner that is oppressive towards the Claimants such that they would be entitled to relief under s 216 of the Companies Act ("Oppression Issue").

The Breach of Agreement Issue

27 I start with the Claimants' claim against Dr Yang for breach of the Founding Agreement.

28 I first have to determine whether Shiju, Leena and Dr Yang entered into a legally binding and enforceable agreement (*ie*, the Founding Agreement) at

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the May 2021 Meeting. It is not disputed that the Founding Agreement, if it existed, would be an oral agreement.

29 Two preliminary observations are necessary. The first is that the Claimants bear the legal burden of proving that the parties entered into the Founding Agreement (*Chan Tam Hoi v Wang Jian* [2022] SGHC 192 ("*Chan Tam Hoi*") at [38]–[45]). In other words, the Claimants have to adduce sufficient evidence to prove their positive case that the Founding Agreement exists on a balance of probabilities. Their burden cannot be discharged simply by pointing to aspects of Dr Yang's defence which might be unsustainable or unbelievable.

30 Second, it was observed by Goh Yihan JC (as he then was) in *Chan Tam Hoi* that there is an important conceptual difference between ascertaining whether an oral agreement exists at all, and determining what its terms are if it is found to exist (at [71]). The inquiry which I am concerned with in the present case is the former. To my mind, the key question is whether the Founding Agreement – as pleaded by the Claimants in its entirety – was established at the May 2021 Meeting.[46] This is because Dr Yang takes the position that he met with Shiju on 2 May 2021 to discuss issues relating to the registration and incorporation of KTC, and there was *no Founding Agreement* discussed at that meeting.[47]

31 In this regard, I note that although Dr Yang denies the existence of the Founding Agreement, he accepts that he did agree with Shiju on certain matters relating to KTC prior to its incorporation (specifically, at another meeting on 27

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46 SOC(A4) at para 16.

47 BAEIC at p 168 (para 39); Bundle of pleadings dated 29 July 2025 ("BOP") at pp 258–261 (paras 20–24).

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April 2021).[48] In fact, some of these matters are consistent with the terms of the Founding Agreement. This is the reason why the Claimants submit that Shiju, Leena and Dr Yang had entered into an oral agreement (which they also label as the "Oral Understanding") before incorporating KTC, and the only divergence between the parties relates to the specific terms of that oral agreement.[49] In other words, the Claimants submit that the court's focus should be on ascertaining the *terms* of the Founding Agreement. I respectfully disagree. That submission would be correct if Dr Yang did not dispute that he and the Claimants entered into the Founding Agreement. But that is not the case here. On the face of the pleadings, it is apparent that Dr Yang denies having entered into the Founding Agreement at the May 2021 Meeting (see [30] above). In the final analysis, the Claimants' claim for breach of the Founding Agreement rests on their assertion that they entered into the Founding Agreement with Dr Yang on 2 May 2021.[50]

The law on formation of oral agreements

32 The substantive legal requirements for the formation of an oral agreement are the same as those for a written contract: (a) offer and acceptance; (b) intention to create legal relations; (c) certainty of terms; and (d) consideration (*Tan Swee Wan v Johnny Lian Tian Yong* [2018] SGHC 169 at [222]). The evidence must clearly show that all parties to the alleged oral agreement intended to create legal obligations by their exchange of words and

48 BAEIC at pp 163–166 (paras 34–35).

49 Claimants' closing submissions dated 24 September 2025 ("CCS") at paras 26–27 and 32.

50 SOC(A4) at para 16.

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conduct (*Lim Seng Choon David v Global Maritime Holdings Ltd* [2019] 3 SLR 218 at [6]).

33 There are, however, specific principles regarding *how* the court should evaluate whether the substantive requirements for the formation of an oral agreement have been established (see *Chan Tam Hoi* at [66]–[69]; *ARS v ART* [2015] SGHC 78 ("*ARS*") at [53]):

(a) The court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time in an objective manner.

(b) Where possible, the court should look first at the relevant documentary evidence. It is only if there is little or no documentary evidence that the court will examine the precise factual matrix to determine if an oral agreement was concluded between the parties. The availability of relevant documentary evidence also reduces the need to rely solely on the credibility of witnesses to ascertain if an oral agreement exists.

(c) Credible oral testimony may clarify the existing documentary evidence. Oral testimony may, however, be less reliable as it is based on the witness' recollection and may be affected by subsequent events (such as the dispute between the parties). In addition, where the witness is not legally trained, the court should not place undue emphasis on the choice of words.

From the above, it is clear that documentary evidence is generally preferred over oral testimony when determining if an oral agreement has been entered into (*The*

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Law of Contract in Singapore (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) at para 03.269).

34 I note, however, that the Claimants have not adduced any contemporaneous documentary evidence to support the existence of the Founding Agreement. They have, for instance, failed to produce any written documents or records which shed light on what was discussed and who was present at the May 2021 Meeting.[51] Aside from their assertions, all that the Claimants are relying on to prove that the Founding Agreement was entered into is the subsequent conduct of the contracting parties. In this regard, I note that the Appellate Division of the High Court has recently clarified that, under Singapore law, the parties' subsequent conduct is a relevant consideration when the court is determining whether a contract has been formed (*Kok Kuan Hwa v Yap Wing Sang* [2025] 1 SLR 1400 at [37]–[38]).

Whether the Claimants and Dr Yang entered into the Founding Agreement

35 In my judgment, the Claimants have not provided sufficient evidence to discharge their burden of proving that the Founding Agreement was entered into between them and Dr Yang at the May 2021 Meeting.

36 As previously highlighted (at [34] above), the Claimants are primarily relying on evidence of subsequent conduct to prove the existence of the Founding Agreement.[52] Broadly, they submit that Shiju, Leena and Dr Yang conducted themselves in a manner which is consistent with them having agreed to the terms of the Founding Agreement. However, I do not think that the

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51 CCS at para 28.

52 CCS at paras 35–60.

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evidence put forth by the Claimants takes them very far. In my view, the evidence of the parties' subsequent conduct in this case is not necessarily determinative – and not sufficiently indicative – of whether the Claimants and Dr Yang agreed to enter into the Founding Agreement at the May 2021 Meeting. The evidence might show how the parties behaved after 2 May 2021, but such behaviour cannot be definitively attributed to the existence of the Founding Agreement. Indeed, evidence of the parties' subsequent conduct is inherently ambiguous; it is often the case that "conduct can be explained by a number of reasons which does not have only one explanation" (*ARS* at [90]). In my view, it will be rare that evidence of the subsequent conduct of contracting parties is, by itself, sufficient to establish the existence of a contract. In this regard, it has been observed that in many of the previous cases, subsequent conduct was used *together* with other evidence to support a finding of a contract (see Goh Yihan, "Towards a Consistent Use of Subsequent Conduct in Singapore Contract Law" (2017) 5 *Journal of Business Law* 387 at n(63)). Given the lack of other evidence (*eg*, documentary evidence, oral evidence from disinterested third parties) in this case, I am not satisfied that the evidence of the subsequent conduct of the Claimants and Dr Yang is sufficient to prove that the Founding Agreement exists on a balance of probabilities.

37 Some of the evidence of subsequent conduct referred to by the Claimants does not establish that the Founding Agreement was formed at the May 2021 Meeting. Specifically:

(a) First, the Claimants submit that Shiju's appointment as KTC's secretary on 19 May 2022 evinces the parties' agreement that Shiju

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would be KTC's company secretary (see [8] above).[53] I do not accept that submission. The Claimants have not explained why Shiju was only appointed as KTC's secretary on 19 May 2022, although KTC was incorporated long before that on 4 May 2021. Even if there was a concern about conflict of interest given that Shiju was employed with FMC around the time of KTC's incorporation, it is Shiju's evidence that he stopped working for FMC in May 2021.[54] If it had indeed been agreed at the May 2021 Meeting that Shiju will be appointed as KTC's secretary, it is difficult to see why Shiju's appointment was only effected more than a year later.

(b) Second, the Claimants submit that the evidence reflects the parties' agreement that Leena and Dr Yang will not be removed from their appointments as KTC's directors. In this regard, the Claimants point to Dr Yang's insistence on stating that Leena was "retired" (and not "removed") at the First AGM.[55] The Claimants contend that Dr Yang was adamant on using the word "retired" because he had agreed to not "remove" Leena from her appointment as KTC's director. This, however, does not demonstrate that there was an agreement that Dr Yang and Leena will not be removed as KTC's directors. In fact, I note that Dr Yang's use of the word "retired" is consistent with the language of Art 67 of KTC's constitution, which states that "all the directors shall *retire* from office" [emphasis added] at the First AGM.[56] Furthermore,

53 CCS at paras 36–37.

54 BAEIC at p 6 (para 6).

55 CCS at paras 45–46.

56 Agreed bundle of documents dated 29 July 2025 ("ABOD") at p 81.

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Art 72 of KTC's constitution allows for the removal of any director before the expiration of his or her period of office by ordinary resolution.[57] There is no indication that there is a carve-out in this case, such that Art 72 does not apply to Dr Yang and Leena. This further points away from the conclusion that there was an agreement that Leena and Dr Yang will not be removed as directors of KTC.

(c) Third, the Claimants submit that the "practical effect" of Dr Yang and Leena being appointed as KTC's directors was that the parties had agreed that all important decisions concerning KTC must be agreed to by the Claimants and Dr Yang.[58] I am unable to accept this submission. To my mind, it does not necessarily follow from Dr Yang and Leena's appointments as KTC's directors that all important decisions in KTC must be unanimously agreed to by the Claimants and Dr Yang. The fact that Dr Yang and Leena were both directors of KTC cannot speak to how decisions regarding the management of KTC were made between them.

(d) Fourth, the Claimants submit that Dr Yang continued to be employed full-time with the Centre for Kidney Diseases ("CFKD") after KTC was incorporated (up until January 2023), which shows that there was an agreement that Dr Yang would not be involved in KTC's management and operations.[59] However, such an agreement is contradicted by the fact that Dr Yang was appointed as KTC's Medical Director. As KTC's Medical Director, Dr Yang had to, among other

57 ABOD at p 82.

58 CCS at para 47.

59 CCS at paras 48 and 50.

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things, "practise holistic medicine and be responsible for overall management of the patients in [KTC]" and remain "contactable at all times to render emergency medical care".[60] Moreover, if Dr Yang was unable to fulfil his responsibilities as Medical Director, he had to "make arrangements for a similarly qualified physician to be responsible for the total care of the patients in [KTC]".[61] In my view, it cannot be seriously disputed that being a Medical Director of a dialysis centre is an important responsibility.[62] Dr Yang therefore could not have completely divorced himself from the management and operations of KTC.

(e) Fifth, the Claimants submit that there is evidence to show that the parties had agreed that KTC's profits would be shared equally between the Claimants and Dr Yang.[63] Specifically, the Claimants point to how Dr Yang had agreed to draw a Medical Director Fee that is equivalent in value to Shiju's monthly salary at KTC (see [16(c)]–[16(d)] above). I do not think that the evidence is sufficient to prove that there was an agreement for KTC's profits to be shared equally. First, on the Claimants' case regarding the terms of the Founding Agreement, Dr Yang had agreed not to draw any Medical Director Fee (whether or not KTC was profitable) (see [10(d)] above).[64] Second, after Shiju and Dr Yang met on 16 July 2022 (see [12] above), Shiju messaged Dr Yang the next day claiming that, at the time of KTC's incorporation, Dr Yang had told Shiju that he was "ready to share profit 40%" even though the

60 CB at pp 298–299 (paras 2.1.2–2.1.3).

61 CB at p 298 (para 2.1.2).

62 Notes of Evidence dated 14 August 2025 at p 41.

63 CCS at para 56.

64 SOC(A4) at para 16(n); BAEIC at p 16 (para 23(12)).

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Claimants only owned 33% of KTC's shares.[65] This contradicts the Claimants' position that there was an agreement to share KTC's profits equally. If Shiju did in fact believe that Dr Yang had agreed to an equal sharing of KTC's profits, he would not have told Dr Yang that he had previously agreed "to share profit 40%". Moreover, I do not think that the fact that Shiju and Dr Yang set up KTC together is able to show that they had agreed for KTC's profits to be split equally.[66] If the Claimants and Dr Yang had indeed intended for profits to be split equally, the most straightforward way to ensure this would have been for the shareholding of KTC to be split equally between the Claimants (or Leena) on the one hand and Dr Yang on the other. In this regard, I do not accept Shiju's evidence that Dr Yang "was concerned with his reputation at the time (he was known as Dr Lye's [*ie*, Dr Lye Wai Choong ("Dr Lye")] 'high-paid nurse') and therefore wanted the records to reflect that he held majority shares in KTC" [emphasis in original omitted].[67] Even if Dr Yang held the majority of the shares in KTC, I do not see how that would have helped to dispel any notion that he is Dr Lye's "high-paid nurse", especially since there is no evidence that Dr Yang went around telling others that he held 67% of KTC's shares.[68] For context, Dr Lye is the owner of CFKD and was previously Dr Yang's mentor.

38 There is an additional and, in my view, important reason why I am not inclined to find that the Claimants have met their burden of establishing the

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65 CB at p 690.

66 CCS at para 57.

67 BAEIC at p 15 (para 23(7)).

68 Notes of Evidence dated 6 August 2025 ("NE 060825") at pp 78–80.

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existence of the Founding Agreement. This pertains to the fact that the Founding Agreement was *never* mentioned in the correspondence which was sent to Dr Yang by the Claimants' former solicitors (*ie*, C H Eng & Frois ("CHEF")).[69] For context, CHEF (on behalf of the Claimants) first sent a letter to Dr Yang on 29 December 2022 claiming, among other things, that Dr Yang had acted in breach of s 216 of the Companies Act. This was later followed up with an e-mail sent on 5 January 2023 and another letter on 20 January 2023. In this regard, I share Dr Yang's view that if the Founding Agreement did in fact exist, the Claimants would have informed CHEF about it, and the Founding Agreement would have featured in at least one of the letters or in the e-mail sent to Dr Yang.[70]

39 In response, the Claimants submit that CHEF's omission to mention the Founding Agreement in the letters and e-mail should not be held against them.[71] This is because the contents of the correspondence were dependent on the legal strategy undertaken by CHEF at that time, and "less aggressive language" was adopted in the correspondence as the Claimants were trying to reach a settlement with Dr Yang. I do not accept this submission. If the Claimants did inform CHEF about the Founding Agreement, there is no compelling reason why the letters and e-mail would have omitted to mention it. This is especially since the first letter from CHEF (dated 29 December 2022) expressly referred to Leena's removal from her position as a director of KTC and Dr Yang paying himself a directors' fee of $40,600 – both of which are matters that purportedly

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69 CB at pp 799–800, 813 and 819–820.

70 2nd Defendant's closing submissions dated 24 September 2025 ("2DCS") at para 70.

71 Notes of Evidence dated 13 October 2025 ("NE 13 Oct") at p 16 line 18 to p 19 line 2; CCS at paras 75–76.

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fall within the scope of the Founding Agreement (see [10(b)] and [10(d)] above).[72] I further note that although that letter did state that there was "an agreement … that both [Leena and Dr Yang] will not take any [directors' fees]",[73] it does not allude to any agreement between the Claimants and Dr Yang that Leena will not be removed as a director of KTC. The letter only states that "[Leena] has, without her knowledge or consent, and certainly against her will, been removed from [her capacity as a director of KTC and a signatory of KTC's cheques] and her belief is that [Dr Yang is] the person responsible".[74] In my view, if the Founding Agreement did exist (and CHEF was informed about it), it is unlikely that CHEF's letter would have only referred to one of the terms of that alleged agreement (*ie*, that Leena and Dr Yang would not take any directors' fees) while omitting to state another (*ie*, that Leena will not be removed from her appointment as a director of KTC).

40 Therefore, after having considered the evidence in the round, I am not satisfied that the Claimants have shown on a balance of probabilities that the Founding Agreement exists. This finding is fatal to the Claimants' claim for breach of the Founding Agreement. There is accordingly no need for me to further consider whether Dr Yang had breached the Founding Agreement.

The Misrepresentation Issue

41 I turn to the Claimants' claim against Dr Yang for fraudulent and/or negligent misrepresentation. This claim can be easily dealt with as it is

[72] CB at p 799 (para 3).

[73] CB at p 799 (para 3(iii)).

[74] CB at p 799 (para 3(i)).

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essentially based on the existence of the Founding Agreement. The Claimants' Statement of Claim (Amendment No. 4) ("SOC(A4)") states as follows:[75]

> 64 Shiju and Leena aver that Dr Yang had agreed to the terms of the Founding Agreement, and that therefore by continuing to act as the medical director of KTC, *represented to Shiju and Leena that he would continue to adhere to the terms of the Founding Agreement* as set out at paragraph 16 above …
>
> [emphasis added]

42 Given that I have found (at [40] above) that the Claimants and Dr Yang did not enter into the Founding Agreement at the May 2021 Meeting, the Claimants are thus unable to establish their claim against Dr Yang for misrepresentation.

The Oppression Issue

43 I turn to the Claimants' claim against Dr Yang for minority oppression under s 216 of the Companies Act.

Preliminary issues

44 I start with two preliminary issues: (a) whether the Claimants' minority oppression claim is premised on the existence of the Founding Agreement; and (b) whether Shiju has standing to make a claim in minority oppression against Dr Yang.

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75 SOC(A4) at para 64.

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Whether the Claimants' oppression claim is premised on the existence of the Founding Agreement

45 Dr Yang submits that the Founding Agreement forms the sole foundation of the Claimants' claim in minority oppression.[76] Consequently, a finding that the Founding Agreement does not exist would be fatal to the Claimants' claim.[77] The Claimants, unsurprisingly, submit otherwise.[78]

46 In my view, the Claimants' oppression claim is not premised only on the existence of the Founding Agreement. This is apparent when one looks at certain paragraphs of the SOC(A4):

> 72 Shiju and Leena aver that the acts and/or omissions of Dr Yang constitute breach(es) of fiduciary duties ("Breach of Duties") owed by a director to the company and is evidence of the oppressive acts against Shiju and Leena.
>
> 73 *Each of the Breach of Duties is tantamount to commercial unfairness against Leena as the minority shareholder*, and contrary to the legitimate expectations of Shiju and Leena pursuant to the Founding Agreement.
>
> …
>
> 80 *Shiju and Leena aver that Dr Yang, as controller of KTC, has withheld information from Shiju and Leena in a manner that is prejudicial, unfair, and/or oppressive to Shiju and Leena*, in breach of the Founding Agreement and in disregard of Leena's interests as a minority shareholder of KTC.
>
> …
>
> 90 *Even if the Court were not to find that there was a Founding Agreement*, Leena would be entitled to 33% of the profits of KTC. After 2022, Leena has not received any monies in the form of dividends.

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76 2DCS at para 27.

77 2DCS at para 148; NE 13 Oct at p 35, lines 17–22.

78 Claimants' reply submissions dated 8 October 2025 ("CRS") at para 25.

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> 91 Instead, Dr Yang and Ms Li Jing have paid themselves excessively in director's remuneration and fees, without consulting or seeking the approval of Leena and Shiju.
>
> 92 *The consistent failure of Dr Yang to declare and pay dividends when profits have been available, coupled with the payment of excessive director's remuneration and fees to himself and Ms Li Jing amounts to unfairness to Leena and Shiju.*
>
> [emphasis added]

47 On a plain reading of the SOC(A4), I am prepared to accept that the Claimants' oppression claim is not just based on Dr Yang's breach of the Founding Agreement. For instance, the Claimants have pleaded that Dr Yang had acted in an oppressive or commercially unfair manner by (a) withholding information relating to KTC from the Claimants; (b) breaching his fiduciary duties as a director of KTC; and (c) failing to declare dividends while paying excessive amounts in remuneration to himself and Li Jing. I accept that these alleged acts of oppression might also amount to breaches of the terms of the alleged Founding Agreement. However, I am of the view that the Claimants' pleadings sufficiently indicate that they are also relying on the various specific instances of Dr Yang's oppressive conduct in and of themselves (*ie*, independent of the Founding Agreement) as part of their claim in minority oppression. Consequently, their claim does not fail in its entirety even if the Claimants and Dr Yang did not enter into the Founding Agreement (as I have found at [40] above).

48 Nevertheless, although the Founding Agreement does not form the *sole* basis of the Claimants' oppression claim, I am cognisant that a number of aspects of that claim rests on the Founding Agreement. For example, under the minority oppression section of the SOC(A4), the Claimants plead that they "had the legitimate expectation that the terms of the Founding Agreement … would

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be complied with by Dr Yang"[79] and that "Dr Yang breached the [Founding] Agreement by wrongfully causing KTC to pay director's fee which had not been agreed, or otherwise duly authorized".[80] Furthermore, as I have highlighted, the Claimants' pleaded case in relation to KTC being a quasi-partnership and their legitimate expectations are heavily dependent on the existence of the Founding Agreement (see [11] above). In light of how the Claimants have framed their pleadings, my finding above that the Founding Agreement does not exist inevitably has certain implications on their oppression claim. I will return to this point later on in this judgment.

Whether Shiju has standing in respect of the oppression claim

49 It is not disputed that Leena is a registered shareholder of KTC with the requisite standing to bring a claim under s 216 of the Companies Act. However, Dr Yang submits that Shiju does not possess the standing to pursue a claim in minority oppression given that he is not a registered shareholder of KTC.[81] This issue has arisen because the SOC(A4) appears to allude to, among other things, a breach of "the legitimate expectations of Shiju and Leena pursuant to the Founding Agreement",[82] the fact that Dr Yang "owed Shiju and Leena fiduciary duties",[83] and a "relationship of mutual trust and confidence and/or legitimate expectations between Shiju, Leena and Dr Yang".[84]

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79 SOC(A4) at para 71.

80 SOC(A4) at para 75.

81 2DCS at para 152.

82 SOC(A4) at para 73.

83 SOC(A4) at para 97.

84 SOC(A4) at para 99.

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50 I note that the Claimants accept that Shiju is not a registered shareholder of KTC.[85] However, they submit that the court can "take [Shiju's] economic and contractual interests into account" when determining whether Leena has established her claim in minority oppression.[86]

51 I do not think that the Claimants are disputing the general rule that only registered shareholders of a company at the time the claim is commenced are permitted to seek relief under s 216 of the Companies Act (*Marten, Joseph Matthew v AIQ Pte Ltd* [2023] SGHC 361 ("*Marten, Joseph Matthew*") at [67]). Nevertheless, I agree with the Claimants that when a nominee shareholder – who holds shares on behalf of a beneficial shareholder – brings a claim in minority oppression under s 216, the interests of the nominee shareholder in respect of that claim may include the economic and contractual interests of the beneficial shareholder. Otherwise, a nominee shareholder would never be in a position to bring a claim under s 216 as they have no interest *per se* in the shares they are holding on to. This was recognised by Mavis Chionh Sze Chyi J in *Marten, Joseph Matthew* (at [117]–[118]):

> 117 In sum, therefore, where a nominee shareholder holds shares on behalf of the beneficial owner, it holds the legal title to the shares on the latter's behalf and does not own the beneficial interest in those shares; the latter is the true owner of the shares. In such a situation, the English cases cited above appear to accept that the nominee shareholder's interests are one and the same as the beneficial owner's; in the context of a claim by the nominee shareholder that its interests as shareholder have been unfairly prejudiced by the manner in which the company's affairs are conducted, the nominee shareholder's "interests" for the purposes of such a claim may therefore include the economic and contractual interests of the beneficial owners of the shares.

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[85] CRS at para 27.

[86] CRS at paras 27–28.

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> 118 In my view, the above position must be correct as a matter of law. If it were otherwise, the nominee shareholder would never be able to bring a claim for oppression under s 216 of the Companies Act in respect of oppressive acts: the nominee shareholder would always have no such interest *per se*, since the interest affected would always be that of the beneficial owner of the shares. As Ferris J noted in *Lloyd*, this would lead to an absurd situation in which the oppressor would be afforded a complete defence. …

52 In this case, although it was Leena who was registered as a 33% shareholder of KTC, both Shiju and Dr Yang recognised that the reason for this arrangement was because Shiju was employed with FMC at the time of KTC's incorporation and he wanted to avoid any issues regarding a possible conflict of interest.[87] This reason was also acknowledged by Leena in her evidence:[88]

> Several weeks passed after that, with no news from Dr Yang about when Shiju was to meet with him again. I recall that Shiju was very eager to start running his own dialysis centre at the time, and so he talked about this to me almost every day. During one of these conversations, Shiju mentioned to me that the shares in the new company would have to be held in my name, because he was worried that there would be concerns of conflict of interests with FMC. I did not have similar concerns with Thye Hua Kwan Nursing Home, and so I agreed.

53 Nevertheless, I note that the Claimants' pleaded case in the SOC(A4) is that, pursuant to the Founding Agreement, Leena was to have a "shareholding equity stake of 33% held for the benefit of herself and Shiju",[89] while the position taken by the Claimants in their written reply submissions is that "[i]t is undisputed that the 2nd Claimant held her shares in KTC for the benefit of the 1st Claimant".[90] From this, it is not entirely clear what proportion of the 33% of

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87 BAEIC at pp 10–11 (paras 19–20) and 164 (para 34(c)).

88 BAEIC at pp 75–76 (para 16).

89 SOC(A4) at para 16(f).

90 CRS at para 28.

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KTC's shares held by Leena were in fact held for Shiju's benefit. What is reasonably clear, however, is that *some* of the shares held by Leena were held for Shiju. In relation to those shares, Leena would have been a nominee shareholder and holding the shares on a bare trust for Shiju (see *Marten, Joseph Matthew* at [116], citing *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [8]). In the context of the oppression claim, it is therefore open to Leena to bring a claim in minority oppression on the basis that the beneficial shareholder's (*ie*, Shiju's) economic and contractual interests have been prejudiced (see [51] above), quite apart from the oppression claim she could pursue in her own right in relation to that portion of KTC's shares that she held beneficially for herself. Indeed, this is notwithstanding the fact that Shiju may not have the standing to pursue a claim in minority oppression against Dr Yang as he is not a registered shareholder (see [51] above).

The law on oppression

54 I turn to the law on minority oppression. It is well-established that a claim under s 216 of the Companies Act is centred on the concept of commercial unfairness, and the court is primarily concerned with whether there has been "a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect" (*Over & Over Ltd v Bonvests Holdings Ltd* [2010] 2 SLR 776 ("*Over & Over*") at [77], citing *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227 at 229).

55 In considering whether there has been commercial unfairness that warrants the grant of relief, the court must first determine the commercial agreement between the shareholders of the company (see *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373 ("*Tomolugen*") at [88]). This

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commercial agreement – which forms the backdrop of the inquiry under s 216 by setting out the behaviour that the shareholder is entitled to expect or rely on – should be viewed as "an agreement in the broadest sense" (*Deniyal bin Kamis v Mapo Engineering Pte Ltd* [2023] SGHC 183 ("*Deniyal*") at [80]). In my view, this agreement may be found within: (a) formal documentation such as the company's constitution or shareholders' agreements; (b) informal understandings among the shareholders; and (c) implied understandings among the shareholders. I go through each of these aspects of the commercial agreement in turn.

56 The first aspect of the commercial agreement is the formal documentation of the company, which includes the constitution and any collateral or supplemental shareholders' agreements. Such documentation often sets out "*prima facie* the entirety of the agreements, understandings, and promises of the corporate participants *inter se*" (Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 3rd Ed, 2017) ("Margaret Chew") at para 4.031). Indeed, the company's constitutive documents would often give rise to enforceable expectations that essentially amount to legal rights founded in contract. Given that it would be fundamentally fair to expect the shareholders to abide by the company's constitution and any written agreements they have entered into, any conduct in respect of the company's affairs that infringes the formal constitutive documentation of the company would normally be sufficient to ground a claim under s 216. This is especially since "keeping promises and honouring agreements is probably the most important element of commercial fairness" (*Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14 at 18).

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57 There may nonetheless be circumstances where the commercial agreement extends beyond formal documents or recorded understandings. As stated by Lord Wilberforce in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 ("*Ebrahimi*") at 379:

> [A] limited company is more than a mere legal entity, with a personality in law of its own: … there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure … [as] defined by the Companies Act and by the articles of association by which the shareholders agree to be bound.

This is where the second and third aspects of the commercial agreement come into play – informal understandings and implied understandings between shareholders. These understandings are often not reflected or recorded on paper, but it is well-established that they can give rise to legitimate expectations which the shareholders are entitled to rely on. Indeed, if there has been conduct which has breached or offended a party's legitimate expectations, that in and of itself can amount to commercial unfairness that warrants relief under s 216. This follows from the fact that in an action under s 216, the court must consider both the legal rights and the legitimate expectations of the parties in its assessment of commercial unfairness (*Ho Yew Kong v Sakae Holdings Ltd* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [82]).

58 In respect of informal understandings between the shareholders of the company giving rise to legitimate expectations (*ie*, the second aspect of the commercial agreement, as stated at [55] above), these depend on "the establishment of a non-contractual agreement between the impugned majority and the complaining minority that is either expressed or clearly evidenced by the circumstances" (Margaret Chew at para 4.043). Preliminarily, it is important

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to recognise that informal understandings between shareholders do not feature in every company. Such understandings will only be present when equitable considerations apply to the circumstances of the shareholders' association (*Lim Kok Wah v Lim Boh Yong* [2015] 5 SLR 307 ("*Lim Kok Wah*") at [102]–[106]). These are considerations "of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way" (*Ebrahimi* at 379D, cited with approval in *Over & Over* at [79]). Indeed, if the association is a purely commercial one, the formal documentation of the company is "ordinarily considered *prima facie* to contain the entire agreement between the shareholders which adequately and exhaustively lay down the basis of the association" (Margaret Chew at para 4.054; see *Ng Sing King v PSA International Pte Ltd* [2005] 2 SLR(R) 56 ("*Ng Sing King*") at [95]). It is only when there is "something more" in the relationship between the parties and the nature of their dealings that informal understandings can be taken into consideration (*Ebrahimi* at 379).

59 In my view, the presence of informal understandings very much depends on the relationship between the shareholders and the nature of the company. In this regard, it is usually when the association and the relationship between the shareholders takes on a *personal character* that informal understandings can be considered in the assessment of whether there has been commercial unfairness. In other words, there should be "a personal relationship or personal dealings of some kind between the party seeking to exercise the legal right and the party seeking to restrain such exercise, such as will affect the conscience of the former" (*Deniyal* at [87], citing *O'Neill v Phillips* [1999] 1 WLR 1092 ("*O'Neill*") at 1101). Such personal relationships are most commonly found in companies that have been described as "quasi-partnerships" – closely held private companies which operate in an informal manner and are founded on a

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relationship of mutual trust and confidence between their shareholders (see *Over & Over* at [83]; *Leong Chee Kin v Ideal Design Studio Pte Ltd* [2018] 4 SLR 331 ("*Leong Chee Kin*") at [50]). However, whether a company is a quasi-partnership is not – and should not – be determinative of the question of whether informal understandings between the shareholders exist. In *Thio Syn Kym Wendy v Thio Syn Pyn* [2017] SGHC 169 ("*Thio Syn Kym Wendy*"), Judith Prakash JA stated that legitimate expectations may be derived from informal understandings among shareholders *independent* of whether the company is a quasi-partnership (at [44(a)]). There have in fact been a number of cases in recent years where the courts have found that there are informal understandings between the shareholders, notwithstanding the fact that the company was not a quasi-partnership (see *Anita Hatta v Lee Siow Kiang Georgia* [2020] 5 SLR 304 ("*Anita Hatta*") at [71]; *Deniyal* at [92]).

60 There can also be legitimate expectations arising from implied understandings between the shareholders of the company (*ie*, the third aspect of the commercial agreement, as stated at [55] above). Such understandings, which can be seen to be implicit in all corporate relationships, have been described as follows (Margaret Chew at para 4.063):

> … the notion of an implied understanding is an attempt to rationalise expectations that may be extrapolated *supra* any informal understandings … Unlike informal understandings, implied understandings do not depend entirely for their inference on a unique, close and personal inter-shareholder dynamic giving rise to rights, expectations and obligations amongst shareholders *inter se*. *Implied understandings are premised upon the very nature and commercial purpose of a corporate association or structure*, though it is further recognised that each corporate entity would have unique characteristics or idiosyncrasies. … It is submitted that section 216 of the Companies Act empowers the courts to fill gaps in the context of an intra-corporate relationship by recognising implied understandings amongst members *inter se*. In this way,

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> *the courts are able to give effect to members' interests and expectations which are not expressly provided for in the formal constitutive and collateral documents, nor could they be said to have arisen from an informal understanding amongst the members.*
>
> [emphasis added; internal citations omitted]

61 Legitimate expectations borne out from implied understandings have indeed been recognised in the case law. For example, in *Anita Hatta*, the High Court observed that it is implicit in the commercial agreement that there would be an "implied understanding that [directors of a company] would not use their positions of power to 'defraud' other participants, contrary to their duties in statute, common law or equity" (at [78], citing *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Revised 3rd Ed, 2009) at para 5.76). Such an implied understanding flows from a director's fiduciary duty to act *bona fide* in the best interests of the company (*Anita Hatta* at [78]; *Leong Chee Kin* at [65]). Other forms of implied understandings could be that the constitution of the company and the Companies Act would be complied with to the best of the abilities of the company's management (Margaret Chew at para 4.066).

62 After discerning the ambit of the commercial agreement and/or what the shareholders of the company are legitimately entitled to expect, it is incumbent on the claimant to show that the oppressive conduct complained of is contrary to or has departed from that agreement to the extent that it has become commercially unfair (*Lim Kok Wah* at [103]; *Thio Syn Kym Wendy* at [44(b)]). In this regard, it is important to remember that there is a distinction between unfairness and unlawfulness – an individual's conduct may be commercially unfair although they are acting lawfully within their strict legal rights (*Ho Yew Kong* at [82], citing *Leong Chee Kin* at [48]). In the final analysis, whether a

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claim in oppression has been established is inherently a contextual and fact-sensitive one. This was made clear by Lord Hoffmann in *O'Neill* (at 1098F):

> Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used. Conduct which is perfectly fair between competing businessmen may not be fair between members of a family. In some sports it may require, at best, observance of the rules, in others ('it's not cricket') it may be unfair in some circumstances to take advantage of them. All is said to be fair in love and war. So the context and background are very important.

The court must therefore conduct an objective assessment of the impugned conduct against the commercial agreement and the factual circumstances surrounding the complaint, which necessarily includes the history and nature of the company, the relationship between the shareholders, the broader context within which the company operated, and the conduct of the relevant parties (*Lim Kok Wah* at [102]; Hans Tjio, Pearlie Koh and Lee Pey Woan, *Corporate Law* (Academy Publishing, 2nd Ed, 2024) ("*Corporate Law*") at paras 11.062 and 11.066).

What the nature of the relationship between the Claimants and Dr Yang was

63 Before I turn to look at the commercial agreement between the parties and whether Dr Yang has acted in a commercially unfair manner in this case, it is apposite to look more closely at the nature and character of the relationship between the Claimants and Dr Yang. This is because – as I have noted at [59] above – legitimate expectations derived from informal understandings may be considered only in circumstances where there is a personal relationship between the shareholders of the company.

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64 The Claimants submit that KTC was in fact a quasi-partnership and it operated based on a relationship of mutual trust and confidence between the Claimants and Dr Yang.[91] This is because their association was not based on any recorded or written agreement, and Leena and Dr Yang both had access to KTC's bank account and CorpPass account although they did not have a formal employment contract with KTC.[92] The Claimants further submit that even if KTC was not a quasi-partnership, the Claimants and Dr Yang still shared a personal relationship involving mutual trust and confidence.[93]

65 Dr Yang, however, submits that KTC cannot be a quasi-partnership as the Claimants and Dr Yang did not have any prior personal relationship and were strangers before KTC was incorporated. Furthermore, there was no arrangement that all the shareholders were entitled to participate in the management of KTC's business.[94]

66 As a preliminary point, it should be noted that the Claimants' assertion that KTC was a quasi-partnership which operated based on mutual trust and confidence between the Claimants and Dr Yang is substantially based on the existence of the Founding Agreement. The SOC(A4) states as follows:[95]

> <u>KTC was a quasi-partnership</u>
>
> 70. Shiju and Leena aver that KTC was a quasi-partnership which was operated on mutual trust and confidence and was supposed to remain a quasi-partnership until it was upended

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91 CCS at para 61.

92 CCS at paras 62 and 65.

93 CCS at paras 66–67.

94 2DCS at para 155.

95 SOC(A4) at para 70.

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> by a series of acts perpetrated by Dr Yang. This quasi-partnership is evidenced by the following:-
>
> > a. Dr Yang had worked with both Shiju and Leena and knew and trusted that they were capable of running KTC's operations. In particular, Dr Yang had worked with Leena from 3 January 2020 – 11 April 2020 at Dr Lye's clinic, and was well aware that Shiju was capable and trustworthy.
> >
> > b. *Neither Leena and Shiju nor Dr Yang insisted on reducing the Founding Agreement into writing.* These terms were orally agreed upon, over the course of the First Meeting and eventually the Second Meeting. Leena and Shiju trusted Dr Yang to uphold the terms of the Founding Agreement and vice versa.
> >
> > c. The terms on which KTC was to be incorporated were never reduced to writing. Shiju was entrusted with the incorporation of KTC. *Leena and Shiju on the one hand, and Dr Yang on the other, trusted that KTC would be incorporated on the terms of the Founding Agreement as discussed and agreed.*
> >
> > d. The terms of employment for Leena and Shiju were not reduced into writing. *Leena and Shiju trusted Dr Yang to uphold the terms of the Founding Agreement and pay them what was due in terms of unpaid salaries, once KTC was profitable.*
> >
> > e. A shareholder's agreement between Leena and Dr Yang was never reduced into writing. *Leena and Shiju on the one hand, and Dr Yang on the other, trusted that they would treat each other as per the terms of the Founding Agreement as discussed and agreed.*
>
> [emphasis in original omitted; emphasis added]

67 As a result, my finding that the Claimants and Dr Yang did not enter into the Founding Agreement (see [40] above) inevitably makes it more difficult for the Claimants to prove that KTC was in fact a quasi-partnership.

68 Having said that, I do not think that it is productive for the inquiry to be unduly focused on whether the company should be classified as a quasi-partnership. It is not a pre-requisite for there to be a quasi-partnership before

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informal understandings may be taken into consideration in the assessment of whether there has been commercial unfairness warranting relief under s 216 (see *Anita Hatta* at [69], citing *Fisher v Cadman* [2006] BCLC 499 at [84]). Furthermore, a finding that a company is a quasi-partnership does not lead to the inception of any pre-determined informal understandings or legitimate expectations. I reiterate that what is needed for informal understandings between the shareholders to arise is a personal relationship that goes beyond the purely commercial. That sets the necessary context for the court to ascertain the details of the commercial agreement – the informal understandings and the corresponding legitimate expectations that the parties are entitled to rely on. In the words of Philip Jeyaretnam J in *Deniyal*, "[t]o make finding a 'quasi-partnership' a pre-requisite before the court may look into legitimate expectations arising from the parties' personal relationship is to turn the proper analysis on its head" (at [89]). With that in mind, I turn to look at the nature of the relationship between the Claimants and Dr Yang.

69 In my judgment, the Claimants (or more specifically, Shiju) and Dr Yang did have a personal relationship based on mutual trust when it came to matters that concerned KTC. Although I accept that the Claimants and Dr Yang might have been unfamiliar to one another before KTC was incorporated,[96] that cannot be a factor that is determinative of whether they shared a personal relationship (see, in the context of a quasi-partnership, *Chong Kok Ming v Richinn Technology Pte Ltd* [2020] SGHC 224 at [102]). Indeed, it is also important to consider the circumstances surrounding how the Claimants and Dr Yang established KTC and how they managed KTC's affairs. I make two points in this regard.

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96 2DCS at para 157.

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70 First, although they diverge on what was agreed and when it was agreed, both the Claimants and Dr Yang are consistent in their view that some matters relating to KTC were agreed on prior to its incorporation. Specifically, Shiju claims that the parties entered into the Founding Agreement at the May 2021 Meeting, while Dr Yang's position is that he agreed with Shiju regarding certain matters on 27 April 2021 (see [10] and [16] above). What is notable about this – leaving aside the finding that the Founding Agreement was not entered into – is that on either Shiju's or Dr Yang's account, the parties did not take steps to formally record what they had discussed or to formulate a proper shareholders' agreement.[97] This lack of formal documentation shows that the Claimants and Dr Yang did share *some* degree of mutual trust and a belief that the parties would abide by what they had discussed orally for matters related to KTC. If they did not, and if their relationship was indeed a purely commercial and professional one, it would have been natural for either the Claimants or Dr Yang to insist that any agreement they reached regarding KTC's affairs was to be documented on paper.

71 Second, the somewhat informal manner in which KTC was managed also indicates that the relationship between the Claimants and Dr Yang had a personal character. For example, despite there being no formal employment contract in respect of Shiju's role as the operations manager of KTC, both Dr Yang and Shiju recognised that Shiju was in fact KTC's operations manager. This is evinced by the WhatsApp messages between Shiju and Dr Yang, where Dr Yang referred to Shiju as "the ops manager"[98] and Shiju sent a message stating that "Today Dr Alvin clinic called 9th floor and ask operation manager

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97 BAEIC at pp 18 (para 24) and 167 (para 37).

98 ABOD at p 889 (30/4/22, 9:08pm).

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shiju".[99] Similarly, there were no written contracts for Dr Yang and Leena in relation to their appointments as directors of KTC (and also for Dr Yang's appointment as the Medical Director of KTC). Although the Claimants submit that the written documentation – such as KTC's constitution and the Accounting and Corporate Regulatory Authority records – point to the conclusion that the Claimants and Dr Yang did not have a personal relationship,[100] I do not place much weight on them as those are customary documents which feature in the incorporation process of every company. To sum up, the point is that the Claimants and Dr Yang did not feel the need to particularise and formalise many aspects of their relationship when it came to matters that concerned KTC.

72 In light of the above, I am of the view that the Claimants and Dr Yang did have a personal relationship that was underpinned by some degree of mutual trust and confidence. This is therefore a case where the parties' commercial agreement can extend beyond the formal documentation of the company to include legitimate expectations borne out of informal understandings among the shareholders.

73 Nevertheless, I note that the Claimants' pleaded case regarding the legitimate expectations that they held appears to be based *entirely* on the existence of the Founding Agreement. The SOC(A4) states as follows:[101]

> Legitimate Expectations of Shiju and Leena
>
> 71. *Leena (together with Shiju) had the legitimate expectation that the terms of the Founding Agreement as set out at paragraph 16 above would be complied with by Dr Yang*, including that:-

99 ABOD at p 918 (3/6/22, 12:26pm).

100 2nd Defendant's reply submissions dated 8 October 2025 ("2DRS") at para 9.

101 SOC(A4) at para 71.

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> a. All shareholder's resolutions required the unanimous consent of all shareholders; i.e, Leena and Dr Yang.
>
> b. All director's resolutions required the unanimous consent of all directors; i.e, Leena and Dr Yang.
>
> c. All major decisions concerning KTC, including (a) any acquisition or disposal of substantial assets and taking of any loans etc, and (b) any appointment or removal of any director, company secretary required unanimous consent of the directors and shareholders; i.e, Leena and Dr Yang.
>
> d. In spite of Dr Yang's higher shareholding on record, that Leena would be entitled to a profit share and dividend payout as a legal and/or beneficial owner of 50% of the issued and paid-up shares of the business.
>
> [emphasis in original omitted; emphasis added]

74 As I have already noted (see [11] above), the Claimants did not – as part of their oppression claim – plead and particularise other legitimate expectations that are independent of the Founding Agreement. The Claimants are, strictly speaking, bound by how they have framed their pleadings (see [79] below). Indeed, it follows that they should not be permitted to submit that they have suffered oppression as a result of a breach of other legitimate expectations which are independent of the Founding Agreement. However, even if I went beyond the Claimants' pleaded case and accept that there existed legitimate expectations arising from informal or implied understandings between the Claimants and Dr Yang which are independent of the Founding Agreement, I am not satisfied that there has been a breach of any such legitimate expectation such that the Claimants are entitled to relief under s 216 of the Companies Act. It is to this that I now turn.

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Whether Dr Yang acted in a commercially unfair manner

75 The Claimants submit that Dr Yang acted in a manner that was oppressive and commercially unfair towards the Claimants.[102] They highlight the following incidents in support of their submission:

(a) Dr Yang's receipt of a backdated Medical Director Fee and directors' fees for FYE April 2022.

(b) Dr Yang's act of removing Shiju and Leena from their respective appointments as KTC's company secretary and director respectively at the First AGM.

(c) Dr Yang's act of terminating Shiju's employment with KTC on 2 February 2023.

(d) Dr Yang's repeated refusal to provide KTC's financial documents and information to the Claimants when they requested for them.

(e) Dr Yang's financial mismanagement of KTC, which includes the payment of excessive salaries and fees to himself and Li Jing.

(f) Dr Yang's failure to declare any dividends for FYE April 2023 and FYE April 2024.

76 Before I turn to deal with each of the Claimants' submissions, I make an important point. Although it is well-established that the broad concept of "commercial unfairness" lies at the heart of the oppression remedy under s 216,

[102] CCS at para 98.

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it bears emphasis that the court does not have *carte blanche* to impose its own personal standards of fairness onto the parties (see *Corporate Law* at para 11.042). It is imperative that the concept of fairness must be applied judicially and based on rational principles (*O'Neill* at 1098E). On that note, I reiterate the point made by the Court of Appeal in *Tomolugen* that the essence of a claim for relief under s 216 of the Companies Act lies in *upholding the commercial agreement* between the shareholders of the company (at [88]). To put it another way, the commercial agreement between the parties "sets the frame against which commercial unfairness is to be judged" (*Oon Swee Gek v Violet Oon Inc Pte Ltd* [2024] 6 SLR 313 at [26]). It is therefore fundamental for the court to discern what exactly is the commercial agreement between the parties, as that serves as the benchmark for determining whether there has been commercial unfairness warranting relief.

Dr Yang's receipt of a backdated Medical Director Fee and directors' fees

77 The Claimants submit that Dr Yang received from KTC: (a) a backdated Medical Director Fee of $40,600; and (b) directors' fees of $28,000 for FYE April 2022.[103] This was commercially unfair as Dr Yang had previously agreed with the Claimants that he would not draw any Medical Director Fee until KTC was profitable. Furthermore, no directors' fees were paid to Leena for FYE April 2022 although she was similarly a director of KTC.

78 I first deal with the submission in respect of the directors' fees amounting to $28,000 for FYE April 2022. I accept Dr Yang's submission that the Claimants should not be allowed to make a claim in relation to this sum of

103 CCS at paras 99 and 104–105.

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$28,000. As pointed out by Dr Yang,[104] the Claimants had previously sought to amend their Statement of Claim (Amendment No. 2) to expressly refer to the sum of $28,000 by including the following sub-paragraph:[105]

> Dr Yang also pocketed around S$28,000 as alleged "directors' fees" in around 2022, on top of the S$40,600 in alleged medical director's fees. However, he did not account for the payment of S$28,000 to him in KTC's financial statements for FYE April 2022 or FYE April 2023.

79 This sub-paragraph was, however, later not included in the Statement of Claim (Amendment No. 3) ("SOC(A3)"). Counsel for the Claimants had also confirmed before the learned Senior Assistant Registrar at the case conference on 4 June 2025 that they will not be adding the above sub-paragraph to the SOC(A3).[106] It follows that the Claimants' allegation regarding Dr Yang's receipt of directors' fees of $28,000 has not been properly pleaded. As stated by the Court of Appeal in *V Nithia v Buthmanaban s/o Vaithilingam* [2015] 5 SLR 1422 at [38]–[41], the general rule is that parties are bound by their pleadings, and the court is precluded from deciding on a matter that the parties themselves have decided not to put into issue. This general rule can only be departed from in limited circumstances, such as where no prejudice is caused to the other party or where it would clearly be unjust for the court not to do so.

80 In the circumstances, there is no reason for me to depart from the general rule that the Claimants should be held to their pleaded case. Moreover, the Claimants had earlier informed the court and Dr Yang that the above sub-paragraph (at [78]) will not feature in the SOC(A3). In my view, that amounted

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104 2DRS at para 48.

105 Letter to court from Silvester Legal LLC dated 28 May 2025 at p 35 (para 75(b)).

106 Minute sheet of case conference dated 4 June 2025.

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to an indication that the Claimants would not – as part of their pleaded case – pursue the issue of Dr Yang receiving the directors' fees of $28,000 from KTC. Indeed, if the Claimants were to now be permitted to raise this as part of their case, Dr Yang would suffer significant prejudice. This is because the issue concerning the sum of $28,000 was not an aspect of the case he had to meet, and he did not have the opportunity to properly address this in his evidence. Furthermore, it cannot be argued that it would clearly be unjust to the Claimants if they were precluded from raising the issue of the sum of $28,000 as part of their case, given that they themselves had agreed to not include it in the SOC(A3).

81 I next deal with the submission regarding the backdated Medical Director Fee of $40,600. Dr Yang does not dispute that the Medical Director Fee of $40,600 was paid to him by KTC.[107] The Claimants take the position that there has been commercial unfairness as Dr Yang had agreed at the time KTC was incorporated not to draw a Medical Director fee until KTC was profitable. They assert that there was no subsequent agreement that Dr Yang could draw a Medical Director Fee for FYE April 2022, and that the payment of the Medical Director Fee was unilaterally decided by Dr Yang. In addition, both the Claimants did not receive any backdated remuneration or fees for the services they rendered to KTC.[108]

82 I do not think that Dr Yang's receipt of the backdated Medical Director Fee of $40,600 can be viewed as commercially unfair. Dr Yang's position is that he had agreed with Shiju that he would not draw a Medical Director Fee

107 BAEIC at p 191 (para 92).

108 CCS at paras 99–103.

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until KTC turned profitable.[109] Similarly, on the Claimants' case, it is undisputed that Dr Yang had agreed not to draw any Medical Director Fee until KTC's business was profitable.[110] It does not appear to be the Claimants' case that it had been agreed that Dr Yang was not entitled to draw a *backdated* Medical Director Fee after KTC became profitable. In my view, what had in fact happened was that Dr Yang only received the Medical Director Fee of $40,600 for FYE April 2022 after it was established that KTC had been profitable. Furthermore, it was only after the draft financial statements for FYE April 2022 were released on 16 July 2022 – and after the parties knew that KTC was profitable – that Dr Yang informed Shiju that he wanted to draw a Medical Director Fee.[111] Consequently, Dr Yang acted in a manner consistent with the parties' commercial agreement – *ie*, he would draw a Medical Director Fee only after KTC's business became profitable. It thus cannot be said that Dr Yang acted in a commercially unfair manner as he did adhere to what was agreed between himself and the Claimants.

83 Regarding the submission that the Claimants did not receive any backdated remuneration for the services they rendered to KTC, it is not the case that Shiju did not receive any remuneration for working in KTC, given that he was drawing a salary of $2,500 per month from 28 August 2021 onwards.[112] Although Shiju did not receive any remuneration for his services to KTC before 28 August 2021, I note that the Medical Director Fee received by Dr Yang was only in respect of the period which Shiju was drawing a salary from KTC, *ie*,

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[109] BAEIC at p 164 (para 34(d)).

[110] CCS at paras 33(4) and 55.

[111] BAEIC at pp 27–28 (para 48) and 186–187 (para 81).

[112] CB at p 438 (para 2); BAEIC at pp 25–26 (para 42) and 180 (para 66(a)).

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after 28 August 2021.[113] In relation to Leena, I accept that she did not receive any salary or remuneration from KTC. However, there is no evidence that Leena had – at any point in time – requested to receive any salary from KTC, even after Dr Yang had informed Shiju on 16 July 2022 that he wanted to draw a Medical Director Fee. Indeed, the Claimants did not allude to any agreement or understanding between them and Dr Yang that Leena would be entitled to any salary or remuneration from KTC. In light of that, I am unable to accept the Claimants' submission that Dr Yang's receipt of the backdated Medical Director Fee of $40,600 constituted commercial unfairness.

Dr Yang's act of removing Shiju and Leena from their appointments in KTC and terminating Shiju's employment with KTC

84 The Claimants submit that Dr Yang's act of removing Shiju and Leena from their appointments in KTC at the First AGM was commercially unfair. This is because it was done in breach of an understanding between the Claimants and Dr Yang that Shiju and Leena will be KTC's company secretary and director respectively.[114] In addition, the Claimants submit that the termination of Shiju's employment as a senior enrolled nurse with KTC on 2 February 2023 by Dr Yang amounted to oppression, as it was in breach of the parties' agreement that Shiju would be KTC's operations manager and be left in charge of the day-to-day operations of KTC together with Leena.[115] Furthermore, Dr Yang is alleged to have terminated Shiju's employment with KTC purely to punish the Claimants as they had dared to resist his oppressive actions.[116]

113 BAEIC at pp 27–28 (para 48) and 186 (para 80).

114 CCS at para 106.

115 CCS at para 144.

116 CCS at para 149.

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85 As previously stated (see [40] above), I am not satisfied that the Claimants have shown on a balance of probabilities that they entered into the Founding Agreement with Dr Yang. The Claimants are thus not entitled to rely on the Founding Agreement to prove that they have suffered oppression. Notwithstanding this, the Claimants' oppression claim could still be based on a breach of legitimate expectations arising from informal or implied understandings between the parties, given my finding that the Claimants and Dr Yang shared a personal relationship founded on some degree of mutual trust and confidence (see [72] above).

86 I am, however, unable to accept the submission that there was an informal understanding between the Claimants and Dr Yang that Shiju and Leena will respectively serve as KTC's company secretary and director and will not be removed from their positions. In my view, the Claimants have not provided sufficient evidence to prove that such an informal understanding between the parties existed (see [37] above). Most importantly, the evidence does not indicate that the Claimants had a legitimate expectation that they will not be removed from their appointments as the company secretary and director of KTC. In fact, the Founding Agreement as alleged by the Claimants (see [10] above) does not even have a term stating that Shiju cannot be removed as KTC's company secretary.

87 Moreover, even if I take the Claimants' case at its highest and accept that there was an informal understanding that Leena will not be removed as a director of KTC, I do not think that necessarily leads to a legitimate expectation that Leena is entitled to remain as a director no matter the circumstances. In this case, by the time of the First AGM on 27 August 2022, Dr Yang had some basis to suspect that Shiju was intending to set up a competing kidney dialysis centre

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with Dr Lye's support.[117] WhatsApp messages exchanged between Shiju and Dr Lye on 6 and 7 August 2022 confirmed Dr Yang's suspicions.[118] I set out parts of the WhatsApp conversation between Shiju and Dr Lye for reference:

> 6/8/22, 9:15pm - Shiju: Sir if level 9 close can you take over?
>
> …
>
> 6/8/22, 9:15pm - Dr Lye: But I don't want to manage dialysis Centre anymore, I am getting old Shiju
>
> …
>
> 6/8/22, 9:16pm - Shiju: I can can [*sic*] manage only want support
>
> …
>
> 6/8/22, 9:39 pm - Shiju: Sir I am going to take an appointment with Anbu. if they close I like to take over.
>
> 6/8/22, 9:39 pm - Shiju: Do you have share in Level 9?
>
> …
>
> 6/8/22, 9:42 pm - Dr Lye: Anbu will not pass to you. I know FMC very well
>
> …
>
> 6/8/22, 9:42 pm - Shiju: So if they close level 9. do you have a chance to open?
>
> 6/8/22, 9:42 pm - Dr Lye: It's not Anbu it's the Mount Elizabeth Hospital that decides
>
> 6/8/22, 9:43 pm - Shiju: Can you try to get level 9
>
> 6/8/22, 9:43 pm - Dr Lye: I don't want to run dialysis Centre anymore.
>
> 6/8/22, 9:43 pm - Dr Lye: I am planning to stop working
>
> 6/8/22, 9:44 pm - Shiju: I can run
>
> 6/8/22, 9:44 pm - Shiju: Pls help me for a start up
>
> …

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117 BAEIC at p 191 (para 93(c)).

118 ABOD at pp 667–673.

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> 7/8/22, 12:56 pm - Shiju: 05-20 planing [*sic*] to rent
>
> 7/8/22, 12:56 pm - Dr Lye: He won't survive if he opens his own clinic
>
> 7/8/22, 12:57 pm - Shiju: Yes
>
> 7/8/22, 12:57 pm - Dr Lye: If I stop sending my patients to KTC especially hospital patients, revenue will drop.
>
> 7/8/22, 12:57 pm - Shiju: 100%
>
> 7/8/22, 12:58 pm - Dr Lye: If you plan to go back to FMC you must tell them they have to work differently, do like KTC now and I will send patients to them
>
> 7/8/22, 12:59 pm - Shiju: I am trying take an appointment with them
>
> 7/8/22, 12:59 pm - Dr Lye: Then before you go back you must negotiate a good deal for yourself first
>
> 7/8/22, 12:59 pm - Shiju: Also planing [*sic*] to open a small dialysis center in Lucky plaza
>
> 7/8/22, 12:59 pm - Shiju: Only problem need 250k
>
> 7/8/22, 12:59 pm - Dr Lye: My patients will give them a lot of revenue
>
> 7/8/22, 1:00 pm - Dr Lye: Won't work Shiju, you will not get hospital patients
>
> 7/8/22, 1:00 pm - Shiju: Rental is 6000k
>
> 7/8/22, 1:00 pm - Shiju: 6000$
>
> 7/8/22, 1:00 pm - Shiju: 2 staff enough
>
> 7/8/22, 1:00 pm - Shiju: Present all ktc patient join
>
> 7/8/22, 1:01 pm - Shiju: Angelin goh and Dr ho also give patient

88 It cannot be disputed that the competing kidney dialysis centre – Kidney Treatment Services Pte Ltd ("KTS") – was eventually incorporated on 14 April 2023, with Shiju as one of its directors and shareholders and its registered office at 304 Orchard Road, #05-20, Lucky Plaza, *ie*, right beside the Premises (see

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[6] above).[119] Given that Leena was Shiju's representative in the management of KTC (see [52] above), I do not think Leena could reasonably have had a legitimate expectation that she was entitled to remain as a director of KTC even when Shiju was taking steps that were in competition with and against the best interests of KTC's business. In other words, Leena's legitimate expectation to not be removed as a director of KTC (assuming it exists) cannot an absolute one, and it may be trumped by an implied understanding that she could be removed if there is just cause or justifiable reason (see Margaret Chew at paras 4.089 and 4.097; *Corporate Law* at para 11.066). In this regard, I note that it was suggested by the court in *Ng Sing King* that even if a shareholder had a legitimate expectation to not be excluded from the management of the company, it may not amount to oppressive conduct if the exclusion of that shareholder had not been "motivated by an improper collateral motive" (*Ng Sing King* at [101] and [104]–[105]).

89 In this case, it is clear that Leena, who held 33% of KTC's shares for the benefit of Shiju (see [52] above), had been placed in an inherent conflict of interest by virtue of Shiju's actions. On the one hand, Shiju, having set up KTS, would have an interest in maximising its profitability. This would be directly in conflict with his interest as a beneficial owner of 33% of KTC's shares, especially since both companies operated in the same field and in the same building. Given that Leena's interests as a nominee shareholder are "co-extensive" with that of Shiju's interests as the beneficial shareholder (see *Marten, Joseph Matthew* at [94] and [118]), it follows that Leena, being a mere proxy of Shiju, would similarly be in a position of conflict by virtue of her status as a nominee shareholder. Consequently, I am of the view that Shiju's conduct

119 CB at pp 938–939.

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in this case was a justifiable reason for Leena to be removed as a director of KTC, especially considering that directors have a fiduciary duty to always act in the best interests of the company (*Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [1]).

90 In addition, it is well-established that the court is entitled to take into account the conduct of all the parties in determining whether there has been commercial unfairness warranting relief under s 216 of the Companies Act (*Tan Yong San v Neo Kok Eng* [2011] SGHC 30 ("*Tan Yong San*") at [103] and [106]). It is thus permissible to consider whether the Claimants have come to court with "clean hands" (see *Tan Yong San* at [106]). In light of Shiju's conduct and role in the setting up of a competing kidney dialysis centre, I am not inclined to find that Leena's removal as a director of KTC amounted to commercial unfairness.

91 On a related note, although the Claimants submit that Dr Yang's position, in his evidence on the stand, is that Shiju's setting up of a competing dialysis centre was unrelated to the removal of the Claimants from their appointments in KTC,[120] I note that this is not an entirely accurate characterisation of Dr Yang's position. This is because Dr Yang accepted, in the course of cross-examination, that the two events were not completely independent.[121]

92 I am similarly unable to accept the Claimants' submission that the termination of Shiju's employment with KTC constituted oppressive conduct

[120] CRS at para 36.

[121] Notes of Evidence dated 20 August 2025 ("NE 200825") at p 44.

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on Dr Yang's part. Preliminarily, I note that the Claimants did not clearly plead – as part of their claim under s 216 – that the termination of Shiju's employment was oppressive.[122] In any event, the Claimants have not adduced any evidence to show that there was an agreement or informal understanding between the Claimants and Dr Yang that Shiju's employment with KTC will not be terminated under any circumstances. The Claimants did not even allege it was a term of the Founding Agreement that Shiju will not be terminated from his role as a senior enrolled nurse in KTC. I also do not agree with the Claimants' submission that the termination of Shiju's employment was a "punitive tool" that was employed by Dr Yang in a commercially unfair manner.[123] As I have stated (see [76] above), whether or not an act is oppressive is dependent on the content of the commercial agreement between the parties. In the circumstances, it is difficult to see how the termination of Shiju's employment can be viewed as commercially unfair treatment, especially since (a) there was no agreement or understanding between the Claimants and Dr Yang that Shiju's employment with KTC cannot be terminated; and (b) KTC adhered to the termination clause in Shiju's employment contract by providing Shiju with two months' salary in lieu of notice after his employment was terminated.[124]

93 It therefore follows that the removal of the Claimants from their appointments in KTC and the termination of Shiju's employment with KTC does not constitute oppressive conduct on Dr Yang's part.

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122 SOC(A4) at paras 70–101.

123 CCS at para 149.

124 CB at p 441 (cl 17); NE 060825 at pp 50–58.

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Dr Yang's refusal to provide KTC's financial documents and information to the Claimants

94 The Claimants submit that Dr Yang refused to provide them with KTC's financial documents and information. This amounted to commercial unfairness as it was in breach of the parties' agreement and understanding that the Claimants were entitled to participate in the management of KTC and Leena's legitimate expectation as a shareholder of KTC that she would receive KTC's financial statements.[125]

95 The starting point is that shareholders do not have a broad right to the financial information of a company other than the audited financial statements pursuant to s 203 of the Companies Act (*Suying Design Pte Ltd v Ng Kian Huan Edmund* [2020] 2 SLR 221 ("*Ng Kian Huan Edmund (CA)*") at [124], citing *Ezion Holdings Ltd v Teras Cargo Transport Pte Ltd* [2016] 5 SLR 226 ("*Ezion*")). Outside of a general meeting, shareholders do not have a general right to access the company's financial information as they are not involved in the management of the company (*Ezion* at [16] and [20]–[21]). In this case, Leena's requests for KTC's financial information and documents were not made pursuant to s 203 of the Companies Act. I thus reject the Claimants' submission that there has been a breach of Leena's "legitimate expectation as a shareholder of KTC that she would at the very least receive KTC's financial statements".[126]

96 Furthermore, I am not persuaded by the Claimants' submission that Dr Yang had breached an agreement or understanding between the parties that the Claimants were entitled to participate in the management of KTC. Leaving aside

125 CCS at para 140.

126 CCS at para 140.

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my finding that the parties never entered into the Founding Agreement, I am not satisfied that there was an informal understanding between the Claimants and Dr Yang regarding the Claimants having an absolute and unqualified right to be involved in the management of KTC. I have previously discussed the circumstances regarding the actions taken by Shiju in the establishment of another kidney dialysis centre to compete with KTC (see [87] above). In light of that, I do not think the Claimants could reasonably have had a legitimate expectation that they were entitled to remain involved in the running of KTC.

97 In any event, the Claimants accept that Dr Yang did provide them with KTC's financial documents, albeit only after their lawyers sent a formal letter requesting for the documents.[127] The Claimants nonetheless rely on *Ng Kian Huan Edmund v Suying Metropolitan Studio Pte Ltd* [2019] SGHC 56 ("*Ng Kian Huan Edmund (HC)*") to submit that Dr Yang had still acted in an oppressive manner because of his initial refusal to allow the Claimants to access KTC's financial documents.[128]

98 I am, however, of the view that the facts of *Ng Kian Huan Edmund (HC)* are quite different from the present case. In *Ng Kian Huan Edmund (HC)*, the court's finding that the plaintiff had been wrongfully denied access to the company's financial documents was based on the fact that the plaintiff had not been provided with the documents *both* before and after the plaintiff had successfully obtained a court order to inspect the company's accounts (at [100]–[106]; see also *Ng Kian Huan Edmund (CA)* at [121]). Furthermore, I note that the Court of Appeal eventually found that the defendants' refusal to provide the

127 CCS at para 143; BAEIC at p 38 (para 79).

128 CCS at para 143.

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plaintiff with the company's financial documents was not a valid ground to support the plaintiff's oppression action (*Ng Kian Huan Edmund (CA)* at [122]–[125]). In contrast, Dr Yang's conduct in this case was not as egregious as that of the defendants in *Ng Kian Huan Edmund (HC)*, given that: (a) he was initially willing to provide the Claimants with KTC's financial documents as long as Leena signed a non-disclosure agreement or provided an undertaking that she will not disclose the documents to third parties;[129] and (b) he did eventually provide the Claimants with a copy of the financial documents of KTC which they had requested for.[130]

99 Therefore, I am not persuaded that there has been commercial unfairness or oppressive conduct as a result of Dr Yang's refusal to provide KTC's financial documents to the Claimants.

Dr Yang's financial mismanagement of KTC

100 The Claimants submit that Dr Yang's financial mismanagement of KTC was oppressive and commercially unfair.[131] They focus, in particular, on how Dr Yang remunerated himself and Li Jing in excessive amounts from September 2022 onwards.

101 Preliminarily, the Claimants do not make clear in their submissions the specific informal or implied understanding between the parties that has been breached in relation to their allegation that Dr Yang has financially mismanaged KTC. It is only stated, among other things, that "[Dr Yang] then financially

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[129] BAEIC at pp 201–202 (para 113) and 253 (para 60(f)); CB at p 799 (para 5); CCS at para 142

[130] BAEIC at p 38 (para 79); CCS at para 143.

[131] CCS at paras 114.

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mismanaged KTC and caused its costs to balloon by making commercially unfair payments to himself and his wife" and "[Dr Yang] was being commercially unfair to the Claimants by making such excessive payments to himself and his wife almost immediately after removing the Claimants as officers of KTC".[132] In light of my finding that the Founding Agreement does not exist, the Claimants have to prove that Dr Yang had breached a legitimate expectation arising from an informal or implied understanding between the parties in order to contend that his conduct constituted commercial unfairness. It does not suffice for the Claimants to merely allege that there has been an act of financial mismanagement, without properly situating that act within the context of the commercial agreement between the Claimants and Dr Yang. This is especially since the Claimants are relying on the alleged financial mismanagement as a ground of relief under s 216 of the Companies Act (see *Kroll, Daniel v Cyberdyne Tech Exchange Pte Ltd* [2025] 4 SLR 1020 at [41]).

102 Notwithstanding that, the Claimants seek to rely on *Deniyal* to support their case that Dr Yang had acted in a manner that was commercially unfair towards the Claimants. However, the court in *Deniyal* had found that the commercial agreement between the parties included a legitimate expectation that the plaintiff would be treated fairly in relation to the success of the companies (at [94] and [199]). This legitimate expectation arose from the basis of the parties' association and the specific reasons why the plaintiff in *Deniyal* became a shareholder of the companies. In the present case, the Claimants did not seek to ground their allegation of financial mismanagement with reference to such a legitimate expectation. Thus, I do not place much weight on *Deniyal*.

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132 CCS at paras 114 and 129.

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103 In any event, I am not inclined to conclude that the remuneration received by Dr Yang and Li Jing is excessive in the circumstances.

104 In respect of Li Jing's remuneration, it is not disputed that Li Jing entered into an employment contract with KTC on 29 August 2022 which entitled her to, among other things, a monthly salary of $8,562. Li Jing also confirmed that she was paid: (a) $8,526 per month from September 2022 to December 2023 (as a result of a misreading of the terms of her employment contract); (b) $4,800 per month from January 2024 to April 2024 (after she agreed to a reduction in her monthly salary); and (c) one month of her base salary as an annual wage supplement for both 2022 and 2023.[133]

105 The Claimants submit that Li Jing's remuneration was not justified for the following reasons: (a) her monthly base salary from September 2022 was more than three times the amount she had been receiving prior to that; (b) her job scope did not increase significantly even after she took on the role of managing director; (c) she was not qualified to be appointed as the managing director; and (d) KTC did not need a managing director.[134]

106 On the evidence before me, I reject the submission that the remuneration received by Li Jing for her services at KTC was unjustified or excessive. I do not agree with the Claimants' assertion that Li Jing's job scope was "simple and straightforward".[135] Li Jing testified as follows:[136]

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133 BAEIC at pp 259–260 (paras 78–80).

134 CCS at paras 118–121.

135 CCS at paras 119(1)–119(2).

136 Notes of Evidence dated 21 August 2025 ("NE 210825") at p 70 lines 2–18.

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A. As accounts manager, I was paid 4,200. After I become managing director after the AGM. On top of management of all aspects of finance, I took up more responsibilities including HR and other non-medical-related work. I oversaw day-to-day operation on the ground, and based on this information, I coordinate resources to make sure KTC is running in an efficient and safe manner. And based on the first year experience, there was so many mistakes in the process of preparing financial accounts and the delayed salary payment to nurses, I am the one decided to formalise and implement digitalised HR and accounting system. It's about a decision-making as a whole rather than only administrative work. And also, because I am the person who take up three persons' job, by doing this, not outsourcing to the third party, I save a lot of expenses for KTC.

107 From the evidence, it is clear that Li Jing was expected to juggle a variety of responsibilities whilst working in KTC, *eg*, handling KTC's accounts and insurance claims, cultivating patient relationships and arranging for payments to KTC's vendors.[137] Considering the range of tasks which Li Jing had to work on, I am hesitant to characterise her responsibilities as "simple and straightforward". Moreover, I find that there was indeed an increase in Li Jing's workload after she was appointed as KTC's managing director.[138] And even though it might have been the case that Li Jing received assistance when she carried out her responsibilities, that does not necessarily mean that she was not essential or did not play an important role. For instance, although she was assisted by Royal Management Services (S) Pte Ltd ("RMS") in ensuring that KTC's nurses were paid their salary on time, she still had to independently

137 BAEIC at p 241 (para 35); NE 210825 at pp 57–58 and 195.

138 BAEIC at pp 248–249 (para 56); NE 210825 at p 107 line 23 to p 113 line 19.

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validate the information provided by the nurses regarding their working hours before sending the information to RMS.[139]

108 Moreover, I note that there does not appear to be any proper evidential basis for the Claimants' submission that KTC did not require a managing director.[140] Indeed, even if KTC did not have a managing director before Li Jing was appointed, that does not invariably mean that it was redundant for KTC to appoint a managing director, especially since KTC's business grew significantly after FYE April 2022.[141] I also do not accept the Claimants' submission that Li Jing was not qualified to be KTC's managing director,[142] as no evidence was adduced as to what were the specific qualifications required for the role of managing director of KTC. In any event, it cannot be said that Li Jing was *wholly* unqualified, as she does hold degrees in economics and business administration and she had worked as a business development manager before she joined KTC.[143]

109 In respect of Dr Yang's remuneration, it is not disputed that Dr Yang entered into an employment contract with KTC on 1 September 2022 which entitled him to, among other things, a monthly salary for his role as a Medical Director and consultant nephrologist in KTC.[144] Li Jing also confirmed that Dr Yang was paid: (a) a monthly base salary of $20,800; (b) an annual wage supplement equivalent to one month of his base salary; (c) a fee of $500 for

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[139] NE 210825 at p 97 line 21 to p 98 line 7 and p 108 lines 3–22.

[140] CCS at para 120.

[141] CB at p 886.

[142] CCS at para 120.

[143] BAEIC at p 233 (paras 10–11).

[144] CB at p 772.

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every acute dialysis case he worked on; and (d) a Medical Director Fee of $3,500.[145]

110 The Claimants submit that there was no reason for Dr Yang to be paid such exorbitant amounts.[146] This is because: (a) KTC did not require a consultant nephrologist as every patient in KTC had a referring nephrologist; (b) Dr Yang was working at CFKD full time from September 2022 to January 2023 and did not have any capacity to work as a consultant nephrologist at KTC; and (c) Dr Yang's primary role in KTC was to be its Medical Director.

111 I am not persuaded that Dr Yang was remunerated excessively by KTC. I have previously covered Dr Yang's responsibilities as the Medical Director of KTC (see [37(d)] above). Dr Yang also testified extensively regarding his involvement in the running and management of KTC, notwithstanding the fact that he was concurrently employed at CFKD:[147]

> A. Your Honour, just to give you an example as the witness had alluded to, I was sitting beside him, I saw patients together with him, and there would be times in between cases, there would be times when I'm called on the phone, and I had to leave the clinic not only to just attend to his patients or any patients of his who are admitted to Mount E Hospital, there would be times that I have to do that. And it's easily, easily, easily done so.
>
> And this is notwithstanding KTC was right beside the clinic two doors away, so I could just pop by the clinic in between patients. In fact, not just in between patients. Before the clinic opened, I was there at 7 to open the door sometimes for my patients. I would be there for two hours before the clinic opens. When CFKD

145 BAEIC at pp 258–259 (para 75).

146 CCS at para 124.

147 NE 200825 at p 206 line 16 to p 207 line 15.

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> finished his clinic hours about 3 o'clock when there are no patients, I go over to KTC to continue my work there.
>
> In fact, most of the work I would do there is to continue to the nighttime or any time when I'm called to the hospital if there was an acute case. So if you want to split hairs to say you can't be in two places within the same moment as if he was referring to a quantum moment, it's not true. In practical aspects of my work, I could be in many places around the same time but not of course literally. But, yeah.

112 It was also admitted by Ma Ohnmar Hlaing – who worked at KTC as a nurse clinician from 1 November 2021 to 30 November 2022 and as a nurse manager from 1 December 2022 to 30 December 2023[148] –that Dr Yang "was involved in the consultation of patients", "wrote down many things on the clinical notes", "review[ed] medical reports of the patients", and "was also kept updated via WhatsApp and urgent calls about the patient's treatment at KTC".[149]

113 Moreover, although I accept that every patient in KTC had a referring nephrologist,[150] that does not mean that Dr Yang's role as KTC's consultant nephrologist or Medical Director was redundant. I accept Dr Yang's evidence that he would have to be present in cases where a patient in KTC had to be urgently attended to:[151]

> COURT: Dr Yang, I just want to understand the way the dialysis clinic was run because we've heard from other witnesses if patients are referred by other doctors, which I understand we've heard was a fair bit --
>
> A. Yes.

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148 BAEIC at p 119 (para 1).

149 NE dated 15 August 2025 at p 91 lines 3–11.

150 BAEIC at p 111 (para 46).

151 NE 200825 at p 221 line 21 to p 222 line 6.

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COURT: -- and if there was a crisis with that patient, would it be that doctor that would have to deal with it or you?

A. If it had happened at KTC premise and if the patient had to be attended to, the nurses would usually call the referring doctor first, but most of the time I was there, so they would have relied on my presence to attend to the patients. They might call their referring doctors, but I was -- my presence was more important that I was there to render that first-on support.

COURT: So would that mean that you would in a number of situations be dealing with the patient without reference to the referring doctor?

A. Yes. Yes, your Honour.

114 As to the fee of $500 which Dr Yang received for every acute dialysis case he conducted, Dr Yang explained the rationale for such a fee:[152]

> A. Yes. Your Honour, I would like to elaborate on this. I took a monthly salary for the work that I carried out at the dialysis centre at KTC, that was physically -- that was in 05-19. After I won the contract for KTC to provide service to the hospital, it was an additional load of work that I had to deal with. And this additional load of work would have been state-of-the-art dialysis treatment, provision of very specialised dialysis service, plasma freezes, lung dialysis, liver dialysis, which could be delivered at the hospital.
>
> In fact, I want to explain, lung dialysis is a very, very sub-specialised treatment which, prior to KTC, it never happened. So I had to be on call. I had to come back. I had to be involved. In fact, even Dr Lye, who was my mentor had to ask me how it would have been done.
>
> So it took time. I had to go down in the middle of the night if the filters clotted, if the dialyser was not working properly. We even did state-of-the-art lung dialysis for two machines on one patient to wean them from ECMO [*ie*, extracorporeal mechanical ventilation]. And ECMO is a very, very, very life-threatening condition, and I had to use these new techniques. In order to introduce all

152 NE 200825 at p 188 line 11 to p 189 line 22.

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> this state-of-the-art treatment, I was personally involved. It was my neck on the chopping board if things had failed. So I had to be there.
>
> So this is why for my time, for my -- any time on call, any time call-back, I don't think to be paid $500 for an acute case was excessive. In fact, one case could cost [$]10,000 per treatment. I took $500. One case could be $800. Of course, that would be in addition to nurse call-backs. So it would not just be [$]800, it would be $900, $1,000. And I took [$]500.
>
> So it does not matter what is the severity or the complexity of the case. My call-back to provide my service as a specialist and a subspecialist and an expert of renal replacement therapy, I think it is not too much to ask for a $500 call-back per case.

115 In addition, although it might have been the case that Shiju and Dr Yang did not specifically discuss Dr Yang serving and drawing a salary as KTC's consultant nephrologist at the time of the setting up of KTC,[153] I accept Dr Yang's evidence that this was not an important consideration at that point in time. Dr Yang testified that his focus then was "to get [KTC] off the ground" and "setting out and getting [KTC] to work".[154] In my view, there is insufficient evidence to conclude that there was an agreement or understanding between the Claimants and Dr Yang when KTC was incorporated that he would *only* serve as KTC's Medical Director and would *never* be permitted to draw a salary from working in KTC in another capacity. Indeed, I note that one of the terms of the Founding Agreement as alleged by the Claimants is that "[n]either Leena nor Dr Yang would collect or otherwise demand or draw any salary and/or fees whatsoever until the business was profitable" (see also [10(d)] above).[155] This

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153 Notes of Evidence dated 19 August 2025 at p 23 lines 2–23, p 147 lines 6–25 and p 148 lines 16–20; BAEIC at pp 163–165 (para 34).

154 NE 200825 at p 152 lines 17–21.

155 BAEIC at p 16 (para 23(10)).

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indicates, at the very least, that it was not outside the Claimants' contemplation that Dr Yang would eventually start drawing a salary after KTC's business became profitable.

116 Accordingly, I am not satisfied that there has been commercial unfairness in the circumstances, given my finding that Dr Yang and Li Jing were not excessively remunerated by KTC.

Dr Yang's failure to declare dividends for FYE April 2023 and FYE April 2024

117 The Claimants submit that Dr Yang's failure to declare any dividends for FYE April 2023 and FYE April 2024 amounted to commercial unfairness. This is because there has been a breach of the agreement or understanding between the Claimants and Dr Yang that KTC's profits will be shared equally between the Claimants on the one hand and Dr Yang on the other, and/or at the very least, there has been a breach of the Claimants' legitimate expectation to receive a fair share of KTC's profits in accordance with Leena being registered as a 33% shareholder of KTC.[156]

118 I have previously explained (see [37(e)] above) why I am not persuaded that there was any agreement or understanding between the Claimants and Dr Yang that KTC's profits will be shared equally between the Claimants on the one hand and Dr Yang on the other. Nevertheless, even if I were to accept the Claimants' submission that Leena had a legitimate expectation as a 33% shareholder of KTC to receive a *pro rata* share of KTC's profits, I do not agree that Dr Yang's failure to declare any dividends for FYE April 2024 amounted

156 CCS at para 133.

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to commercial unfairness. This is because KTC did not make any profit for FYE April 2024 – instead, it incurred a loss of $341,378.[157] Given that dividends are only payable out of profits of a company (see s 403(1) of the Companies Act), and in light of my finding that Dr Yang and Li Jing were not paid excessive salaries and remuneration (see [103] above), the fact that no dividends were declared for FYE April 2024 could not be commercially unfair towards the Claimants.

119 I am similarly not persuaded that Dr Yang's failure to declare dividends for FYE April 2023 – although KTC generated a profit of $200,187[158] – constitutes commercial unfairness. Shareholders do not have a right to demand a company to declare dividends, as it is a business decision reserved for the directors of the company (*Cost Engineers (SEA) Pte Ltd v Chan Siew Lun* [2016] 1 SLR 137 at [20]). The courts are generally reluctant to second-guess the directors' decision regarding the declaration of dividends, unless the directors have exercised their powers for improper purposes or in bad faith without commercial justification (*Lim Chee Twang v Chan Shuk Kuen Helina* [2010] 2 SLR 209 ("*Lim Chee Twang*") at [114]).

120 In this case, I accept Dr Yang's submission that dividends could not be declared for FYE April 2023 due to Leena's failure to turn up for the second annual general meeting on 13 October 2023 ("Second AGM") even though she was invited.[159] The Second AGM could not be convened due to the lack of a quorum, as KTC's constitution required a minimum attendance of two

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157 CB at p 1029; BAEIC at p 221 (para 162).

158 CB at p 886 and p 1029.

159 2DCS at para 194.

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shareholders to form a quorum (*ie*, both Dr Yang and Leena had to be present).[160] Although it is stated in the minutes of KTC's board of directors' meeting (which was held in lieu of the Second AGM) that Dr Yang had commented that it is not in KTC's interests to declare a dividend as KTC needed to conserve its resources for challenges ahead,[161] I am not inclined to find that there has been commercial unfairness, as there is no evidence that Leena took any subsequent action to request KTC to declare a dividend despite a copy of the financial statements for FYE April 2023 being provided to her. For instance, Leena did not take any further action to commence an extraordinary general meeting to seek the declaration of dividends. This was despite the fact that Leena had been represented by counsel (*ie*, CHEF) from 29 December 2022 onwards (see [38] above),[162] which indicates that she was likely aware of her legal rights as a shareholder of KTC.

121 I deal briefly with the Claimants' reliance on the case of *Senda International Capital Ltd v Kiri Industries Ltd* [2019] 2 SLR 1 ("*Senda (CA)*") to support their submission that Dr Yang's refusal to declare dividends for FYE April 2023 is commercially unfair towards them.[163] In that case, the Singapore International Commercial Court ("SICC") found that the refusal to declare a dividend constituted an oppressive act as it had neither been made in good faith nor was it a decision reached on purely commercial grounds (*DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd* [2018] 5 SLR 1 ("*Senda (HC)*") at [244] and [246]). The SICC further observed that there was "an

160 BAEIC at p 288 (para 14).

161 CB at p 962 (para 3).

162 2DCS at para 194.

163 CCS at para 139.

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improper motivation in denying [the minority shareholder] the benefits of its shareholding in [the company], while simultaneously permitting [the majority shareholder] unilaterally to extract benefits from [the company]" (*Senda (HC)* at [246]). The SICC's finding was subsequently upheld by the Court of Appeal (*Senda (CA)* at [132]). In my view, however, *Senda (CA)* is not instructive as its facts appear to be distinct from those in the present case. In *Senda (CA)*, the managing director of the aggrieved minority shareholder had proposed for the company in question to declare a dividend, but this proposal was rejected by the board of directors on the basis that the company needed working capital for its business (*Senda (CA)* at [120]–[121]). But in this case, there is no evidence that Leena made a similar proposal to Dr Yang or took any action to request KTC to declare a dividend for FYE April 2023 (see [120] above). Therefore, I am not satisfied that Dr Yang had acted in an oppressive or commercially unfair manner by not declaring dividends for FYE April 2023, and it cannot be said that he had exercised his powers for improper purposes or in bad faith without commercial justification (*Lim Chee Twang* at [114]).

122 To sum up, having considered the totality of the evidence, I find that the Claimants have not shown on a balance of probabilities that Dr Yang had conducted the affairs of KTC or exercised his powers in a manner that is oppressive towards them, such that they are entitled to relief under s 216 of the Companies Act.

Conclusion

123 For the foregoing reasons, I am not satisfied that the Claimants have established, on a balance of probabilities, their claims for breach of the

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Founding Agreement, misrepresentation, and minority oppression under s 216 of the Companies Act. Consequently, OC 235 is dismissed in its entirety.

124 The parties are to file their submissions on costs (limited to 10 pages) within 14 days from the date of this judgment.

Sushil Nair
Judge of the High Court

Akesh Abhilash, Shari Huang Xiao Rui, Marilyn Sim Ruilin and Wong Vanessa (Silvester Legal LLC) for the first and second claimants;
Sim Puay Jain Edwin and Ho Jun Yang Joshua (He Junyang) (Covenant Chambers LLC) for the first defendant;
Muk Chen Yeen Jonathan, Clara Lim Ai Ying and Lim Ting Xuan Lynette (LVM Law Chambers LLC) for the second defendant.

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