

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 270

Suit No 1282 of 2014

Between

Ong Bee Dee (executor of the estate of Ong Tuan Seng,
deceased)

... Plaintiff

And

- (1) Ong Bee Chew
- (2) Neo Guat Leng @ Linda Nio
- (3) Ong Zhi Jie

... Defendants

JUDGMENT

[Companies] — [shares] — [allotment]
[Companies] — [oppression] — [minority shareholders]
[Trusts] — [constructive trusts]

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTS.....	1
CHHMPL, OTSDPL AND OTHER FAMILY COMPANIES	2
THE DECEASED’S WEALTH DISTRIBUTION PLANS	5
FIRST SERIES OF DISPUTED TRANSACTIONS (NOVEMBER TO DECEMBER 2011)	5
<i>CHHMPL-related transactions</i>	6
<i>26,000 OTSDPL shares</i>	8
EVENTS SURROUNDING THE ABORTED SHAREHOLDERS’ AGREEMENT	9
SECOND SERIES OF DISPUTED TRANSACTIONS: ISSUE OF 340,000 NEW CHHMPL SHARES	13
SHAREHOLDERS’ MEETING ON 9 MARCH 2012	15
THE DECEASED’S REPUDIATION OF THE TRANSFERS.....	16
ISSUES	18
FIDUCIARY DUTIES.....	20
VALIDITY OF THE FIRST SERIES OF DISPUTED TRANSACTIONS	22
120,000 CHHMPL SHARES	22
APPOINTING THE 3RD DEFENDANT A DIRECTOR OF CHHMPL.....	26
26,000 OTSDPL SHARES	29
CONCLUSION ON THE VALIDITY OF THE FIRST SERIES OF DISPUTED TRANSACTIONS.....	32
VALIDITY OF THE SECOND SERIES OF DISPUTED TRANSACTIONS	33

DID THE DECEASED AUTHORISE THE ISSUE OF 340,000 CHHMPL SHARES?..	33
VALIDITY OF THE RESOLUTIONS	38
<i>Ordinary Resolution dated 20 February 2012</i>	39
<i>Directors’ Resolution dated 21 February 2012</i>	42
CONCLUSION ON THE VALIDITY OF THE SECOND SERIES OF DISPUTED TRANSACTIONS.....	43
LEGAL BASIS FOR REVERSAL OF THE TRANSACTIONS	43
RESULTING OR COMMON INTENTION CONSTRUCTIVE TRUST.....	44
LEGITIMATE EXPECTATIONS.....	46
MINORITY OPPRESSION	48
CONCLUSION.....	49

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**Ong Bee Dee (executor of the estate of Ong Tuan Seng,
deceased)**

v

Ong Bee Chew and others

[2016] SGHC 270

High Court — Suit No 1282 of 2014

Valerie Thean JC

23 August - 15 September 2016; 21 October 2016

7 December 2016

Judgment reserved.

Valerie Thean JC:

Introduction

1 The frustrated intentions of a dead man are at the heart of this case. Because the late Mr Ong Tuan Seng (“the Deceased”) was unable to effect his plans to distribute his wealth prior to his death, this tussle has continued amongst his children and their children.

Facts

2 The Deceased had six sons, including the plaintiff (“the Plaintiff”), the first defendant (“the 1st Defendant”), and four daughters. On 19 February 2013, the Deceased passed away.¹ In his will, he named the Plaintiff as the sole executor and beneficiary of his estate.²

3 The Deceased, a successful entrepreneur who started various businesses with his children in his lifetime, was proficient in Hokkien, with a basic grasp of Mandarin.³ He did not speak English. The present suit concerns shares held by the 1st Defendant in two companies through which the Deceased held properties. These companies were first, Chen Hock Heng Machinery Pte Ltd (“CHHMPL”), which also had a forklift business, and second, Ong Tuan Seng Development (Pte) Ltd (“OTSDPL”). The 1st Defendant’s wife, Neo Guat Leng (“the 2nd Defendant”), is sued as a director in CHHMPL. The 1st Defendant’s son, Ong Zhi Jie (“the 3rd Defendant”) was at one time a director of CHHMPL but has since resigned.

CHHMPL, OTSDPL and other family companies

4 CHHMPL was incorporated on 18 October 1989 as a private limited exempt company with three shares and a share capital of \$3. The three shares were held by the Deceased, the 1st Defendant and Ong Bee Chip (“Bee Chip”), the Deceased’s youngest son.⁴ Shortly after, in February 1990, CHHMPL acquired the Deceased’s textile printing business, Chen Hock Heng Printing Industries.

5 In 1995, CHHMPL acquired a 30-year lease of a piece of land in Sungei Kadut to build a six-storey factory.⁵ The first storey of the factory was sub-leased out for thirty years to Hock Eek Seng Machinery Pte Ltd (“HES Machinery”) at a price of \$3m. HES Machinery was a partnership set up by

¹ Statement of Claim (Amendment No 1) (“SOC”) at para 6

² SOC at para 2

³ SOC at para 8, Defence (Amendment No 1) (“Defence”) at para 27

⁴ SOC at para 10; Defence at para 17

⁵ SOC at para 13; Defence at para 20

the Deceased with the Plaintiff and ran a forklift business. On 24 October 1996, the Plaintiff was appointed Managing Director of CHHMPL.⁶ In 2004, the Deceased decided to discontinue CHHMPL's textile printing business, in which Bee Chip and Chew Yong, his daughter, assisted in, and started investing in real estate. In 2005, CHHMPL acquired two hotels: No 757 Geylang Road ("757 Geylang"), at a price of \$5.6m, and No 12 Lorong 12 Geylang, at a price of \$10.5m.⁷

6 After the discontinuance of CHHMPL's textile printing business, Bee Chip and Chew Yong left CHHMPL to manage another family company, Golden Bridge Foods Manufacturing Pte Ltd ("Golden Bridge").

7 CHHMPL's majority shareholder at the time the hotels were acquired was Ong Tuan Seng Pte Ltd ("OTSPL"), which functioned as the Ong family's holding company in which all the Deceased's children held shares.⁸ The Deceased intended to transfer 757 Geylang to OTSPL. The Deceased wanted only the sons to have a share in the two hotels. In 2006, the Deceased asked his daughters to sign a Family Arrangement, giving up their shares in OTSPL for a sum of money, intending to transfer 757 Geylang to OTSPL thereafter. This Family Arrangement was not signed, although the evidence was not clear which daughters refused to sign.

8 The Deceased then divested OTSPL of its assets instead. On 6 May 2009, OTSPL was struck off and OTSDPL was incorporated on 8 February 2007.⁹ The smaller hotel, 757 Geylang, was transferred from CHHMPL to

⁶ SOC at para 20; Defence at para 30

⁷ SOC at para 21; Defence at para 31(c)

⁸ Defence at para 32(a)

OTSDPL.¹⁰ OTSDPL had an initial paid up capital of \$4, with the Deceased, the Plaintiff, Bee Chip, and Ong Bee Song (“Bee Song”), another of the Plaintiff’s sons, holding one share each.¹¹ The four shareholders were also appointed as directors of OTSDPL.¹² Following the incorporation of OTSDPL, the Plaintiff stepped down as managing director of CHHMPL on 6 June 2007.¹³ The Deceased instructed the sons who had received shares in OTSDPL - the Plaintiff, Bee Dee and Bee Song - to give up their shares in CHHMPL. After a series of share transfers, the shares in CHHMPL were held by the Deceased, the 1st Defendant, Ong Bee Leng (“Bee Leng”) (one of the Deceased’s sons), Bee Leng’s son Chong Ho, Ong Bee Beng (“Bee Beng”) (one of the Deceased’s sons), and Bee Beng’s son Yongxiang.¹⁴ In or around June 2011, the Deceased gave each of his daughters \$450,000.

9 At all material times, only the 1st Defendant and the 2nd Defendant helped the Deceased to manage CHHMPL.¹⁵ From 2003, after the Deceased turned 74, the Deceased went into semi-retirement.¹⁶ The 1st Defendant assisted him in the business, and the 2nd Defendant was his assistant who translated and explained documents to the Deceased in Hokkien. Although the Plaintiff was CHHMPL’s Managing Director from 1996 to 2007, his evidence was that he did not assist the Deceased with the management of the company.¹⁷

⁹ SOC at para 22; Defence at para 32(c)

¹⁰ SOC at paras 22 and 26

¹¹ SOC at para 23; Defence at para 32(d)

¹² SOC at para 23; Defence at para 32(d)

¹³ SOC at para 20; Defence at para 30

¹⁴ SOC at para 27; Defence at para 32(i)

¹⁵ Defence at para 30

¹⁶ Plaintiff’s submissions, para 7

¹⁷ Transcript, 23 August (Ong Bee Dee)

In addition, the 1st Defendant and 2nd Defendant assisted the Deceased in managing the affairs of OTDSPL even though they were, until 1 December 2011, neither directors nor shareholders of OTDSPL.¹⁸ The other shareholders of OTDSPL were not involved in its management.

The Deceased's wealth distribution plans

10 It is not disputed that the Deceased initially intended for his family to retain the two hotels owned by CHHMPL and OTSDPL for at least 30 years after his death.¹⁹ The various transactions must be viewed in this light.

First series of disputed transactions (November to December 2011)

11 Four significant transactions took place in November and December 2011:

- (a) 200,000 CHHMPL shares were transferred from the Deceased to the 3rd Defendant;
- (b) 120,000 CHHMPL shares were transferred from the Deceased to the 1st Defendant;
- (c) the 3rd Defendant was appointed a director of CHHMPL; and
- (d) 26,000 OTSDPL shares were transferred from the Deceased to the 1st Defendant.

The first transfer of shares to the 3rd Defendant was admitted by the Deceased in a letter dated 7 January 2013²⁰ and is not disputed in the present suit.

¹⁸ Defence at para 32(f)

¹⁹ SOC at para 46; Defence at para 42

CHHMPL-related transactions

12 In order to effect the transfer of shares in CHHMPL, as well as the 3rd Defendant's appointment as a director of CHHMPL, the following documents were executed:²¹

(a) On 19 November 2011, the existing shareholders of CHHMPL, namely, the Deceased, the 1st Defendant, Bee Leng, Bee Beng, Chong Ho and Yongxiang, signed

(b) a "Waiver of Pre-emptive Rights" in respect of the proposed transfer of the 120,000 and 200,000 CHHMPL shares from the Deceased to the 1st and 3rd Defendants respectively.²²

(c) On 25 November 2011, the Deceased and the 1st Defendant, as the existing directors of CHHMPL, signed a Directors' Resolution appointing the 3rd Defendant as a director of CHHMPL.²³

(d) On 1 December 2011, the Deceased, the 1st Defendant and the 3rd Defendant signed a Directors Resolution approving the transfer of the 120,000 and 200,000 CHHMPL shares from the Deceased to the 1st and 3rd Defendants respectively.²⁴

(e) On 1 December 2011, the Deceased and the 1st Defendant signed a share transfer form, effecting the transfer of 120,000 CHHMPL shares from the Deceased to the 1st Defendant.²⁵

²⁰ 2 AB at p7

²¹ Defendants' written submissions at para 54

²² 3AB at p27

²³ 3AB at p28

²⁴ 3AB at p35

(f) On 1 December 2011, the Deceased and the 3rd Defendant signed a share transfer form, effecting the transfer of 200,000 CHHMPL shares from the Deceased to the 3rd Defendant.²⁶

13 Following the events described above, the directors of CHHMPL were the Deceased, the 1st Defendant, and the 3rd Defendant. The Deceased, Chong Ho, Yongxiang and the 3rd Defendant held 200,000 each. Bee Leng held 260,000 and Bee Beng, 280,000. The 1st Defendant had the largest share at 660,000.

14 The dispute between the parties may be summarised as follows. The Plaintiff contends that the defendants induced the Deceased to sign the abovementioned documents even though he did not know the contents and effect of the said documents.²⁷ The defendants contend that the transfer of the 320,000 CHHMPL shares from the Deceased to the 1st and 3rd Defendants was effected on the instructions of the Deceased, in recognition of the 1st Defendant's years of hard work and capable management of the affairs of both CHHMPL and OTSDPL, as well as in furtherance of the Deceased's intention that the 1st Defendant and his family should have control of CHHMPL.²⁸

26,000 OTSDPL shares

15 The 1st Defendant was appointed a director of OTSDPL in late November 2011.²⁹ On 1 December 2011, the Deceased, the 1st Defendant and

²⁵ 3AB at p36

²⁶ 3AB at p37

²⁷ SOC at para 44; Plaintiff's written submissions at para 35(iii)

²⁸ Defence at para 47

²⁹ Defence at para 46

Bee Chip signed a Directors' Resolution authorising the transfer of 26,000 OTSDPL shares from the Deceased to the 1st Defendant, and the transfer of 6,000 OTSDPL shares from the Deceased to Chew Yong.³⁰

16 The defendants contend that the Deceased had originally intended to vest management and control of OTSDPL in Bee Chip,³¹ but he lost confidence in Bee Chip because he was not running Golden Bridge well.³² Given the 1st Defendant's good track record of running CHHMPL and OTSDPL, the Deceased decided that the 1st Defendant should run OTSDPL instead. The Deceased therefore asked the 1st Defendant to become a shareholder and director of OTSDPL.³³ The 1st Defendant was apparently reluctant initially because he feared upsetting his brothers.³⁴ In response, the Deceased suggested giving some OTSDPL shares to Chew Yong so that she could mediate between the 1st Defendant and the other brothers should conflicts arise.³⁵ The 1st Defendant thus agreed to take on an official role in OTSDPL and was accordingly made director and shareholder of the company.³⁶

17 The Plaintiff, on the other hand, contends that the Deceased planned for OTSDPL to invest its excess funds in the stock market, and the 1st Defendant was appointed a director and given some shares to enable him to have some credibility to act for OTSDPL.³⁷ The Plaintiff claims that the shares were transferred on trust for that specific purpose and seeks their return.³⁸

³⁰ 3AB at p32

³¹ Defence at para 40

³² Defence at para 41

³³ Defence at para 43

³⁴ Defence at para 44

³⁵ Defence at para 45

³⁶ Defence at para 46

Events surrounding the aborted shareholders' agreement

18 An aborted shareholders' agreement, intended to implement the Deceased's intention to retain the hotels for 30 years, is central to this suit. It is not disputed that some time before 30 November 2011, the 1st Defendant sought advice from two private bankers at J P Morgan Chase Bank, N.A. ("JP Morgan"), Shaun Lim ("Mr Lim") and Stacy Choong ("Ms Choong"),³⁹ who referred the matter onwards to WongPartnership LLP ("Wong Partnership") for assistance in drafting the shareholders' agreement.⁴⁰ Vivien Yui ("Ms Yui") and Favian Tan ("Mr Tan") were the lawyers who assisted with the shareholders' agreement.

19 A first meeting at Wong Partnership was held on 30 November 2011. It is not clear whether the Deceased was present at the meeting. The defendants assert that the Deceased was present at the 30 November 2011 meeting; the Plaintiff denies that he was present.⁴¹ At this first meeting, the proposed shareholders agreement was discussed and instructions were given to Wong Partnership to draft the agreement.⁴²

20 Wong Partnership prepared a draft shareholders' agreement dated 7 January 2012. A second meeting was held with Wong Partnership on 10 January 2012 to discuss the draft shareholders' agreement. It is not disputed

³⁷ SOC at paras 36-37

³⁸ SOC at para 39

³⁹ SOC at para 48(a); Defence at para 49(c); Stacey Choong's AEIC at para 5

⁴⁰ SOC at para 48(b); Defence at para 49(c)

⁴¹ SOC at para 48(b); Defence at para 50(a)

⁴² SOC at para 48(b); Defence at para 50

that the Deceased, the 1st and 2nd Defendants, Ms Choong, Mr Lim, Mr Tan and Ms Yui were present.⁴³

21 Parties disagree as to whether the Deceased understood the draft agreement dated 20 January 2012⁴⁴, which was the subject of this meeting and contained the following salient terms:⁴⁵

(a) Clause 3.1 delineates the shareholders' respective shareholdings in CHHMPL – this reflects the position after the Deceased transferred the 120,000 shares to the 1st Defendant.

(b) Clause 5 (Board of Directors): (i) cl 5.1 provides that there shall be a maximum of four directors, which shall be nominated by the 1st Defendant, (ii) cl 5.2 provides that the office of the Managing Director shall be held by the 1st Defendant or his designate, (iii) cl 5.3 gives the 1st Defendant the right to nominate his younger son as a Director and compels the other shareholders to accept the appointment, (iv) cl 5.4 provides that all decisions of the Board of Directors require the affirmative vote of the Managing Director (*ie*, the 1st Defendant), (v) cl 5.5 provides that the Deceased shall be the Chairman for as long as he is a director, (vi) cl 5.6 provides that the Managing Director must be present to satisfy the quorum requirement for Board meetings, and (vii) cl 5.7 provides that all Board resolutions must be signed by the Managing Director.

⁴³ SOC at para 48(d); Defence at para 50

⁴⁴ SOC at para 49; Defence at para 50

⁴⁵ 2 ASB at pp352–384

- (c) Clause 6.1 provides that the 1st Defendant is required to be present at all shareholders' meetings to form a quorum.
- (d) Clause 9 provides that CHHMPL shall not sell, disposed or transfer, or create an encumbrance over, any of its property assets during the 30-year lock in period.
- (e) Clause 10 gives the shareholders pre-emptive rights in respect of new or additional shares issued by the company, and cl 10.4 gives the 1st Defendant the right to purchase any shares declined by the other shareholders.
- (f) Clause 11.2 allows shareholders to transfer their shares to the other shareholders, but mandates that this will be at a price equal to 30% of the fair market value of the shares during the 30-year lock in period.
- (g) Clause 14 provides that in the event of a default by any shareholder, they shall sell their shares at a reduced price.

22 Instructions were taken and the agreement was revised. On 27 January 2012, the 1st and 2nd Defendants had a further meeting at Wong Partnership for the lawyers to explain the changes made consequent upon the earlier meeting.⁴⁶ There were minimal changes to the agreement following this meeting. The Plaintiff claims that at this meeting, Wong Partnership expressed concern about the powers given to the 1st Defendant and strongly advised that the other shareholders get independent legal advice before signing the agreement,⁴⁷ which was when the 1st Defendant decided to position for

⁴⁶ SOC at para 50; Defence at para 50(b)

majority control. The defendants contend that Wong Partnership had advised from the outset that the other shareholders should obtain independent legal advice. At the 27 January 2012 meeting, Wong Partnership had specifically suggested that the best way to ensure that the hotel would not be sold was to have the majority of the CHHMPL shares in the control of one shareholder, who would not sell the hotel.⁴⁸

Second series of disputed transactions: Issue of 340,000 new CHHMPL shares

23 In February 2012, the following CHHMPL resolutions were passed, giving the 1st and 3rd Defendants majority shareholder control of CHHMPL:

(a) On 2 February 2012, a Directors' Resolution was signed by the Deceased, the 1st Defendant and the 3rd Defendant to convene an Extraordinary General Meeting ("EGM") on 20 February 2012 to pass an Ordinary Resolution authorising the directors to issue new CHHMPL shares of any amount they deem fit.⁴⁹

(b) On 3 February 2012, the Deceased signed a "Notice of Extraordinary General Meeting", giving notice that the abovementioned EGM would take place on 20 February 2012.⁵⁰

(c) On 20 February 2012, the Deceased signed the minutes of the EGM, which recorded the passing of an Ordinary Resolution

⁴⁷ SOC at para 50

⁴⁸ Defence at para 50(b)(i)

⁴⁹ 3AB at p48

⁵⁰ 3AB at p49

authorising an increase in shares to any amount the directors deemed fit.⁵¹

(d) On 20 February 2012, the Deceased also signed the Ordinary Resolution giving effect to what was recorded in the above minutes.⁵²

(e) On 21 February 2012, the Deceased, the 1st Defendant and the 3rd Defendant signed a Directors' Resolution, resolving to (i) increase the issued share capital of CHHMPL from 2m to 2.34m shares, and (ii) allot the further 340,000 CHHMPL shares to the 1st Defendant.⁵³ The documents record that the 1st Defendant paid \$1 for each share.⁵⁴

24 Thus, following the issuance of 340,000 fresh CHHMPL shares to the 1st Defendant, the 1st Defendant's shareholding stood at 1,000,000 shares, and he and the 3rd Defendant jointly had a 51% majority stake in CHHMPL.

25 The defendants claim that the issuance of the 340,000 CHHMPL shares was carried out on the Deceased's instructions. The 1st Defendant had informed the Deceased of Wong Partnership's advice that majority shareholder control was one way to ensure that the hotel would not be sold for the next 30 years, and the Deceased took the advice on board.⁵⁵ The 2nd Defendant's evidence was that the Deceased decided to issue 340,000 shares

⁵¹ 3AB at p50

⁵² 3AB at p54

⁵³ 3AB at p52

⁵⁴ 3AB at p55

⁵⁵ Defence at para 51; Defendants' written submissions at para 83

to the 1st Defendant so that he and his family would have slightly over 51% of the shares.⁵⁶

26 The Plaintiff claims that the Deceased was induced to sign the various resolutions mentioned above by several misrepresentations from the 1st and 2nd Defendants. The Deceased was allegedly told that CHHMPL did not have enough capital, and that the 1st Defendant would be making a loan of \$340,000 to CHHMPL. The Deceased thought that the documents he was signing were in order to give effect to the loan.⁵⁷

Shareholders' meeting on 9 March 2012

27 On 9 March 2012, a shareholders' meeting was convened for the purposes of signing the shareholders' agreement. Bee Leng, Chong Ho, Bee Beng and Yongxiang attended in response to the Deceased's instruction.⁵⁸

28 Premier Law LLC, pursuant to arrangements made by Wong Partnership at the Deceased's instruction, attended the meeting as legal counsel for the minority shareholders. They explained the terms of the shareholders' agreement, and the extent of control it would give the 1st Defendant.⁵⁹ The minority shareholders also found out at the meeting that the 1st Defendant's stake in CHHMPL had been increased from 540,000 to 1m shares.

⁵⁶ Defendants' written submissions at para 84

⁵⁷ SOC at paras 54-56

⁵⁸ SOC at paras 62-63

⁵⁹ SOC at para 64

29 The draft agreement was not signed. According to the Plaintiff, the other shareholders were all outraged and refused to accept the terms of the shareholders' agreement. The Plaintiff also claims that the Deceased was surprised at the acrimony that ensued because the meeting was conducted in English and Mandarin and he could not understand what was being explained.⁶⁰ Only after the meeting did the Deceased realise that the defendants had procured (a) the 3rd Defendant's appointment as a director of CHHMPL, (b) a transfer of the 120,000 CHHMPL shares from the Deceased to the 1st Defendant, and (c) the issuance of 340,000 new CHHMPL shares to the 1st Defendant.⁶¹ The defendants contend that the Deceased's conduct at and after the meeting was consistent with the 1st Defendant having done no wrong,⁶² and also deny that the Deceased expressed any sort of shock as claimed by the Plaintiff.⁶³

The Deceased's repudiation of the transfers

30 It is not clear what the relationship between the defendants and the Deceased was like after the 9 March 2012 meeting. The defendants claim that their relationship was fine: the Deceased went out for lunch with them after the meeting⁶⁴ and continued to work alongside them until May 2012, when the 1st Defendant had a quarrel with the Deceased arising from the latter's request to reverse the issuance of the 340,000 shares.⁶⁵ The Plaintiff, on the other hand, contends that everything was unravelled after the Deceased found out

⁶⁰ SOC at para 64

⁶¹ SOC at para 65

⁶² Defendants' written submissions at para 93

⁶³ Defendants' written submissions at para 98

⁶⁴ Defendants' written submissions at para 94

⁶⁵ Defence at para 57(d)

about the unauthorised transactions in a series of family meetings organised by the Plaintiff and Chew Yong after 9 March 2012.

31 On 21 May 2012, the Deceased sent a letter, typewritten in English, to the 1st Defendant, reiterating that as Chairman of CHHMPL and OTSDPL, the Deceased had the “ultimate and final say”, and asked the 1st Defendant to:⁶⁶

- (a) “reverse the increase in his shareholding in CHHMPL from 540,000 to 1,000,000” which gave the 1st and 3rd Defendants majority share in CHHMPL; and
- (b) return the 26,000 OTSDPL shares to the Deceased and resign as director of OTSDPL.

32 Thereafter, on 7 January 2013, the Deceased, via his lawyers Khor Thiam Beng & Partners, sent a further letter to the 1st Defendant, alleging that:

- (a) the Deceased only transferred the 26,000 shares in OTSDPL and appointed the 1st Defendant as a director of OTSDPL on the basis of the representation that the 1st Defendant would step down as a director and return the shares at any time the Deceased required him to do so;⁶⁷
- (b) the Deceased did not know about the 3rd Defendant’s appointment as director of CHHMPL;⁶⁸

⁶⁶ 1AB at p288

⁶⁷ 2AB at p8

⁶⁸ 2AB at p8

(c) the 1st Defendant made the Deceased sign the resolutions authorising the 3rd Defendant's appointment as director, the transfer of the 120,000 CHHMPL shares, and the issuance of the 340,000 new CHHMPL shares, without explaining the resolutions to the Deceased;⁶⁹ and

(d) the Deceased only discovered all of the above at the 9 March 2012 meeting held at Wong Partnership.⁷⁰

The Deceased also demanded a reversal of all of the above disputed transactions and threatened legal action.⁷¹

33 The 1st Defendant's lawyers only gave a substantive reply to the letter on 12 March 2013. This was after the Deceased passed away on 19 February 2013.⁷²

Issues

34 The Plaintiff essentially claims that the various transactions were wrongful and should either be reversed or remedied by an award of damages. Specifically, the Plaintiff claims that the Deceased did not know the true nature of the documents the defendants had induced him to sign. The defendants were in breach of their fiduciary duties in failing to explain the documents to the Deceased. And, in any event, the Deceased had a right to demand the reversal of the transfers because the shares were held on trust for

⁶⁹ 2AB at p9

⁷⁰ 2AB at p9

⁷¹ 2AB at p10

⁷² SOC at para 72

him and/or on the basis of his legitimate expectations. The Plaintiff's final salvo is a claim in minority oppression in respect of CHHMPL.

35 The defendants, while agreeing that the Deceased was the patriarch of the family, assert that the Deceased had approved all the disputed transactions, and that at all material times, he was actively involved and fully aware of the nature of the documents that he signed.

36 The factual issue pivotal to the suit is this: was the Deceased a victim of the defendants' deception and conspiracy, as the Plaintiff contends, or was this simply a case of the Deceased changing his mind, retrospectively making up false allegations in order to set aside the transactions, as the defendants contend?

37 The dispute may be deconstructed using four broad strands. First, the standard of care owed by the 1st and 2nd Defendants to the Deceased must be determined. In particular, did they stand as fiduciaries in relation to the Deceased (as alleged by the Plaintiff), and if so, what was the standard of care expected of them?

38 Second, save for the gift of 200,000 CHHMPL shares to the 3rd Defendant, the validity of the two sets of transactions arises for determination. These are: (a) the appointment of the 3rd Defendant as a director of CHHMPL; (b) the transfer of the 120,000 CHHMPL shares from the Deceased to the 1st Defendant; (c) the transfer of the 26,000 OTSDPL shares from the Deceased to the 1st Defendant; and (d) the validity of the series of resolutions passed to give effect to the issuance of 340,000 new CHHMPL shares in favour of the 1st Defendant. The Plaintiff makes various claims of trust, misrepresentation, conspiracy and breach of fiduciary duties,⁷³ conspiracy, *non*

est factum, misrepresentation⁷⁴ and alleged procedural improprieties that affect the validity of the various resolutions under the company's articles and general company law.⁷⁵

39 If the disputed transactions are found to be valid, I shall consider whether the Plaintiff has any legal basis to demand a reversal of the transactions on the basis of either a resulting or common intention constructive trust, or a legitimate expectation.

40 Finally, I shall consider whether there has been oppression on the minority shareholders of CHHMPL. On this issue, parties agree that the 1st and 3rd Defendants are the majority shareholders, whether or not the disputed transactions are set aside, because of subsequent share transfers in the run up to this litigation which this suit is not concerned with.

Fiduciary duties

41 The Plaintiff pleads that the 1st and 2nd Defendants owed the Deceased, who was old and illiterate, fiduciary duties at all material times on the grounds that:⁷⁶ (a) the Deceased relied on them to prepare, translate and explain documents to him; (b) the Deceased entrusted the 1st and 2nd Defendants with the task of explaining to him all legal and statutory matters relating to CHHMPL and OTSDPL, and taking steps to comply with them; and (c) the Deceased reposed trust and confidence in the 1st and 2nd Defendants, trusting them to carry out their duties diligently and faithfully,

⁷³ Plaintiff's written submissions at paras 35-38

⁷⁴ Plaintiff's written submissions at para 47(iii)

⁷⁵ Plaintiff's written submissions at para 47(iii)(d)-(e)

⁷⁶ SOC at para 35

with skill, care and honesty. In counsel's closing submissions, the Plaintiff elaborates that the fiduciary duties were owed because the 1st and 2nd Defendants were agents of the Deceased in assisting to find and instruct lawyers to draft the shareholders' agreement.⁷⁷

42 In my judgment, an agency relationship does not arise simply because the 1st and 2nd Defendants prepared, translated and explained company documents to the Deceased, or because the Deceased trusted them to manage CHHMPL and OTSDPL. In assisting the Deceased in these ways, the defendants were in no sense acting *on behalf of* the Deceased vis-à-vis a third party, or in a manner that affected the Deceased's legal position. I note that the defendants did not sign any document prepared for the Deceased on the Deceased's behalf. The crux of an agency relationship is the existence of a principal who authorises an agent *to act on his/her behalf*, such that the agent has the legal power to *affect the principal's legal position as against third parties*: see the Court of Appeal's views in *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [70], adopting *Scott v Davis* (2000) 204 CLR 333 at [227].

43 The Plaintiff's alternative argument centred on the instructions to Wong Partnership is slightly different. The Court of Appeal in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervenor) and another appeal* [2009] 3 SLR(R) 109 ("Ng Eng Ghee") affirmed the view that even in "incomplete agency" cases, where no power to affect legal relationships is conferred, the relationship still imports an undertaking by one to act in the interests of the other rather than his own. In such cases, the duty is one of loyalty. Such an agent "may not act for his own

⁷⁷ Plaintiff's written submissions at paras 114 and 115

benefit ... without the informed consent of his principal”: *Ng Eng Ghee* at [135] citing Millett J in *Bristol and West Building Society v Mothew* [1998] Ch 1 at [18].

44 It is not disputed that the 1st Defendant assisted in the process of seeking out, consulting, and instructing JP Morgan and Wong Partnership. In particular, the 1st Defendant conducted initial consultations with JP Morgan, and then with Wong Partnership. Furthermore, the 1st Defendant claims that he dutifully followed the Deceased’s express instructions in all the various matters. Because he had acted on the Deceased’s behalf in instructing JP Morgan and Wong Partnership, an incomplete agency thus arose. For reasons which follow, however, I find that he acted with the informed consent of the Deceased.

Validity of the first series of disputed transactions

45 The first series of transactions concern documents executed in November and December 2011 to: (a) transfer 120,000 CHHMPL shares to the 1st Defendant; (b) transfer 200,000 CHHMPL shares to the 3rd Defendant (not disputed); (c) appoint the 3rd Defendant as a director of CHHMPL; and (d) transfer 26,000 OTSDPL shares to the 1st Defendant. I consider each of these in turn.

120,000 CHHMPL shares

46 The Plaintiff’s case is that the Deceased signed the documents effecting the transfer of the 120,000 CHHMPL shares to the 1st Defendant without knowing the contents and effect of the said documents.⁷⁸ These documents include (see also [12(a)], [12(c)] and [12(d)] above):

- (a) a “Waiver of Pre-emptive Rights” in respect of the proposed transfer of the 120,000 and 200,000 CHHMPL shares from the Deceased to the 1st and 3rd Defendants respectively⁷⁹ signed on 19 November 2011;
- (b) a Directors’ Resolution approving the transfer of the 120,000 and 200,000 CHHMPL shares from the Deceased to the 1st and 3rd Defendants respectively signed on 1 December 2011;⁸⁰ and
- (c) a share transfer form, effecting the transfer of 120,000 CHHMPL shares from the Deceased to the 1st Defendant signed on 1 December 2011.⁸¹

Importantly, the Plaintiff claims that the Deceased only found out that the 120,000 CHHMPL shares were transferred to the 1st Defendant after the meeting on 9 March 2012 at Wong Partnership.

47 In my view, many aspects of the evidence adduced in this case are inconsistent with the Plaintiff’s case that the Deceased did not know about, or authorise, the transfer of the 120,000 CHHMPL to the 1st Defendant.

48 First, the “Waiver of Pre-emptive Rights” dated 19 November 2011 was not just signed by the Deceased, but also, Bee Leng, Bee Beng, Chong Ho and Yongxiang. Chong Ho and Yongxiang are English educated, and they would have understood the effect of the short document.⁸² It is not disputed

⁷⁸ SOC at para 44; Plaintiff’s written submissions at para 35(iii)

⁷⁹ 3AB at p27

⁸⁰ 3AB at p35

⁸¹ 3AB at p36

that they signed the documents at the request of the Deceased, who lived alone and met them frequently for dinner, particularly Chong Ho who lived in the same apartment building.

49 Second, while the Deceased may not have been able to understand English, it is clear that he was a shrewd and successful businessman who recognised numbers and was far from gullible. It was the Plaintiff's, Chew Yong's and Bee Chip's evidence that their father was "very clear about numbers".⁸³ It is unlikely that he would have signed the documents approving the transfer of the 120,000 CHHMPL shares to the 1st Defendant without asking the 1st Defendant what the "120,000" represented.

50 Third, the evidence of the lawyers and bankers were consistent that the Deceased was active in the 10 January 2012 meeting and gave instructions on various aspects of the agreement. Ms Yui's evidence is that at the 10 January 2012 meeting, she went through the parties' respective shareholdings as set out in the 7 January 2012 draft shareholders' agreement, which the Deceased understood and *confirmed*.⁸⁴ The 7 January 2012 draft shareholders' agreement reflected the parties' shareholdings *after* the first series of disputed transactions, and stated that the 1st Defendant had 660,000 shares in CHHMPL. Going back to the previous point that the Deceased was very clear about numbers, and in particular, Bee Chip's evidence that the Deceased "was very clear about the percentage of the shares, who had how much and how much he had",⁸⁵ it is unlikely that any unauthorised change in shareholding

⁸² Defendants' written submissions at para 57

⁸³ Defendants' written submissions at para 78

⁸⁴ Transcripts, 7 September 2016, pp28-30 (Vivien Yui)

⁸⁵ Defendants' written submissions at para 78

would have slipped past the Deceased unnoticed, and further, received his affirmation. The Plaintiff claims that the Deceased did not understand what was being explained to him at the 10 January 2012 meeting (see [20] above), but this flies in the face of Ms Yui's evidence that the Deceased confirmed that the shareholding shown to him was correct⁸⁶ and that the Deceased understood what was going on in the meeting.⁸⁷

A: ... And then when we presented the shareholders' agreement to [the Deceased], on 7 January, he did not object to it.

Q: Tenth?

A: Sorry, 10 January.

Q: The meeting was on the 10th. He didn't object, right. But did he give you stronger indication that it was acceptable to him? I mean how would you – I guess not objecting could mean he kept quiet. But are you able to explain why your impression is that he accepted it?

A: *Because he participated in the meeting. He understood what we were trying to say when we explained things to him and then when he had certain points of different instructions he gave it to us.* So, for example, the thing about transferring within the family for 30 years, at the meeting he then told us, "Oh, I only want to give it to the boys". So you will see that that instruction was reflected in the next draft.

[emphasis added]

51 In the circumstances, I find that the Deceased did authorise the transfer of the 120,000 CHHMPL shares to the 1st Defendant. I reject the Plaintiff's case that the Deceased was deceived or misled into transferring the 120,000 CHHMPL shares to the 1st Defendant. In my view, that simply flies against the face of the evidence.

⁸⁶ Transcripts, 7 September 2016, p30 (Vivien Yui)

⁸⁷ Transcripts, 7 September 2016, pp14-15 (Vivien Yui)

Appointing the 3rd Defendant a director of CHHMPL

52 The Plaintiff claims that the Deceased signed the Directors’ Resolution dated 25 November 2011 appointing the 3rd Defendant as a director of CHHMPL without knowing what he was signing. In making this submission, the Plaintiff primarily relies on (a) the improbability of the Deceased choosing the 3rd Defendant as the successor to CHHMPL’s business, and (b) the inconsistent factual accounts given by the defendants. I reject these contentions for reasons that follow.

53 First, the Plaintiff submits that the 3rd Defendant is an unlikely choice as the successor to CHHMPL given that: (a) he suffers from a disability;⁸⁸ and (b) the 3rd Defendant did not turn up at the EGM requisitioned by the Plaintiff and Chong Ho on 18 February 2014.⁸⁹

54 Second, the Plaintiff highlights the inconsistent evidence given by the defendants regarding the choice of the 3rd Defendant as director of CHHMPL. In the Defence at para 47(b), it was stated that the 3rd Defendant was appointed as director of CHHMPL “so that [he] could assist the 1st Defendant in the management of CHHMPL”. In the 1st Defendant’s affidavit of evidence in chief, however, he states as follows (para 138):

My late father wanted one of my sons to be appointed as a director of CHHMPL to assist me to run CHHMPL. Between my two sons, it was decided that it would be more appropriate to appoint Benson as a director as Zhi Jie was hearing impaired. However, since the purpose of having another director was a formality only as I would be effectively running the company, and because Benson was still young at that time and would only turn 18 in 2014, my late father decided that Zhi Jie could be appointed as a director until Benson turned 18.

⁸⁸ Defendants’ written submissions at para 194

⁸⁹ Defendants’ written submissions at para 202

The claim that the 3rd Defendant was “still learning the ropes of managing [CHHMPL]” as recorded in the 18 February 2014 EGM minutes was thus false as the 3rd Defendant was, at the material time, working at his sister’s ice cream shop rather than learning about managing CHHMPL.⁹⁰

55 It is clear that the defendants now agree that the Deceased did not intend the 3rd Defendant to be the long-term successor to CHHMPL. His appointment was merely a temporary formality. Whilst there is some inconsistency, this is not, in my view, crucial in a determination of the credibility of the 1st Defendant. In this case, the letter of 7 January 2013 had highlighted the 3rd Defendant’s disability and labelled him “unable and not fit to serve as a director”. In these circumstances, the 1st Defendant, as a father, would naturally feel protective at the 18 February 2014 EGM amongst unfriendly relatives. The 3rd Defendant’s disability relates to his hearing only: he took the stand and it was clear that he was only hearing impaired. He was not suffering from any other disability and had graduated from the Institute of Technical Education. There could, in addition, be some sensitivity for a father to refer to a succession preference for a younger son over an elder son on the basis of a hearing impairment alone.

56 In my judgment, Ms Yui’s evidence regarding the 10 January 2012 meeting is fundamental to understanding the evidence. Ms Yui testified that she had asked the Deceased whether the managing director should be appointed by the Deceased, the 1st Defendant and the 3rd Defendant. She based her answer on the comment made by her firm at para 5.2 of the draft shareholders’ agreement dated 7 January 2012 which stated: “Clients to confirm if it is necessary to provide that the directors shall be appointed by

⁹⁰ Defendants’ written submissions at para 206

Ong Tuan Seng, Ong Bee Chew and Ong Zhi Jie”. This comment was struck out on the 20 January 2012 version of the draft shareholders’ agreement. She testified: “If we put a comment there, we would have gone through it”.⁹¹

57 When asked by the court how the three names were selected, Ms Yui answered:⁹²

A: These are family - you are right. *These could have been the directors that are on the ACRA search.* So we would have wanted to ask the client to address his mind further whether the new managing directors should always be appointed by these three people.

[emphasis added]

58 What is clear from this is that the identities of the three existing directors of CHHMPL (including the 3rd Defendant) must have been communicated to the Deceased in the course of confirming his instructions on who should hold the office of Managing Director. The fact that he did not object or question the fact of the 3rd Defendant’s appointment as a director suggests that he knew that the 3rd Defendant was a director of CHHMPL.

59 The fact that cl 5.3 of the draft shareholders’ agreement dated 20 January 2012 contemplates the appointment of the 1st and 2nd Defendants’ younger son, Ong Jun Hao Benson, as a director shows that the Deceased did indeed intend for the 1st Defendant’s family to take control over CHHMPL.⁹³ Indeed, Ms Yui testified that cl 5.3 was drafted on the *Deceased’s instructions*.⁹⁴

⁹¹ Transcripts, 7 September 2016, p37 (Vivien Yui)

⁹² Transcripts, 7 September 2016, p37 lines 9-13 (Vivien Yui)

⁹³ 2 ASB at p360

⁹⁴ Transcripts, 7 September 2016, p34 line 25-p35 line 7 (Vivien Yui)

A: Clause 5.3, the instructions were to provide for Benson Ong to be a director when he becomes of age, because at the time this was drafted he was not old enough to be a director yet.

Q: Right

A: So [the Deceased's] instructions were because this is the next generation, he wanted to make sure that the next generation of the 1st Defendant will have a right to be a director...

Thus, it was *the Deceased* who instructed Ms Yui that the 1st Defendant's descendant should continue to have a seat on the board of directors. This is consistent with the Deceased agreeing to appoint the 3rd Defendant as a temporary director before the 1st Defendant's younger son turns 18.

26,000 OTSDPL shares

60 It is clear that the Deceased's *initial* intention was to give one hotel to one group of brothers, namely, Bee Leng, Bee Beng and the 1st Defendant, via shares in CHHMPL, and to give the other hotel to another group of brothers, namely, the Plaintiff, Bee Chip and Bee Song, via shares in OTSDPL;⁹⁵ he also intended to exclude his daughters from OTSDPL (see [7] and [8] above). In 2011, he gave 6,000 OTSDPL shares to Chew Yong and 26,000 OTSDPL shares to the 1st Defendant.

61 The Plaintiff claims that the 1st Defendant holds the 26,000 OTSDPL shares on trust for the Deceased because the shares were transferred on the basis that the 1st Defendant would hold the shares as a nominee of the Deceased, and would return the shares and relinquish his directorship after his share investment activities on behalf of OTSDPL ceased. As for Chew Yong's shares, these were given to her in order for her to assist Bee Chip. The

⁹⁵ SOC at paras 22-27; Defence at para 32

defendants claim that the Deceased intended to make the 1st Defendant a shareholder and director of OTSDPL so that he could run OTSDPL after the Deceased's passing. 6,000 shares were given to Chew Yong so that she could mediate between the 1st Defendant and the other brothers in the event of any conflict between them (see [16] above). The Deceased thought this was feasible because Chew Yong's and the 1st Defendant's children got along.

62 On balance, I prefer the defendants' account of the transfer of the 26,000 OTSDPL shares for the following reasons:

(a) Ms Yui's evidence confirms that the Deceased intended for the 1st Defendant to have a management role in OTSDPL.⁹⁶ Giving the 1st Defendant some OTSDPL shares would be consistent with the intention to give him an official management role in OTSDPL. The practice of the Deceased's companies, as shown in CHHMPL, OTSDPL, HES and Golden Bridge, were such that directors held shares.

(b) The 1st Defendant had assisted the Plaintiff throughout with the management of OTSDPL. Ms Yui's evidence that the Deceased wished the 1st Defendant to manage the company in transition after the Deceased's passing was logical. Indeed, if the purpose of the 1st Defendant holding shares was only to assist with share investment, the 1st Defendant could and would have assisted the Deceased to so invest. He and his wife were in any event already assisting the Plaintiff with matters relating to OTSDPL.

⁹⁶ Defendants' written submissions at para 48

(c) The Deceased did not want the hotels to be sold for 30 years. One way of ensuring this would be to put the management of the companies which held the hotels in the hands of someone whom he trusted for this specific task, and Ms Yui testified that the level of trust between the Deceased and the 1st Defendant was extremely high. While there was a lot of unnecessary evidence as to whether Golden Bridge was well run or not, what is clear was that Golden Bridge, partly also arising from the nature of its business, did have loans outstanding. The 1st Defendant's evidence that the Deceased was worried that Bee Chip and Chew Yong would sell the hotel in preference to their own business interests was plausible. The 1st Defendant, on the other hand, did not have a similar business history or risk profile.

(d) Chew Yong conceded on the stand that her children got along with the 1st Defendant's children, which the 1st Defendant explained as a reason for her to be chosen as a mediator between Bee Chip and himself. While not a definitive piece of evidence in and of itself, it is consistent with the defendants' narrative.

63 Arguments were made about the time lag between the transfer of the shares to the 1st Defendant (November 2011) and the opening of the securities account on 13 January 2012.⁹⁷ Arguments were also made about the intention behind transferring OTSDPL shares to Chew Yong at the same time OTSDPL shares were transferred to the 1st Defendant: Chew Yong says that the Deceased told her that it was for the purpose of share investment; the 1st Defendant's evidence was that Chew Yong was given shares so that she could

⁹⁷ 3AB at p46

mediate between him and the other brothers in running OTSDPL. In my view, little will be gained from a detailed examination of these contrary assertions; they are inconclusive. What is clear is that from Chew Yong's evidence of her conversation with her father, the Deceased clearly knew he had transferred the shares to the 1st Defendant. There is no evidence of any common intention between the Deceased and 1st Defendant that the latter was holding the 26,000 OTSDPL shares for the specific premise of investing in shares for OTSDPL and only for so long as that purpose existed only. From the Court of Appeal's decision in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [110] – [113] and [153], it is clear that the Plaintiff must prove that *both* the Deceased and the 1st Defendant had a *common intention* that the beneficial interest in the 26,000 OTSDPL shares should remain with the Deceased. It is *not sufficient* to prove that the *purpose* for which the 26,000 OTSDPL shares were transferred was not or could not be achieved.

Conclusion on the validity of the first series of disputed transactions

64 It is clear from the facts of the 10 January 2012 meeting that the Deceased knew what powers he wanted to give to the 1st Defendant's family under the shareholders' agreement, and understood the transactions which had taken place prior to 10 January. The Plaintiff's legal case, which depicted the Deceased as someone old, ill-educated and misled, is wholly out of sync with the evidence. While the Deceased may have worked in the same office as the 1st and 2nd Defendants each morning, he had an active social life. He lived alone, in the same apartment building as Chew Yong and Chong Ho. He ate breakfast with Chew Yong and saw his other children and grandchildren at dinner daily. All the witnesses testified that the Deceased was a sharp businessman with a keen mind. As for the contentions that he did not understand English documents, those would equally apply to the two letters in

English from the Deceased on 21 May 2012 and 7 January 2013, both drafted by lawyers, upon which the Plaintiff's claim is founded. For these reasons, I find that the Plaintiff fails in his claim in relation to the first series of disputed transactions.

Validity of the second series of disputed transactions

65 The second series of transactions must be considered with reference to two queries: first, whether the Deceased had agreed to give the 1st Defendant's family majority control of CHHMPL to ensure that the hotel would not be sold for the next 30 years; and second, whether the resolutions passed leading to the issue of the 340,000 CHHMPL shares to the 1st Defendant are valid.

Did the Deceased authorise the issue of 340,000 CHHMPL shares?

66 The Plaintiff claims that the Deceased signed the various resolutions mentioned thinking that he was authorising a loan of \$340,000 from the 1st Defendant to CHHMPL,⁹⁸ while the defendants contend he made a decision for their family to have majority control of CHHMPL, as reflected by the following:

- (a) minutes of the EGM dated 20 February 2012, which records that an Ordinary Resolution was passed allowing the directors to issue new CHHMPL shares of any amount they deem fit;⁹⁹
- (b) an Ordinary Resolution dated 20 February 2012 giving effect to what was recorded in the above minutes;¹⁰⁰ and

⁹⁸ Defence at paras 54-56

⁹⁹ 3AB at p50

(c) a Directors' Resolution dated 21 February 2012, resolving to (i) increase the issued share capital of CHHMPL from 2m to 2.34m shares, and (ii) allot the further 340,000 CHHMPL shares to the 1st Defendant.¹⁰¹

67 In the context of the first series of transactions, where the Deceased was actively re-organising his affairs with a view to distribution of his wealth, I find it unlikely that just a month after his visit to Wong Partnership, in February 2012, the Deceased, as a shrewd businessman and the main decision maker when it came to the affairs of his companies, would have simply signed a whole series of company documents without inquiry. As the defendants point out, none of the documents contained a "\$" next to 340,000 and this would have raised questions in the Deceased's mind as to whether the documents indeed related to a proposed \$340,000 loan. Although he did not read English, he was a rather extraordinary serial entrepreneur who had set up many businesses. I find it incredible that he would not recognise a share transfer document.

68 Ms Yui also testified that she had been clear at the 10 January 2012 meeting that the minority would need to be independently advised, and queried whether the other shareholders would agree to the terms, because the Deceased was a minority shareholder of CHHMPL. His response on was that he was the father (she recalled vividly, "wo si lao pa") and that his children would comply. This supports the 1st Defendant's contention that the Deceased later decided, after further conversation with the 1st Defendant, to give the

¹⁰⁰ 3AB at p54

¹⁰¹ 3AB at p52

defendants majority control of CHHMPL to follow through with his plan to keep the hotels for 30 years.

69 Further, Ms Yui's evidence is that at the 9 March 2012 meeting, in contrast to his active participation on 10 January 2012, the Deceased was "very quiet"¹⁰² and "did not have a reaction to everything, anything that was going on".¹⁰³ Mr Tan's evidence was the same. This is contrary to the Plaintiff's case that the Deceased was "surprised" at what was going on in the meeting¹⁰⁴ and consistent with the 1st Defendant's evidence.¹⁰⁵ It would be completely inconsistent for him to remain silent if, as the Plaintiff contends, the Deceased was truly ignorant about all the 1st Defendant had allegedly been doing behind his back.

70 Finally, if the Deceased had found out about the serious deception the defendants had practised on him to gain control of CHHMPL after the 9 March 2012 meeting, it is unlikely that he would have waited more than two months, until 21 May 2012, to repudiate these transfers. It not disputed that the Deceased left the meeting together with the 1st and 2nd Defendants. The fact that the Deceased only wrote the letter to the 1st Defendant on 21 May 2012 is more consistent with the defendants' account that they fell out with the Deceased only in May 2012. Again, after his letter of 21 May 2012 was ignored, there was a long delay on the Deceased's part before his lawyer's letter of 7 January 2013 was sent. This was nearly ten months' after the 9 March 2012 shareholders' meeting. Chew Yong conceded on the stand that the

¹⁰² Transcripts, 7 September 2016, p98 lines 6-12 (Vivien Yui)

¹⁰³ Transcripts, 7 September 2016, p101 lines 1-4 (Vivien Yui)

¹⁰⁴ SOC at para 64

¹⁰⁵ Ong Bee Chew's AEIC at paras 157-158

2nd Defendant continued assisting the Deceased with his cheques at least until July 2012; from September 2012, the Deceased brought his cheque book home, and thereafter, Chew Yong assisted the Deceased with his cheques from December 2012.¹⁰⁶

71 I therefore find that the Deceased did authorise the issuance of 340,000 new CHHMPL shares to the 1st Defendant, and that he signed the various resolutions fully aware of their effect. With these findings, I also dismiss any claim that the 1st Defendant had breached his fiduciary duties to the Deceased on the basis that the Deceased was fully aware of the documents that he was signing. While the Plaintiff's complaint is that the transactions benefitted the 1st Defendant, what is significant is that *at the time* of the transactions, the Deceased's sole object was to bring into effect his "legacy"; he was well aware that benefit to the 1st Defendant was a necessary incident of the intended method of implementation.

72 For completeness, I note that there are two peripheral disputes on the facts. Both of these are of little significance in light of the fact that it is clear from the 10 January 2012 meeting that the Deceased fully understood and endorsed the shareholders' agreement. First, the Plaintiff contends the defendants had lied that the Deceased attended the 30 November 2011 meeting with Wong Partnership.¹⁰⁷ In this regard, I note that both Ms Choong and Mr Lim's evidence is that the Deceased was at the 30 November 2011 meeting, and an email in evidence also alluded to this. Ms Yui's evidence to the contrary is based on her attendance note. Nothing turns on this: either of the parties could have been mistaken in light of the passage of time.

¹⁰⁶ Transcript, 26 August 2016, p.41 (Ong Chew Yong)

¹⁰⁷ Plaintiff's written submissions at paras 72-78

73 Second, the Plaintiff claims that the defendants have not told the truth about where the idea of having a shareholders' agreement came from.¹⁰⁸ The defendants contend this was first suggested by a lawyer who had assisted the Deceased for many years, one Mr Tan Chin Siong ("Mr CS Tan").¹⁰⁹ Mr CS Tan's evidence was that he did not meet the defendants in October 2011. As the defendants point out, Mr CS Tan could not recall quite a few matters. What is clear, in any event, from Ms Yui's and Ms Choong's evidence, is that a shareholders' agreement was a sensible manner of effecting the Deceased's wishes for his two companies. Counsel for the Plaintiff spent a great deal of time cross-examining various witnesses on the possibility of setting up a trust rather than signing a shareholders' agreement. But it is clear from Ms Yui's evidence that this would have entailed incurring the cost of professional managers, which would have been difficult to explain to an old Chinese businessman such as the Deceased, and indeed, would not be feasible for CHHMPL, given the JTC lease conditions under which the Sungei Kadut property was held.¹¹⁰ The Plaintiff's claim that the shareholders' agreement was an elaborate plot conceived behind the Deceased's back by the defendants simply cannot stand in the face of the evidence.

Validity of the resolutions

74 Separately, the Plaintiff challenges the legal validity of the following resolutions:

- (a) the Ordinary Resolution dated 20 February 2012 on the basis that it was not in compliance with CHHMPL's articles because (i) no

¹⁰⁸ Plaintiff's written submissions at paras 63-71

¹⁰⁹ Defence at para 49(b)

¹¹⁰ Transcript, 7 September (Vivien Yui)

notice of meeting for a shareholders' meeting was given, (ii) no meeting was held, and (iii) the resolution was only signed by the Deceased;¹¹¹ and

(b) the Directors' Resolution dated 21 February 2012 on the basis that no directors' meeting was held and that the 1st Defendant failed to disclose his interest as an interested party and refrain from voting.¹¹²

75 The defendants submit that:

(a) it has never been the practice in the Deceased's businesses for shareholders' or directors' meetings to be held;¹¹³

(b) there was shareholders' approval of the Ordinary Resolution dated 20 February 2012 given that the Deceased, the 1st Defendant and the 3rd Defendant signed the EGM attendance list;¹¹⁴

(c) there was no need for the 1st Defendant to disclose any interest in the Directors' Resolution dated 21 February 2012 as the Deceased knew the 1st Defendant was an interested party and even if the 1st Defendant had abstained, the resolution would have been passed with the Deceased's and 3rd Defendant's votes;¹¹⁵ and

(d) even if there were irregularities in the way shareholders' approval was obtained, these irregularities can be cured under s 72 or

¹¹¹ SOC at para 56(d)

¹¹² SOC at para 56(e)

¹¹³ Defendant's written submissions at paras 208-211, 215

¹¹⁴ Defendant's written submissions at para 212

¹¹⁵ Defendant's written submissions at paras 213-214

s 392 of the Companies Act (Cap 50, 2006 Rev Ed) (“Companies Act”).¹¹⁶

Ordinary Resolution dated 20 February 2012

76 I should mention as a preliminary point that the Plaintiff did not sufficiently identify, in his pleadings or submissions, the *specific* articles or statutory provisions which he claims the resolutions were passed in breach of. I shall nevertheless deal briefly with the issues here as counsel for the defendants covered the matter in detail.

77 Article 4 of CHHMPL’s Articles of Association (“CHHMPL’s Articles”) gives the directors of CHHMPL the power to issue shares. This power, as acknowledged in art 4 itself, is subject to s 161 of the Companies Act, which allows companies to approve in a general meeting, the directors’ exercise of power to issue shares. From s 161 of the Companies Act, it is clear that specific approval of each share issue is not required and the approval may take the general form that it took in the Ordinary Resolution dated 20 February 2012. It follows then that it is important to consider if the Ordinary Resolution dated 20 February 2012 was validly passed such that the requirement in s 161(1) of the Companies Act is satisfied since non-compliance renders the share issue void under s 161(6) of the Companies Act.

78 In this case, the following steps were taken:

- (a) an EGM was convened pursuant to a Directors’ Resolution dated 2 February 2012;¹¹⁷

¹¹⁶ Defendant’s written submissions at para 216

¹¹⁷ 3AB at p48

(b) a “Notice of Extraordinary General Meeting” with the requisite particulars was issued on 3 February 2012,¹¹⁸ but there is no evidence that the other CHHMPL shareholders, namely, Bee Leng, Chong Ho, Bee Beng and Yongxiang, received the notice and the defendants do not assert that notice was properly given;¹¹⁹

(c) based on the documents, the quorum requirement was met given that the “Attendance List” for the 20 February 2012 EGM was signed by the Deceased, the 1st Defendant and the 3rd Defendant;¹²⁰ and

(d) the minutes of the EGM, signed by the Deceased, who was also the chairman, states that the Ordinary Resolution was passed at the 20 February 2012 EGM.

79 While the documents suggest that an EGM was held on 20 February 2012 and was attended by the Deceased, the 1st Defendant and the 3rd Defendant, there is no direct evidence that such a meeting physically took place. The defendants point to the fact that the Deceased’s practice was not to hold meetings, even for significant matters such as the sale of 2 Sungei Kadut to HES Machinery. The Deceased merely made sure that the documents were in order. In my view, given that the Companies Act does not regulate how a private company should hold EGMs, and given that the documents *prima facie* suggest that the EGM was attended by three shareholders, I find that the Ordinary Resolution is not invalid by virtue of the absence of an actual physical meeting. I further observe that under art 61 of CHHMPL’s Articles,

¹¹⁸ 3AB at p49

¹¹⁹ Defendant’s written submissions at paras 208-211

¹²⁰ 3AB at p51

the minutes of the 20 February 2012 EGM, signed by the Deceased, are conclusive proof that the Ordinary Resolution was indeed passed.

80 The only other outstanding issue in this regard is that *notice* was not given to the other shareholders who were entitled to have notice of the EGM. They are entitled to such under art 124 of CHHMPL’s Articles and s 180(1) of the Companies Act. Section 392(1)(b) treats the lack of a notice as a “procedural irregularity” which does not invalidate a meeting “unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid” (see s 392(2) Companies Act). I am of the view that there is no substantial injustice in this case. First, the resolution was passed by a majority of the shareholders (in terms of shareholdings) and thus, the resolution would have passed regardless. Second, I accept the defendants’ submission that the Deceased’s children and grandchildren all knew about and accepted the Deceased’s practice of making key decisions and signing the requisite documents to give effect to those decisions, without holding actual meetings and complying with the notice requirements.¹²¹

81 Further, it is important to bear in mind that the *only plaintiff* in this case is the executor of the Deceased’s estate. Given that this practice was instituted by the Deceased, and the Deceased was the one who signed the notice, the resolutions and made the key decisions, I see no basis for the Plaintiff, *as the executor* of the *Deceased’s* estate, to now seek to repudiate these resolutions under s 392 of the Companies Act.

¹²¹ Defendant’s written submissions at paras 208-211

82 In the circumstances, I find that the Plaintiff has failed to prove his case that the Ordinary Resolution dated 20 February 2012 was not valid.

Directors' Resolution dated 21 February 2012

83 The Plaintiff objects to the validity of the Directors' Resolution dated 21 February 2012 on the basis that no directors' meeting was held and that the 1st Defendant failed to disclose his interest as an interested party and refrain from voting.¹²² On the first objection, I note that art 100 of CHHMPL's Articles states that "a resolution in writing, signed by a majority of the directors present in Singapore shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held". Given that a written Directors' Resolution was signed by three directors, the Deceased, the 1st Defendant and the 3rd Defendant, I treat it as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

84 On the 1st Defendant's failure to disclose his interest as an interested party and refrain from voting, I find that the 1st Defendant's interest in the resolution must have been abundantly clear and there was no need to expressly "disclose" his interest. Further, the Plaintiff has provided no authority for the proposition that the fact that the 1st Defendant voted in favour of a Directors' resolution that he had an interest in would, without anything else, invalidate that resolution. As the defendants point out, the Deceased and the 3rd Defendant would have, in any event, constituted the requisite majority to pass the resolution without the 1st Defendant's participation.¹²³

¹²² SOC at para 56(e)

¹²³ Defendant's written submissions at para 214

85 To conclude, I find that the Plaintiff has not proven his case that the Ordinary Resolution dated 20 February 2012, or the Directors' Resolution dated 21 February 2012, is invalid.

Conclusion on the validity of the second series of disputed transactions

86 In the result, I dismiss the Plaintiff's contentions on the second series of transactions. I should mention that the Plaintiff's claim is premised upon the Deceased's letters of 21 May 2012 and 7 January 2013. These letters deal with both series of transactions. My findings on the first series of transactions would also mean that I find that the letters, as a whole, are not credible.

Legal basis for reversal of the transactions

87 The Plaintiff submits that the Deceased is entitled to demand a reversal of the various transfers to the 1st Defendant on two grounds: (a) the disputed shares are held by the 1st Defendant on a resulting or common intention constructive trust for the Deceased;¹²⁴ and (b) the Deceased has a legitimate expectation as a partner in a quasi-partnership that the other shareholders, including the 1st Defendant, would obey his orders.¹²⁵ I shall consider each claim in turn.

Resulting or common intention constructive trust

88 The Plaintiff relies on the fact that (a) the Deceased did as he saw fit with the companies and made all the important decisions,¹²⁶ (b) the Deceased considered that the companies were his,¹²⁷ and (c) there was a common

¹²⁴ Plaintiff's written submissions at para 221

¹²⁵ Plaintiff's written submissions at para 222

¹²⁶ Plaintiff's written submissions at para 226

understanding and intention based on Chinese culture and tradition that “it was not the 1st Defendant’s place to question the Deceased”,¹²⁸ to argue that a resulting trust or common intention constructive trust arises over the company shares given to the Deceased’s children or grandchildren. By refusing to reverse the impugned share transactions, the 1st Defendant became a constructive trustee.¹²⁹

89 The defendants submit that the Deceased transferred the shares to his children and grandchildren intending to vest in them both legal and beneficial interest in the shares.¹³⁰ In my view, the defendants’ position is better supported by the evidence.

90 It should be noted that the language used by the Plaintiff and the Deceased is the language of gift. For example, Chong Ho’s evidence was that his understanding was that his grandfather had given him the shares that he held in CHHMPL. Similarly, in the letter sent by the Deceased via his lawyers Khor Thiam Beng & Partners on 7 January 2013, it was stated that CHHMPL and OTSDPL was set up “for the benefit of” the Deceased’s children and grandchildren (paras 2(2) and 2(7)). In the Statement of Claim, numerous references are made to the Deceased “giving” or “distributing” shares to his children, with no suggestion that any of his children were holding the shares on trust for him.¹³¹

¹²⁷ Plaintiff’s written submissions at para 228

¹²⁸ Plaintiff’s written submissions at para 237

¹²⁹ Plaintiff’s written submissions at para 238

¹³⁰ Defendants’ written submissions at para 270

¹³¹ Plaintiff’s written submissions at para 272

91 Secondly, while the Deceased's children and grandchildren may have by and large obeyed him, this is not inconsistent with them owning the shares absolutely. Further, there are clear instances where the Deceased's children have disobeyed him *and behaved as owners of their respective shares*. Three examples would suffice. First, in 1999, the Deceased wanted to increase CHHMPL's authorised capital from \$2m to \$4m and to allot 800,000 new shares to himself and the 1st Defendant. Bee Chip, however, refused to sign the directors' resolution. As a result, the Deceased decided not to proceed with the increase in capital.¹³² A second instance occurred in 2006, when the Deceased wanted the daughters to sign a Family Arrangement and give up their shares in OTSPL. That was not done and the Deceased divested OTSPL of its assets instead.¹³³ He also then paid the daughters \$450,000, rather than the original \$400,000 intended. Yet another example was in 2008, when the Deceased (who had given shares in HES Machinery to the Plaintiff) wanted the Plaintiff to purchase 2 Sungei Kadut Drive at \$3m and prepared a draft agreement to that effect. The Plaintiff however rejected the terms of the agreement. A lower price was agreed and the agreement was not signed.¹³⁴

92 Lastly, it is not disputed (and Chew Yong gave evidence to the same effect) that in general, the Deceased handled the allocation of shares in his various companies very carefully. If he had regarded all the shares as all being his and held on trust for him, this would seem unnecessary.

¹³² Ong Bee Chew's AEIC at paras 66-67; 1 ASB at p 11, 13; Defendants' written submissions at para 130

¹³³ 2 ASB at pp240-241; Defendants' written submissions at para 131

¹³⁴ D1's AEIC at para 76; Defendants' written submissions at para 132

93 In the circumstances, to say that the Deceased lacked the intention to transfer beneficial interests to his children and grandchildren when transferring shares to them is completely untenable.

Legitimate expectations

94 The Plaintiff alternatively argues that the family companies were analogous to quasi-partnerships,¹³⁵ and thus, “informal understandings can merit legal protection and central to this relationship was the fundamental understanding of the family based on their mutual trust and confidence in the late Mr Ong as the final arbiter of fairness in the family and the final decision maker on how the family’s shareholdings could be structured or restructured”.¹³⁶ The Plaintiff submits that the Deceased had a legitimate expectation that his instructions would be obeyed,¹³⁷ and that such an expectation is legally enforceable.¹³⁸ In support, the Plaintiff cites cases such as *Chow Kwok Chuen v Chow Kwok Chi and another* [2008] 4 SLR(R) 362 (“*Chow Kwok Chuen*”) and *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 (“*Over & Over*”).

95 In my view, the Plaintiff appears to have misapplied the principles of quasi-partnership and legitimate expectations in relying on it as the legal basis to demand a reversal of the disputed transactions. *Chow Kwok Chuen* was a case concerning just and equitable winding up, while *Over & Over* is a case concerning minority oppression. Both these cases concerned the court’s special statutory jurisdiction under the Companies Act. The House of Lords’

¹³⁵ Plaintiff’s written submissions at para 239

¹³⁶ Plaintiff’s written submissions at para 240

¹³⁷ Plaintiff’s written submissions at para 242

¹³⁸ Plaintiff’s written submissions at para 241

decision in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 and that of our Court of Appeal in *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 have clarified that the legal relevance of a parties' legitimate expectations is premised on the court's special statutory jurisdiction. In my judgment, the defeating of informal, legitimate expectations is only relevant to proving unfairness for the purposes of invoking the court's just and equitable or oppression jurisdiction under the Companies Act. *It is not, by itself, an independent legal basis that can justify a grant of relief*, even in a quasi-partnership. While the Deceased may have been on paper a minority shareholder, he was the person largely in control of CHHMPL. Having found that the Deceased had authorised the share issue, I hold that there is no legal right upon which to found his expectation that he could demand the return of the shares he had given away.

Minority oppression

96 In his Statement of Claim, the Plaintiff prays for a share buy-out by the 1st Defendant under s 216 of the Companies Act.¹³⁹ He does not, however, expressly plead any grounds for his minority oppression claim. In counsel's closing submissions, the Plaintiff relies on the following grounds for its minority oppression claim: (a) CHHMPL's financial accounts are inaccurate or misleading and the defendants, as directors, have stonewalled the other shareholders;¹⁴⁰ and (b) the appropriation of majority control by the 1st Defendant and refusal to surrender the same upon the Deceased's demand was an act of oppression which violated the Deceased's legitimate expectation to be obeyed.¹⁴¹

¹³⁹ SOC at para 81(7)

¹⁴⁰ Plaintiff's written submissions at paras 244-263

97 Regarding (a), the fact that the defendants may not have been forthcoming in explaining the financial accounts of CHHMPL, or the fact that the Plaintiff may have doubts over those accounts, clearly does not constitute oppression under either of the s 216 grounds. It cannot be said that the directors are conducting the affairs of the company or exercising their powers in a manner oppressive to the Deceased; nor can it be said that the above constitutes “some act of the company”.

98 The contentions relating to (b) are rather confused. Regarding the appropriation of majority control as an instance of oppressive conduct, this cannot possibly be oppression because the Deceased himself had authorised it. It is clear that acts carried out pursuant to *the Deceased’s* instructions *cannot found an oppression action by the Deceased’s Estate* against the defendants. Further, the submission that the Deceased had a legally enforceable legitimate expectation that the shares he distributed would be returned to him upon demand has no merit. I have already found at [91] above that there were numerous instances in which his children have disobeyed him: this litigation itself arises from the children’s non-compliance with his wishes. The principle of legitimate expectation, as explained at [95] above, also rests on fairness. The Plaintiff has not shown how or why it was fair to expect the 1st Defendant to return the shares given to him. From the 1st Defendant’s perspective, these shares represented his life’s work and the Deceased’s own legacy which he was, up to that point, charged with effecting.

99 I therefore dismiss the Plaintiff’s claim for relief based on s 216 of the Companies Act.

¹⁴¹ Plaintiff’s written submissions at para 271

Conclusion

100 The Deceased had planned as his legacy a source of income which was to last for at least the next 30 years. He hoped to benefit his sons and grandsons, and thereafter, to pass the mantle to the third generation. It is clear from his stance on 10 January 2012 (and his declaration, “wo si lao pa”) that he assumed his sons and grandsons would comply. With an asset division so clearly in sight, however, the situation became difficult. On 9 March 2013, Bee Beng, Bee Leng and their sons did not comply with the Deceased’s wishes in respect of CHHMPL. Through subsequent family conversations, it must have become clear to the Deceased that Bee Chip, Chew Yong and Bee Dee would also not comply in respect of OTSDPL. Thus, the Deceased must have realised that his vision of maintaining his legacy by giving substantial control to the 1st Defendant and his family could not be effected without great unhappiness amongst those whom he initially sought to benefit.

101 The Deceased then changed his mind and decided to unwind his plans. In so doing, he assumed the 1st Defendant would comply. This was clear from the opening paragraph of his letter of 21 May:

As you are aware, from the very beginning of Chen Hock Heng Machinery Pte Ltd and Ong Tuan Seng Development Pte Ltd have always been our family-run companies. Also as have been in the past and until now, as the Founder and Chairman of both companies I have the ultimate and final say on how both companies should be run and organized and all other importance [sic] decisions concerning the businesses of both companies.

But the 1st Defendant, too, decided that he would not comply either. There was and remains no legal obligation on the 1st Defendant’s part to comply. There is also insufficient basis to find minority oppression.

102 In conclusion, I dismiss Suit 1282 of 2014. I shall hear parties on costs.

Valerie Thean
Judicial Commissioner

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