

Han Cheng Fong v Teo Chong Nghee Patrick and others
[2013] SGHC 51

Case Number : Suit No 908 of 2010
Decision Date : 27 February 2013
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Anthony Lee Hwee Khiam and Pua Lee Siang (Bih Li & Lee) for the plaintiff; Chan Kia Pheng, Harpal Singh, Tan Wei Ming and Favian Kang (KhattarWong LLP) for the 1st, 2nd, 4th and 5th defendants; Sean Lim (Hin Tat Augustine & Partners) for the 3rd defendant.
Parties : Han Cheng Fong — Teo Chong Nghee Patrick and others

Companies – Directors – Removal

Tort – Conspiracy

27 February 2013

Judgment reserved.

Tan Lee Meng J:

1 The plaintiff, Dr Han Cheng Fong (“Han”), was the chairman and a director of the fifth defendant, Cleantech Partners Hangzhou Pte Ltd (“CTPHZ”), a wholly-owned subsidiary of the fourth defendant, Cleantech Partners Pte Ltd (“CTP”), until he was dismissed on 12 October 2010 (“the dismissal”).

2 The first defendant, Mr Teo Chong Nghee Patrick (“Patrick”), the second defendant, Mr Lim Shih Hsi (“Richard”), and the third defendant, Mr Michael Heng Swee Hai (“Michael”), are directors of CTP. Patrick and Richard were also CTPHZ’s directors at all material times while Michael joined the CTPHZ board after the dismissal. These three defendants will collectively be referred to as “the defendants” in the rest of this judgment.

3 Han, who claimed that he was entitled to remain as the chairman and a director of CTPHZ by virtue of a shareholders’ agreement on 1 March 2010 as well as his legitimate expectations, claimed damages for wrongful dismissal. He also asserted that Patrick and Richard conspired against him to injure him by unlawful means and sought to wind up CTP and CTPHZ under s 216 of the Companies Act (Cap 50, 2006 Rev Ed).

4 Han’s allegations were denied by the defendants, who contended that they had good grounds for the dismissal.

Background

5 CTP is a Singapore company, whose founder directors are Patrick, Richard, Michael and Mr Robin Low Soo Chee (“Robin”).

6 In late 2009, CTP wanted to collaborate with a Chinese company, Hangzhou Vanwarm Holdings Group Ltd (“Vanwarm”), to develop a low-carbon project in Hangzhou, China, known as the

"Hangzhou-Singapore Eco-Park" ("the Hangzhou project"). This project, which is managed by the Hangzhou Qianjiang Economic Development Area Management Committee ("HQEDA"), is intended to showcase clean and environmentally friendly technological innovations.

7 CTP's founder directors invited Han to participate in the Hangzhou project because of his expertise in the property market in Singapore and China. Han was a former Chief Executive Officer of Fraser & Neave Ltd and a former Deputy Chairman of DBS Land. Han's request that Ms Christine Liew Sok Kuan ("Christine"), a former real estate sales executive from Frasers Centrepoint Limited, be included as a shareholder of CTP so that she could work in the Hangzhou project was acceded to.

The 1 March 2010 Meeting

8 Han wanted to have the terms of his participation in the Hangzhou project recorded in a shareholders' agreement. In early March 2010, CTP's founder directors, Han, Christine and Cleantech Ventures Asia Pte Ltd ("CTVA"), a company controlled by Patrick and Richard, signed a document ("the 1 March document"). Han asserted that the 1 March document was a shareholders' agreement but the defendants insisted that it was not.

9 Apart from giving shares and directorships in CTP to Han and Christine, the 1 March document provided, *inter alia*, that Han would be appointed the chairman and a director of a new subsidiary of CTP, subsequently named CTPHZ, which was to be set up to roll out the Hangzhou project. The 1 March document also stipulated that profits from the Hangzhou project would be shared between CTP and CTPHZ in the proportion of 33% and 67% respectively. Of the 67% intended for CTPHZ, 33% would be shared by its directors while the remaining 67% would be distributed to CTPHZ's management, headed by Han, at his sole discretion. The 1 March document further provided that any "change to the above Resolutions shall require unanimous decision of the Board of Directors of CTP".

Tripartite agreement between HQEDA, CTP and Vanwarm

10 On 23 March 2010, CTP entered into a tripartite agreement with HQEDA and Vanwarm ("the Tripartite Agreement") to collaborate on the preparation of a master plan for and the development and promotion of the Hangzhou project.

Problems with Patrick's fund-raising

11 On 24 March 2010, the Business Times reported ("the BT Report") that CTP was "dipping its toes into potential deals, including a coal gasification project in Indonesia, a wind farm project in Vietnam and a solar panel installation business in China". Han thought that the BT Report, which was published after an interview with Patrick, Richard and Michael, portrayed CTP as a substantial company with many impressive projects when it was in fact only involved in the Hangzhou project. Concerned that such misstatements in the course of CTP's fund raising efforts for its business might tarnish his reputation, Han informed CTP's directors on 7 April 2010 that he would focus his attention on CTPHZ and not sit on the CTP board "so as not to stand in the way of [CTP's] fund raising efforts". The directors of CTP accepted his stand.

Setting up of CTPHZ and appointment of Han as its chairman

12 On 1 April 2010, CTPHZ was incorporated. Han became its chairman. The other directors were Robin, Patrick, Richard and Christine. Michael was not appointed to the CTPHZ board.

Signing of collaboration agreement with Vanwarm

13 On 31 May 2010, Han signed a collaboration agreement with Vanwarm on CTPHZ's behalf ("the Collaboration Agreement"). Under the Collaboration Agreement, a joint venture company named "Hangzhou Vanwarm Cleantech Co Ltd" ("HVC") was to be set up and CTPHZ was guaranteed a profit of RMB130 million from the Hangzhou project by Vanwarm. Furthermore, Vanwarm undertook to arrange for Hong Kong Hong Jia Investments Co Ltd ("Hong Jia") to lend CTPHZ USD6 million to pay for CTPHZ's 40% share of HVC's registered capital of USD15 million ("the Loan Agreement").

14 To be enforceable in China, the Collaboration Agreement had to be registered with the relevant Chinese governmental department there but this was not done as Vanwarm wanted the said agreement to be confidential. As such, whether CTPHZ would eventually receive the promised profit of RMB130 million depended entirely on Vanwarm's generosity.

15 On 17 June 2010, HVC was incorporated in China. CTPHZ appointed Han and Robin to the HVC board. HVC's other directors were Vanwarm's chairman, Mr Liu Hai ("Liu Hai"), Vanwarm's general manager, Mr Chen Yang, and Mr Zeng Jimin.

Cracks in Han's relationship with the defendants

16 In the meantime, Han's relationship with the defendants deteriorated. The defendants contended that Han was egotistical and overly protective of Christine. When Patrick chided her at a meeting, Han sent him an email on 1 June 2010, part of which read as follows:

... IF I HAD KNOWN BEFORE I SIGNED THAT YOU HAD AN OUTBURST DIRECTED AT CHRISTINE BUT AIMED AT ME AT THE MEETING WHILE I WAS AT THE LOO I WOULD NOT HAVE SIGNED AND YOU KISS THE PROJECT GOODBYE. I took a long time to decide on joining the team. But after joining I had conscientiously worked at getting this project off the ground ensuring that we end up getting what we all wanted ... money ... without undue risk to the team financially and to our reputation.

... I KNOW DAMN WELL WHAT RISKS AND REWARDS ARE. I WOULD NOT BE WHERE I AM NOW IF I DID NOT KNOW ANYTHING ABOUT THIS. I KNOW WHO SAID THIS AND MY MESSAGE TO HIM IS DON'T TRY TEACH YOUR GRANDMOTHER TO SUCK EGGS.

[upper case in original]

17 Han asserted that by August 2010, he discovered that Patrick and Richard were planning to deprive him and Christine of their rights under the 1 March document and to remove him from his posts in CTPHZ. Without the knowledge of Patrick and Richard, the emails sent by them to each other and to Robin about sidelining or getting rid of Han were handed over by Robin to Han and Christine.

18 Han also discovered by August 2010 that Patrick and Richard were trying to sell their CTP shares to a Malaysian company, Bintan Kindenko Corporation Berhad ("BKCB"). This was contrary to the understanding with HQEDA and Vanwarm that the Hangzhou project was to be a China-Singapore project. Between June and August 2010, emails were exchanged between Patrick, Richard and others which showed that Patrick and Richard were hoping by the sale of their CTP shares to BKCB to, in their own words, "get rid of [Han] and [Christine]". It was also made clear in the said emails that they were "going to be ruthless" when dealing with Han. In the end, the proposed sale did not go through. According to Patrick, the proposed sale of CTP's shares was not completed because Han and Christine would not be interested in the deal and he was told that "the regulators in the Kuala Lumpur Stock Exchange were unfriendly to Chinese projects".

19 Han thought that his interests would be better protected if he was appointed to the CTP board,

as had been intended under the 1 March document. He emailed CTP's company secretary, Mr Ng Chee Tiong ("Ng"), to arrange for his appointment as the deputy chairman and a director of CTP but no action was taken on his request.

20 On 25 August 2010, Han instructed Ng to ask all CTPHZ directors to disclose their directorships. In an email on 5 September 2010, Patrick informed the other CTPHZ directors that he would address the issues raised by Han with Ng in a "memo to CTP members" at a later date.

21 On 18 September 2010, Christine and Robin formed a new company, Green Solutions @ ARB Pte Ltd, which changed its name to "International Eco-City Pte Ltd" ("IEC") on 20 January 2011. The defendants alleged that IEC was formed to hijack the Hangzhou project from CTPHZ, a charge vehemently denied by Han.

CTPHZ board meeting on 29 September 2010

22 On 24 September 2010, Han arranged for a meeting of the CTPHZ board to be held on 29 September 2010. After receiving the notice of the said meeting, Patrick emailed Richard and Robin on 27 September 2010 to ask them not to attend the said meeting. He stated as follows:

I ask both of you for [your] support not to attend [the meeting] ... if any one of us do, it is the break up of CTP... pls believe me.

Every time we attend a board meeting, we risk making a mistake and [Han] has already ... [planned] to catch us wrong footed.

23 Robin attended the meeting on 29 September 2010 together with Han and Christine. At this meeting, the board replaced the company secretary, Ng, with Ms Sally Phuar ("Sally") and changed the company's registered address to the new company secretary's address. The board also confirmed that CTPHZ had five directors, namely, Patrick, Richard, Han, Robin and Christine and that one seat on the board was left vacant. The defendants claimed that Han tried to seize control of CTPHZ on 29 September 2010.

24 On 1 October 2010, Patrick instructed Ng to retain CTPHZ's records until further notice because the majority of CTP's board did not agree to the change of CTPHZ's company secretary.

25 On 5 October 2010, Han sent an email to Patrick, part of which read as follows:

I now regret very much being involved with the likes of you and Richard, but *having committed to this project especially to our Chinese partners, I now have no choice but to see this project to the end.* This is my commitment to Mr Liu Hai and Vanwarm and I will fulfil it. *But I will do all I can to ensure that the two of you stay within the law, observe good governance and meet our obligations to our Chinese partners.* I have enough documentary proof of what you have been up to in the last few months and I have communicated these to Mr Liu Hai and his people in Vanwarm. [emphasis added]

26 On 6 October 2010, Patrick emailed Han and said that he had neither the time nor the passion to spar with Han. He also reserved his comments on Han's views on corporate governance.

Sacking of Han on 12 October 2010

27 On 12 October 2010, Patrick caused an Extraordinary General Meeting ("EGM") of CTPHZ to be

held to remove Han and Christine as directors of that company with immediate effect. At the said meeting, Michael was appointed a director of CTPHZ. On the same day, the defendants caused a board meeting of CTPHZ to approve a resolution to remove Han as the company's corporate representative on HVC and to replace him with Patrick. No notice was given to Han of the said meetings on 12 October 2010. On 21 October 2010, Ng emailed to Han the resolutions that dismissed the latter from his positions in CTPHZ. No reasons were given for the dismissal.

28 On 28 October 2010, Patrick and Michael went to Hangzhou to discuss matters with Vanwarm's Liu Hai. Patrick said that Liu Hai requested and he agreed that Han and Robin remain as HVC's directors because HVC was then bidding for land in the Hangzhou project and Chinese government officials frowned on dealing with companies with internal problems. As such, Han and Robin remained as HVC's directors for the time being.

Liu Hai's attempt to mediate

29 Vanwarm's chairman, Liu Hai, came to Singapore on 30 November 2010 to mediate. The defendants claimed that on 2 December 2010, they agreed to reinstate Han and Christine to the CTPHZ board in accordance with the terms of the 1 March document. However, Han did not trust the defendants and wanted them to agree that he would not be dismissed again until after the completion of the Hangzhou project. There being no agreement on this new matter, Han served his writ on the defendants on 3 December 2010.

Warning from HQEDA

30 In a Letter of Notice dated 31 January 2011, HQEDA pointed out to CTP and Vanwarm that HVC's registered capital was not in place by the agreed deadline of 31 December 2010 and that construction work had not started even though this should have been done by the end of 2010. HQEDA warned Vanwarm and CTP that if the requisite share capital was not injected by the extended deadline of 10 March 2011, the Tripartite Agreement would be terminated.

Vanwarm terminates the Collaboration Agreement

31 On 2 February 2011, Vanwarm terminated the Collaboration Agreement on the ground of "internal problems at CTP". Vanwarm had no right to do this but CTPHZ did not challenge Vanwarm on this.

HQEDA, Vanwarm and Hong Jia terminate agreements with CTPHZ

32 CTP and CTPHZ failed to inject their share of the requisite registered capital of HVC by the extended deadline of 10 March 2011. On the very next day, HQEDA informed CTP and Vanwarm that the Tripartite Agreement had been terminated.

33 On 31 March 2011, Vanwarm terminated the Collaboration Agreement on a new ground, namely, that there was no basis for the Collaboration Agreement since HQEDA had terminated the Tripartite Agreement. On 3 April 2011, Hong Jia terminated the Loan Agreement.

The dispute spawns two suits

34 The dispute between the parties spawned two suits. Apart from the suit presently being considered ("Suit 908"), the defendants caused CTP and CTPHZ, which they control, to commence Suit No 266 of 2011 ("Suit 266") against Han, Robin and Christine for, *inter alia*, breach of fiduciary

duties and conspiring to divert their interest in the Hangzhou project to IEC. It was ordered that the present suit and Suit 266 be heard together.

35 What transpired after the termination of the Tripartite Agreement, the Collaboration Agreement and the Loan Agreement is more relevant to Suit 266. For the present suit, what needs to be considered are the following issues:

- (a) whether Han had, without more, a right to remain as the chairman and a director of CTPHZ by virtue of a shareholders' agreement or his legitimate expectation;
- (b) whether Patrick and Richard had conspired against Han; and
- (c) whether the defendants had wrongfully dismissed Han from his posts in CTPHZ.

Whether there was a shareholders' agreement

36 Han explained that he had agreed to participate in the Hangzhou project with the understanding and legitimate expectation that he would helm CTPHZ. He added that he had ensured that his expectation was safeguarded by a shareholders' agreement on 1 March 2010, which gave him a right to, without more, remain as the chairman of CTPHZ's board. He explained in his affidavit of evidence-in-chief ("AEIC") (at para 41) as follows:

The Shareholders' Agreement was the very basis [on which] I agreed to participate in the Hangzhou project. As CTP and CTPHZ were shell companies without any money or other ongoing business, I wanted to ensure that I would get my fair share of the profits that might flow in from the Hangzhou Project. Knowing that I could not influence events in CTP, it was very important for me to (i) head the management of CTPHZ, which was the vehicle to participate in the Hangzhou Project, and (ii) get my share of the profits from within CTPHZ (or Hangzhou Project).

37 When considering whether the 1 March document is a shareholders' agreement, note may be taken of *Bakery Mart Pte Ltd (in receivership) v Sincere Watch Ltd* [2003] 3 SLR(R) 462, where the Court of Appeal stated (at [22]):

... [W]here negotiations are protracted the court is entitled to look at all the circumstances and apply an objective test to determine whether the parties had reached an agreement as far as the essential terms are concerned, or whether the parties intended to reserve their rights pending a formal agreement: *Projection Pte Ltd v The Tai Ping Insurance Co Ltd* [2001] 1 SLR(R) 798.

38 Han said that he asked Christine to discuss the proposed shareholders' agreement with CTP's directors. In an email dated 23 February 2010, which was addressed to "Christine and all", Richard confirmed that Christine had raised this issue as he stated as follows:

Shareholders Agreement among CTP shareholders (*ie* 6 + CTVA) – it is proposed by Christine that we should have a formal agreement among the shareholders to govern our business relationship. *We will look into it and to get the 1st Draft out soonest.* Anyone has any Shareholders Agreement template. [emphasis added]

39 Interestingly, the proposed deadline for the conclusion of the shareholders' agreement was 1 March 2010. In his email on 28 February 2010, Richard stated as follows:

Christine has requested the preparation of a *simple* Shareholders' Agreement (among CTP 6 BOD)

so that this could be signed by the 1st March. Richard Lim has prepared the Resolution to be sent out to all CTP BOD *by 1st March 2010.* The Resolution has covered the following points: Total No of Shareholders, No of Shares to be issued, Appointment of Dr Han & Christine Liew as Directors and Dr Han as Vice Chairman of CTP and the various 100% owned subsidiary companies to be set up under CTP and their respective BODs and proposed profit sharing between these companies and CTP. [emphasis added]

40 The second sentence in this last mentioned email, which relates to Richard’s preparation of “the Resolution to be sent out” to all CTP’s directors by 1 March 2010, follows the reference in the previous sentence to Christine’s request for a simple shareholders’ agreement to be signed by 1 March 2010. This suggests that the “resolutions” recorded in the 1 March document were intended to be the terms of the “simple” shareholders’ agreement requested by Christine on Han’s behalf.

41 The 1 March document was worded as follows:

Resolved and confirmed the following number of ordinary shareholders, no. of ordinary shares to be issued to each shareholder and the appointment of Dr Han Cheng Fong and Christine Liew as Company Directors, Dr Han Cheng Fong as Deputy Chairman of CTP, CleanTech Ventures Asia Pte Ltd as Manager, is hereby accepted with effect from 1st March 2010.

Name	Designation	Ordinary Shareholding
Patrick Teo	Chairman	2 shares
Dr Han Cheng Fong	Deputy Chairman	2 shares
Richard Lim	Managing Director	2 shares
Robin Low	Director	2 shares
Michael Heng	Director	2 shares
Christine Liew	Director	2 shares
CleanTech Ventures Asia Pte Ltd	Manager	4 shares
Total		16 shares

...

The Board of Directors also resolved that the following companies will be set up by CleanTech Partners Pte Ltd:

- 1 CTP-Hangzhou Pte Ltd (CTPHZ) as 100% subsidiary company of CTP and will be the Special Purpose Vehicle (SPV) for rolling out the Hangzhou Singapore Eco-Park Development Project in Hangzhou:
 - 1.1 CTP-HZ Board of Directors will consist of all the six Directors of CTP and Dr Han Cheng Fong as Chairman and Christine Liew as CEO;
 - 1.2 CTP-HZ Board of Directors has decided that the net income split between CTP-HZ and CTP will be 67%:33% respectively.

1.3 It was also decided that of the remaining 67% held by CTP-HZ, 33% of the 67% is to be distributed to the CTP-HZ Board of Directors. The remaining 67% (ie 67% of 67%) is to be distributed to CTP-HZ Management headed by Dr Han Cheng Fong and Christine Liew. The distribution of the profit to the Management of CTP-HZ shall be decided by Dr Han Cheng Fong at his sole discretion.

1.4 CTP-HZ will in due course enter into joint venture agreement to set up Hangzhou Singapore Eco-Park Investment & Development Co Ltd (HSEPID) in Hangzhou with the local partner Vanwarm Group where Dr Han Cheng Fong will be appointed as Chairman and Christine Liew will be appointed as CEO/GM respectively on the Board of Directors.

...

4 Any change to the above Resolutions shall require unanimous decision of the Board of Directors of CTP.

[Signed by]

Patrick Teo

Dr Han Cheng Fong

Richard SH Lim

Robin Low

Michael Heng

Christine Liew

For and behalf of CleanTech Ventures Asia Pte Ltd

42 Robin agreed that the 1 March document was a shareholders' agreement. He stated in his AEIC (at paras 39 and 42) as follows:

39 The Shareholders' Agreement is not merely a board resolution or an MOU... *It is evidence of an agreement between the 6 key players (Dr Han, Patrick (who controlled CTVA), Richard (who controlled CTVA), Michael, Christine and me) on the terms of our participation in CTP, CTPHZ and the Hangzhou Project.*

...

42 Although the Shareholders' Agreement was not labelled "Shareholders' Agreement", it is my understanding, then and now that it constitutes or evidences a binding agreement between the CTP shareholders. *No other agreement was entered into and after the Shareholders' Agreement was signed, Dr Han and Christine did not renew their request for a written shareholders' agreement to be prepared.*

[emphasis added]

43 In contrast, the defendants contended that the 1 March document was not a shareholders' agreement. Patrick explained in his AEIC (at para 24) as follows:

The Directors' Resolution of 1st March 2010 was simply a written record of what was intended to

be done by the board and it provided the directors with the authority to carry them out. ... The signatures were merely to acknowledge that the substance of what was recorded in the Directors' Resolution of 1st March 2010 was acceptable to all present. Had we intended to sign a formal and legally binding agreement, we would have engaged lawyers to act for us to do up a formal written agreement.

44 Notably, the 1 March document was signed by three non-directors of CTP, namely Han, Christine and CTVA. Han rightly asserted that if this document was not a shareholders' agreement, then he, Christine and CTVA would have had no reason to sign it as they were not CTP's directors. Furthermore, Michael, who signed the said document at a later date, could only have signed it as a shareholder and not as a director as he did not attend the board meeting on 1 March 2010. The defendants explained that as Han and Christine were prospective board members of CTP, they were allowed to sign the document and that CTVA signed the document as CTP's manager. In my view, this was a rather contrived explanation.

45 The defendants' evidence on the effect of the 1 March document was quite unsatisfactory. They emphasised that the document was entitled "Directors' Resolution in Writing Pursuant to the Company's Articles of Association". However, the title given to a document is not conclusive. In any case, it cannot be said that all the resolutions in the 1 March document were passed pursuant to CTP's Articles of Association. For instance, the "resolution" stating that decisions recorded in the 1 March document cannot be changed without the unanimous consent of the directors contradicts the Articles of Association, which require board decisions to be taken by majority vote. Such a "resolution" can only make sense in the context of obligations undertaken pursuant to a shareholders' agreement.

46 The defendants also advanced other arguments on why the 1 March document could not be a shareholders' agreement. For a start, they pointed out that vital terms, including the remuneration of each shareholder and the governing law and jurisdiction, were missing. Han testified that the 1 March document set out the key terms and "the basic things we care about". As for the governing law and jurisdiction, a contract is not invalid merely because these are not specifically provided for. In innumerable cases, the courts have had to determine the governing law of the contract.

47 In desperation, the defendants pointed out that the requirement in the 1 March document of a unanimous vote with respect to changing the decisions recorded therein contradicted CTP's Articles of Association, which provide that decisions of the board are to be taken on the basis of a majority vote. They added that as the Articles of Association were not amended, any director of CTPHZ could be removed by a special resolution. The defendants missed the point altogether as they did not see the distinction between a shareholders' agreement and the Articles of Association. In *Russell v Northern Bank Development Corp Ltd* [1992] 1 WLR 588, the House of Lords accepted (at 593) that *as between shareholders*, a clause that may be interpreted as a voting agreement may be enforced. Here, the requirement of unanimity stipulated in the 1 March document for changing the so-called "resolutions" stated therein may be regarded as a voting agreement. As such, regardless of what CTP's Articles of Association may provide regarding the removal of a director, the effect of the 1 March document was that *as between the shareholders*, Han cannot, without more, be removed from his positions in CTPHZ without a unanimous vote, as had been agreed between the shareholders in the 1 March document.

48 The defendants relied on *Dovechem Holdings Pte Ltd (in liquidation) and others v Ng Joo Soon (alias Nga Ju Soon)* [2011] 4 SLR 345 ("*Dovechem*") but that case may be distinguished. In *Dovechem*, the plaintiff, aged 76, who founded a family company, claimed the right as a director to inspect that company's accounts. The defendants in that case, who were his fellow shareholders and

directors, contended that the plaintiff was no longer a director as all of them had agreed on a remuneration and benefits plan that required directors to retire at the age of 70. The Articles of Association provided that directors remained in their office until they resigned or were removed as directors. It was held by the Court of Appeal that as the Articles of Association had not been amended to require directors to retire when they reached the age of 70, the plaintiff was still a director of the company. It is important to note that the Court of Appeal had observed (at [42]) that the remuneration and benefits plan relied on by the defendants there was "informal and cryptic". Furthermore, even if the plan could be read as requiring every director to retire upon attaining the age of 70, there were grounds upon which the plaintiff could raise the plea of *non est factum*. In short, in relation to the plaintiff, the validity of the remuneration and benefits plan was in doubt.

49 In the present case, Han relied on what I have found to be a *valid* shareholders' agreement and he is suing Patrick, Richard and Michael for breaching *that* agreement.

50 When cross-examined on the effect of the 1 March document, Patrick could not give clear answers. While he agreed that there was an "agreement" on 1 March 2010 that Han would be issued two shares in CTP, he likened the 1 March document to an agreement to take someone to lunch, which had no legal consequences. When questioned further, he finally conceded that there was an "agreement" between the parties as he testified as follows:

Q: Why is [Han] entitled to the two shares?

A: Because in [the 1 March document], we all agreed to give each other two shares.

...

Q: *So there was an agreement, right?*

A: *If you want to call it that, yes.*

...

Q: ... Clauses 1.2, 1.3 of [the 1 March document], you now concede that *there was an agreement to effect ... what was set out in these two clauses, yes or no?*

...

A: *I confirm.*

[emphasis added]

51 Richard's testimony also did not adequately support the defendants' assertion that the 1 March document was not a shareholders' agreement. When asked why Han and Christine had signed the 1 March document if it was not a shareholders' agreement, he testified confusingly as follows:

Q: So your answer to my question is this: Christine Liew had on two previous occasions ... requested for a shareholders' agreement to be prepared and to be signed on the 1st of March 2010 ... you agree with me?

A: Yes.

Q: So on 1st March 2010, you say that they signed because this was what they wanted to do. They requested for it and that's why they signed.

A: They requested for a [shareholders' agreement] ... Dr Han and Christine Liew also signed, and we don't feel that there is anything ... wrong that they wanted --- they insist on signing because they will be part of it moving forward.

52 After taking all the circumstances into account, I find that the 1 March document was a shareholders' agreement that gave Han a right to be appointed as the chairman and a director of CTPHZ and to, without more, remain in those positions. I also find that even if there was no shareholders' agreement, the circumstances under which Han agreed with the defendants to participate in the Hangzhou project gave him a legitimate expectation that he would, without more, remain as the chairman and a director of CTPHZ. It follows that the dismissal was wrongful unless it can be justified by the defendants.

Whether Patrick and Richard conspired against Han

53 Han contended that Patrick and Richard conspired to use unlawful means by breaching the shareholders' agreement to remove Han from his positions in CTPHZ and reduce his profits from the Hangzhou project. In *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637, the Court of Appeal stated (at [45]) that a conspiracy by unlawful means "is constituted when two or more persons combine to commit an unlawful act with the intention of injuring or damaging the plaintiff, and the act is carried out and the intention achieved". It is not easy to prove the existence of a conspiracy. In *R v Siracusa* (1990) 90 Cr App R 340, the English Court of Appeal observed (at 349):

... [T]he origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made, or when or where other conspirators were recruited. The very existence of the agreement can only be inferred from overt facts. Participation in a conspiracy is infinitely variable ...

54 The above passage was relied on by the Court of Appeal in *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901. Chao Hick Tin JA pointed out (at [19]) that it is not often that the victim of a conspiracy has direct evidence to prove the allegation and that proof of conspiracy is normally inferred from other objective facts. This present case is thus one of the rare cases where there is documentary evidence of a conspiracy because Robin, who was kept informed by Patrick and Richard about plans to get rid of Han, handed over the incriminating emails to Han and Christine.

55 Clearly, Patrick and Richard had second thoughts about Han's participation in the Hangzhou project and the profit-sharing formula in the 1 March document. On 3 June 2010, Richard emailed Patrick to ask the latter to "remove" Han and Christine:

Robin suggested and I agree[d] that our proposal to [Han] would be:

1 Reduce him to 10% max.

2 Remove him from Chairman as he will give us a lot of trouble and block us from running the CTPHZ and booking of cost into CTPHZ.

3 He and [Christine] are no more bank signatories.

If we want to initiate with the reduction of shares to 10%, we might as well do all of the above. Don't leave luggage behind. [Christine] told Robin that [Han] does not trust both of us as we bull shit a lot to the Press in March...

There is already a bad smell in the back yard. *Let's deodorise them and sideline here...*

Just remove them. Pat.

[emphasis added]

56 Robin denied that he had made suggestions to Richard to reduce Han's share of profits, remove Han from the chairmanship of CTPHZ or strip Han of his power to sign CTPHZ's cheques. When cross-examined on his email of 3 June 2010, Richard did not deny his "plot" against Han as he testified as follows:

Q: So ... 3 days after the signing of the collaboration agreement, ... *you and Patrick started plotting, okay ---*

A: *And Robin.*

Q: --- *to freeze Dr Han and Christine from further information and updates until they felt useless, right? Agree?*

A: *Yes.*

...

Q: Okay. And to prevent them from being cheque signatories of [CTPHZ], right?

A: *Yes, yes.*

Q: To de-authorise [sic] *them and finally to remove them from [CTPHZ] or to frustrate them until they have to resign ---*

A: *Yup.*

[emphasis added]

57 Patrick did not want an open confrontation with Han at that time. All the same, he planned to diminish the role played by Han and Christine and make them feel "useless". In his reply to Richard on the same day, Patrick stated as follows:

[Your] comments noted...

To achieve our 3 goals will trigger a confrontation.

I am prepared for it if you guys are but this can't be done over emails and *I wud [sic] prefer an approach which is more elegant.*

It has to be done over a marathon meeting at M hotel ... I will prepare a term sheet ... one which we can agree to adopt... as a board resolution.

...

The platform we must push is that CTP and CTPHZ are cleantech vendors ... so their role is diminished.

We don't wish to confront them head on ... we are the major shareholder so what we say goes.

We may not achieve all the objectives in one meeting but we can "freeze" them from further information and updates until they feel "useless".

...

[Han] will threaten to resign ... so be it ... With him going [Christine] may also depart.

[emphasis added]

58 In relation to Patrick's statement that Han would threaten to resign and that Christine might depart, Richard replied to Patrick that "THAT IS OUR PLAN".

59 According to Han, the plot to remove him from CTPHZ also involved a planned sale of CTP shares to a Malaysian company, BKCB, through one Mr Frankie Tan ("Frankie"), who dealt with BKCB's executive chairman, Mr Ong Puay Koon ("OPK"). Patrick claimed that his three proposals on the sale of CTP's shares to BKCB were not intended to harm Han as there would be "equal misery" for all of CTP's shareholders. In his AEIC, he explained (at paras 56-58) as follows:

56 ... "Plan A" entailed Cheng Fong and Christine first exchanging their shares in CTP for shares in CTP-HZ whereby [they] would together hold 25% of the shareholding in CTP-HZ. Thereafter, there would be a rights issue in CTP-HZ whereby the shareholders ... would be offered rights shares. CTP would not subscribe to its 75% entitlement and suffer dilution, whilst Cheng Fong and Christine could subscribe to their rights entitlement should they elect to do so. and avoid dilution. CTP would then agree to exchange its shareholding in CTP-HZ for BKCB shares as payment consideration instead of cash. Cheng Fong and Christine could also exchange their CTP-HZ shares for BKCB shares should they elect to do so.

57 "Plan B", on the other hand, contemplated a rights issue in CTP should Cheng Fong and Christine insist on retaining their CTP shares and not exchange their shares in CTP for shares in CTP-HZ. All of us shareholders of CTP (excluding Cheng Fong and Christine) holding a total of 75% of CTP's issued share capital would, by prior agreement, not subscribe to our rights entitlements but instead renounce our entitlements to BKCB thus suffering dilution equally. Cheng Fong and Christine ... could, ... if they so chose, subscribe to their rights entitlement and thus not suffer dilution.. We 75% CTP shareholders would then exchange our shares in CTP for BKCB shares, and Cheng Fong and Christine could also do likewise, if they so chose to do, to avoid being left as minority shareholders in CTP.

58 "Plan C" was envisaged as a share placement of new CTP shares for cash to OPK or his nominee. This transaction would have diluted all the CTP shareholders equally.

60 Although Patrick tried to convince the court that the plan to sell CTP's shares to BKCB was not a sinister one, it must be noted that on 17 August 2010, Frankie, who thought that Han had to be got rid of before the deal with BKCB could materialise, emailed Patrick as follows:

Having given more thought to [Han's] situation, I think you *may have to get rid of them before doing a deal with OPK* because at the end of the day, they will jam the deal once it is announced... This is my view.

I can talk to OPK about this rather than trying to 'claw' back indirectly because I think they are waiting for this deal to be signed and then pounce on you for more benefits knowing that you cannot afford to call it off.

[emphasis added]

61 Whatever Patrick may have said about plans A, B and C, his real intention was revealed in his following email to Frankie on 17 August 2010, in which he spoke of his "covert" plans, which delighted him so much that he could not sleep while thinking about them. Parts of this email read as follows:

At ... [CTPHZ] [Han] is chairman... Again, we can remove him with 75%, but as we will be injecting CTP into BKCB, *it is just a matter of procedure that he will have to step down say in favour of OPK or I.*

That's why I thought of *diluting covertly ... my solution.*

1 We first get a Malaysian company (MCO) with a malay chairman/director but you and OPK control it...

5 ... [Han and Christine] get diluted down to 19.23%. *My partners will be pleased with that.*

I don't mind if the JV arrangement is 51/49%... then *[Han/Christine] get diluted even further to about 12.5%.* Bears thinking.

I think this is a beautiful scheme... *I did not sleep last nite thinking about it.* We all benefit. *At the time of the cash subscription by MCO, we ask [Han] to step down from the chair of CTPHZ and [Christine] from CTP.*

Hows ZAT [*sic*]?

[emphasis added]

62 On 24 August 2010, Patrick emailed Richard and Robin as follows:

Am planning something with Frankie to get rid of [Han] and [Christine]. We are going to be ruthless. [emphasis added]

63 Patrick claimed that what he meant by "ruthless" was that he was going to be "firm" and not "soft". However, he finally conceded as follows:

Q: There you are, Frankie Tan telling you ... get rid of them first before you do the deal with [BKCB] or OPK. Am I not right?

A: ... [Y]ou are right.

...

Q: You agreed with him in your reply --

A: I did.

64 Significantly, Richard admitted that the proposed sale of CTP shares to BKCB was intended to get rid of Han. He testified as follows:

Q: My point is this. If Plan A is implemented, it will change the *status quo*, it will mean ... the removal [of Han].

A: Yes ... the answer is yes – the answer is yes...

Q: [P]lan C was essentially to dilute them ... and then at ... end of the day, you remove them from the board of directors of [CTPHZ], do you agree?

...

A: Yah...

Q: *And finally Dr Han would be removed as chairman and director of [CTPHZ] and Christine as well as a director of [CTPHZ]... That's the aim and objectives of these three plans.*

A: *Yah.*

[emphasis added]

65 Further evidence of the purpose of the proposed sale of shares to BKCB may be found in Patrick's email to Harpal Mahtani Partnership on 30 August 2010, in which he wrote:

Dear Harpal,

...[Yeong Wee Kiong] is somewhat retired and I will need a litigator if it goes that far. I won't use [Drew & Napier] so it'll be you.

My partners and I plan to exchange our shares in CTP for shares in a public listed company. We are in midst of talking but this altercation with [Han] will obviously create problems ***so I need to get him out of the way or neutralise him somehow.***

[emphasis added]

66 I thus find that there was ample evidence that Patrick and Richard conspired to use unlawful means to remove Han from his positions in CTPHZ.

Whether Han was wrongfully dismissed

67 While the conspiracy against Han may be taken into account in understanding the defendants' actions against him, it must be borne in mind that Han could be dismissed if there were legitimate reasons to justify the dismissal. The defendants asserted that even if there was a shareholders' agreement on 1 March 2010, they did not breach it because Han was dismissed for failing to act in the best interests of CTPHZ and CTP and for breaching his fiduciary duties to CTPHZ. The main reasons that allegedly justified the dismissal are considered below.

Han's alleged failure to provide real estate contacts and access to private equity funds

68 The defendants cited Han's failure to provide real estate contacts and access to private equity funds as a reason for the dismissal. However, Han contended that his role in CTPHZ was merely to oversee the Hangzhou project, in respect of which funding was not required since Vanwarm had already arranged for Hong Jia to lend USD6 million to CTPHZ to enable it to pay for its 40% share of HVC.

69 To advance the defendants' allegation against Han, Patrick asserted in his AEIC (at para 12) as follows:

On or around 7th January 2010, *[Han] verbally held himself out to Michael and I that he was a respected veteran in the real estate industry, with an established network access to real estate developers and private equity funds in Singapore and China as he was the former Chief Executive Officer of Fraser & Neave Ltd and Deputy Chairman of DBS Land Ltd. [emphasis added]*

70 When cross-examined, Patrick undermined his case by admitting that Han did not make the alleged representation referred to in his AEIC at para 12.

71 Why Han was asked to helm the Hangzhou project was evident in Patrick's email to CTP's other directors on 30 Jan 2010, in which he said that CTP did not "have the savvy", "political clout" or "any real estate track record" in China and that Han had the "prominence needed by CTP" and the "aura and personality" to carry CTP's views to Vanwarm. In their positive responses to Patrick's plan to involve Han in the Hangzhou project, the other directors of CTP did not say anything about Han's access to real estate developers and private equity funds.

72 It may be recalled that Han stated on 7 April 2010 that he would not participate in CTP's fund-raising. Patrick testified that while he was disappointed, there was "no issue" about Han's decision not to participate in the fund-raising. Richard agreed that if Han was obliged to raise funds for CTP or CTPHZ, the CTP board could have pointed this out to Han on 7 April 2010. In my view, it was not proven that Han was required to provide real estate contacts and access to private equity funds when he agreed to participate in the Hangzhou project. In any case, the defendants cannot rely on Han's refusal to participate in CTP's fund raising efforts to justify the dismissal as they had accepted Han's decision not to get involved in CTP's fund-raising efforts in April 2010.

Non-participation in the residential and SOHO project

73 The Hangzhou project involved the development of industrial, commercial and residential small office units. Under its initial arrangements with Vanwarm, CTPHZ was not involved in the residential small office component of the said project ("the RESOHO component"). To be involved in the RESOHO component, CTPHZ would have had to give up the guaranteed profit of RMB130 million offered by Vanwarm and inject a further USD15 million into HVC. In April 2010, CTPHZ's directors unanimously decided to retain the benefit of the guaranteed profit of RMB130 million and stay out of the RESOHO component. Despite this, Patrick claimed in his AEIC (at para 44) that Han had "deliberately caused CTP and CTPHZ to lose the opportunity to participate in what could have been a lucrative involvement in the residential development aspect of the [Hangzhou project] potentially exceeding even the Profit Guarantee of RMB130 million".

74 Although Patrick alleged in his AEIC that Han had *recommended* that CTPHZ "forego the residential development aspect", he undermined his case by testifying that Han did not advise against participating in the RESOHO component. The relevant part of the proceedings is as follows:

Q: [Y]ou made your own decision and decided, "Yes, we should not participate", right?

A: Yes.

...

Q: *No one misled you into making that decision?*

A: *No, not at all...*

Q: *... certainly not Dr Han, right?*

A: No, no, he did not, I mean, *he did not try to --- mislead me.*

[emphasis added]

75 More alarmingly, Patrick testified that he was also at fault for not reading the feasibility study by a Chinese company on the RESOHO component, which was mentioned by Han at the meeting at which the decision to stay out of the RESOHO component was taken. The relevant part of his testimony is as follows:

All I am saying ... is that if there was other independent private equity or corporate investors in CTP, and I as chairman made that decision together with my other fellow directors not to pursue a project which we didn't read a feasibility study on, we would be thrown out. Now, that's what I'm saying and that's why we didn't do enough due diligence in coming to that decision. *I am not saying that that decision is wrong. I'm saying that the methodology, the lack of due diligence, was wrong. And I am also partly to be blamed.* [emphasis added]

76 If, as Patrick claimed, he was not saying that the collective decision to stay out of the RESOHO component was wrong, then he was in no position to assert in his AEIC that Han had caused CTPHZ to lose a lucrative opportunity that could bring in profits exceeding the RMB130 million offered by Vanwarm. In any case, Han cannot be blamed for the failure of Patrick or Richard to acquaint themselves more thoroughly with the facts before agreeing with him that it was not in CTPHZ's interest to participate in the RESOHO component.

77 The evidence was that at the material time, Patrick had a lot to say about why it was in CTPHZ's interest not to participate in the RESOHO component. In his email to Patrick on 5 October 2010, Han recounted Patrick's thoughts on the matter as follows:

With regard to the decision not to participate in the [RESOHO] component, *you correctly pointed out* that we needed to inject US\$15.0 million, which was impossible for CTP to raise. *As you also pointed out*, private equity ... investors would demand an arm and a leg to lend us this money. Hence, at a board meeting, we all decided together that we should not risk bringing in PE money as it was made clear to us by VanWarm that if we participated in the [RESOHO component], we would not be eligible for the profit guarantee. Although investing in the [RESOHO component] could bring us higher returns, the bulk of the additional earnings would go to the PE investors and we could be facing risks that were not commensurate with the additional return. *We all decided together that we would just forego the [RESOHO component] and accept the generous guaranteed profits.* [emphasis added]

78 Richard, who testified that CTPHZ's directors had made a collective decision not to participate

in the RESOHO component, could not explain why he chose to blame Han for this decision.

79 As Han's evidence on the RESOHO component was not effectively countered by the defendants, I hold that CTPHZ's non-participation in the RESOHO component did not justify the dismissal.

Whether Han tried to seize control of CTPHZ on 29 September 2010

80 The defendants also sought to justify the dismissal on the ground that Han, Christine and Robin attempted to seize control of CTPHZ on 29 September 2010. As mentioned, on that day, CTPHZ's board appointed Sally as the company's secretary in place of Ng, changed the company's registered address to that of the new company secretary and confirmed that there were five directors of the company, with one vacancy yet to be filled. When cross-examined, Han rightly retorted that he could not have seized control of CTPHZ because CTPHZ was *wholly owned* by CTP, which was controlled by the defendants.

81 The defendants alleged that Han replaced Ng as company secretary with someone who would do his bidding. Michael testified that he believed that this was so on the basis of what Patrick and Richard told him. However, Patrick admitted that he had no evidence to prove this allegation. Richard's testimony was also unsatisfactory as he stated as follows:

Q: What evidence do you have to say that Dr Han knew Sally Phuar before that meeting?

A: This is very simple answer ... *Obviously, it's someone that he knows. Otherwise, he go and pick up someone from the street to be a ... company secretary.*

[emphasis added]

82 As for the use of Sally's address as the registered address of CTPHZ, Han explained that he could not have Sally perform her duties in one location while the company's registered address was at another location. Michael conceded that the change of the address was "in itself nothing wrong" and accepted that thousands of companies use their company secretary's address as their registered office. However, Patrick claimed that the change made it difficult for him to have access to CTPHZ's correspondence without explaining why this was so. Richard went so far as to assert that Han breached his fiduciary duties by changing the registered address of CTPHZ. When cross-examined, he could not justify this assertion and merely stated as follows:

Q: Why [do you say that changing the registered office of CTPHZ amounted to a breach of his fiduciary duty?]

...

A: The registered address of a company is the ... nerve centre for communication. All mails, all registered mail or non-registered mail is being sent to the ... registered address which I'm the only person that is ... taking all the mails... So if you change your company address, you are trying to cut off all the communication links that we had ... with our potential partners in China.

...

Q: What makes you think that when the registered office was changed to Sally Phuar's office,

you could not go there and retrieve mails addressed to [CTPHZ]?

A: I don't want to argue with this but ... it's just like I'm staying here, you're asking me to go ... to another person's house to pick up mails?

83 Obviously, the allegation that Han tried to seize control of CTPHZ by changing the registered address of that company need not be considered further.

84 Finally, the confirmation that CTPHZ's board had six directors and a vacancy did not, as the defendants contended, give majority control of CTPHZ's board to Han, Christine and Robin as the existing position on the said board was not altered. This was conceded by Patrick, who testified as follows:

Q: How did this resolution change the position or the situation from that which stood as at 1st April 2010?

A: It didn't change.

Q: Yes, so this is another baseless allegation, isn't it? You are alleging that by passing this resolution, they ... have effective majority control of the board of [CTPHZ]. There was no change.

A: Correct.

85 It follows that the defendants' allegation that Han, Christine and Robin attempted to seize control of the board and management of CTPHZ when they met on 29 September 2010 cannot be relied on to justify the dismissal.

Failure to meet key deadlines

86 The defendants alleged that Han failed to meet key deadlines and this led to a warning notice by HQEDA on 31 January 2011 to CTP and Vanwarm regarding the failure to put in place HVC's capital and to commence construction work by the specified deadlines. The defendants accused Han of putting the Hangzhou project at risk by his alleged failure to meet the deadlines. However, they were unable to substantiate their allegation.

87 Patrick conceded that Han was not responsible for the missed deadlines regarding the placement of the registered capital of HVC as he testified as follows:

Q: And this registered capital had to be injected, or the first phase of this capital injection had to be in place by December 31st 2010?

A: Correct....

Q: Dr Han was kicked out of [CTPHZ] on 12th October 2010.

A: Correct.

Q: *So how can Dr Han be responsible for the non-fulfilment of CTP with regard to these two requirements?*

A: *I accept that argument.*

[emphasis added]

88 As for the failure to commence construction work in the Hangzhou project by the end of 2010, Patrick agreed that it was not Han's fault as the first plot of land in the Hangzhou project was acquired by HVC from HQEDA only on 13 December 2010. Obviously, construction work cannot begin until land had been acquired and it was not alleged that Han was responsible for the delayed acquisition of land in the Hangzhou project by HVC. In any case, Patrick accepted that it was HVC, and not CTPHZ, who was responsible for commencing construction work in the Hangzhou project.

89 In short, the accusation that Han was responsible for the missed deadlines is but one of many unproven allegations against Han and further dented the defendants' already badly mauled credibility.

Exclusion of Michael from the CTPHZ board

90 Under the 1 March document, Michael was entitled to a seat on the CTPHZ board (see [42]). However, until after Han had been dismissed, Michael was not appointed to the CTPHZ board. The defendants claimed that Han excluded Michael from the CTPHZ board so that Han's faction could outvote Patrick and Richard.

91 Han's position on the appointment of Michael as a director of CTPHZ was consistent. While he did not want Michael to be part of the *management* of CTPHZ, he did not object to Michael being on the CTPHZ Board. He stated in his Supplementary AEIC (at para 10) as follows:

Sometime in February 2010, at a meeting between Michael, Patrick, Richard, Robin, Christine and me, we discussed Michael's request to be involved in the *management* of the Hangzhou Project as well as to be the Deputy Chairman of CTPHZ. In the presence of everyone, including Michael, I objected to Michael's request and gave my explanation. I said that Michael had no experience in real estate, especially real estate in China and I had no time to train him to fulfil this role. Everyone accepted my explanation and agreed that Michael should not be involved in the *management* of the Hangzhou Project. *However, we agreed that Michael would remain a director of CTP and CTPHZ (to be formed).* [emphasis added]

92 Crucially, Michael admitted that Han did not inform him that he was not wanted on CTPHZ's board.

93 The defendants' case on Michael's exclusion from CTPHZ's board was incoherent and inconsistent. Patrick asserted in his AEIC (at para 96) that Michael was an *incumbent* director of CTPHZ and that he "was effectively kicked off the board of CTPHZ". Michael repeated this allegation in his AEIC. However, as Michael was not an incumbent director of CTPHZ at the material time, he could not have been kicked out of CTPHZ's board.

94 Patrick was inconsistent and vague about the date on which Han requested that Michael be excluded from CTPHZ's board. He and Richard testified that they *and Michael* reluctantly acceded to Han's demand that Michael be left out of CTPHZ's board. However, Michael insisted that he never agreed to be left out of CPTHZ's board. When asked about the inconsistency, Patrick reiterated that Michael had agreed to be left out of CTPHZ's board.

95 Surprisingly, Richard testified that he was responsible for the exclusion of Michael from CTPHZ's board. He explained that he had liaised with the company secretary on the appointment of CTPHZ's

directors on 1 April 2010 and had mistakenly left out Michael's name. Astonishingly, he then blamed Han for not reminding him that Michael should have been appointed as a director. The relevant part of the proceedings is as follows:

Q: Who left him out? ... [Y]ou have already agreed that you were the one who liaised with the company secretary to prepare all these documents?

A: Okay, no doubt ... I was the one who liaised with ... the company secretary ... for the formation of ... [CTPHZ]. *So, if there was a mistake that I did not include [Michael] in the names as a director ... Dr Han, being the chairman, he could have pointed out that, "Why is he left out"?*

Q Okay. *Are you conceding that it was your mistake that Michael Heng's name was not there, and therefore, Dr Han ought to have pointed it out to you? ... Is that your evidence?*

A Yup.

[emphasis added]

96 Shortly thereafter, Richard changed his evidence and insisted that he did not make a mistake when he left out Michael's name from the list of CTPHZ's directors. He readily admitted that he was changing his evidence and this severely damaged his credibility.

97 Robin explained why Michael was left out of CTPHZ's board as follows:

Michael Heng, since the 1st March agreement ... vanish into thin air. He did not participate in ... any of the discussion[s] of the agreement. He did not meet ... us. We do not know at that time ... whether ... Michael Heng has any interest to be a director at all. So the only thing we can do for him is to reserve a vacant seat. We can't appoint a person when we don't even know whether he want[ed] to participate

98 Michael confirmed that from the time CTPHZ was incorporated on 1 April 2010 until 29 September 2010, he did not inform Han, Robin or Christine that he wanted to be appointed as a member of CTPHZ's board. The relevant part of the proceedings is as follows:

Q: Okay. If you did not approach any of my clients that you wanted to be made a member of [CTPHZ's] Board, how could they make you a director? They can't, right?

A: They can't, of course.

...

Q: After 1st April 2010, you went missing in action. Right? They didn't know ... whether you were still interested in [CTPHZ] or in the [Hangzhou project]. Agreed they did not know?

A: Yes, I gave [them] a free hand to run the show ...

99 Although the defendants blamed Han for excluding Michael from the CTPHZ board, there was ample evidence that Patrick and Richard did not want Michael to be involved in the Hangzhou project. In fact, on 10 February 2010, Michael emailed Patrick as follows to complain about his exclusion from the Hangzhou project:

I do appreciate your confidence to include me in your CTVAM team. To me, *that is secondary as compared to my primary focus in CTP and [the Hangzhou project]*. You will recall that CTP and [the Hangzhou project] were largely visualised and articulated by me ...

I would still prefer to be seen as a key driver in ... [the Hangzhou project]. *In your proposed setup in ... [the Hangzhou project] my presence has strangely disappeared.*

[emphasis added]

100 There was evidence that Patrick and Richard wanted to keep Michael in the dark about certain aspects of the Hangzhou project. In an email to Patrick, Robin and Christine on 11 March 2010, Richard said that he would lie to Michael that a proposed meeting had been postponed so that the others could meet behind Michael's back. The said email was as follows:

After due consideration, we have decided not to bring [Michael] into this coming Monday meeting as the discussion is sensitive on a number of issues including the [RMB130 million guaranteed profit for CTP]...

We shall continue with the meeting on Monday @ M Hotel but I will tell [Michael] that Christine will not be back on Monday so it has to be postponed.

[emphasis added]

101 Furthermore, on 1 April 2010, Richard emailed Vanwarm that Michael should not be told about the source of funds for CTP's participation in the Hangzhou project.

102 Richard revealed his dislike of Michael when he informed Patrick in an email on 3 June 2010 that he "1 million [per cent]" objected to having Michael as a shareholder of another company in which he and Patrick were to be involved. Part of this email read as follows:

What do you intend to bring [Michael] into CTIG or CTIH? Please don't make him a shareholder as we 1 million % object. He doesn't need us and we don't need him either.

....

PLEASE DON'T START ANOTHER VOLCANO ERUPTION.

[emphasis added]

103 Richard explained that he did not want to work with Michael because he wanted to avoid "fighting" with the latter.

104 In the light of the evidence on the exclusion of Michael from CTPHZ's board, I find that the defendants had no basis for saying that Han decided to leave Michael out of CTPHZ's board or that he did this in order to seize control of CTPHZ.

Whether Han failed to carry out "reasonable management tasks"

105 The defendants alleged that Han's failure to carry out the following "basic reasonable management tasks" ("the management tasks") justified the dismissal:

- (a) meet with Vanwarm to strengthen its relationship with CTP and CTPHZ;
- (b) discuss the weekly progress of investment commitments;
- (c) anticipate issues and solutions relating to these investments and projects at all levels;
- (d) identify known problems and explore possible feasible solutions;
- (e) meet with investors and project implementations to nurture and foster better partnerships;
- (f) visit the site to obtain actual appreciation of the land development;
- (g) update joint venture corporate and communication materials;
- (h) encourage the marketing, planning and time-tabling of investment promotion events;
- (i) review results of immediate past investment promotion events;
- (j) talk to and meet potential investors; and
- (k) ensure that the funding and construction deadlines under the Tripartite Agreement and Collaboration Agreement were met.

106 Although the defendants claimed that Han had to perform the list of management tasks, Patrick stated in an email to Richard on 3 June 2010 that Han was only appointed as a *non-executive* chairman. In response to Patrick's email, Richard stated that Han "*thinks* that he is executive and he is running the show" (emphasis added). Despite this, Richard testified that Han was an executive chairman who was required to perform the management tasks but his testimony, which was as follows, made no sense:

Q: So that means he is executive chairman.

A: Yah... *Not executive as in that sense*, yah.

Q: If that is what you say, Dr Han was an executive chairman of [CTPHZ], am I right?

A: -- *he's a chairman but not executive chairman...* Well, *as a chairman with executive role ... That's what I mean.*

Q: Chairman with executive role is an executive chairman ---

A: Okay.

[emphasis added]

107 It is also odd that the defendants, while suggesting that Han had failed to strengthen CTPHZ's relationship with Vanwarm, also accused him of being so close to Vanwarm's top officials that he could have IEC replace CTPHZ in the Hangzhou project.

108 The accusation that Han did not carry out the management tasks has its roots in Michael's email to Patrick and Richard on 29 October 2010, *after* Han had already been dismissed. In that email, Michael proposed an "action agenda" for himself and Patrick that included all the tasks that Han

allegedly did not do, and concluded as follows:

Note that [Han] did not do any of the stuff as described above... Our *new* action agenda *will also support his removal as Chairman of CTPHZ and from [HVC]* (together with Robin). [emphasis added]

109 Richard admitted that the idea of relying on Han's alleged failure to carry out the management tasks to justify Han's dismissal could be traced to Michael's email of 29 October 2010.

110 I find that the allegation that Han failed to carry out the management tasks was not proven and cannot be relied on to justify his dismissal.

Whether Han competed against CTPHZ and CTP

111 In their Defence, the defendants claimed that Han had to be removed because he entered into competitive projects and activities and was pre-occupied with his own companies at the expense of CTP and CTPHZ.

112 The defendants' complaint about Han's involvement in a project in Chengdu, China, was not tenable as Chengdu is situated more than 1,500 km away from Hangzhou. When cross-examined, Patrick admitted that the Chengdu project did not compete with the Hangzhou project. However, he and Richard subsequently alleged that the Chengdu project competed with the Hangzhou project for Han's time. Neither Han nor the defendants had been prohibited from playing a role in other projects. In fact, Patrick and Richard were themselves looking for opportunities to do other business in Asia at the material time. In any case, there was no evidence that the Chengdu project took up too much of Han's time.

113 As for Han's participation in IEC, it was not disputed that Han became a director of IEC only *after* he had been dismissed from CTPHZ and there was no proof that he had a hand in the setting up of IEC in September 2010. It follows that the allegations that Han competed with the Hangzhou project or was pre-occupied with his own vested interest in IEC were not proven.

Han's revelations to Vanwarm on internal disputes and proposed sale to BKCB

114 Finally, reference may be made to the defendants' assertion that the dismissal was justified because Han breached his fiduciary duties to CTPHZ by revealing to Vanwarm his dispute with the defendants as well as the planned sale of CTP's shares to a Malaysian company. They relied on *Tokuhon (Pte) Ltd v Seow Kang Hong and others* [2003] 4 SLR(R) 414 ("*Tokuhon*").

115 In *Tokuhon*, the director-shareholders of a company that distributed Tokuhon plasters did not have a cordial working relationship. One of them, a Mrs Seow, sent three letters to the person responsible for awarding the Tokuhon distributorship to convey her intention to withdraw from the company. She also mentioned numerous conflicts among the three directors. Subsequently, the company's distribution rights were withdrawn and Mrs Seow was invited to be Tokuhon's new distributor. The Court of Appeal, which accepted (at [38]) that what Mrs Seow did would, in ordinary circumstances, be a breach of her fiduciary duties, noted that as the recipient of the letters knew all along about the internal disputes and had been consulted by the various parties, there was no breach by Mrs Seow.

116 In my view, the circumstances in the present case are also not ordinary. Patrick and Richard were planning to sell their shares in CTP to a Malaysian company when it was understood all along

that the Hangzhou project was a China-Singapore project. Furthermore, unlike Mrs Seow in *Tokuhon*, Han was not telling Vanwarm that he was going to leave CTPHZ. Instead, as mentioned, Han told Patrick on 5 October 2010, a few days before he was dismissed from his positions in CTPHZ, that they should work with Vanwarm to ensure that the guaranteed profit of RMB130 million from the Hangzhou project was payable to CTPHZ. Patrick and Richard cannot be allowed to soil their hands by plotting to get rid of Han and sell their shares in CTP to a Malaysian company and then accuse Han of a breach of fiduciary duties when he alerted Vanwarm to these sordid facts. In any case, even if Han committed a technical breach of his fiduciary duties to CTPHZ, it ought to be noted that the proposed sale of CTP's shares to the Malaysian company did not materialise and HQEDA terminated the Tripartite Agreement because its extended deadline for the injection of capital into HVC was not met and not because of the internal disputes in CTPHZ. As for Vanwarm, although it initially terminated the Collaboration Agreement on the ground that there were internal disputes in CTPHZ, it did not have the right to do so and as mentioned, it finally relied on the termination of the Tripartite Agreement by HQEDA as a ground to terminate the Collaboration Agreement. In short, the revelation of the internal disputes by Han did not cause the exclusion of CTPHZ from the Hangzhou project.

Conclusion on whether Han was wrongfully dismissed

117 I have found that there was a shareholders' agreement that Han was to be chairman and a director of CTPHZ and that Han had a legitimate expectation that he would, without more, retain these positions. As the defendants could not justify the dismissal, Han was wrongfully dismissed on 12 October 2010.

Han's remedies and costs

118 Han is entitled to damages for losses suffered as a result of his dismissal from his posts in CTPHZ. The defendants asserted that Han did not suffer any loss as a result of the dismissal. Whether or not this is correct will be determined when damages are assessed.

119 Han also sought to have CTP and CTPHZ wound up under s 216 of the Companies Act, which allows minority shareholders to seek relief from oppression. He explained that CTP and CTPHZ are shell companies with no source of income and no viable business projects following the termination of the Hangzhou project. The defendants agreed that if the court finds that Han was wrongfully dismissed from his positions in CTPHZ, both CTP and CTPHZ should be wound up. I am of the view that in the circumstances of the case, it is just and equitable that these two companies be wound up and I order that this be done.

120 Han is entitled to costs.

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