

Spectramed Pte Ltd v Lek Puay Puay and others and another suit
[2011] SGHC 43

Case Number : Suits Nos 681 and 829 of 2009
Decision Date : 25 February 2011
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Lai Yew Fei and Melissa Tan (Rajah & Tann LLP) for the plaintiff in Suit No 681 of 2009 and all the defendants in Suit No 829 of 2009; Chan Kia Pheng and Sharon Lin (KhattarWong) for the first, second and fourth defendants in Suit No 681 of 2009 and the plaintiff in Suit No 829 of 2009; The third defendant in Suit No 681 of 2009 in person.
Parties : Spectramed Pte Ltd — Lek Puay Puay and others

Companies

25 February 2011

Judgment reserved.

Lai Siu Chiu J:

Introduction

1 These two actions arose as the result of a dispute between the shareholders of a company named Spectramed Pte Ltd ("Spectramed" or "the Company"). In Suit 681 of 2009 ("Suit 681"), Spectramed's majority shareholders caused it to bring a claim against, *inter alia*, its minority shareholder for breach of her duties as its director. In response, the minority shareholder sued the majority shareholders in Suit 829 of 2009 ("Suit 829") under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act") on the grounds that they had conducted the affairs of the Company in a manner oppressive to her. Both suits were tried together with the evidence adduced in Suit 681 to be applied to Suit 829.

The parties

Suit 681 of 2009

2 Spectramed, which is the plaintiff in Suit 681, is a company incorporated in Singapore on 3 May 2006 and was at all material times a wholesale supplier of professional, scientific and precision equipment for use in the medical and cosmetics surgery market. The Company has an issued share capital of \$100 comprising of 100 shares.

3 The first to fourth defendants in Suit 681 are:

(a) Lek Puay Puay ("Samantha"), who holds 48 of the 100 shares in Spectramed. Samantha was Spectramed's managing director from 2006 to 2008. She remained as a director of Spectramed until 2009.

(b) Lok Yee Min ("Jimmy"), who was Spectramed's marketing manager from 2007 to 2008. Jimmy is Samantha's husband.

(c) Tay Hui Choo ("Karen"), who was employed by Spectramed as an administrator from 2007 to 2008.

(d) Absolute MS (S) Pte Ltd ("Absolute"), a company incorporated in Singapore on 5 May 2008. Jimmy is Absolute's sole director and shareholder.

Suit 829 of 2009

4 The plaintiff in Suit 829 is Samantha. The first to fourth defendants are:

(a) Loo Liew Pian ("David"), one of two co-founders of Spectramed.

(b) Rosie Tang Miew Leng ("Rosie"), David's wife and the other co-founder of Spectramed. Rosie is also presently a director of Spectramed.

(c) Goh Poh Cheng ("Jasmine"), Rosie's daughter-in-law. Jasmine is the chairman of Spectramed's board of directors and also holds 52 of its 100 issued shares as a nominee of David and Rosie.

(d) Spectramed.

The facts

Background and incorporation of Spectramed

5 David and Rosie are the sole directors and shareholders of Innomed Pte Ltd ("Innomed"), a company incorporated in Singapore on or about 26 August 1976. Innomed is engaged in the wholesale business of beauty saloon equipment and supplies including cosmetics and toiletries, as well as the wholesale business of medical equipment, medicinal and pharmaceutical products.

6 Samantha joined Innomed on 1 July 1997 as a medical representative selling various health care products. She was very successful in her job and was promoted several times, eventually becoming a sales manager. Her job scope in Innomed included: (a) promoting and demonstrating machines to doctors; (b) liaising with exhibition organisers for trade shows; and (c) co-ordinating delivery and servicing of equipment.

7 Samantha tendered her resignation from Innomed in or about April-May 2006 without having secured another position. While serving out her notice at Innomed, she accepted an offer from David and Rosie to become managing director of Spectramed, which was incorporated around the same period.

8 At the time of its incorporation, Spectramed's shareholders and shareholdings were as follows:

- | | | | |
|-----|-------------------|---|-----|
| (a) | Michale Lee | – | 20% |
| (b) | Kong Toong Shiong | – | 20% |
| (c) | Chee Fui Fong | – | 8% |
| (d) | Lee Boon Tien | – | 40% |
| (e) | Jasmine | – | 12% |

Lee Boon Tien is Jasmine's husband and Rosie's son from her first marriage. Both Lee Boon Tien and Jasmine were holding their shares in Spectramed as nominees of David and Rosie.

9 By a board resolution dated 26 June 2006, the five initial shareholders of Spectramed were also appointed its directors with effect from 3 May 2006, with Jasmine being chairman of the board of directors. A day later, on 27 June 2006, Samantha was appointed managing director of Spectramed.

10 On 23 August 2006, Michale Lee, Kong Toong Shiong and Chee Fui Fong resigned as directors of Spectramed, leaving Lee Boon Tien, Jasmine and Samantha as the remaining directors. Although Jasmine stated in her affidavit of evidence-in-chief ("AEIC") that she and Samantha were the only directors of Spectramed after this date, it is unclear when Lee Boon Tien resigned as a director. At any rate, it seemed from the documents adduced at trial that he had completely dropped out of the picture by the start of 2007.

11 On 24 August 2006, Michale Lee and Kong Toong Shiong transferred their shares in Spectramed to Samantha, making her a 40% shareholder. It was not disputed that Samantha held the shares beneficially. On the same day, Lee Boon Tien transferred his shares in Spectramed to Jasmine, making her a 52% shareholder (she was however still a nominee of David and Rosie). Chee Fui Fong continued to hold the remaining 8% of Spectramed's shares.

12 Lee Boon Tien was relocated to France for work in February 2007. Jasmine accompanied him although she remained a director of Spectramed. Prior to Jasmine's departure, she and Samantha signed a board resolution on 22 January 2007 allowing either of them to be a signatory to Spectramed's bank accounts. Shortly thereafter on 24 January 2007, Samantha bought over Chee Fui Fong's 8% shareholding in Spectramed for \$1,600. Thus, as from 24 January 2007, the only two shareholders in Spectramed were Jasmine and Samantha.

13 After Jasmine went to France, Samantha was left to run Spectramed's business on her own. Samantha subsequently hired Jimmy as a marketing manager for Spectramed on 23 August 2007. Prior to joining Spectramed, Jimmy was a sales manager in a local distributor of electrical light fixtures. Samantha also hired Karen as an administrator for Spectramed on 3 December 2007.

Conflict between Spectramed's shareholders and Absolute's incorporation

14 In early 2008, signs of a conflict were beginning to show among David, Rosie and Samantha. According to Samantha, she had accepted David's and Rosie's offer to be Spectramed's managing director only on the understanding that she would be allowed to run the company without interference from David and Rosie, and that she could make strategic business decisions for Spectramed without having to consult them. However, David and Rosie had apparently reneged on this understanding and embarked on a series of oppressive acts that undermined Samantha's interest in Spectramed. David and Rosie denied Samantha's allegations and contended that it was Samantha instead who rebelled against them, forcing them to take defensive measures to protect Spectramed's interests.

15 On 29 April 2008, Samantha and Jimmy had a meeting with David and Rosie in which David and Rosie requested the transfer to them of Jasmine's 52% shareholding in Spectramed. David and Rosie further requested that Samantha make Rosie a joint signatory to Spectramed's bank account which Samantha refused. Samantha proposed to buy over Jasmine's 52% shareholding in Spectramed but her proposal was rejected.

16 On 2 May 2008, Jimmy tendered his resignation from Spectramed. Three days later, on 5 May

2008, Absolute was incorporated with Jimmy as its sole shareholder and director. The last day of Jimmy's employment with Spectramed was 30 May 2008. By July 2008, the number of employees in Spectramed had fallen to two – Samantha and Karen. It was not disputed that Samantha made the decision not to recruit new staff.

17 While Samantha remained as Spectramed's managing director during this period, her relationship with David and Rosie continued to deteriorate. Throughout July 2008, the two corresponded via email with a view to meeting up and ironing out their differences but it is unclear if any meeting took place. In any event, Samantha emailed Jasmine on 29 September 2008 proposing to buy over Jasmine's 52% shareholding in Spectramed or sell her own 48% shareholding to Jasmine. Samantha also stated that if Jasmine was not agreeable to either of her proposals, then Spectramed should be closed down.

Samantha's resignation as Spectramed's managing director

18 On 7 November 2008, a directors' meeting was held at Spectramed's office involving Jasmine (who had returned from France), Samantha and Spectramed's company secretary. It was resolved at that meeting to appoint Rosie as an additional director of Spectramed. Although Samantha objected, she was overruled by Jasmine who had a casting vote as chairman of Spectramed's board of directors.

19 On 11 November 2008, Karen tendered her resignation from Spectramed. She did not need to serve a notice period as she paid Spectramed one month's salary in lieu of notice.

20 Subsequently on 14 November 2008, Rosie and Jasmine changed the locks to Spectramed's office, preventing Samantha from having access to the office. Samantha was suspended from work shortly thereafter by Rosie and Jasmine, via a letter dated 17 November 2008.

21 On 24 November 2008, Samantha resigned as Spectramed's managing director. She remained as a director of Spectramed because she believed at the time that she would lose her shares in Spectramed if she was no longer a director. At around the same time, Rosie and Jasmine went through Spectramed's documents and accounts and formed the view that Samantha and Jimmy, assisted by Karen, had dishonestly been stripping Spectramed of its business, customers, suppliers and contracts with the intention of diverting the same to Absolute.

22 From late 2008 to 2009, Samantha and Jimmy were in negotiations with David and Rosie on how to resolve their dispute. Unfortunately, the parties failed to reach a settlement and Spectramed accordingly brought Suit 681 against Samantha, Jimmy, Karen and Absolute on 6 August 2009. Samantha resigned as a director of Spectramed a week later on 13 August 2009. She also commenced Suit 829 against David, Rosie, Jasmine and Spectramed on 29 September 2009.

23 On 10 March 2010, Spectramed obtained a Mareva injunction in Suit 681 against Samantha, Jimmy and Absolute. The Mareva injunction was upheld on appeal save that Samantha's and Jimmy's personal bank accounts were released from the injunction.

Claim and Defence in Suit 681

Spectramed's claim

24 Spectramed alleged in its pleadings that Samantha and Jimmy had set up Absolute as a vehicle to divert to the latter Spectramed's business, customers, suppliers and contracts. It also alleged that Samantha had misused its funds. Spectramed's specific allegations were that:

(a) Samantha and Jimmy had caused Spectramed to sell various products to Absolute below their normal market price. A full list of the products was set out at Annex A of Spectramed's Statement of Claim (Amendment No 3).

(b) Samantha and Jimmy had caused Absolute to sell various products to existing customers of Spectramed from around 22 to 28 May 2008, while Jimmy was still serving out his notice period with Spectramed.

(c) Samantha and Jimmy had caused a number of Spectramed's suppliers to terminate their respective distributorship agreements with Spectramed in favour of Absolute and/or to sell their products to Absolute instead of Spectramed.

(d) Samantha had caused Spectramed to pay commission to Jimmy on top of his salary without notifying the other directors or shareholders of Spectramed.

(e) Samantha had utilised Spectramed's resources to benefit Absolute by procuring Spectramed to order and pay for a rubber stamp meant for Absolute's business. Samantha also procured Karen to do administrative work for Absolute while Karen was still employed by Spectramed.

(f) Samantha paid herself petrol claims using Spectramed's funds even though she already had a car allowance as part of her remuneration package.

25 By reason of the above allegations, Spectramed contended that Samantha was liable for breach of trust, breach of her fiduciary duties, breach of her statutory duty as a director under s 157 of the Companies Act, and breach of her common law duties of care and skill.

26 As for the other defendants in Suit 681, Spectramed alleged that Jimmy and Karen had breached their fiduciary duties and their duties of good faith and fidelity as employees. Spectramed further contended that Jimmy and Absolute were liable for dishonestly assisting in Samantha's breach of trust and fiduciary duties, as well as their knowing receipt of Spectramed's assets that had been disposed of in breach of such duties.

27 For the avoidance of doubt, Spectramed's only allegation in respect of its claim against Karen was that she had breached her duties to Spectramed by knowingly performing administrative tasks for Absolute's benefit when she knew that Absolute was a competitor of Spectramed. Karen did not feature in Spectramed's other allegations involving the diversion of its business to Absolute by Samantha and Jimmy. Although Spectramed initially pleaded that Karen had also dishonestly assisted Samantha in the latter's breach of trust and breach of fiduciary duties, this point was not pursued in its closing submissions.

28 Lastly, Spectramed contended that Samantha, Jimmy and Absolute were liable for conspiring to injure the Company by unlawful means, and for inducing Spectramed's suppliers to breach their respective distributorship agreements with Spectramed.

29 By reason of the above, Spectramed claimed against Samantha, Jimmy and Absolute for an account of profits or, alternatively, damages to be assessed against all the defendants (including Karen). Spectramed further claimed against all the defendants for damages in respect of management time and investigation costs, and a sum of \$2,276.54 against Samantha for unauthorised petrol claims.

30 Spectramed also had an additional claim of \$428.00 against all four defendants in respect of certain season parking charges, but this point was also not pursued in its closing submissions.

The defence of Samantha, Jimmy and Absolute

31 The response of Samantha, Jimmy and Absolute to Spectramed's allegations was as follows:

(a) In relation to the items allegedly sold by Spectramed to Absolute:

(i) Samantha admitted that she had caused Spectramed to sell several machines known as "NannoLight MP 50" and "Trio Skin Tightener" to Absolute at a discount. Her reason for doing so was to make Absolute a dealer for Spectramed for these products so that Absolute instead of Spectramed would be responsible for after-sales service, repair and maintenance.

(ii) Samantha also admitted that she had caused Spectramed to sell a machine known as a "Co-Cell Fractional CO2 Laser" to Absolute. This was done because Absolute had taken over the exclusive distributorship of this product by the time of the sale.

(iii) Samantha, Jimmy and Absolute conceded to Spectramed's claims for the remaining products listed in Annex A of its Statement of Claim (Amendment No 3).

(b) As for the products sold by Absolute to Spectramed's customers while Jimmy was still Spectramed's employee, Samantha and Jimmy admitted that it was wrong of them to have allowed Absolute to sell such products.

(c) Samantha and Jimmy denied procuring Spectramed's former distributors to transfer their distributorships to Absolute. Their defence was that those distributors had their own independent reasons for wanting to terminate their distributorships with Spectramed. There was also one supplier known as Medro Medical Division Co Ltd ("Medro Medical") from whom Samantha caused Spectramed to cease buying products. Samantha's reason for doing so was that she had made her own assessment and decided that it was not viable for Spectramed to distribute Medro Medical's products in Singapore.

(d) Samantha admitted that she was responsible for Spectramed's payment of commissions to Jimmy in respect of the sale of two units of NannoLight MP 50 by Spectramed. She explained that it was because Jimmy was involved in work which went beyond his responsibilities as marketing manager in the pre-shipment inspection, testing and commissioning of those machines.

(e) Samantha conceded that she had used Spectramed's funds to pay for a rubber stamp used for Absolute's business. As for Karen's performing administrative tasks for Absolute while she was still employed by Spectramed, Samantha, Jimmy and Absolute contended that those tasks were minor and did not take up any of Spectramed's resources other than paper.

(f) Finally, in relation to Spectramed's allegation that Samantha had made unauthorised petrol claims, Samantha asserted that she was justified in reimbursing herself for those expenses as they had been incurred in the course of Spectramed's business.

Karen's defence

32 Karen admitted that she had performed various administrative tasks for Absolute and that she knew such tasks were not for Spectramed's benefit. However, she contended that she had not

breached her duties to Spectramed because those tasks were done with the express knowledge and consent of Spectramed's managing director, Samantha. Karen added that she had at all times acted in the belief that she was not doing anything illegal or unlawful, or in breach of her terms of employment with Spectramed.

The pleadings in Suit 829

Samantha's claim

33 Samantha sued David, Rosie and Jasmine on the ground that the three of them had conducted Spectramed's affairs in a manner oppressive to her. Specifically, Samantha contended that although Spectramed was meant to be run as a quasi-partnership between its respective shareholders, her interests as a minority shareholder had been undermined by David, Rosie and Jasmine through the following series of incidents:

(a) In February 2008, David had met with Steven Daffer and Ron Bergund of Sybaritic Inc ("Sybaritic"), an American company that apparently had an exclusive distributorship agreement with Spectramed for the sale of the former's products in Singapore. Samantha averred that David had attempted to divert this exclusive distributorship agreement to his own company Innomed, which would have resulted in Spectramed having to pay more to purchase Sybaritic's products.

(b) David and Rosie requested at the 29 April 2008 meeting (at [\[15\]](#) above) for Jasmine's shares to be transferred to them and for either David or Rosie to be joint signatories to Spectramed's bank account with Samantha. This caused Samantha to suspect that they were plotting to wrest control of Spectramed from her.

(c) On 7 May 2008, David and Rosie caused Jasmine to unlawfully withdraw \$225,600 from Spectramed's bank account, leaving a balance of \$60.15. Although the monies were returned the next day, Samantha contended that the withdrawal was done to demonstrate to her that David and Rosie were still in control of Spectramed and could transfer out its funds at any time without her approval.

(d) Between March and May 2008, David made several requests to Hong Sool Joo ("Joo"), the president of a Korean company called Shin Han ENI ("Shin Han"), to allow Innomed to be the exclusive distributor of Shin Han's Co Cell Laser System even though Spectramed already had exclusive distributorship rights for that product. David had also requested Joo in an email dated 23 May 2008 to sell Shin Han's products to Spectramed at a higher price so that 10% commission could be paid to David.

(e) In June 2008, David and Rosie caused Innomed to publish an advertisement in Dawn Magazine, a publication for medical practitioners. The advertisement stated that the NannoLight MP 50 and Trio Skin Tightener were available to be purchased from Innomed even though Spectramed was already the exclusive distributor of those products.

(f) Jasmine appointed Rosie as an additional director of Spectramed against Samantha's objections at a directors' meeting on 7 November 2008. Samantha alleged that this meeting was sprung on her by surprise. Samantha was subsequently locked out of Spectramed's office and excluded from its management.

34 By reason of the above, Samantha requested (pursuant to s 216(2)(d) of the Companies Act) that the court order David, Rosie and/or Jasmine to purchase her 48 shares in Spectramed at a fair

value to be determined by an independent valuer. Samantha also asked for the costs of the valuation and of Suit 829 to be borne by David, Rosie and/or Jasmine.

35 Finally, Samantha alleged that she made a loan of \$9,600 to Spectramed as an injection of working capital sometime in July 2006. She claimed the return of the loan.

The defence of David, Rosie and Jasmine

36 David, Rosie and Jasmine denied Samantha's allegations and contended that it was Samantha's breach of her directors' duties which necessitated the defensive measures that they took to protect Spectramed's interests. Specifically, they responded to each of her allegations as follows:

(a) David and Rosie denied they had attempted to divert the distributorship of Sybaritic's products from Spectramed to Innomed. According to them, David had sought in February 2008 for Innomed to be the exclusive distributor of Sybaritic's products in Singapore with Spectramed as the sub-distributor so that both companies could enjoy economies of scale. They did not know at the time that Spectramed already had the exclusive distributorship of Sybaritic's products.

(b) David and Rosie admitted they were instrumental for Jasmine's withdrawal of \$225,600 from Spectramed's bank account. Their explanation was that at the meeting with Samantha on 29 April 2008, Samantha had told them that she was going to treat Innomed as a competitor thenceforth. As a result, David and Rosie feared that she was going to dispose of Spectramed's assets without their knowledge. The withdrawal of the money was a pre-emptive measure but after it was carried out, David, Rosie and Jasmine realised that their action was inappropriate and Rosie returned the money the following day.

(c) As for the advertisement by Innomed in Dawn Magazine, David and Rosie reiterated that they did not then know that Spectramed was the exclusive distributor of the NannoLight MP 50 and Trio Skin Tightener in Singapore.

(d) In relation to Rosie's appointment as a director against Samantha's wishes on 7 November 2008, Jasmine's position was that Rosie's guidance was needed in the light of the then on-going problems. In any event, Samantha was not entitled to complain because by then, Samantha had already completed her scheme of diverting Spectramed's business to Absolute.

37 I should point that in their closing submissions, the three defendants did not address Samantha's complaint in relation to David's attempt to divert the distributorship of Shin Han's Co Cell Laser System to Innomed and his requests for commissions from Joo. Samantha's allegation/evidence was therefore unchallenged.

38 Lastly, Spectramed denied that Samantha had made any loans to the Company.

The findings

39 As the issues in Suit 681 and Suit 829 were closely intertwined, I have decided to approach the issues in a broad chronological order. I will first set out my findings on the initial relationship between the parties and the alleged oppressive acts against Samantha, before dealing with Spectramed's allegations against Samantha, Jimmy, Karen and Absolute.

The Spectramed Agreement

40 As mentioned above (at [14]), Samantha claimed that she agreed to become Spectramed's managing director only on the understanding that she would be allowed to run the company without interference from David and Rosie, and that she could make strategic business decisions for Spectramed without having to consult them. Both counsel referred to this understanding as the "Spectramed Agreement" and I will accordingly adopt this term, although it should be noted that the alleged Spectramed Agreement was ultimately an informal understanding and should not be taken to suggest that there was an actual, written contract between the parties.

41 Samantha had deposed in her AEIC that when she tendered her resignation from Innomed in about April-May 2006, she did so because she could not tolerate David's mood swings and temper. While she was serving her notice period, David and Rosie offered her the job of managing director of Spectramed based on the understanding as set out in the Spectramed Agreement. Samantha added that without the Spectramed Agreement, it would have been illogical for her to leave Innomed and join Spectramed, only to face David and his bad temper again and to have him continue to impose his will on her.

42 David and Rosie, on the other hand, totally denied the existence of the Spectramed Agreement. They deposed in their AEICs that when Samantha was serving out her notice period at Innomed, she informed Rosie that she had yet to secure suitable alternative employment and was having problems with her husband Jimmy. Rosie felt sorry for Samantha and spoke to David about offering her a job with Spectramed in appreciation of her contributions to Innomed in the past. David agreed.

43 David and Rosie added that Spectramed's managing director was supposed to have been Michale Lee, who as mentioned above (at [8]-[9]) was one of the initial shareholders and directors of Spectramed along with Kong Toong Shiong. However, as David and Rosie were unable to contact Michale Lee after Spectramed was incorporated, they decided to appoint Samantha as managing director instead. Michale Lee and Kong Toong Shiong subsequently resigned from Spectramed because they had found other jobs and gave up their 40% shareholding in Spectramed, which David and Rosie then gave to Samantha.

44 David and Rosie also deposed that they were the ones who provided the start-up funding for Spectramed and it was only natural for businessmen in their position to have the final say in any important decisions that were to be made. As further evidence of their involvement in Spectramed's business, the couple produced several emails from 2007 to 2008 where Samantha appeared to be consulting David on how to manage Spectramed's business. David also sent several emails to Samantha and Jimmy (after Jimmy joined Spectramed in August 2007) giving them leads on new product lines or customers.

45 Finally, David and Rosie relied on the following email from David to Samantha dated 27 January 2008:

Sam,

I am requesting for the following:

1. The accounts ending 31 Dec 2007.
2. Quarterly P & L wef 2008.
3. A email copy of the monthly bank Statement of Account for the whole of 2007 and also monthly from now on.

4. That we have a monthly meeting from now on. As a major shareholder, we would like to be updated on the major issues, purchases and sales. This shall take place by first week of the following month at Spectramed's office.

Hope you have no objections with the above.

46 Samantha replied to the above email on 28 January 2008 saying that David's request was "perfectly fine with us" as long as they scheduled to meet at Spectramed's office. David and Rosie therefore contended that Samantha's allegation of a Spectramed Agreement was contrived because Samantha had never raised any issue of David's involvement in Spectramed's business throughout their dealings nor did she object to David's above request to be updated on Spectramed's operations.

47 Having heard the evidence, I find that there was indeed a Spectramed Agreement as alleged by Samantha – that she could run Spectramed independently and make strategic business decisions without interference from David and Rosie. It is noteworthy that Samantha was left to run Spectramed without supervision from David or Rosie since its incorporation, until early 2008. David and Rosie admitted in cross-examination that they did not supervise Samantha in the day-to-day running of Spectramed for the period June 2006 to December 2007. David also admitted that he could not recall making any important decisions for Spectramed during that period.

48 Secondly, it was clear that Samantha was never required to report to David or Rosie on Spectramed's activities during the same period. Although David and Rosie claimed that Samantha had consulted David in relation to running Spectramed on several occasions, there was a difference between Samantha seeking David's advice as opposed to his approval. Rosie admitted in cross-examination that for most of the instances when David was involved in Spectramed's business, Samantha was only seeking his advice. The one exception related to an email dated 11 January 2007 where Samantha asked David if "it is alright" to sell a particular machine at \$30,000 to \$35,000. Given the context in which their other communications were made, I find that Samantha was also asking David for his advice not his approval, in that particular instance.

49 I do not find it strange that Samantha would have consulted David in relation to Spectramed's business even though she was entitled under the Spectramed Agreement to run Spectramed without David's or Rosie's interference. David had been running his own company, Innomed, for years while Spectramed was Samantha's first experience of running a company. David by his own admission also had many contacts in the medical, aesthetic and cosmetic surgery industry and it was only natural for Samantha to seek his advice without him, as she put it, imposing his will on her.

50 Thirdly, I disbelieved David's and Rosie's version of the circumstances in which Samantha became Spectramed's managing director. It did not make sense for Samantha to resign from Innomed because she was having problems with her husband Jimmy and, in the next breath, accept David's and Rosie's offer to join another company they owned for no reason. Samantha's version was more credible – she wanted to leave Innomed because she was tired of working under David's thumb, but accepted the opportunity to have the chance to run and manage her own company and make her own independent decisions. Further, although David and Rosie said that Michale Lee was originally supposed to have been Spectramed's managing director instead of Samantha, their evidence was contradicted by Michale Lee himself, who testified that he never had discussions on the subject with David and Rosie.

51 Finally, David's own email to Samantha on 27 January 2008 (referred to at [\[45\]](#) above) showed that he and Rosie never expected to be updated on Spectramed's finances and operations up until that point, when he made the request "as a major shareholder". The reasons for David's interest in

Spectramed from 2008 onwards will become apparent later.

52 Taking all the factors together, I find that the Spectramed Agreement existed as an informal understanding between Samantha, David and Rosie that Samantha would be allowed to run Spectramed and make strategic business decisions for the Company without interference from David or Rosie. While this did not mean that Samantha could run Spectramed as she pleased without being accountable to them at all (they were, after all, Spectramed's majority shareholders), the presence of the Spectramed Agreement would be a relevant factor in determining whether Samantha had been oppressed as a minority shareholder in Spectramed.

Samantha's loan of \$9,600 to Spectramed

53 Although Spectramed's pleadings denied it had taken any loans from Samantha, Rosie had conceded in cross-examination that Samantha was required to make a contribution of \$9,600 to Spectramed as working capital at the time she joined the company and that the loan was repayable on demand. I am of the view that Spectramed does owe Samantha \$9,600.

David's attempt to divert the Sybaritic distributorship of Spectramed to Innomed

54 Samantha called Steven Daffer, Sybaritic's president, as a witness. Daffer gave evidence that Sybaritic and Spectramed entered into a "Non-Exclusive Territory Agreement" dated 5 November 2007. Despite the title, the agreement gave Spectramed exclusive distributorship rights in Singapore over Sybaritic's NannoLight MP 50 machine as well as a line of Sybaritic's products known as "IPL products". Subsequently, Daffer met David in Singapore on 15 February 2008 at Innomed's office and David asked for the exclusive distributorship rights for the sale of Sybaritic's products in Singapore to be awarded to Innomed. Daffer also deposed that at that time, he was unaware that Samantha was a shareholder in Spectramed. It was only when he met Samantha and Jimmy the following day that she informed him of this fact. When Daffer met David and Rosie on 17 February 2008, David repeated his request for Innomed to be given exclusive distributorship rights of Sybaritic's products in Singapore.

55 Samantha also gave evidence in her AEIC and in cross-examination that David had telephoned her on 16 February 2008 (the day after his first meeting with Steven Daffer) and informed her that he had told Daffer that "Innomed will take over your line on Sybaritic". Samantha was furious because she was never consulted on the matter and when she confronted David in Spectramed's office later that day, David told her he had the right to take such actions as he was Spectramed's founder. This confrontation eventually led to David making a scene in Spectramed's office.

56 David's case was that Spectramed and Sybaritic did not even enter into any Non-Exclusive Territory Agreement dated 5 November 2007. Even if they did, David said in cross-examination that he only became aware of Spectramed's exclusive right to distribute Sybaritic's NannoLight equipment in September 2009, during the course of legal proceedings. He deposed in his AEIC that when he asked Steven Daffer to give Innomed the exclusive distributorship for Sybaritic's products in February 2008, it was his intention to make Spectramed the sub-distributor so that both companies would enjoy economies of scale. It was thus always his intention to find a win-win solution for Innomed and Spectramed.

57 As for the altercation with Samantha in Spectramed's office on 16 February 2008, David said in cross-examination that he had earlier informed Samantha that he wanted to attend a meeting which Samantha was going to have with Sybaritic that day in Spectramed's office. Thereafter, Samantha confronted him and declared that she was Spectramed's managing director, that she had worked so hard to build up Spectramed and that David had no right to play any role in Spectramed's business.

She apparently did not inform David that Spectramed already had the exclusive right to distribute Sybaritic's products in Singapore.

58 I find, contrary to David's contention, that Spectramed and Sybaritic did enter into the "Non-Exclusive Territory Agreement" dated 5 November 2007 as mentioned by Steven Daffer. Daffer gave evidence that this agreement was signed on behalf of Sybaritic by his son, Anthony Daffer, and that he was present when the agreement was signed. Steven Daffer's evidence in this regard was not challenged in cross-examination.

59 I also find that David was untruthful when he claimed not to have known that Spectramed had been awarded the exclusive distributorship right for Sybaritic's NannoLight equipment until the present actions were commenced in 2009. In June 2008, David had been corresponding with Jory Steinman (Spectramed's Managing Director of Asia Pacific) regarding Innomed's bid to become Sybaritic's exclusive distributor in Singapore and Vietnam. By an email dated 12 June 2008, Steinman informed David that if Innomed was willing to meet certain sales targets, it would become the exclusive distributor for Singapore and Vietnam while Spectramed would become the sub-distributor working under Innomed. Steinman also warned in the same email that "[t]his is a very complicated decision to make and I have no doubt that Vinhy will become very upset and perhaps Spectramed."

60 David had replied on 19 June 2008 and informed Steinman that Innomed would not pursue the Sybaritic distributorship. He mentioned that "since we own part of Spectramed, we shall leave it as it is and hope that our business with Sybaritic will continue to grow." In the light of the chain of emails, David must have known that Spectramed already had the exclusive distributorship of some of Sybaritic's products (viz the NannoLight MP 50 and other IPL products) since there was no other reason for Spectramed to become upset at Innomed's attempt to become Sybaritic's exclusive distributor.

61 In fact, the likely story was that David had already known about Spectramed's exclusive distributorship for the NannoLight MP 50 and IPL Products by February 2008. I disbelieve David's evidence that his confrontation with Samantha on 16 February 2008 arose out of his request to attend Samantha's meeting with Sybaritic later that day. It seemed implausible for both David and Samantha to have a flare-up over such a minor issue. Samantha's version of events (that she confronted David over his plans for Innomed to take over Spectramed's line with Sybaritic) was the more probable scenario. Despite the confrontation with Samantha on 16 February, David still asked Steven Daffer a day later to grant Innomed the exclusive distributorship for Sybaritic products in Singapore.

62 I therefore find that David had attempted to divert the Sybaritic distributorship from Spectramed to Innomed in February 2008 and that such conduct continued until June 2008. Although David's attempt eventually failed, it was nevertheless relevant to the court's consideration of whether Samantha had been oppressed.

David's attempts to divert the Shin Han distributorship from Spectramed to Innomed and his requests for commission

63 Samantha called Joo, who as mentioned above (at [33(d)]) was Shin Han's president, as a witness. Joo deposed that from March 2008, Shin Han had granted Spectramed the exclusive distributorship for two of its products in Singapore, the Co Cell Laser System and the Eraser-C CO2 Laser System. Apparently, this exclusive distributorship was granted verbally and there was no written contract between Spectramed and Shin Han. Rosie also admitted in cross-examination that Joo informed her and David around this time that he had given the exclusive distributorship to

Spectramed.

64 Joo further deposed that David had made several verbal requests to him for Innomed to be the exclusive distributor for Shin Han's Co Cell Laser System, in place of Spectramed. Rosie confirmed this fact in cross-examination, and also acknowledged that it was wrong from Spectramed's standpoint for David to have made such requests.

65 Finally, Joo produced an email from David dated 23 May 2008 in which David requested Joo for 10% commission of any product sold by Shin Han to Spectramed:

...Although I founded and still own 52% of SpectraMed, Samantha has declared Spectramed as Innomed's competitor and therefore I am compelled to react according, not just for your products but for all other products as well. ...

From now on, pls note that Spectramed and Innomed are not longer business allies. We are separate entities and we are competitors. Since it was me who introduced you to Samantha, I feel that it is necessary for you to reserve a commission for any item sold to them.

David admitted making such a request in cross-examination and conceded that such a request was against Spectramed's interests.

66 David, Rosie and Jasmine did not challenge the above evidence in their closing submissions. Accordingly I find that David had attempted to divert the Shin Han distributorship from Spectramed to Innomed, as well as requested Joo for commissions on the sale of products from Shin Han to Spectramed. It bears noting that David's attempts and requests were ultimately unsuccessful, although I have already mentioned (see [\[62\]](#) above) that they would still be relevant factors in determining whether Samantha had been oppressed.

67 It is perhaps not too surprising that David wanted Innomed to take over the Sybaritic and Shin Han distributorships from Spectramed in 2008. In barely two years after its incorporation, Spectramed had become a very profitable business under Samantha's management. Its financial statements for the year ending 30 April 2007 recorded revenues of \$655,722 and a profit of \$56,203. For the year ending 30 April 2008, Spectramed had revenues of \$1,094,792.91 while its profit more than tripled to \$193,365.71. I believe that was why David only became interested in Spectramed's business from early 2008 onwards (see [\[51\]](#) above). He realised that Spectramed's distributorships were making money and wanted to divert those distributorships to Innomed so he would not have to share profits with Samantha.

68 Although it was denied by David, I think he probably felt he was justified in seeking to transfer part of Spectramed's business to Innomed since he was Spectramed's founder and had introduced Samantha to his various contacts in the industry. He thus believed that he ought to have a larger share of the business as long as this did not cause Spectramed to make a loss. However, Samantha had chosen to confront him instead of quietly accepting his decision and that was the reason their relationship soured.

Meeting on 29 April 2008

69 It was common ground that David and Rosie had asked Samantha to transfer Jasmine's 52% shareholding in Spectramed to them at the 29 April 2008 meeting, and for either David or Rosie to be joint signatories with Samantha for Spectramed's bank account. However, I do not see how a mere request like this could have constituted oppressive conduct against Samantha.

Unlawful withdrawal of \$225,600 from Spectramed's bank account

70 As noted above (at [36(b)]), David and Rosie prevailed on Jasmine to withdraw \$225,600 from Spectramed's bank account on 7 May 2008. What was disputed was their reason for doing so. Samantha alleged that David and Rosie wanted to show her that they were still in control of Spectramed. David and Rosie vehemently denied this and deposed in their AEICs that after the 29 April 2008 meeting, they realised that Samantha was holding them to ransom because she was in total control of Spectramed's assets and bank account, and was no longer prepared to comply with their instructions. Since Samantha had allegedly informed David and Rosie at the 29 April 2008 meeting that she then regarded Innomed as a competitor, they feared that she would dispose of Spectramed's assets without their knowledge and, out of this fear, they had Jasmine transfer the monies out of Spectramed's bank account.

71 Having reviewed the evidence, I am of the view that Samantha's version of events was more credible than David's and Rosie's. Although David and Rosie claimed that they procured Jasmine to make the withdrawal out of fear, this was not their initial position. On 19 July 2008, Samantha emailed David demanding an explanation as to why the monies were withdrawn. David's reply on 22 July 2008 was as follows:

Rosie is not a signatory to the bank account. Was there any fund missing from the account at all?

72 It was clear that David had initially attempted to cover up by pretending that nothing had happened at all. When he was confronted with the fact in cross-examination, he sought to clarify his position by saying that since the monies were returned the next day, he thought it was no longer an issue:

Q Okay. But do you recall that you tried to brush it off like it was nothing? Like it was a non-event.

A Well, I wouldn't say I brushed it off, because I thought when I---when---when we reversed the transaction, I thought, er, you know, we had corrected our mistake, your Honour.

73 I reject David's unconvincing answer. It was evident from his above email of 22 July 2008 that he was denying that any withdrawal of monies took place since he implied that neither he nor Rosie could have carried out the transaction. His refusal to come clean reflected poorly on his credibility.

74 Jasmine also gave an inconsistent reason for the withdrawal when she was confronted by Samantha. In an email to Samantha dated 22 October 2008, Jasmine wrote:

With regard to the transfer of funds on 8 May 2008, the transfer was made mistakenly. I realized the mistake and got the funds transferred back to Spectramed immediately the next day. I don't think Spectramed took any loss because of that. I don't know what you are trying to insinuate.

75 Jasmine was questioned on her email in cross-examination. Her answer was that she used the word "mistake" in the sense that she realised that the transfer was wrongful, and not in the sense that it was done accidentally. I neither believe nor accept her explanation. If Jasmine had really intended to admit in her email that she made a mistake in the sense that she had acted wrongfully, she would not have added the sentence "I don't know what you are trying to insinuate." It was clear, and I so find, that Jasmine was also attempting to cover up her wrongful act, just like David had done earlier.

76 In the light of the various excuses given for the withdrawal of the \$225,600 from Spectramed's bank account, I find that David's, Rosie's and Jasmine's common explanation for the withdrawal (that they did it out of fear) to be contrived and an afterthought. It is noteworthy that, despite their fear of Samantha disposing of Spectramed's assets, David, Rosie and Jasmine did nothing else to safeguard against such a possibility after the \$225,600 was returned to Spectramed's bank account on 8 May 2008. I therefore find that the real reason behind the withdrawal was that David and Rosie wanted to show Samantha that they were still in control of Spectramed (through Jasmine) and could remove its assets at any time without her consent.

Innomed's advertisement of NannoLight MP 50 and Trio Skin Tightener in the June 2008 edition of Dawn Magazine

77 In her AEIC, Samantha had deposed that David and Rosie had caused Innomed to wrongfully advertise the NannoLight MP 50 and Trio Skin Tightener in the June 2008 edition of Dawn Magazine when Spectramed already had the exclusive distributorship rights over both products. She added that as David and Rosie knew they were Spectramed's majority shareholders, Spectramed would not be able to sue them or Innomed for the false advertisement. Samantha concluded that this incident showed that David and Rosie were planning to take control of the distributorship of Sybaritic's products in Singapore, to Spectramed's detriment.

78 As I mentioned above (at [\[58\]](#)), I found that Spectramed had entered into the Non-Exclusive Territory Agreement dated 5 November 2007 with Sybaritic, which gave Spectramed the exclusive right to distribute the NannoLight MP 50 and other IPL Products in Singapore. Aside from this agreement, Spectramed had also entered into another agreement with Sybaritic on 26 June 2008. This latter agreement was titled "Exclusive Distributor Agreement" and gave Spectramed the exclusive right to distribute the NannoLight MP 50, Trio Skin Tightener, and a product called the "Lumi 8 LED" in Singapore, with effect from 1 June 2008. It is unclear if this Exclusive Distributor Agreement was meant to supersede the earlier Non-Exclusive Territory Agreement but I assume that was the case. In other words, Spectramed had the exclusive distributorship of the NannoLight MP 50 from November 2007 while it only obtained the exclusive distributorship of the Trio Skin Tightener from 26 June 2008 (backdated to 1 June 2008).

79 With regard to Innomed's advertisement of those products in the June 2008 edition of Dawn Magazine, David and Rosie both testified that the advertisement had been placed in May 2008, when Innomed was still negotiating with Sybaritic to become the latter's exclusive distributor in Singapore.

80 Since Innomed's advertisement in Dawn Magazine for the Trio Skin Tightener was placed before Spectramed obtained the exclusive distributorship of the product, I do not find that Innomed had acted wrongfully in placing such an advertisement. However, it was clear that David and Rosie had knowingly caused Innomed to place a wrongful advertisement for the NannoLight MP 50, in the light of my earlier finding (at [\[61\]](#) above) that David had already known in February 2008, of Spectramed's exclusive right to sell the NannoLight MP 50.

Sales from Spectramed to Absolute at a discount

81 I turn now to Spectramed's sales of products to Absolute at a discount. As mentioned earlier (at [\[31\(a\)\]](#)), Samantha, Jimmy and Absolute did not deny that those products were sold by Spectramed to Absolute. Indeed, they conceded to Spectramed's claims for most of the products barring the more expensive ones, comprising four units of NannoLight MP 50, three units of Trio Skin Tightener and one Co Cell Fractional CO2 Laser.

82 Samantha deposed that she had made a *bona fide* decision to sell the NannoLight MP 50 and Trio Skin Tightener units to Absolute in order to make Absolute the dealer of Spectramed for those products. She explained that the advantage to Spectramed in having this arrangement was that the end purchasers would look to Absolute to provide after-sales service, repair and maintenance. Thus, Spectramed would not be burdened with such obligations. Samantha also said that Spectramed did not have any employees with the relevant technical expertise to provide such services after Jimmy ceased his employment with Spectramed at the end of May 2008. As such, she had assessed that it was in the best interests of Spectramed to have a distributor-dealer relationship with Absolute as the products were sold to Absolute at a good profit.

83 I reject as contrived Samantha's story that Absolute was meant to be Spectramed's dealer; it went against the weight of the evidence. First, Jimmy had submitted an application to M/s S B Tan & Co for the incorporation of Absolute on 2 May 2008 (the same day he tendered his resignation from Spectramed). In the application form, he described Absolute's principal activities as "wholesale of professional, scientific and precision equipment" and "general wholesale trade (imports and exports)". This description was identical to that of Spectramed. There was no mention of Absolute being a dealer or a company to provide after-sales service, repair or maintenance. In fact, Samantha, Jimmy and Absolute did not produce any evidence at trial as to what were the after-sales service, repair and maintenance Absolute had provided to Spectramed or to its customers.

84 Second, Karen testified in cross-examination that Samantha had informed her that Absolute was going to sell the same products as Spectramed:

A Samantha told me that Jimmy has resigned from the company and he will be setting up a new company called Absolute. And because it is too risky for both husband and wife to be working in the same company, having gone through all these uncertainties.

Q And what---were you told what the new company would do?

A Er, yes.

Q What were you told?

A That they will be selling the same medical equipments.

85 Third and most strikingly, Samantha contradicted her own evidence in a later part of her AEIC where she was attempting to explain why Spectramed had cancelled the sale of one NannoLight MP 50 to Point Medical Group ("PMG") on 13 May 2008. Samantha had said that she "was very certain by May 2008 that there was no future for Spectramed, especially if David and Rosie managed to divert the Sybaritic and Shin Han distributorships to Innomed." Hence, she had Spectramed cancel the sale to PMG. This was also part of the reason for her deciding not to take on new distributorships or hire new employees for Spectramed. However, this explanation goes against her own case that she intended to let Spectramed and Absolute have a distributor-dealer relationship. If she genuinely felt that there was no future for Spectramed and that there was no point carrying on trading, she would not have bothered making Absolute a dealer for Spectramed's products.

86 The simplest and most probable explanation for Samantha's actions was that she had intended to divert Spectramed's business to Absolute. She genuinely felt aggrieved that David and Rosie were trying to undermine her and take away portions of Spectramed's business for their own company

Innomed, when she had worked so hard to build up the business on her own. Samantha proclaimed several times in cross-examination that Spectramed was her “baby” and she was understandably furious and upset at David’s and Rosie’s attempt to take over Spectramed’s business. I therefore find that she decided to retaliate and move the business out of their reach. I also find that Jimmy willingly assisted her in such a plan by incorporating Absolute as a vehicle for the new business.

87 Samantha’s intention to transfer Spectramed’s business to Absolute can be seen from the following incident. As I noted above (at [85]), Samantha arranged for Spectramed to cancel the sale of one NannoLight MP 50 to PMG on 13 May 2008, barely eight days after Absolute was incorporated. Ten days later, on 23 May 2008, Absolute issued an invoice to PMG for one NannoLight MP 50 for the price of \$48,000 (excluding GST). On 5 June 2008, Absolute issued a purchase order to Spectramed for one NannoLight MP 50. Spectramed issued its invoice to Absolute the next day on 6 June 2008 at a price of \$30,000 (excluding GST). Based on a comparison of the serial numbers, the NannoLight MP 50 that was sold by Absolute to PMG was the exact same machine sold by Spectramed to Absolute. This was clear evidence that Samantha was diverting Spectramed’s sales, customers, profits and ultimately, business, to Absolute.

Co Cell Fractional CO2 Laser

88 Samantha mentioned in her closing submissions that she had procured Spectramed to sell one Co Cell Fractional CO2 Laser to Absolute on 27 August 2008 because this was a Shin Han product and Absolute had taken over the exclusive distributorship of Shin Han products from Spectramed by then. Leaving aside the fact that this was neither her pleaded case nor raised in her AEIC, Samantha did not give any reason for selling the Co Cell Fractional CO2 Laser to Absolute at a discount. Accordingly I find that she had no valid reason to do so.

Other products

89 The other products sold by Spectramed to Absolute at a discount, which Samantha, Jimmy and Absolute conceded to are as follows:

(a) Atlas Euro Deluxe Aesthetic Couch (4 units);

(b) Auriderm XO (30 tubes);

(c) Ecla Cell Duo (11 sets); and

(d) Hyaluronic Acid (2 cases).

90 Samantha, Jimmy and Absolute submitted in their closing submissions that they should be given credit for the following items as they already formed part of Spectramed’s claim (at [24(b)] above, regarding products sold by Absolute to Spectramed’s customers, while Jimmy was still an employee of Spectramed) to which they had conceded (at [31(b)] above):

(a) Atlas Euro Deluxe Aesthetic Couches (2 units);

(b) Auriderm XO (10 tubes); and

(c) Ecla Cell Duo (5 sets).

91 Spectramed contended on the other hand that no credit should be given as Samantha, Jimmy and Absolute did not produce any evidence that those items were the same as the items sold by Absolute to Spectramed's customers.

92 I am of the view that Samantha, Jimmy and Absolute should be given credit for the two couches and the five sets of Ecla Cell Duo referred to above. When Absolute issued its invoice for the NannoLight MP 50 to PMG on 23 May 2008, the invoice included the couches and the Ecla Cell Duo sets as part of the overall package. Subsequently, when Spectramed issued its invoice to Absolute for the NannoLight MP 50 on 6 June 2008, the invoice included those exact same items. The invoices suggested that the two couches and five Ecla Cell Duo sets sold by Spectramed to Absolute at a discount were the same as the couches and Ecla Cell Duo sets sold by Absolute to PMG; they were clearly intended to be sold together with the NannoLight MP 50 as a package. Therefore, Samantha, Jimmy and Absolute should be given credit for those items.

93 As for the ten tubes of Auriderm XO, there is no evidence that the tubes sold to Absolute at a discount were the same as those which Absolute had sold to Spectramed's customers. Samantha, Jimmy and Absolute should therefore not be given credit for the items.

Spectramed's loss of revenue

94 The question that remains is how much Spectramed had lost in revenue due to the sales to Absolute at a discount. In this regard, Rosie produced a worksheet displaying the prices at which Spectramed sold its products to Absolute and the prices at which it normally sold to other customers. Based on the worksheet, Spectramed had made a revenue loss of \$126,298.33 from all the products sold to Absolute. I accept this figure in my findings. After giving credit for the two Atlas Euro Deluxe Aesthetic Couches and the five sets of Ecla Cell Duo, I am left with a figure of \$123,208.33 which I find represents Spectramed's revenue loss from the items it sold at a discount. Samantha, Jimmy and Absolute had contended in their closing submissions that the average selling price of the NannoLight MP 50 in Rosie's worksheet did not take into account two units which were sold by Spectramed to Innomed at \$20,000. I find that those two units were meant to be sold to Innomed at a discount and should therefore not be factored into the average market price of the NannoLight MP 50.

Diversification of distributorships

Sybaritic distributorship

95 As mentioned above (at [78]), Spectramed had entered into the Exclusive Distributor Agreement with Sybaritic on 26 June 2008. However, on 30 October 2008, Sybaritic informed Spectramed that it was terminating this agreement with effect from 15 November 2008. It is not disputed that subsequently around January 2009, Sybaritic awarded the exclusive distributorship of its products to Absolute. Spectramed's case therefore was that Samantha and Jimmy had procured Sybaritic to terminate the Exclusive Distributor Agreement with Spectramed with the intention of diverting it to Absolute.

96 Samantha denied Spectramed's allegations. She deposed in her AEIC that Sybaritic awarded the exclusive distributorship of its products to Absolute on its own accord, and that she played no active part in the decision. Samantha, Jimmy and Absolute also called Jory Steinman as a witness to testify on Sybaritic's reasons for terminating the Exclusive Distributor Agreement with Spectramed.

97 Steinman gave several reasons for Sybaritic's termination of the Exclusive Distributor Agreement with Spectramed. First, he knew that David was Spectramed's majority shareholder but was still dealing with products (through Innomed) which competed with Sybaritic's products. Steinman believed this conflict of interest was unproductive for Sybaritic. Second, he did not like the fact that Innomed wanted to be Sybaritic's primary distributor in Singapore with Spectramed as a sub-distributor, due to the conflict of interest already mentioned. Third, he was personally unhappy with David for not allowing Sybaritic to pick up some of its equipment in Vietnam that was urgently needed, and for his unethical advertisement in the June 2008 edition of Dawn Magazine (which I have dealt with earlier). Fourth, Spectramed had failed to meet the sales targets laid down by Sybaritic.

98 I feel that the reasons given by Steinman do not sufficiently explain Sybaritic's decision to terminate the Exclusive Distributor Agreement with Spectramed. On the conflict of interest point, Steinman admitted in cross-examination that he had known by June 2008 that David owned part of Spectramed, and that Innomed was also distributing products that competed with Sybaritic. Despite being aware of the potential conflict of interest, Sybaritic still decided to enter into the Exclusive Distributor Agreement with Spectramed. The conflict of interest issue must therefore not have been a matter of great concern to Steinman.

99 I accept Steinman's evidence that he was unhappy with David over the latter's unethical conduct. However, this again did not explain why Steinman had to sever ties with Spectramed. It can be seen from the numerous documents and emails adduced at trial that Steinman had corresponded with David in his capacity as Innomed's owner, while conversely he had corresponded with Samantha and Jimmy in their capacities as Spectramed's officers. One example can be found in an email from Steinman to Jimmy dated 20 June 2008 (which was sent after David had informed Steinman that Innomed would no longer be seeking the exclusive distributorship for Sybaritic's products):

Dear Jimmy- Great news, Innomed is out (for sure) and you will be our main partner in Singapore.

Congratulations!

David said he will support your company.

I am attaching the new Agreement for you to sign. Print 2 copies, sign them and bring them to Bangkok.

100 It is thus clear that Steinman had always associated Spectramed with Samantha and Jimmy instead of David. His dislike of David, although understandable, was not a convincing reason for him to terminate Sybaritic's Exclusive Distributor Agreement with Spectramed.

101 Finally, Spectramed's failure to meet Sybaritic's sales targets was also not a credible explanation for Sybaritic to terminate the Exclusive Distributor Agreement. Steven Daffer accepted in cross-examination that Spectramed was only a few thousand dollars short of its sales target. Since I have already found that Steinman had always associated Spectramed with Samantha and Jimmy, it made little sense for him to terminate Sybaritic's relationship with Spectramed over this minor shortfall, only for Sybaritic to award a new exclusive distributorship to Absolute in January 2009.

102 I believe that the main reason for Steinman's decision to terminate the Exclusive Distributor Agreement with Spectramed was that he simply preferred to work with Jimmy. Although Jimmy had already resigned from Spectramed (in May 2008) before Spectramed signed the agreement with Sybaritic on 26 June 2008, Jimmy deposed in his AEIC that he had continued to liaise with Steinman using his Spectramed email account during the period so that Steinman would have more confidence in giving the exclusive distributorship to Spectramed. It was only in August 2008 when Steinman visited Singapore that Jimmy informed him that he had left Spectramed and was now working with Absolute. This, I find, was the real reason for Steinman's decision to pull out of Spectramed and award the exclusive distributorship to Absolute instead.

103 It was unclear from the evidence whether Steinman was aware that Samantha and Jimmy intended to use Absolute as a vehicle for the diversion of Spectramed's business. In any event, it was clear that Jimmy was more than happy for Sybaritic to terminate the Exclusive Distributor Agreement with Spectramed and award it to Absolute. Samantha, on her part, deliberately remained silent on the matter and made no effort to ensure Spectramed retained the exclusive distributorship with Sybaritic. I therefore find that Samantha and Jimmy had diverted the Sybaritic distributorship from Spectramed to Absolute.

Shin Han distributorship

104 Spectramed had the exclusive distributorship rights for Shin Han's Co Cell Laser System and the Eraser-C CO2 Laser System from March 2008 although, as noted above (at [\[63\]](#)), there was never any written exclusive distributorship agreement. However, on 20 June 2008, Jimmy sent an email to Joo on behalf of Absolute placing a purchase order for one Co Cell Laser System and one Eraser-C Laser System. Joo replied on 23 June 2008 indicating the prices of the products and also added that "[t]he distributor rightship of Absolute will be sent soon." Subsequently, Shin Han granted Absolute a letter of authorisation in July 2008 to be its exclusive distributor in Singapore with effect from January 2008. Spectramed's case therefore was that Samantha and Jimmy had diverted the Shin Han distributorship from it to Absolute.

105 Samantha and Jimmy denied the allegation and called Joo as a witness to explain why he decided to terminate Shin Han's distributorship with Spectramed. Like Jory Steinman, Joo said that he was unhappy with David due to the latter's persistent requests for Innomed to be given the exclusive distributorship of Shin Han's products, as well as David's request for commissions on the sale of Shin Han's products to Spectramed. Joo also deposed that after Jimmy left Spectramed's employ, he felt that Spectramed was no longer capable of carrying on the servicing of Shin Han's Eraser-C Laser Systems as Samantha was not trained to do such servicing.

106 Joo also mentioned in cross-examination that he knew Innomed was distributing a product called "Laser Link" which competed with Shin Han. As Joo was aware that David was an owner of both Innomed and Spectramed, he was therefore concerned about the conflict of interest, much like Steinman was with regard to the Sybaritic distributorship.

107 I find on the evidence that Samantha and Jimmy had diverted the Shin Han distributorship from Spectramed to Absolute, just as they did with the Sybaritic distributorship. Joo's concerns about Spectramed's lack of technicians (to service the Eraser-C Laser Systems) and the conflict of interest with Innomed were not convincing reasons to terminate Shin Han's distributorship with Spectramed. It was a simple enough matter for Samantha to have hired more technicians if she wanted to, while Joo admitted in cross-examination that he had known Innomed was distributing Laser Link since 2007, before Shin Han granted the exclusive distributorship of its products to Spectramed.

108 In fact, Joo had sent David an email dated 30 September 2008 in which he seemed to confess that Samantha and Jimmy had asked him to transfer the Shin Han distributorship from Spectramed to Absolute:

Do you remember that I mentioned 'Absolute' company in Malasia? Already, Absolute was trying to get imported licence at the time. Because Spectra had Cell unit from Dental exhibition for display purpose. *I did not change the distributor company, they did do, not me, Loo.* So I thought that Spectra to Absolute transferred action is imported action, so I gave the letter of distributorship, at the time in order to fix an imported permit.

[emphasis added]

109 When Joo was confronted with this email in cross-examination, he became evasive and tried to allege that the "they" in the email referred to David, who was representing Spectramed. I found his answer to be unconvincing. Joo was clearly attempting to protect Samantha and Jimmy by not coming clean with the fact that they had asked him to transfer to Absolute the Shin Han distributorship.

110 I accept that Joo genuinely disliked David because of the latter's unreasonable and unethical behaviour but this was not his real reason for terminating the exclusive distributorship with Spectramed. It is clear from the evidence that the move was instigated by Samantha and Jimmy.

Medro Medical distributorship

111 Spectramed did not have a formal distributorship agreement with Medro Medical although it had been distributing one of its products, the "SonoMaster", since around March 2007. However, apparently, Spectramed ceased to distribute the SonoMaster from August 2008 onwards and this was evidenced by an email dated 19 August 2008 from Samantha to one John Park of Medro Medical:

Dear John,

Thank you for accepting my proposal. In future, all buying will be under the new company.

Please amend the proforma Invoice to the following address and Company Name:

Absolute MS (S) Pte Ltd

1 Ubi View

#04-05

Focus One

Singapore 408555

112 Samantha claimed in her AEIC that in August 2008, she had assessed that it was not viable for Spectramed to continue distributing SonoMaster in Singapore because it carried some defects which might require frequent maintenance and servicing. Since Jimmy had already resigned from Spectramed by then, there was nobody to provide the required after-sales service.

113 I find Samantha's evidence to be contrived in the light of her above email where she expressly stated that "all buying will be under the new company" and asked John Park to amend the invoice

address from Spectramed's to Absolute's. As if that was not enough, she also mentioned at the end of the email that "[a]s for right now, we will correspondence thru SpectraMed email but once the NEW Company email posted." This email was another clear example that Samantha was moving Spectramed's entire business over to Absolute. I therefore find that Samantha and Jimmy had diverted the distributorship of Medro Medical's products from Spectramed to Absolute.

Commissions paid to Jimmy

114 As mentioned above (at [31(d)]), Samantha did not dispute that she had procured Spectramed to pay commissions to Jimmy during his employment with Spectramed. She explained in her supplementary AEIC that the commissions were paid in consideration of Jimmy's involvement in the pre-shipment inspection, testing and commissioning of two units of NannoLight MP 50 which went beyond his job scope as Spectramed's marketing manager.

115 Spectramed did not challenge Samantha's evidence in this regard but contended that it was nevertheless improper for her to pay the commissions without seeking the shareholders' authorisation as it put her in a position of conflict. As there was no factual dispute here, it is not necessary for me to make any findings. I will deal with the propriety of the commissions later in this judgment (at [\[126\]](#) below).

Karen's work for Absolute

116 As with the commissions, there was no dispute between the parties that Karen did some administrative work for Absolute (at Jimmy's request and with Samantha's consent) while she was still employed by Spectramed. Such work included the purchase of a water cooler for Absolute's office, printing and binding work, and the booking of a hotel room. Karen explained in her AEIC that she agreed to help Jimmy if she did not have any pressing work to do for Spectramed. She also added that she had always acted in the belief that she was not doing anything illegal or unlawful, and that she did not receive any extra reward from anybody for doing administrative tasks for Absolute.

117 I find that Karen carried out minimal administrative work for Absolute and it could not have resulted in any real detriment to Spectramed or any real gain for Samantha, Jimmy or Absolute. The tasks Karen carried out were simple, clerical work that would cumulatively have taken at most a couple of hours. There was really no need for Spectramed to have dragged Karen into these legal proceedings or to make an issue of the tasks she performed for Absolute when they formed a very insignificant portion of Spectramed's overall complaint.

Samantha's petrol claims

118 I turn next to Samantha's claim for petrol allowances. It was common ground that Samantha had claimed \$2,276.54 from Spectramed between April and October 2008, despite already having a car allowance of \$1,000 per month as part of her remuneration. Samantha explained in cross-examination that she utilised the \$1,000 car allowance to service the monthly instalments on her car, which was used for Spectramed's business. Although she would normally pay for petrol on her own, she said that the price of petrol shot up between April and October 2008; thus, she felt justified in making petrol claims during the period as the expense was incurred for Spectramed's business.

119 Samantha was not entitled to claim the extra \$2,276.54 in petrol expenses when she was already given a monthly car allowance. Although she spent the entire sum to service her monthly hire-purchase instalments instead of on petrol consumed by her car, that did not mean that she was entitled to make additional claims for petrol.

Meeting on 7 November 2008 and exclusion from management

120 Finally, I turn to the meeting held on 7 November 2008 at which Rosie was appointed as Spectramed's director against Samantha's wishes, and Samantha's subsequent exclusion from management of Spectramed. In the light of my earlier findings, the events of 7 November 2008 and subsequently are no longer relevant because by then Samantha had already completed her scheme of diverting Spectramed's business to Absolute.

General credibility of witnesses

121 I have arrived at the above findings not just by examining the objective evidence, but also by assessing the credibility and demeanour of the various witnesses in cross-examination. While it was obvious that neither party had been completely honest, I was inclined to favour Samantha's and Jimmy's evidence over that of David, Rosie and Jasmine in situations where the objective evidence was unclear and I only had one person's word against the other's. Both Samantha and Jimmy struck me as being more candid than the other witnesses. Their answers in cross-examination were straightforward and were without hesitation. I did not form the impression that their evidence was coached. They were also more willing to come clean and accept some of their wrongdoings at trial without pretending to be completely innocent.

122 Furthermore, as I mentioned earlier, Samantha in particular seemed genuinely aggrieved (from her demeanour in cross-examination) that David and Rosie had been attempting to undermine all the work and effort she had expended in building up Spectramed's business. This led to my earlier finding that she decided to retaliate by moving the business away from their reach. It was certainly not the case that greed got the better of Samantha and she tried to divert Spectramed's business away so that she would not have to share the profits with David and Rosie.

123 In contrast, David and Rosie displayed very little credibility as witnesses. Rosie's answers throughout cross-examination gave the impression that she had been coached. She consistently gave long-winded and irrelevant answers in response to counsel's questions, which suggested that her testimony had been rehearsed. As a result, she was caught off guard at several points. David on the other hand was a far shrewder witness and appeared to be the only person (among the defendants in Suit 829) who was fully aware of the issues in the present proceedings as well as the implications of his answers. Although David did not share Rosie's fate, I nevertheless gave little credence to his testimony. This was because he continued to maintain throughout trial that he was completely innocent of any wrongdoing, when the objective evidence strongly indicated to the contrary, that he was the one who had been greedy in the first place and who attempted to take away part of Spectramed's business for Innomed.

124 As for Jasmine, I found her evidence to be of little assistance. Although she was the chairman of Spectramed's board of directors, she appeared to have had very little knowledge of the Company or even of the present proceedings. The distinct impression she gave at trial was that she was simply acting on the instructions of David and Rosie (to a lesser extent). Consequently I gave little weight to her evidence.

The decision

125 Based on my above findings and the concessions made by the defendants, I find that Samantha is liable for breach of her fiduciary duties as a director of Spectramed in respect of the following:

- (a) Causing Spectramed to sell the products listed in Annex A of its Statement of Claim (Amendment No 3) to Absolute at a discount (but giving credit for two Atlas Euro Deluxe Aesthetic Couches and five Ecla Cell Duo sets);
- (b) Assisting Jimmy and Absolute to sell various products to existing customers of Spectramed;
- (c) Diverting the Sybaritic and Shin Han distributorships from Spectramed to Absolute, as well as causing Medro Medical to supply its products to Absolute instead of Spectramed; and
- (d) Using Spectramed's resources to pay for the rubber stamp used for Absolute's business.

126 Samantha is also liable for breach of fiduciary duty in respect of the commissions paid to Jimmy (see [\[114\]](#)–[\[115\]](#) above). Whatever her reason might have been for getting Spectramed to pay those commissions, she was obviously in a position of conflict of interest and should not have made the decision without the prior authorisation of Spectramed's shareholders.

127 Finally, Samantha must account for the sum of \$2,276.54 that she took from Spectramed in petrol claims.

128 It bears noting that even if Samantha had not been actively diverting Spectramed's business to Absolute, her very act of remaining as Spectramed's managing director and doing absolutely nothing while Spectramed's business was being taken away by Absolute was sufficient to give rise to liability. If Samantha genuinely felt that she could no longer carry on Spectramed's business due to David's, Rosie's and Jasmine's acts of oppression, she should have resigned from Spectramed at the outset and competed with them on a fair footing instead of remaining as Spectramed's fiduciary, where she was obligated to act in its best interests.

129 I also find Jimmy and Absolute liable as accessories for the items listed above at [\[125\]](#). Jimmy was clearly working together with Samantha in their plan to divert Spectramed's business to Absolute. Jimmy is further liable for knowing receipt of the commissions he obtained from Spectramed (at [\[126\]](#) above).

130 Spectramed's claim against Karen should be and is dismissed in view of my finding that the work she did for Absolute was *de minimis*.

131 As for Samantha's claim in Suit 829, I am of the view that her interests as a minority shareholder had been oppressed essentially by David's conduct (although Rosie and Jasmine also played a minor part in the same). In *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776, the Court of Appeal held at [81] that commercial fairness was the touchstone by which a court determines whether to grant relief under s 216 of the Companies Act. The court further said at [83] that quasi-partnerships are consistently scrutinised more strictly since the minority shareholders would have entered into the business on the basis of mutual trust and confidence, without spelling out their rights and obligations in entirety.

132 In the present case, I find that Spectramed was a quasi-partnership in the light of the Spectramed Agreement that Samantha would be entitled to run the business without David's or Rosie's interference, while any profits would naturally be split according to their respective shareholdings (52% to David and Rosie and 48% to Samantha). Unfortunately, David attempted to alter this profit-sharing ratio by trying to divert the Sybaritic and Shin Han distributorships from Spectramed to his own company Innomed, and by requesting for commissions from Joo. While such attempts were ultimately unsuccessful, I am of the view that they nevertheless constituted

commercially unfair and oppressive conduct against Samantha, since they undermined the very basis on which Spectramed should be run as Samantha had agreed with David and Rosie. Indeed, it was disingenuous for David to have Spectramed sue Samantha for acts which he himself had (unsuccessfully) attempted to do. I also find that the withdrawal of the \$225,600 on 7 May 2008 and Innomed's advertisement of the NannoLight MP 50 in the June 2008 edition of Dawn Magazine were, to a lesser extent, oppressive acts towards Samantha as they constituted deliberate interference in her running of Spectramed's business.

133 While the acts of oppression of David, Rosie and Jasmine against Samantha do not in any way justify her subsequent decision to divert Spectramed's business to Absolute, I am of the view that Samantha should nonetheless be entitled to relief. Even if she had not diverted away Spectramed's business, it was clear that the relationship of mutual trust and confidence between herself, David and Rosie had been shattered by the various oppressive acts. It would not be fair for her shareholding to remain tied up in Spectramed in any event. The appropriate relief for the court to grant in this case is to order David and Rosie which I so do, to purchase Samantha's 48 shares in Spectramed at a fair value, pursuant to s 216(2)(d) of the Companies Act.

134 Further, in the light of my findings that the Spectramed Agreement existed and that Spectramed was a quasi-partnership, I am of the view that the valuation of Samantha's shares should not factor in any minority discount or any discount for lack of marketability. Samantha's shares should therefore be valued at 48% of Spectramed's fair market value, to be ascertained by an independent valuer. The appropriate date of valuation should be 14 February 2008, which was the date prior to the commencement of the oppressive acts by David, Rosie and Jasmine.

135 I am further of the view that the costs of the independent valuation are to be borne by David personally. It was apparent from the evidence adduced in court and from the behaviour of the witnesses at trial that David was primarily the mastermind behind the acts of oppression while Jasmine, and Rosie (to a lesser extent), simply followed his directions. It is only fair for him and not Spectramed, to bear the costs of the valuation.

Conclusion

Suit 681

136 For the foregoing reasons, I allow Spectramed's claim against Samantha, Jimmy and Absolute in Suit 681 and order an account of profits or damages to be assessed (at Spectramed's election), in respect of the items listed at [\[125\]](#) of this judgment. Further, I also order an account of profits or damages to be assessed (at Spectramed's election) against Samantha and Jimmy in respect of the commissions mentioned at [\[126\]](#) of this judgment.

137 Spectramed had claimed damages in respect of management time and investigation costs that it incurred in pursuing its claim. It is for the Registrar assessing damages to decide whether to allow such claims which are to say the least unusual.

138 I award judgment to Spectramed against Samantha for the sum of \$2,276.54.

139 Spectramed's claim against Karen is dismissed with costs awarded under O 59 r 18A of the Rules of Court (Cap 322, R 5, 2006 Rev Ed).

Suit 829

140 Section 216(1) and (2) of the Companies Act states:

216. —(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground —

(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

(a) direct or prohibit any act or cancel or vary any transaction or resolution;

(b) regulate the conduct of the affairs of the company in future;

(c) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;

(d) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(e) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

(f) provide that the company be wound up.

141 On the evidence, Samantha succeeds on her claim for oppression under s 216 and buy-out under s 216(2)(d). I order David and Rosie to purchase Samantha's shares in Spectramed, to be valued at 48% of Spectramed's fair market value as of 14 February 2008. Such fair market value is to be ascertained by an independent valuer to be agreed to between the parties, failing which either party may apply to court to appoint the same. The costs of the valuation are to be borne by David personally. The valuation should be carried out expeditiously so that the purchase of Samantha's shares can be carried out simultaneously with Samantha's payment of Spectramed's judgment sums in Suit 681.

142 I give the parties liberty to apply in the event of any difficulties in ascertaining Spectramed's fair market value as of 14 February 2008.

143 I award judgment to Samantha in the sum of \$9,600 against Spectramed which sum can be set off against the judgment sums of Spectramed in Suit 681.

Mareva injunction against Samantha. Jimmv and Absolute

~~Mareva injunction against Samantha, Jimmy, and Absolute~~

144 The Mareva injunction against Samantha, Jimmy and Absolute is to remain in place until satisfaction of Spectramed's claim in Suit 681.

Costs

145 Save for Karen who has been awarded her costs, I will hear all other parties on costs on a date to be fixed by the Registrar.

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