Ooi Ching Ling v Just Gems Inc (No 2)
[2002] SGCA 43

Case Number : CA 15/2002

Decision Date : 11 October 2002

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Kenneth Tan SC (instructed) and Benjamin Goh (Arthur Loke Bernard Rada & Lee) for the appellant; Molly Lim SC (instructed), Ms Grace Chako and Mohamed Gul (Peter Low, Tang & Belinda Ang) for the respondent

Parties : Ooi Ching Ling — Just Gems Inc

Contract – Breach – When contract is concluded – Whether party personally liable in damages for breach

Contract – Consideration – Failure – Whether there is total failure of consideration – Nature of total failure of consideration

Judgment

Cur Adv Vult

GROUNDS OF DECISION

1 This is an appeal against a decision of Judith Prakash J allowing the claim of the plaintiff-respondent, Just Gems Ltd (Just Gems), that the sum of US$500,000 which the latter had paid to the appellant, Shirley Ooi Ching Ling (Ooi), to purchase 22% of the shares of a company, Pacific Rim Trading (PRT), should be returned on the ground that there was a total failure of consideration. In addition, the judge also ordered that an excess sum of $50,000 which was paid by mistake to be repaid to Just Gems.

2 Just Gems is a bearer share company, incorporated in British Virgin Islands (BVI). Its sole shareholder is one Jamilah.

3 Under BVI law, a bearer share company issues share certificates which do not bear the name of the owner of the shares. The holder of the bearer share certificate is the legal and beneficial owner of the stated shares of the company. Thus, the ownership of a bearer share company changes as the possession of the share certificate is transferred.

The facts

4 Ooi and Jamilah were friends, having previously been colleagues working in the Bank of Novia Scotia (the bank). The former was with the Singapore branch of the bank and the latter, the Kuala Lumpur branch.

5 At all material times, Ooi was the Chief Financial Officer of Agate Technologies Inc ("Agate"), a Californian company, incorporated in January 1996 to develop the technology of "hot swap software", and "hot swap removable data storage services". Agate was substantially owned by PRT, with the latter holding 4,500,000 out of 7,500,000 issued shares of Agate. The entire assets of PRT were the 4,500,000 shares of Agate.

6 PRT is a BVI Company. It was originally a bearer share company but, in September 1996, was converted to be a company with registered shareholders. Share certificates were issued to named shareholders, like the position prevailing in Singapore. Ooi and two associates, Mr Francis Khoo (Khoo) and Mr Soh Boon Hock (Soh), held 80% of the issued share capital of PRT. The other 20% shares in PRT were held by three other persons. Ooi was also a director of PRT.

7 In June 1996, Agate needed funds and so Ooi offered to sell to Jamilah 750,000 shares in Agate for US$100,000. The offer was accepted. At Ooi's suggestion, Jamilah took over Just Gems and the investment was made through this company. The 750,000 Agate shares were transferred to Just Gems who became the registered owner.

8 In August 1996, Ooi again offered Jamilah an opportunity to invest. This time in 22% of the shares of PRT at a sum of US$500,000. This would work out to be about 1,000,000 shares of Agate out of the total number of 4,500,000 shares held by PRT in Agate. Jamilah agreed and the purchase price was to be paid by instalments. It was understood that Jamilah would be using Just Gems to make the investment and that Just Gems would be the registered owner of the PRT shares.

9 Following the agreement, payments were effected by Jamilah through her husband, one Amin. However, there was a dispute as to which of the payments were made in respect of this transaction. According to Jamilah, payments were effected by her husband as follows:-

16 September 1996 - US$200,000

6 November 1996 - US$250,000

20 November 1996 - US$100,000

Total US$550,000

10 Ooi disputed that the first sum was made in respect of this transaction. She asserted that the instalment payments made by Jamilah for this transaction were the following:-

6 November 1996 - US$250,000

20 November 1996 - US$100,000

30 November 1996 - US$100,000 (by cash)

11 December 1996 - US$ 50,000 (by cash)

11 It should be noted that Jamilah's husband, Amin, admitted making the payment on 11 December 1996 but denied making the payment on 30 November 1996. He explained that he did not mention the payment made on 11 December 1996 because he had no proof of the same. The payments which he made for the transaction (enumerated in para 8 above) were substantiated by bank documents. The trial judge accepted the evidence of Jamilah and Amin as to how the payments were made, including the excess sum of US$50,000. She accepted the explanation of Amin that the excess payment was brought about by confusion on his part.

12 According to Jamilah, after she made the first payment on 16 September 1996, she realized that there should be some written record for the transaction. A meeting was held in 26 September 1996 where Ooi and Khoo were present. A draft, dated 25 September 1996 and addressed to Jamilah, was handed over by Ooi ("the memorandum"). Jamilah said the memorandum recorded the terms already agreed upon as regards the purchase of the 22% of the shares in PRT. Ooi, however, contended that the memorandum was only a preliminary document for discussion.

13 On 1 November 1996, Ooi sent to Jamilah a "Stock Purchase Agreement" (SPA), for her signature which Jamilah duly signed. It was faxed back to Ooi on or about 26 November 1996. As the SPA is a vital document, we set out below its entire contents:-

> This is an agreement, effective ……..…..., 199_, between shareholder/s of Pacific Rim Trading Inc, a BVI Corporation ("The Company") and Just Gems Inc (the "Purchaser"). The parties agree as follows:
>
> The Shareholder/s of the Company agree to sell and deliver to the Purchaser One Hundred and Twenty Four Thousand and Five Shares (124,005) of its US$1 per value common stock (the "Stock") for an aggregate purchase price of US$500,000.
>
> We further confirm that Pacific Rim Trading Inc is a single purpose investment holding company which owns 4,500,000 million shares of Agate Technologies Inc., a California Corporation. Your share purchase

will represent a 20% ownership in Pacific Rim Trading Inc.

___Sgd_____ ____Sgd_____

Shirley Ooi Just Jems Inc

Pacific Rim Trading Ltd (Purchaser)

14 Jamilah became a director of Agate and also the Chief Executive Officer and director of Agate's Malaysian subsidiary.

15 In July 1997, Ooi caused six transfer forms, each being a transfer of a certain number of shares from the six shareholders of PRT to Jamilah, for her execution. The transfer forms were in respect of 124,001 (instead of 124,005) shares of PRT. Jamilah duly signed them upon presentation. Later, in the same month, for a further consideration of US$2,000 another 2,000 shares in PRT was obtained and transferred to Jamilah. Nothing in the present action concerns this further 2,000 shares.

16 On the basis of the SPA, Ooi made two points. First, that the SPA was the agreement between the parties. Second, that the vendors of the 22% of the PRT shares were all the shareholders of PRT and not Ooi alone, and that Ooi signed the SPA in a representative capacity, as did Jamilah on behalf of Just Gems.

17 In early 1998, Jamilah realised that no share certificates had been issued to Just Gems in respect of the 22% PRT shares. Reminders were sent. In her reply of 17 February 1998, Ooi stated that a mistake was made in having the 124,001 shares of PRT registered in the name of Jamilah. It should have been under Just Gems. Ooi promised to make the correction. By that letter, Jamilah was also told that because of a capital restructure, Just Gems's shareholding in PRT had become 900,007 shares. In court, Ooi tried to shift the blame for the mistake to Jamilah.

18 Notwithstanding subsequent correspondence and meetings, the correction was never effected. Thus this action by Just Gems to recover, firstly, the US$500,000 on the ground of a total failure of consideration, and secondly, the excess US$50,000 paid by mistake.

Decision below

19 The judge below found that Just Gems, through Jamilah, had entered into the agreement with Ooi to invest in 124,005 shares of PRT. This agreement was concluded sometime in late August or early September 1996, before the SPA was executed between the parties. This explained why the first instalment payment was made by Jamilah on 16 September 1996. Otherwise, there would have been no reason for Jamilah to effect the payment. She also accepted Amin's explanation that because of confusion on his part, an excess payment of US$50,000 was made.

20 Proceeding from there, the trial judge found that it was the intention of the parties that the consideration for the payment of US$500,000 was the transfer and registration of 124,005 shares of PRT in the name of Just Gems. Ooi, having failed to fulfil that obligation, there was accordingly a total failure of consideration and the sum paid should be returned to Just Gems.

Issues

21 In this appeal, Ooi raises three issues for the consideration of the Court. In the appellant's Case, she formulated the issues as follows:-

> "(i) Has Just Gems shown Ooi to be personally liable in the agreement relating to Just Gems' investment in PRT?
>
> (ii) Has Just Gems shown that it overpaid US$50,000, or any moneys in excess of its investment of US$500,000?
>
> (iii) In any event, has Just Gems shown that it suffered a total failure of consideration?"

Is Ooi personally liable?

22 On this issue, the argument of Ooi rests wholly on the SPA where it is clearly stated that the agreement was between the "shareholders of PRT" and Just Gems, with the former agreeing to sell to the latter 20% of the shares of PRT. Even the signature block shows that Ooi signed in her representative capacity: "Shirley Ooi, Pacific Rim Trading Ltd". Accordingly, Ooi was clearly the agent of all the shareholders of PRT in the proposed transaction. As regards the number of the shares in PRT which Ooi had agreed to sell to Just Gems, it was only 33,445 shares. This was evidenced by the six instruments of transfer effected in July 1997 by the six shareholders of PRT in favour of Jamilah. There was no agreement before the SPA was signed. What took place before then were more negotiations.

23 Ooi also relies upon an affidavit filed by Jamilah in a BVI proceeding where she exhibited the SPA as evidence of the agreement by Just Gems to buy the shares of PRT.

24 Ooi contends that the trial judge's finding that Ooi and Just Gems had already concluded the agreement in late August/early September 1996 is against the weight of the evidence and it is erroneous for her to have found that the SPA was of no legal effect. Ooi also highlights the fact that on the evidence of Just Gems, the latter would be buying 22% of the shares of PRT; however, under the SPA it was only to be 20%. Ooi submits that, in all the circumstances, the judge's suggestion, that the 20% stated in the SPA was a variation without consideration, is wholly unsustainable.

25 The main obstacle which stands in the way of the contention of Ooi is the finding of the trial judge that the first instalment of US$200,000 was paid on 16 September 1996. This payment was substantiated by documentary evidence showing that the sum was remitted into Ooi's Citibank account. This was the key evidence which led the judge to conclude that there was a concluded contract before this payment was made. On the other hand, the judge was not at all impressed by the fact that Ooi kept changing her stand on the receipt of this sum and the purpose thereof. In her pleadings she denied having received this sum. Her final position was that the sum was sent to her so that Amin could open an account in the Singapore Citibank branch. The trial judge, having carefully scrutinized the objective facts, as well as the fact that Ooi failed to call the Citibank officer who handled Ooi's account (Ms Saini) to explain how the sum of US$200,000 was dealt with, could not accept this contention.

26 This finding is one of fact, and unless it could be shown that the trial judge was plainly wrong, there is really no basis for us to overturn it. We are not persuaded that the finding is plainly wrong. It might well be that on the evidence another judge could have come to a different conclusion. But the trial judge here heard the evidence and she accepted the version and the explanation of Jamilah and Amin. In contrast, the judge found Ooi to be an unsatisfactory witness. She also noted that at times Ooi was evasive in her testimony.

27 We should add that there was another basis upon which the trial judge held that the SPA could not be the concluded contract. The SPA did not identify the shareholders specifically nor the quantum of shares which each shareholder agreed to sell to Just Gems. Indeed, it did not even say that *all* the shareholders of PRT had agreed to sell. It is plain that the SPA is vague and ambiguous. There is really no basis to suggest that Ooi should only be bound to the extent of 33,445 shares when that was never specified. The fact that subsequently, in the transfer form, Ooi executed the transfer of 33,445 shares in PRT to Jamilah cannot be used to construe the contract: see *Schular AG v Wickman Machine Tool Sales Ltd* [1974] AC 235 at 261, 263. In all the circumstances, even assuming that the SPA were valid and effective, it was reasonable for the judge to hold that on a fair construction of the document it meant Ooi would ensure that for US$500,000 Just Gems would obtain 20% of the total issued shares of PRT. This obligation was entirely Ooi's. All the more so when the full consideration of US$500,000 (plus the excess of US$50,000) had been paid over to her. Just Gems did not make any payment to any of the other shareholders of PRT.

28 In the premises, we hold that the first issue raised is without merit.

Excess payment

29 The second issue of overpayment is again dependent wholly on the question whether the sum of US$200,000 was paid to Ooi on 16 September 1996 and the purpose of that payment. Ooi's contention is that it would have been too early for Jamilah to make that payment in respect of this transaction. The memorandum of 25 September 1996, which was for discussion, was not even furnished to Jamilah/Just Gems as yet. The deal was only concluded on 1 November 1996 when the SPA was forwarded to Jamilah for execution.

30 We would reiterate that the fact of the matter is that the trial judge heard the evidence. She considered the purport of the memorandum as well as the terms of the SPA. She also scrutinized the different positions taken by Ooi on the $200,000. She noted the shifts made by Ooi. It was only after weighing the evidence, including that of Khoo and Soh who testified for Ooi, that the trial judge came to the conclusion that the sum of US$200,000 was remitted into Ooi's account in part satisfaction of the transaction.

31 The only evidence which posed some difficulties are two letters written by Amin on 26 November 1996 and 11 December 1996, where in the first letter he stated that US$150,000 was outstanding in respect of the transaction and in the second letter, US$50,000 was outstanding. The trial judge did consider this aspect of the matter but she accepted Amin's explanation with this comment (at para 92 of her judgment):-

> "Mr Amin's explanation was that he was confused when he wrote that letter since he had made many payments to Madam Ooi for various investments and she was always asking him for more money. It was only when his wife went through the payments in 1998 that she discovered the overpayment. I accept Mr Amin's explanation. It is a reasonable one given the circumstances then existing."

32 The trial judge also dealt with Ooi's allegation that the remaining US$150,000 was paid by Jamilah in two instalments, $100,000 on 30 November 1996 and $50,000 on 11 December 1996, on both occasions in cash (at para 93 of her judgment):-

> "The last two payments were allegedly made in cash. Mr Amin denied having made the payment of US$100,000. Since Madam Ooi alleged this payment had been made she had the onus of proof on this issue. She was not able to discharge it. The money was purportedly received by Ms Sim but Ms Sim was not called to testify on the matter. Further, Madam Ooi's bank statement did not show a deposit of US$100,000 on the day in question and as I have stated in 51 above Madam Ooi's attempt to equate a deposit of US$99,500 with the US$100,000 purportedly received was not convincing. Madam Ooi's inability to substantiate the US$100,000 payment put a substantial dent in the credibility of her version of how the purchase price was settled."

33 There is really no basis for us to hold that the trial judge's finding is plainly wrong.

Total failure of consideration

34 We now turn to the third issue. It is not in dispute that the purchaser of the 22% of PRT shares was Just Gems and the latter should have been registered as the owner thereof. Ooi admitted it in her letter of March 1998, as well as in court, that she made a mistake in instructing the company secretary of PRT to prepare the instruments of transfer in favour of Jamilah personally. She promised to put things right.

35 It is also not in dispute that to-date the 22% of PRT shares are yet to be registered in the name of Just Gems.

36 Ooi's contention is that the underlying purpose of the two offers she made to Jamilah was to enable Jamilah, through her nominee, Just Gems, to invest in Agate, by the direct holding of 750,000 shares in Agate and through the holding of 22% (or 20% as stated in the SPA) of the PRT shares. Consequently, Jamilah was appointed a director of Agate and also became the CEO of Agate's Malaysian subsidiary. The error in having the shares of PRT transferred to Jamilah personally, instead of to Just Gems, did not cause any real loss or disadvantage to Jamilah or Just Gems.

37 Ooi also alleges that it made no difference whether the PRT shares were registered under the name of Just Gems or Jamilah. Ooi points out that Jamilah in fact wanted to invest in Agate and Pacific Rim in her own name. It was only at her suggestion that Jamilah decided to use Just Gems as the vehicle for her investment.

38 There was correspondence between the parties on the intended rectification. The stumbling block would appear to be that Ooi and/or her representative wanted Just Gems, Jamilah and Amin, to sign an indemnity agreement drafted by Ooi's agent, one Mr Allardice, wherein Just Gems, Jamilah and Amin, were to indemnify all officers of PRT, past, present and future, and to see that such officers are indemnified

against all claims, demands, etc, arising out of PRT acting on their request to cancel the share certificate in the name of Jamilah and reissue it in the name of Just Gems. She admitted in court that she sought the indemnity agreement to protect herself from the consequences of her mistake. There were some negotiations to seek an acceptable draft indemnity but without success.

39 Basically, the trial judge held that as the error in registration was brought about by a mistake on the part of Ooi and/or PRT, there was no reason why Jamilah, Just Gems or Amin, should be required to give any indemnity, particularly so with regard to Amin, who was a third party to the transaction.

40 It is true that in a concurrent proceeding instituted in BVI shortly after this action in Singapore was commenced, Just Gems asked for reliefs as if it were a shareholder of PRT. The claim was dismissed by the BVI court when Just Gems refused to proceed with it. Just Gems sought, without success, to have the BVI proceeding adjourned until after the outcome of the Singapore proceeding was known

41 However, Just Gems clarified that the BVI proceeding was instituted in order to enable it to inspect the share register and to determine its status in PRT. Because under BVI law, only registered shareholders could inspect the share register, the pleadings were amended to include two prayers asking for a declaration that Just Gems was a shareholder of 900,007 shares in PRT and for an order that a share certificate for the same be issued to Just Gems. Later, Just Gems realized the conflict and instructed its BVI lawyers not to proceed with these two prayers.

42 The trial judge held that Just Gems was entitled to a refund of the sum of US$500,000 paid on the ground that there was a total failure of consideration. As for the US$50,000, Just Gems was also entitled to have the sum returned on the ground that it was an excess amount paid by mistake.

The Law

43 It is settled law that where money is paid by a plaintiff to a defendant under a contract and the defendant fails completely to discharge his part of the bargain, the plaintiff has the option of either claiming in contract for damages for breach or he may treat the contract as at an end on the ground that the defendant has repudiated it and sue for the refund of the money in quasi contract. Failure of consideration occurs when one party has not enjoyed the benefit of any part of what it bargained for. In the determination of this question, one has to judge it from the perspective of the payor plaintiff: see *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbur Ltd* [1943] AC 32 at 48.

44 For a plaintiff to succeed in a claim for a refund there must be a *total* failure of consideration. The test, as stated by Kerr LJ in *Rover International Ltd v Canon Film Sales Ltd (No. 3)* [1989] 1 WLR 912, is "whether or not the party claiming total failure of consideration has, in fact, received any part of the benefit bargained for under the contract." If the plaintiff gets something out of the contractual arrangement, this remedy would not be available to him although he can claim in damages against the defendant for failing to fulfil all his obligations.

45 This distinction is very aptly illustrated by the case *Whincup v Hughes* (1871) LR 6 CP 78. There, the plaintiff placed his son as an apprentice to a watchmaker and jeweller for a period of six years. A premium was paid by the plaintiff to the master for the arrangement. Unfortunately, one year after the son became an apprentice, the master died. The plaintiff sued the master's estate to recover the whole, or some part, of the premium paid on the ground of failure of consideration. Brett J in dismissing the action on the ground that the consideration had not wholly failed, said –

> "When a sum of money has been paid for an entire consideration, and there is only a partial failure of consideration, neither the whole nor any part of such sum can be recovered."

46 In contrast, in *Kwei Tek Chao v British Traders and Shippers Ltd* [1954] 2 QB 459, a case concerned with a CIF contract for the sale of goods, Devlin J said (at p.475):-

> "If goods had been properly rejected, and the price has already been paid in advance, the proper way of recovering the money back is by an action for money paid on a consideration which had totally failed, i.e., money had and received."

47 The problem in each case is to determine whether on the facts there is a total or only a partial failure of consideration. In some situations, the line can be rather fine.

48 In *Rowland v Divall* [1923] 2KB 500, the plaintiff bought a motor-car from the defendant and used it for several months. Later, he discovered that the defendant never owned the car. As a result, the plaintiff had to restore it to the true owner. The plaintiff sued to recover the purchase price on the ground that there was a total failure of consideration. The defendant argued that there was no total failure as the plaintiff had enjoyed the use of the car for several months. The Court of Appeal rejected the defendants' argument and held that in the circumstances there was a fundamental breach which entitled the plaintiff to treat the contract as discharged. The court emphasised the fact that the plaintiff intended to buy the car, not to hire it. Atkin LJ said (at p.506):-

> It seems to me that in this case there has been a total failure of consideration, that is to say that the buyer has not got any part of that for which he paid the purchase money. He gave the money in order that he might get the property and he has not got it.

49 The rationale for this decision was extended to a case where instead of an outright purchase of a car, it was made under hire purchase: see *Warman v Southern Counties Car Finance Corpn Ltd* [1949] 2 KB 576.

50 On the other hand, in *Hunt v Silk* (1804) 5 East 449, the plaintiff paid 10 to the defendant in return for a promise by the defendant to give him immediate possession of certain premises, to put them into repair and execute a lease of them in his favour within 10 days. The plaintiff went into possession. But because the defendant failed to carry his other promises, the plaintiff left the premises. He failed in his action to recover the 10. The court held that as the contract had been part performed, the consideration of 10 could not be recovered.

51 We should mention that the decision in *Rowland v Divall* was the subject of criticism by the *Law Reform Committee, 12th Report (Cmnd 2958, 1966)* and academic writers. The point was made that in *Rowland v Divall* while it was true that the plaintiff did not get substantially all that he bargained for, it was hard to agree that he did not receive any part of what he bargained for. After all, the purpose of buying a car was to have the use of it. The plaintiff in *Rowland v Divall* did have some use of it. But no subsequent case has yet overruled it. In fact, *Rover International Ltd* applied *Rowland v Divall*.

52 In *Butterworth v Kingsway Motor* [1954] 1 WLR 1286 the plaintiff recovered the purchase price of 1,275, although by that time the car, which had been used by the purchaser for nearly a year, was worth only 800.

Our decision

53 Reverting to the instant case, the question is whether, on the facts, there has been a total failure of consideration. As indicated before, Ooi's argument is that Just Gems was the vehicle used by Jamilah to undertake her investment. It would make no real difference, in terms of benefit to Just Gems, whether the shares are held in the name of Jamilah personally or in the name of Just Gems. It does not enjoy any less benefit just because the PRT shares are held by Jamilah personally. Reference was also made to the fact that even before the shares were transferred and registered in the name of Jamilah, both Just Gems and Jamilah had enjoyed the benefit of being a shareholder of PRT. It has not been contended by Just Gems that it suffered a loss by the shares being registered in Jamilah's name. Ooi submits it is absurd to suggest that Just Gems has not enjoyed any benefit at all.

54 It seems to us that the arguments of Ooi overlook one very critical fact, i.e., that Jamilah and Just Gems are separate entities. It may well be that Just Gems is a vehicle utilized by Jamilah to effect the investment. But that cannot detract from the fact that they are distinct and separate personalities. It was Ooi herself who suggested that Jamilah should undertake the investment through such a company and there must be advantages in doing that.

55 It is not in dispute that it was Just Gems, acting through Jamilah, who entered into the agreement of purchase with Ooi. The PRT shares should have been transferred to and registered under the name of Just Gems, who was to be the owner. Ooi admitted that the transfers effected in favour of Jamilah personally was her mistake. While Jamilah had also overlooked this when she executed the instrument of transfers, that oversight does not excuse Ooi. It was Ooi's obligation to transfer and have the shares registered in the name of Just Gems. And notwithstanding the fact that considerable time had been given to Ooi to enable her to correct the error and issue a share certificate to Just

Gems, it was not done. The object for which Just Gems paid the US$500,000 was to acquire the 22% PRT shares. Just Gems has not got that. Here we are reminded of the words of Atkin LJ in *Rowland v Divall* (at 506):-

> ".. the buyer has not got any part of that (the car) for which he paid the purchase money. He paid the money in order that he might get the property and he has not got it."

56 It is entirely within the means of Ooi to fulfil her obligation. Yet she wanted to impose conditions (requiring the giving of an indemnity by Just Gems, Jamilah and Amin) before she would discharge her obligation i.e., registering the PRT shares in Just Gems' name. This is wholly unwarranted.

57 Just Gems is not a shareholder of PRT. It has not enjoyed any benefit which a shareholder would enjoy. It could not have nominated anyone to be a director on the board of PRT. Admittedly, Jamilah was made a director of Agate. But it must be borne in mind that Just Gems held 750,000 shares in Agate.

58 It is vitally important not to lose sight of what was the object of the transaction, i.e., Just Gems to acquire 124,005 shares in PRT. It has not got any of the 124,005 PRT shares. In our opinion, this case is certainly stronger than *Rowland v Divall*. There is a total failure of consideration. Ooi has not pleaded that the court should lift the corporate veil. Neither is fraud alleged. Every person has a right to incorporate a company for his own purpose. Here, the purpose for which Just Gems is being used by Jamilah is certainly proper. Moreover, it was at Ooi's suggestion that Jamilah carried out her investment in this manner. There is really no reason to lift the corporate veil.

59 In passing, we would make this further observation. We have in 15 noted that the six instruments of transfer were executed and returned to PRT's secretary for the transfer to be effected. There is nothing on record to indicate that a share certificate has already been issued in favour of Jamilah. If she has, in fact, received the share certificate, then she should do everything within her power to restore the shares to Ooi or her nominee.

60 In the result, we would dismiss the appeal with costs and the usual consequential orders.

Sgd:

YONG PUNG HOW	CHAO HICK TIN	TAN LEE MENG
CHIEF JUSTICE	JUDGE OF APPEAL	JUDGE

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