IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 32

Civil Appeal No 63 of 2021

Between

Wei Fengpin

… *Appellant*

And

(1) Raymond Low Tuck Loong
(2) Sim Eng Chuan
(3) Lateral Solutions Pte Ltd

… *Respondents*

In the matter of Suit No 238 of 2017

Between

Wei Fengpin

… *Plaintiff*

And

(1) Raymond Low Tuck Loong
(2) Sim Eng Chuan
(3) Lateral Solutions Pte Ltd

… *Defendants*

JUDGMENT

[Companies — Oppression — Minority shareholders]

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v
Raymond Low Tuck Loong and others

[2022] SGCA 32

Court of Appeal — Civil Appeal No 63 of 2021
Andrew Phang Boon Leong JCA, Steven Chong JCA and Chao Hick Tin SJ
22 February 2022

12 April 2022 Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 This appeal can be traced to an oppression action which was commenced by the appellant ("Wei") against the majority shareholders, the first and second respondents ("Low" and "Sim" respectively), in 2017. However, just a few months before the trial, Low and Sim caused the company, Lateral Solutions Pte Ltd ("the Company") to be voluntarily wound up.

2 The High Court Judge ("the Judge") found a litany of oppressive acts by Low and Sim against Wei. The Judge held that a buyout order of Wei's shares in the Company could in principle be made against Low and Sim notwithstanding the supervening insolvency of the Company.

3 However, due to, *inter alia*, the lack of proper audited accounts of the Company (which was attributed to the fault and breaches of Low and Sim) and

the Judge's finding that Wei had "contributed" to the eventual demise of the Company, the Judge decided against the buyout order and instead ordered Low and Sim to return various sums which were paid out to them in breach of the Company's Articles of Association ("the Company's Articles").

4 On its face, the remedy ordered by the Judge appeared to have addressed the wrongs committed by Low and Sim as directors of the Company and does not directly address the personal wrongs committed by Low and Sim against Wei in his capacity as the oppressed minority shareholder. It is also not seriously in dispute that Wei is unlikely to achieve any recovery based on the relief as ordered by the Judge given the insolvent state of the Company.

5 The key question before us is whether a buyout order should be granted to Wei in light of the *unchallenged* findings by the Judge against Low and Sim. As will be clear from our decision, the considerations which persuaded the Judge to refrain from making the buyout order can effectively be addressed via the selection of an appropriate valuation date. This was not specifically considered by the court below.

Facts

6 The Judge had set out the facts in great detail in *Wei Fengpin v Low Tuck Loong Raymond and others* [2021] SGHC 90 ("the Judgment"). Given that the facts are not disputed on appeal, we will only set out the facts which are germane to the appeal.

7 The Company was incorporated in 2005 by Sim and one Edwin Seah ("Seah"). They were the directors and shareholders of the Company at that time.

8 In 2006, the Company began supplying polymer parts ("the Parts") to Apple Inc ("Apple"), and sourced the Parts from suppliers such as Sei Woo Polymer Technologies Pte Ltd ("SWP"). In 2007, Low joined the Company and later became a director in 2012.

9 Wei joined SWP in 1998 but later left to set up two companies, Tianjin Synergy Hanil Precision Polymer Technologies Co Ltd ("SH") and Synergy Hanil (S) Polymer Technologies Pte Ltd ("SHS"). From 2010, pursuant to discussions between Wei and Low, SH started supplying the Parts to the Company. In 2011, an entity indirectly owned by Low, Sim and Seah entered into a joint-venture agreement with SH and SHS to form SK Lateral Rubber & Plastic Technologies (Suzhou) Co Ltd ("SKL"). SKL then began manufacturing the Parts for the Company for its onward sale to Apple.

10 By around 2014, the Company's suppliers of the Parts included three companies in which Wei had a substantial interest, namely, SH, SKL and SK Lateral Permen Electronic (Suzhou) Co Ltd ("SKLP").

11 In December 2014, Wei bought Seah's shares in the Company for US$5m and was registered as a shareholder and director in January 2015. About two years thereafter, on 15 March 2017, Wei commenced HC/S 238/2017 ("Suit 238") against Low and Sim under s 216 of the Companies Act (Cap 50,

2006 Rev Ed) ("Companies Act"), claiming that they had acted in a manner that was unfair, oppressive or prejudicial to him.

12 The trial for Suit 238 was scheduled for September 2020. However, on 5 May 2020, Low and Sim applied to wind up the Company on the basis that the Company was insolvent and was unable to pay its debts. Wei did not object to the application and on 12 June 2020, a winding up order was granted. Thereafter, the trial of Suit 238 took place.

Decision below

13 The principal part of the Judgment dealt with the substantive claim, *ie*, whether oppression was made out on the evidence before the court. The examination of the evidence by the Judge in relation to the oppression finding was both comprehensive and flawless. There is no need to repeat these findings save to identify the specific oppressive acts which were found by the Judge.

14 The Judge found that Low and Sim had conducted the affairs of the Company in a manner that was oppressive to Wei, and the acts which they had caused the Company to take also unfairly discriminated against or were prejudicial to Wei (see the Judgment at [137]):

> (a) They declared dividends of US$1.5m each to themselves (to the exclusion of Wei) in breach of the Company's Articles and without informing Wei (the "Dividends"), although he was then a director and shareholder of the Company. The Dividends were paid to Low and Sim by way of a payment of US$800,000 each while the balance US$700,000 was set off against the sums which were owed by Low and Sim to the Company.

(b) They paid excessive and unjustified bonuses of about S$1.5m collectively to themselves without Wei's knowledge or consent, although he was then a director and shareholder of the Company (the "Big Bonuses"), and had also concealed this matter from Wei and ignored his queries on the bonuses.

(c) They deliberately withheld the Company's financial information from Wei and only provided the information after repeated chasers; and from June 2016, completely withheld such information from Wei to conceal their actions in relation to the Dividends and the Big Bonuses.

(d) They subsequently sought to buyout Wei's shares in the Company without providing him with the relevant financial information to determine the fair value of the shares.

(e) They refused to call board meetings despite being obliged to do so.

(f) They intentionally omitted to audit the Company's accounts from Financial Year ("FY") 2015, file annual returns from FY2014 and call Annual General Meetings to deal with the Company's accounts since Wei became a shareholder/director of the Company, in order to conceal the true state of affairs of the Company from him.

(g) They diverted a corporate opportunity to LSW Pte Ltd ("LSW"), a company incorporated by Low, so as to exclude Wei from benefitting through the Company.

(h) Low failed to disclose to Wei related-party transactions between LSW and the Company despite his conflict of duty and interest.

(i) They failed to involve Wei in key management decisions pertaining to transactions between LSW and the Company, such as the Company advancing loans to LSW for its set-up and operations and the subsequent decision not to recover the loans from LSW.

15 The Judge also found that a buyout order can be made notwithstanding the supervening insolvency of the Company (see the Judgment at [143]–[151]).

16 The Judge's two principal findings, namely, that oppression was made out and that a buyout order can be made notwithstanding the Company's supervening insolvency were not challenged by Low and Sim on appeal.

17 Notwithstanding the findings of multiple oppressive acts by Low and Sim against Wei, the Judge did not make a buyout order. Three key considerations were cited by the Judge to explain her decision not to grant the buyout order (see the Judgment at [153]). First, the Company's accounts have not been audited since FY2015 and were unlikely to be audited as the Company had already been wound up. There may thus be difficulties in determining the fair value of the shares as at the date of the decision or as at April 2016 (as Wei had sought in the court below) and any such attempts at determination would likely be time-consuming and expensive. Secondly, the liquidators may carry out investigations and take appropriate steps to redress any wrongs committed by its directors to the Company. Finally, Wei also contributed to the Company's demise when he diverted business from the Company to SH, thereby undercutting the Company. It would not be fair to give Wei a "windfall" by way of a buyout of his shares that may now be worth little when Wei had contributed in part to the devaluation of those shares.

18 The Judge instead ordered Low and Sim to return various sums which were paid out to them in breach of the Company's Articles (see the Judgment at [154]). Even though Wei sought a valuation of his shares as at April 2016 or "such other date as the court deems fit", the Judge did not examine the propriety of ordering the valuation on an alternative date to address the considerations identified. To be fair to the Judge, the alternative valuation dates were not explicitly raised by the parties below. Perhaps their focus was understandably on the substantive oppression issue.

Parties' cases on appeal

Wei's case

19 On appeal, Wei submitted that the Judge had erred in refusing to make a buyout order on account of the three considerations identified (see above at [17]). First, there is no requirement in law that a buyout order can only be made if there are fully audited accounts. Expert evidence can also be adduced to assist the court or alternatively, the court may order a buyout on the basis of a fixed sum.

20 Second, any redress obtained by the liquidators would only vindicate the corporate wrongs done by Low and Sim to the Company. They do not provide any remedy for the personal wrongs done to Wei as a minority shareholder.

21 Third, Wei did not divert business away from the Company to SH and did not contribute to the Company's demise. In any event, any wrongdoing should not preclude a buyout order.

22 Wei proposed four possible periods for the valuation of his shares: (a) December 2014/January 2015; (b) December 2015/January 2016;

(c) December 2016/January 2017; and (d) 15 March 2017. The significance of each period will be explained in greater detail below at [41].

23 In the alternative, Wei argued that if the court is not minded to order a buyout, a compensation order of US$1.5m (being the same amount of Dividends which Low and Sim deprived him of) should be paid to him by Low and Sim.

24 Wei also submitted that the Judge had erred in refusing to grant a declaration that Low and Sim had breached their fiduciary duties to the Company on the basis that this declaratory relief was not pleaded.

Low's and Sim's case

25 Low's and Sim's case on appeal essentially echoed the Judge's reasons for refusing to grant a buyout order. Low and Sim agreed with the three considerations identified by the Judge (see above at [17]) and argued that it would be unfair, unjust and unequitable to give Wei a windfall by ordering Low and Sim to buyout his shares.

26 In response to Wei's alternative prayer for a compensation order of US$1.5m, Low and Sim pointed out that Wei did not dispute the Judge's finding that the Dividends were invalidly declared and that none of the shareholders (including Wei) were entitled to them. Wei therefore cannot argue that he should be entitled to receive the same Dividends.

Issues to be determined

27 The key issues on appeal concerned the propriety of a buyout order and the appropriate valuation date. Before turning to these issues, we believe it is important to bear in mind three critical points.

28 First, the Judge's finding that oppression was made out against Low and Sim is not challenged.

29 Second, the Judge's finding that the court can order a buyout notwithstanding the supervening insolvency of the Company is also not challenged. In any event, this is amply supported by authority (see *Kumagai Gumi Co Ltd v Zenecon Pte Ltd and others and other appeals* [1995] 2 SLR(R) 304 at [73]; *Suying Design Pte Ltd v Ng Kian Huan Edmund and other appeals* [2020] 2 SLR 221 at [133]; *Re Via Servis Ltd Skala v Via Sevis Ltd and another* [2014] EWHC 3069 (Ch) ("*Servis*") at [79]; Sarah Worthington, *Sealy & Worthington's Text, Cases, and Materials in Company Law* (OUP, 11th ed, 2016) at p 725).

30 Third, upon the finding of oppression, the typical and almost default relief is to order a buyout of the shares of the minority shareholder (see *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] 5 SLR 1 at [275]–[276]).

Applicable law

31 Under s 216(2) of the Companies Act, the court has a wide discretion to make various orders, including a buyout order, "with a view to bringing to an end or remedying the matters complained of". The overriding consideration is that of fairness, having regard to the facts of the case: *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 ("*Tullio Planeta*") at [15].

32 Once the court has decided that a buyout order should be made, the next step is to determine the appropriate valuation date and value of the shares. Such determination need not be in accordance with strict accounting principles, and the role of the court is to determine a price that is fair and just in the particular

circumstances of the case: *Yeo Hung Khiang v Dickson Investment (Singapore) Pte Ltd and others* [1999] 1 SLR(R) 773 at [72] ("*Yeo Hung Khiang*").

Our decision

Propriety of a buyout order

33 In our judgment, a buyout order is appropriate in the circumstances.

34 The Judge was of the view that the lack of audited accounts militated against the granting of a buyout order. We agree with counsel for Wei, Mr Jimmy Yim SC ("Mr Yim") that there is no strict requirement in law for share valuations to be carried out on the basis of fully audited accounts. While having fully audited accounts will no doubt aid the valuation exercise, the lack thereof *in itself* should not preclude a buyout order. It is also important to bear in mind that on the facts of this case, the lack of financial information was the result of Low's and Sim's misconduct. The Judge found (at [137(f)]) that Low and Sim had deliberately omitted to audit the Company's accounts to hide the true state of affairs of the Company from Wei. To deny Wei a buyout on this basis would be, as elegantly observed by Chao Hick Tin J (as he then was), reproduced by the Court of Appeal in its judgment in *Yeo Hung Khiang* at [12] albeit in a slightly different context, "tantamount to sanctioning wrongdoings and rewarding the oppressor. That would be to turn justice on its head". This cannot be right as a matter of fairness.

35 The Judge was also influenced by the consideration that the liquidators may carry out investigations and take appropriate steps to redress any wrongs to the Company committed by its directors. However, this overlooks the fact that such a remedy only addresses *corporate* and not *personal* wrongs. Any steps the liquidators take would not address the personal wrongs done to Wei,

which include, among other things, the deprivation of profits and exclusion from management. The remedies under s 216(2) of the Companies Act should be directed towards the wronged shareholder and not the company.

36 Finally, the Judge was of the view that since Wei had contributed to the Company's demise, it would not be fair to give him a "windfall" by way of a buyout of shares that may now be worth little when he had contributed in part to the devaluation of these shares. For the reasons set out below at [51]–[54], we agree with the Judge that Wei did indeed divert business away from the Company around March 2017 (see the Judgment at [121]–[125]). However, as explained below at [38]–[39] and [47], the fact that the diversion occurred in *March 2017* would essentially address the Judge's concern of Wei purportedly enjoying a windfall should a buyout order be granted.

37 The learned author of Robin Hollington, *Hollington on Shareholder's Rights* (Sweet & Maxwell, 9th Ed, 2020) explained at p 267 (citing the case of *Interactive Technology Corp Ltd v Ferster* [2016] EWHC 2896 (Ch) at [318]) that wrongdoing on the part of the minority shareholder can be relevant in two ways. The first way is that the minority shareholder's wrongdoing may make the prejudicial conduct of the respondent not unfair. The second way is that the minority shareholder's wrongdoing may justify the court in refusing to grant relief to the minority shareholder or may influence the choice of any relief which would otherwise be granted. Further, the court is not engaged in a balancing exercise of weighing one side's misconduct against the other, but the minority shareholder's misconduct is relevant "if it has an immediate and necessary relation to the unfairly prejudicial conduct of which complaint is made".

38 Keeping in mind the court's overriding consideration of fairness, in our view, a fair outcome would be achieved by granting a buyout order. Against the

backdrop of the oppressive acts by Low and Sim against Wei, Wei's own misconduct does not preclude a buyout order. Viewed in context, Wei was oppressed by Low and Sim over the years and sought to exit the Company. But he was denied the opportunity to do so. While he may have engaged in misconduct himself, these acts only happened near the end of the parties' relationship, after years of oppressive conduct by Low and Sim commencing almost immediately after Wei became a shareholder in January 2015. Simply put, Wei's misconduct did not render Low's and Sim's oppressive conduct not unfair, and did not justify the denial of a buyout order.

39 For the above reasons, we are of the view that a buyout order is appropriate in the circumstances. We are also satisfied that the considerations which persuaded the Judge to refrain from making the buyout order can effectively be addressed via the selection of an appropriate valuation date.

Appropriate valuation date

40 As earlier mentioned, Wei proposed four possible periods for the valuation of his shares: (a) December 2014/January 2015; (b) December 2015/January 2016; (c) December 2016/January 2017; and (d) 15 March 2017.

41 Wei explained the significance of these four periods as follows:

> (a) December 2014/January 2015: This was the period of Wei's entry into the Company. Upon his entry into the Company, Low and Sim immediately embarked on a series of corporate manoeuvres to deprive Wei of the Company's profits and his rights as a shareholder-director. Further, if this period were chosen, no formal valuation would be needed as the court could take reference from the purchase price of the shares, *ie*, US$5m.

(b) December 2015/January 2016: This was the period when Low and Sim wrongfully paid themselves the Dividends and began preparation for an eventual separation from Wei. Low and Sim also diverted business away from the Company and completely cut off Wei's access to the Company's monthly management accounts.

(c) December 2016/January 2017: This was when Wei recognised that his relationship with Low and Sim had broken down irreparably and proposed an amicable parting of ways by way of a share swap. However, this valuation date would make it difficult to value Wei's shares, as it will require a valuer to account for Low's and Sim's diversion of corporate opportunities away from the Company, for which there is no reliable financial information.

(d) 15 March 2017: This was the date of the commencement of Suit 238. This date is justified on the basis that it reflects the date on which a plaintiff elects to treat the unfair conduct of the majority as destroying the basis upon which he had agreed to continue as a shareholder. However, Wei recognised that the lack of financial information would render any such valuation complex and difficult.

42 During the hearing, Mr Yim confirmed that Wei's primary position was for the shares to be valued as at 31 December 2015, *ie*, period (b) above. The reason was that Wei should be able to enjoy the fruits of his investment, after having been a shareholder for about a year. Mr Yim explained that if the court were to value the shares at the purchase price of those shares, *ie*, period (a), then Wei would not have reaped any benefits from his investment.

43 Low and Sim made no submissions as regards the valuation date in the event the court is minded to make a buyout order. They essentially adopted an

"all or nothing" approach. This was confirmed by their counsel, Mr Loo Choon Chiaw ("Mr Loo") at the hearing. Mr Loo instead submitted that if the court is minded to order a buyout, the matter could be remitted to the Judge to determine the proper valuation of the shares. This was plainly unsatisfactory because the valuation date was always a live issue especially for the appeal.

44 Having considered the various valuation dates proposed by Wei, we are minded to order the shares to be valued based on the purchase price of US$5m paid by Wei to Seah. Two crucial points led us to our decision in choosing the purchase price.

(a) From the very outset when Wei became a shareholder of the Company, Low and Sim had substantially and systematically excluded him from all the benefits of a shareholder and director. The Judge found (at [19] and [21]) that Wei had a legitimate expectation to be a director and that there was an informal understanding that he would be one. The Judge also found (at [22]) that Wei had a legitimate expectation to participate in key management decisions. However, for all intents and purposes, Wei was treated by Low and Sim as a non-shareholder and non-director from inception. This is supported by the Judge's finding at [59] that once Low and Sim knew that Wei was going to be a shareholder, they "decided to quickly pay out a huge sum of bonuses to themselves to Wei's exclusion, and kept Wei in the dark about this at the material time". Sim also acknowledged during cross-examination that Low and him had never involved Wei in any decision-making of the Company since he became a director.

(b) The courts have in previous cases ordered a buyout of shares at their acquisition value. In *Tullio Planeta*, the court noted (at [18]) that

> the court is not bound to fix a value by valuation as at the date of the presentation of the petition or on the date the order is made. The court observed that the company there was not a going concern, and was an inactive company when the appellant was invited by the respondent to buy into the company. The share value was also not asset-backed. As such, fairness could only be achieved by ordering the respondent to purchase back the shares at the price at which the respondent sold them to the appellant in the first place. In *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30, the court ordered the majority to buy the applicant's shares in the company at their initial capitalised value for the reason that the applicant only held 0.89% of the company's shares, had not directly paid for the shares (they were transferred to him for free by the original shareholder who wanted to leave the company), and left the running of the company to the majority without any expectation of profit-sharing. It was under these circumstances that the court observed (at [128]) that the applicant would simply "be getting what he started off with – no more, no less".

45 We note that here, Wei bought the shares from Seah and not from Low and/or Sim. In our judgment, this distinction should not affect the propriety of a buyout order based on the purchase price. As a matter of principle, the remedies to be granted under s 216(2) of the Companies Act are directed towards the wronged shareholder. Viewed from that perspective, it should not matter whether the purchase price was paid to another outgoing shareholder or the remaining majority shareholder save for a situation where the purchase price was paid with a premium which cannot be readily explained or justified. Save for that exception, in either event, the harm to the minority shareholder is the same.

46 In the circumstances, we are of the view that ordering a buyout at US$5m is fair for the following reasons:

(a) This provides the best available objective valuation of the Company because this was in fact the actual value paid by Wei to Seah. It was not some hypothetical value. Both Seah and Wei are experienced businessmen and there is no suggestion by Low or Sim that Wei paid a premium for the shares. In fact, the evidence suggest that it might have been sold at a discounted price, as Seah initially wanted US$10m based on projected turnover of the Company of between US$70–80m. However, Seah eventually accepted Wei's offer of US$5m because he wanted to exit the Company without any further delay.

(b) Seah's estimation based on the projected turnover of the Company is supported by a monthly report and a consolidated report by Octagon88 & Associates Pte Ltd ("Octagon"). In August/September 2015 (a few months after Wei became a shareholder), Low and Sim commissioned Octagon to prepare a report on the Company and its related companies for the purposes of fund raising. The monthly report concluded that the preliminary value of the Company and its related business was in the range of US$30m–60m. The consolidated report, on the other hand, concluded that the preliminary value of the Company was about US$32m, and if its interests in its subsidiaries were included, would total about US$70m. Interestingly, the consolidated report also observed that the shareholders of the Company were "[l]ooking at cashing out their shares at good valuation (preferably to be higher than what the previous shareholder [Seah] had received for his disposal of 33% stake to [Wei])". This would suggest that the purchase price paid by Wei to Seah was both fair and reasonable. This might also explain

why when Mr Yim put Octagon's valuation to Low in cross-examination that the purchase price of US$5m was a fair and reasonable value, Low did not suggest otherwise. In fact, his evidence was that the Octagon report is reliable, because the valuation was based on the documents of the Company and that US$5m was not an "absurdly high figure".

(c) We recognise that adopting the purchase price may not be the ideal way to value the shares. Nonetheless, the court's task is to arrive at a valuation which is fair and sound in principle. In this regard, the court cannot ignore the reality that the accounts are in an unsatisfactory state. While it is true that the unsatisfactory state was caused by Low and Sim, that does not alter the undeniable fact that the accounts remain unsatisfactory. That fact is relevant to prevent Low and Sim from arguing that no buyout should be ordered. In that sense, the less than ideal method of valuation is the consequence of Low's and Sim's breaches and failure to prepare proper accounts of the Company and therefore they should not be permitted to rely on their own failure to argue that any valuation based on the purchase price would be unfair to them. In any event, the evidence clearly indicates that the valuation based on Wei's purchase price was eminently fair.

47 Once we adopt the acquisition date of the shares as the date of valuation, the Judge's concerns about valuation would be sufficiently addressed. There is no further need to conduct any separate valuation. As such, the lack of audited accounts and other financial information can have no bearing on the valuation based on the purchase price. Similarly, there will be no need to factor any discount to the eventual valuation on account of Wei's undercutting since that occurred *way after* the operative valuation date.

48 Wei argued that the court should value the shares as at December 2015/January 2016 as that was the period when Low and Sim began diverting business away from the Company and misusing the Company's funds. Valuing the shares at this date would enable Wei's shares to be valued without the erosion of value due to the above acts. It is, however, important to bear in mind that the Company's accounts have only been audited up to FY2014. The Judge (at [95]) observed that "there was a clear need to audit the FY2015 accounts [as] can be seen from the huge discrepancies between a set of unaudited accounts for FY2015 disclosed on 16 February 2016 and another set disclosed on 7 August 2017, which Low agreed did not give a true picture of the Company's financial position in 2015". Therefore, if we were to order a valuation of the shares as at December 2015/January 2016, we would run into the same problems identified by the Judge, which led her to decline granting a buyout order. As we have noted above, while adopting the purchase price may not be the ideal way to value the shares, the court cannot ignore the reality that the accounts are in an unsatisfactory state. Further, a valuation exercise may generate further disputes as to the parameters of the valuation, *ie*, what documents the valuation should be based on, the method of valuation, *etc*. This might in turn generate further dispute on the eventual valuation.

49 Wei also argued that his investment in the Company was made with the expectation that there would be return and as such, valuing the shares at the purchase price, *ie*, US$5m would not be fair and equitable. However, the *expectation* of returns does not always translate to *guaranteed* returns. Our view is that valuing the shares at the purchase price is the fairest outcome in light of the circumstances of this case.

Wei's other arguments

50 For completeness, we deal with two other points raised by Wei.

51 First, Wei also appealed against the Judge's finding that he had breached his fiduciary duties. The Judge found that Wei was in a position of conflict of duty and interest. As a director of the Company, he had diverted business away from the Company and attempted to undercut the Company. Wei had intended to supply the Parts directly to Apple and undermine the Company's business. We agree with the Judge's findings, which is roundly supported by the evidence detailed in [121]–[125] of the Judgment.

52 On appeal, Wei relied on the cases of *Tokuhon (Pte) Ltd v Seow Kang Hong and others* [2003] 4 SLR(R) 414 ("*Tokuhon*"), *In Plus Group Ltd and others v Pyke* [2002] EWCA Civ 370 ("*Plus*"), and *Servis*. In *Tokuhon*, the director in question wrote letters which contained confidential information to a third party, and placed the company in a bad light. Soon after, the third party terminated his distributorship relationship with the company. The director then resigned and was appointed the new distributor. This court found (at [39]) that the conflict between the company's shareholders was always known to the third party and the other shareholders regarded the third party as a confidante, a peacemaker and a referee for the contending parties. In fact, the other shareholders had similarly divulged confidential information to the third party. All these demonstrated that each of the parties regarded such conduct as being fair game and acceptable, and that was the norm set by the shareholders of the company. Wei argued that similar to the company in *Tokuhon*, the Company was never run in a manner which suited its interests independently from those of its shareholders, at least from the time of his entry into the Company.

53 We disagree with Wei's argument. In *Sakae Holdings Ltd v Gryphon Real Estate Investment Corp Pte Ltd and others (Foo Peow Yong Douglas, third party) and another suit* [2017] SGHC 73 at [257]–[258], the High Court observed that *Tokuhon* concerned "exceptional circumstances". In applying the principles espoused in *Tokuhon*, the High Court held that there must be "a shared expectation regarding the conduct of directors" and the norm must be one that is specific and with defined limits. There was no such expectation or norm in the present case. In fact, Wei's own case is that he was oppressed since he joined the Company. It would be entirely bizarre to suggest that such oppression, which is the genesis of this very dispute, was pursuant to any *shared* expectation or norm.

54 In *Servis* and *Plus*, the shareholders in question were excluded from the company. They then set up competing businesses. In *Servis*, the court found that the shareholder was entitled to earn her livelihood after being excluded and that the shareholder there did not use any confidential information or the company's property in her competing business. The business was also a "small, and personal" business. In *Plus*, the court found that the director-shareholder was "effectively expelled" and that there was no breach of fiduciary duties. The key difference in the present case, however, was that the Company's supplier of the Parts included the three companies in which Wei had a substantial interest. This was a case where a director, having substantial influence over the supply chain, went behind the company's back and attempted to take over its business. The cases therefore do not assist Wei and there is no reason to disturb the Judge's finding that Wei had breached his fiduciary duties. As we have ordered a buyout based on the purchase price, nothing really turned on the finding that Wei had indeed breached his fiduciary duties to the Company.

55 Second, given our decision, it is not necessary to deal with Wei's claim for dividends and/or for the declaration against Low and Sim. In any event, these reliefs were not appropriate in the context of an oppression action and in light of the findings by the Judge below.

Conclusion

56 For the above reasons, we allow the appeal and order that Low and Sim shall be jointly and severally liable to buyout Wei's shares at US$5m in substitution of the order made by the Judge for Low and Sim to return various sums which were paid out to them in breach of the Company's Articles. Whether those sums are to be repaid to the Company is a separate matter for the liquidators of the Company to examine. We also award costs to Wei at $80,000 (all-in), to be borne by Low and Sim. The usual consequential orders will apply.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Chao Hick Tin
Senior Judge

Jimmy Yim Wing Kuen *SC*, Lee Soong Yan Kevin, Eunice Lau Guan Ting and Lim Joe Jee (Drew & Napier LLC) for the appellant;
Loo Choon Chiaw, Chia Foon Yeow, Lim Jun Wei and Sigmund Seah Bingsen (Loo & Partners LLP) for the first and second respondents;
Ng Yeow Khoon and Ho Wei Liang Sherman (Shook Lin & Bok LLP) for the third respondent.
