IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 238

Suit No 863 of 2019

Between

(1) Baker, Samuel Cranage
(2) Lee Chuen Yang Jeremy

… *Plaintiffs*

And

(1) SPH Interactive Pte. Ltd.
(2) Singapore Press Holdings Ltd.
(3) Streetsine Technology Group Pte. Ltd.
(4) Barakat-Brown, Jason Lewis
(5) Fong Yin Leong Leslie

… *Defendants*

JUDGMENT

[Companies — Oppression — Minority shareholders]
[Tort — Conspiracy]
[Companies — Directors — Duties]

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Baker, Samuel Cranage and another
v
SPH Interactive Pte Ltd and others

[2022] SGHC 238

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22–24, 29–31 March, 1, 5–8 and 12 April 2022, 19 July 2022

26 September 2022 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 Where founders sell a majority stake to new investors, it is not uncommon for there to be disagreement about the direction of the business, especially after, as here, a shared hope for an initial public offering fails to be realised. The question for this court is primarily whether, keeping in mind the commercial agreement struck between founders and investors concerning the future management of the company, the founders were, as they allege, unfairly treated by the new majority in a bid to acquire their remaining shares, or the underlying business, on the cheap.

2 In addition to seeking a remedy to put an end to minority oppression pursuant to s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"), the plaintiffs bring a claim in unlawful means conspiracy.

Facts

The parties

3 The subject company in this dispute is the third defendant, StreetSine Technology Group Pte Ltd ("SSTG"), a Singapore company. SSTG was the holding company of StreetSine Singapore Pte Ltd ("SSSPL"), which was the operating company carrying on a business described to the court as "third-generation property technology", meaning the provision of online classifieds technology, big data algorithms, market pricing mechanisms and transaction capabilities including valuation and conveyancing.[1] Where it is convenient to refer to SSTG and SSSPL, or the business itself, I will use the name "StreetSine". SSSPL was sold to 99 Group Pte Ltd ("99 Group") on 1 December 2020, along with StreetSine's intellectual property including trademarks, domain names, applications and algorithms for its various products and services. StreetSine has therefore ceased operations. SSTG has been under interim judicial management since 22 June 2020.[2] SSTG is a nominal defendant, and hence for convenience, any reference to "the defendants" will not include SSTG unless specified.

4 The plaintiffs are the co-founders of StreetSine. The first plaintiff is Mr Samuel Cranage Baker ("Mr Baker") and the second plaintiff is Mr Lee Chuen Yang Jeremy ("Mr Lee"). They are minority shareholders who currently each hold 20% of the shares in SSTG.[3]

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1 Baker's AEIC at para 42.

2 Tan's AEIC at paras 7–13.

3 Baker's AEIC at para 3.

5 The first defendant is SPH Interactive Pte Ltd ("SPHI"), the holder of the remaining 60% of shares in SSTG. SPHI is a wholly-owned subsidiary of the second defendant, Singapore Press Holdings Ltd ("SPH").[4] The fifth defendant, Mr Fong Yin Leong Leslie ("Mr Fong") is the Chairman of the Board of Directors of SSTG. He was appointed by SPHI.[5]

6 The fourth defendant is Mr Jason Lewis Barakat-Brown ("Mr Barakat-Brown"), former CEO of SSTG. He was CEO of SSTG from 1 June 2018 to 1 December 2020.[6]

The dispute

Founding of StreetSine and its acquisition by SPHI

7 StreetSine was founded by the plaintiffs in November 2007. Mr Lee had technical experience from working at the Defence Science and Technology Agency. Mr Baker had considerable business experience from around the world. They decided to collaborate to achieve their vision to "democratize the property market". To do this, they set up StreetSine.[7]

8 In or around July 2012, SPH reached out to Mr Lee to explore a potential investment by SPH into StreetSine through SSTG (which was then known as CoSine Holdings Pte Ltd).[8] SPH was interested in acquiring SSTG as it was then looking to expand its digital media business. SPH viewed the acquisition of SSTG as a strategic expansion in its digital media business and an opportunity

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4 Fong's AEIC at para 4.

5 Fong's AEIC at para 7.

6 Barakat-Brown's AEIC at paras 2–3.

7 Baker's AEIC at paras 20–22.

8 Deborah Lee's AEIC at para 12.

to improve its existing online property listings business, ST Property. At the time, SSTG was Singapore's only major real estate analytics company. It managed and operated the Singapore Real Estate Exchange ("SRX"), a digital platform which provided the property market with computer generated pricing and other related services. It obtained real-time information on sales and rental transactions from its partnership with a consortium of property agencies in Singapore ("SRX Consortium"). SPH was hoping to gain access to this information through an acquisition of SSTG. This would allow ST Property to provide high-quality listings to differentiate itself from its competitors.[9] Acquiring SSTG would also block ST Property's competitors from acquiring it, and at the same time hedge against SSTG becoming a competitor in the future. It was also intended that after the acquisition, SPH, Mr Baker and Mr Lee would work together to position SSTG for an Initial Public Offering ("IPO") by 2017.[10]

9 The plaintiffs were interested in SPH's proposed investment because they felt they needed a large company as an ally. They were of the view that the disruptive power of their technology was too big for two small entrepreneurs to handle. They would need an entity like SPH to protect their business from incumbents which would seek to thwart their vision to create an efficient property market in Singapore.[11]

10 Between December 2013 and August 2014, negotiations were carried out regarding SPH's acquisition of SSTG. Eventually, it was agreed that SPH's investment would be carried out through a subsidiary, SPHI, acquiring 60% of

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9 Deborah Lee's AEIC at paras 18–20.

10 Tan's AEIC at para 38.

11 Baker's AEIC at para 26.

the shares in SSTG. On 31 October 2014, the following agreements were executed:[12]

(a) the Share Purchase Agreement between SPHI and the plaintiffs ("SPA");

(b) the Shareholders' Agreement between SPHI and the plaintiffs ("SHA");

(c) the Put and Call Option Agreement between SPH and the plaintiffs ("P&COA"); and

(d) management agreements for Mr Baker and Mr Lee between them and SSTG ("MAs").

11 Under the MAs, Mr Baker was appointed Chief Executive Officer ("CEO") and Mr Lee was appointed Chief Technology Officer ("CTO") of StreetSine.[13] Clause 2 of the MAs set out their term of employment:

> **2. Term of Employment**
>
> The Employment shall commence on the date of Completion and shall, subject to the provisions hereinafter contained, continue until 30 June 2018 (the "Initial Term"). The Employment shall continue beyond the Initial Term unless terminated by either Party in accordance with Clause 9.

12 The SHA provided that the plaintiffs would be involved in the management of StreetSine. Clause 1.1 defined the term "Management" as "each of the Existing Shareholders in their capacities as Chief Executive Officer (in the case of [Mr Baker]) and Chief Technology Officer (in the case of [Mr Lee])

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12 Deborah Lee's AEIC at paras 17, 24 and 41.

13 1 DCB 235 and 252.

of [SSTG and its related companies]."[14] Clause 5 of the SHA set out the responsibilities and authority of "Management". Specifically, Clause 5.3 provided that:[15]

> **5.3 Management and Operation of [StreetSine]**
>
> The Parties recognise that while the Management are to be subject to the overall supervision of the Board in the discharge of the Directors' fiduciary duties under general law, the Management shall continue to be given an appropriate level of autonomy and control that enables them to maintain their entrepreneurial spirit and freedom which is crucial to the success of the Group. In furtherance of such intention, the Parties agree that, for the period commencing on the date of this Agreement and expiring on 30 June 2018, subject to Clause 3.11:
>
> **5.3.1** the Board shall delegate the day-to-day running of the Business to the Management, which shall manage the Business in accordance with the Strategic Plan and Operating Budget;
>
> **5.3.2** the Management shall be authorised to take the necessary actions and steps to implement the matters in any Strategic Plan that is approved or varied (as the case may be) pursuant to Clause 5.1, provided that;
>
> …
>
> **5.3.3** the Management shall attend the meetings (no more frequently than once a month) of any management committee that may be established by the Board pursuant to Clause 3.12.1 to update the committee on the business operations and products of the Group; and
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> **5.3.4** the Management shall be empowered to authorise the employment of any person for any Group Company who is not a Senior Executive.

There were also some management rights conferred on the plaintiffs in Clause 5.1:[16]

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14 1 DCB 21.

15 1 DCB 21 and 33.

16 1 DCB 32.

> **5.1 Strategic Plan and Operating Budget**
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> **5.1.1** The Management shall prepare and submit a draft updated Strategic Plan (incorporating an annual Operating Budget to be prepared in accordance with FRS) to the Board for its review and approval at least two months before the start of the next financial year of the Company.
>
> …
>
> **5.1.4** For the period commencing on the date of this Agreement and expiring on 30 June 2018, the Management shall have the authority to make any variations to the Strategic Plan, provided that (i) such variation continues to relate to the real estate industry and does not result in any injection of funds by the Shareholders, or any incurrence of debt or financing by any Group Company unless each such event is expressly provided for in the original un-varied Strategic Plan approved by the Board, and (ii) such variation does not result in an unfavourable net change or variation of more than ten (10) per cent. to the prevailing Operating Budget and (iii) the Board is duly notified in writing at least ten Business Days prior to any material variation to the Strategic Plan.

13 The intention that an IPO with an internationally recognised stock exchange ("Qualifying IPO") be worked towards, and achieved by 31 December 2017, was reflected in clause 7.1 of the SHA:[17]

> **7.1.1** It is the Shareholders' intention that [SSTG] should evaluate the feasibility of a listing and quotation of its issued share capital on an internationally recognised stock exchange ("Qualifying IPO"), with the intention that such Qualifying IPO is to take place by 31 December 2017.
>
> …
>
> **7.1.3** In the event that the Shareholders agree pursuant to Clause 3.11 to seek a Qualifying IPO, they shall co-operate fully with each other and the Company and their respective financial and other advisers to achieve a listing … the Shareholders acknowledge and agree that the primary focus of the

[17] 1 DCB 40–41.

> Management shall, at all times, be on the growth and development of the business and operations of [StreetSine]…
>
> **7.1.4** … [SSTG] and each of the Shareholders shall use reasonable commercial endeavours to procure and ensure that all actions necessary to achieve and effect the IPO on or before 31 December 2017 are taken.

14 If no Qualifying IPO was achieved by 31 December 2017, the P&COA granted SPH the right to purchase the plaintiffs' shares at a specified price, and the plaintiffs the right to require SPH to purchase their shares at a specified price.[18] This option could be exercised by either party between 1 January 2018 and 30 June 2018.[19] Under Clause 7.1, if neither option was exercised, the P&COA would terminate at the end of the option period.[20]

SISV Litigation

15 After the acquisition, one obstacle that SSTG faced was opposition from the Singapore Institute of Surveyors and Valuers ("SISV"). Specifically, on 6 April 2016, SISV issued a press release stating that "computer-generated values [were] not valuations (in accordance with the SISV Valuation Standards and Practice Guidelines) and are therefore not recognised by [SISV]".[21] In response, SSTG lodged a complaint with the Competition and Consumer Commission of Singapore ("CCCS") on 18 April 2016.[22] On 10 November 2016, SSSPL commenced a suit in the High Court against SISV for various causes of action, including the tort of conspiracy and unlawful interference with

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18 1 DCB 269–270.

19 1 DCB 268.

20 1 DCB 280.

21 Tan's AEIC at p 880.

22 Tan's AEIC at pp 877–881.

trade or business ("SISV Litigation").[23] On 16 October 2017, 26 defendants were added to SSSPL's claim in the SISV Litigation.[24] When the SISV Litigation was commenced, Wong Thomas & Leong ("WTL") were SSSPL's solicitors. In July 2018, Mr Davinder Singh SC of Drew & Napier LLC ("D&N") took over conduct of the SISV Litigation from WTL. Around the same time, Mr Rodney McCune ("Mr McCune"), a barrister qualified in the UK, was hired as legal consultant to assist in the SISV Litigation.[25] When Mr Davinder Singh SC set up his own legal practice ("DSC") in around February 2019, DSC took over the conduct of the SISV Litigation.[26]

Mr Barakat-Brown as CEO

16 No Qualifying IPO was achieved by 31 December 2017. By 21 January 2018, Mr Baker had decided to relocate to the USA and discussed this with Mr Fong. Discussions concerning Mr Baker's replacement followed.[27] Eventually, Mr Barakat-Brown emerged as a candidate that was acceptable to Mr Baker, Mr Lee and SPHI. At this point, I should note that Mr Barakat-Brown was not new to StreetSine. In 2013, while he was Managing Director & Head of Advisory of Religare Capital, an investment banking firm, he had advised SSTG in relation to the potential acquisition of its shares.[28] Later, in July 2017, through his new firm, Candor Advisory Partners ("CAP"), he was engaged by SSTG as an external advisor to advise on its objectives of bringing in a new investor and positioning itself for an IPO in three to five years' time. CAP was first engaged

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23 Tan's AEIC at pp 883–908.

24 Tan's AEIC at pp 954–1016.

25 Tan's AEIC at paras 124–125.

26 Tan's AEIC at para 127.

27 Fong's AEIC at paras 117–121.

28 Barakat-Brown's AEIC at para 12.

from 1 August 2017 to end-January 2018 before a second mandate letter was executed in March 2018 to engage them until March 2019.[29] When discussions concerning a new CEO were ongoing, Mr Barakat-Brown thought that he would be a good fit because of his expertise and experience with SSTG's business. He suggested this to Mr Baker.[30]

17 On 23 May 2018, the engagement of Mr Barakat-Brown as CEO of StreetSine with effect from 1 June 2018 was formalised by resolutions of SSTG and SSSPL's boards. It was also formalised that Mr Baker would be resigning as CEO of StreetSine and would be adopting the new role of "Co-Founder and Executive Director" with effect from 1 June 2018.[31] On 4 June 2018, Mr Barakat-Brown's Service Agreement ("Service Agreement") was sent to him, signed by Mr Julian Tan ("Mr Tan"), a director of SSTG, on behalf of StreetSine.[32]

18 The months that followed involved a series of disagreements between the plaintiffs and SPHI. One such disagreement related to the Service Agreement. Mr Baker complained to Mr Fong that he had not seen the Service Agreement before it was executed and that he was not aware of what Mr Tan had locked StreetSine into. Mr Fong responded that the Service Agreement was in all material aspects the same as an earlier draft which Mr Baker himself had provided. Mr Fong's evidence was that he thought that this meant that Mr Baker

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29 Barakat-Brown's AEIC at paras 18–24.

30 Barakat-Brown's AEIC at para 26.

31 Fong's AEIC at para 141.

32 Tan's AEIC at para 146.

had accepted its terms and thus it was surprising to him that Mr Baker indicated that he "had not bought into" the Service Agreement.[33]

19 There was also disagreement about Mr Baker's role as "Co-Founder and Executive Director". Mr Baker was of the view that it had been agreed that he would "oversee Singapore operations".[34] To the contrary, SPHI took the position that it had only agreed to this appointment for the purposes of effecting a "transition" so that Mr Baker could oversee the SISV Litigation and regional expansion, but not operational matters.[35] This disagreement was brought to the fore when Mr Baker began raising issues with Mr Barakat-Brown's performance as CEO of StreetSine.

Indicative Proposal from REA

20 As mentioned earlier, StreetSine was looking to bring in a new investor to position itself for an IPO. It was therefore engaged in negotiations with REA Group Limited ("REA'), a multinational digital advertising business specialising in property. On 17 August 2018, REA submitted an indicative non-binding proposal to acquire 60% to 100% of SSTG based on a valuation of the company at $85m (the "Indicative Proposal").[36] For Mr Baker and Mr Lee, this was a massive undervaluation. In an e-mail to Mr Fong, Mr Baker described REA's indicative valuation "brazen but not surprising", and that it arose from REA's "discount[ing]" StreetSine as a "first generation listing portal".[37]

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33 Fong's AEIC at para 148 and p 1887.

34 Tan's AEIC at p 1587.

35 Tan's AEIC at p 1595.

36 Tan's AEIC at pp 1498–1499.

37 16 AB 8837.

21 Thus, on 22 August 2018, Mr Baker and Mr Lee submitted a formal offer to sell their shareholding to SPH. They provided three options as consideration for their 40% shareholding:[38]

(a) $100m cash;

(b) $60m cash and 40% of the proceeds of the SISV Litigation; or

(c) $60m cash and $40m of the proceeds of the SISV Litigation.

They based their offer on a valuation analysis report prepared by Mr Barakat–Brown (the "22 August Valuation Report") which estimated the value of SSTG to be $250m. SPH communicated their rejection of this offer on 24 September 2018 and told Mr Baker and Mr Lee that, having considered the terms of the Indicative Proposal, SPHI wished to "continue to engage REA Group and proceed with the next stage in the process, with the aim of concluding a sale of StreetSine to REA as expeditiously as possible".[39] However, REA withdrew the Indicative Proposal on 22 October 2018, because after concluding its due diligence, it found that "material assumptions that formed the basis of [the Indicative Proposal] [had] not been supported" and "any valuation which would support a final binding offer from REA [was] likely to be materially lower than the terms outlined in [the Indicative Proposal]".[40]

Removal of the plaintiffs from their management positions

22 Discussions between the plaintiffs and SPHI regarding the potential bifurcation of StreetSine followed, but no agreement was reached.[41] In or around

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38 Tan's AEIC at pp 1513–1514.

39 Tan's AEIC at p 1531.

40 Tan's AEIC at p 1534.

41 Mr Baker's AEIC at pp 84–90, Table 9 rows 7–13.

end-October 2018 to November 2018, the SPHI-nominated directors formed the view that it was no longer necessary or in StreetSine's interests for the plaintiffs to stay in their executive positions.[42] On 14 December 2018, Mr Fong informed the plaintiffs that there was no longer a need for them to remain in their executive roles and that their transition to non-executive roles was to be formalised as soon as possible.[43] Written resolutions approving the termination of the plaintiffs' employments as Executive Director and CTO were approved by the SSTG board on 17 December 2018.[44] The plaintiffs were paid three months' salary in lieu of notice in accordance with Clause 9.2 of the MAs, and remained non-executive directors of SSTG.[45] Mr Barakat-Brown then took the following steps pursuant to the plaintiffs' termination:[46]

(a) He restricted their access to the Google drive and other operational systems of StreetSine.

(b) He instructed D&N to take instructions only from himself or Mr McCune in respect of the SISV Litigation.

Events after the plaintiffs' removal from their management positions

23 Between the plaintiffs' removal from their management roles on 17 December 2018 and the commencement of this suit on 30 August 2019, the following relevant events occurred:

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42 Tan's AEIC at para 185.

43 Tan's AEIC at para 189.

44 Tan's AEIC at para 191.

45 Tan's AEIC at para 193.

46 Tan's AEIC at paras 195–196.

(a) On 23 May 2019, letters were issued to the plaintiffs on behalf of StreetSine demanding the return of certain sums (amounting to $19,500) which it alleged were unauthorised and improperly paid.[47] On 21 June 2019, StreetSine commenced a suit against the plaintiffs for the recovery of these payments (the "MC Suit").[48] NLC Law Asia LLC ("NLC") acted for StreetSine in the MC Suit.[49]

(b) SSTG sent a request to its shareholders for additional cash facilities of between $6.58m and $8.58m on 24 July 2019. The same day, Mr Baker replied on behalf of the plaintiffs, indicating that they would only consider the request for capital if certain conditions were met, one of which was reducing Mr Barakat-Brown's compensation or terminating his employment.[50]

(c) On 16 July 2019, the plaintiffs' solicitors at the time sent a letter to SPH's solicitors, Allen & Gledhill LLP ("A&G"), communicating an offer to sell their 40% shareholding to SPH for a total consideration of $55m payable immediately, $45m payable upon completion of the SISV Litigation and 1% of gross revenue for SSTG's digital property, banking and financial services for a 10-year period beginning on 1 September 2021.[51] A&G responded on 29 July 2019 with a counter-offer from SPH to purchase the plaintiffs' shareholding for a total of $10m.[52]

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47 Fong's AEIC at para 323 and p 5184.

48 Fong's AEIC at para 309.

49 Fong's AEIC at para 320.

50 Fong's AEIC at pp 3012–3013.

51 Fong's AEIC at p 5284.

52 Fong's AEIC at p 5287.

24 After commencement of these proceedings, further relevant events occurred. In November 2019, SSSPL sought a legal opinion from DSC on the merits of its claim in the SISV Litigation ("the DSC Note").[53] On 5 December 2019, Mr Fong, Mr Barakat-Brown and lawyers from DSC attended mediation with the parties to the SISV Litigation. A settlement was reached, whereby SISV and StreetSine would jointly issue a press release which addressed SISV's earlier statements (discussed at [15] above) that formed the basis of the SISV Litigation ("SISV Settlement").[54] In the press release, SISV stated that it recognised that computer-generated valuations could facilitate pricing transparency for the public and enhance the efficiency and productivity of property professionals, and strongly recommended embracing such technology. The press release also contained an acknowledgement from StreetSine that for transactions where a formal valuation is required, the opinion of a licensed appraiser remained important.[55] No compensation was paid to SSSPL as part of the SISV Settlement.

SSTG's judicial management and sale of SSSPL

25 During a board meeting held on 28 April 2020, Mr Barakat-Brown updated the board that by the end of June, due to financial difficulties, StreetSine would not be able to continue to trade. After considering his report, the majority of the StreetSine board decided that StreetSine should be placed under judicial management if shareholder funds were not forthcoming.[56] No such funds were made available, and on 11 May 2020, SSTG and SSSPL applied to be placed

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53 Fong's AEIC at para 288.

54 Fong's AEIC at para 301 and pp 4857–4858.

55 Fong's AEIC at p 4865.

56 Fong's AEIC at para 391.

under judicial management ("JM Applications").[57] The JM Applications were granted on 22 June 2020, and leave was given to continue these proceedings against SSTG on the condition that it was to be treated as a nominal defendant, and no substantive relief was sought against it.[58]

26 On 9 November 2020, the interim judicial managers ("IJMs") of SSTG entered into an agreement with 99 Group for the sale of all its shares in SSSPL as well as some of its assets.[59] SPH had also made an offer for the purchase of SSTG's shares in SSSPL, but the IJMs accepted 99 Group's offer instead.[60] The sale of SSSPL to 99 Group was completed on 1 December 2020 for consideration of $8,429,729,56.[61] SSTG remains under judicial management.

Procedural history

27 In the course of proceedings I had to deal with a number of interlocutory applications. I will mention two points.

28 The first concerns party representation. There are two aspects to this. One is that on 17 June 2021, Mr Baker filed notice that he intended to act in person. Mr Lee, however, would remain represented by Providence Law Asia LLP, as they had both been hitherto. This raised the question of whether multiple plaintiffs can proceed in this way, as ordinarily they should be represented by one set of counsel. If plaintiffs engage different counsel, or one is in person while the other is represented by counsel, there is then on one hand

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57 Fong's AEIC at pp 6417–6457.

58 Fong's AEIC at pp 7504–7513.

59 100 AB 54331.

60 100 AB 54325.

61 100 AB 54332.

the risk of inconsistent positions being taken and on the other hand the possibility of inefficient use of court time where both plaintiffs seek to address the court separately on the same points. It was immediately apparent to me that Mr Baker was a sophisticated and articulate individual who felt that he could best speak for the justice of his case. Sensibly, the defendants did not make much of an objection, and I allowed the plaintiffs to proceed in this way, subject to my control of time and on the basis of their stated intention to take consistent positions. Thereafter, Mr Baker and Mr Lee's counsel worked together to divide the time appropriately and with minimal duplication.

29 The other aspect of party representation concerned the fact that, of the defendants, SPH and SPHI had one set of counsel from Allen & Gledhill LLP while Mr Barakat-Brown had another set from the same law firm. The defendants made applications for further security for costs from Mr Baker who is resident outside the jurisdiction. I dismissed these applications on the principal ground that Mr Baker (and Mr Lee) now had assets within the jurisdiction (namely their indirect share of the sales proceeds for SSSPL held by the judicial managers of SSTG) that were likely to exceed the quantum of any adverse order for costs. While doing so, I observed that:[62]

> … the 4th defendant is represented by the same law firm as the 1st and 2nd defendants. I do not decide anything at this stage, but the question whether two parties represented by the same law firm may have separate costs ordered in their favour will have to be considered in due course.

30 The second point is that, preparatory to applying for subpoenas to compel attendance at trial, Mr Baker applied for dispensation of affidavits of evidence-in-chief in respect of twelve witnesses, including the chairman, chief

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62 Minute Sheet, 23 September 2021 at para 8.

executive officer and numerous employees of SPH, the judicial manager of SSTG and even a partner of Allen & Gledhill LLP.[63] First, as the application was only filed by Mr Baker, I required Mr Lee's counsel to confirm that he associated himself with the application and reminded the plaintiffs they could have only one case for both of them, and would be jointly and severally responsible for costs, if ordered. Secondly, as Mr Baker is a litigant in person, albeit one working closely with Mr Lee's counsel, I explained the consequences of a party calling a witness as its own, namely that leading questions may not be asked except in accordance with s 144 of the Evidence Act 1893 (the "EA"), and that the party is generally bound to accept the truthfulness of that witness, unless the witness is impeached in accordance with s 157 of the EA. These are important restrictions that operate to discourage parties from calling witnesses speculatively, merely in hope that they may give favourable evidence. Without them, trials would be unnecessarily prolonged, a result that would not be in the interests of the expeditious administration of justice. I allowed the application only in respect of two witnesses, namely Ms Young Yim Nee Babsy ("Ms Young"), who was a nominee of SPHI on SSTG's board, and Mr Ng Yat Chung ("Mr Ng"), the CEO of SPH.

Parties' cases

Plaintiffs' case

31 The plaintiffs contend that the defendants, instead of advancing StreetSine's interests, developed a plan to remove them so that SPH could gain full control of StreetSine. Around 10 May 2018, the defendants plotted a "bloodless coup", whereby Mr Barakat-Brown would replace Mr Baker, with the ultimate objective of devaluing the plaintiffs' shares in SSTG such that SPHI

63 HC/SUM 5208/2021 dated 16 November 2021.

could acquire them for a cheap price. When this plan failed, the defendants resorted to spilling "blood on the floor", and removed the plaintiffs from their executive roles on 17 December 2018. From that point onwards, the defendants restricted the plaintiffs' access to StreetSine's systems and information and acted in an oppressive manner to force the plaintiffs into selling their shareholding at a low price. When they were unable to force the plaintiffs to do so, they deliberately devalued StreetSine and placed it under judicial management.[64]

32 The plaintiffs rely on s 216 CA to seek an order that their shareholding in SSTG be bought out by SPHI.[65] The relevant parts of s 216 are as follows:

> **Personal remedies in cases of oppression or injustice**
>
> **216**.—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part 9, 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 the applicant or in disregard of his, her or their interests as members, shareholders or holders of debentures of the company; or
> >
> > …
>
> (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 limiting the foregoing, the order may —
>
> > …

64 Plaintiffs' joint closing submissions ("PCS") at paras 3–7.

65 PCS at paras 302–306; SOC (Amendment No 3) at p 217–218.

> (*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;
>
> …

33 The plaintiffs claim that the following acts were committed by SPHI, and constitute oppression under s 216(1)(*a*):[66]

(a) SPHI excluded the plaintiffs from management from 17 December 2018.

(b) SPHI changed the direction of StreetSine's business without the plaintiffs' approval in breach of the SHA.

(c) SPHI severed the plaintiffs' access to StreetSine's information, documents, records and systems, business partners, employees and government regulators in breach of their shareholder rights and the SHA.

(d) SPHI harassed the plaintiffs by commencing frivolous legal proceedings.

(e) SPHI destroyed StreetSine's value so that they could place SSTG and SSSPL under judicial management and thereby acquire full control of StreetSine and the SRX Consortium at a lower price.

34 In respect of [33(a)] above, the plaintiffs argue that they had a legitimate expectation that they would manage SSTG's business until such time that either of them ceased to be at least a 5% shareholder of SSTG. This legal right arises from the express terms of the SHA and the P&COA. The plaintiffs argue that

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66 PCS at para 139.

Clauses 1.1, 3, 5.1 and 5.3 confer on them management rights which are not limited in time. The intention was therefore for their management rights to continue without any cut-off date. Their legitimate expectation of management would only cease when each of them held less than 5% of shares in SSTG, because Clause 3.3.3 provides that their right to appoint directors ceases if their shareholding falls below that threshold.[67] The express terms of the P&COA impose restrictive covenants on the plaintiffs that are linked to their shareholding rather than their employment in management positions. This would only be commercially fair if the plaintiffs retained management rights after their exit options had lapsed, for as long as they remained shareholders.[68] Alternatively, the plaintiffs contend that the term that they would retain their rights, authority and obligation to control and manage SSTG's business until such time that they ceased to be at least a 5% shareholder was an implied term of the SHA.[69] This right was continuing, and was reinforced by representations by SPH in 2017 and 2018.[70]

35 The plaintiffs also claim that the defendants conspired to cause them loss by unlawful means. The defendants combined to exclude the plaintiffs from management by terminating their executive roles. Around 8 May 2018, a plan was hatched between Mr Barakat-Brown and Mr Ng, the CEO of SPH by then, to exclude the plaintiffs from management of StreetSine.[71] This was done by unlawful means because the plaintiffs had a legitimate expectation to be

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67 PCS at paras 148–151.

68 PCS at para 152.

69 PCS at paras 156–160.

70 PCS at para 282.

71 PCS at paras 244–255.

involved in StreetSine's executive management.[72] The defendants also conspired to commit further oppressive acts against the plaintiffs, such as denying their access to information and commencing frivolous litigation against them.[73] Finally, the defendants conspired to place StreetSine into judicial management, which was unlawful because it was oppressive and because it was a breach of Mr Fong's director's duties.[74] As a result of these conspiracies, the plaintiffs suffered loss: loss of their livelihood through their company and loss of profits from StreetSine's opportunity to achieve an efficient property market in Singapore and overseas. The plaintiffs seek damages to be assessed.[75]

36 The plaintiffs have also alleged that Mr Fong committed various breaches of his duties as director of SSTG.[76] However, in their joint written submissions, they have confirmed that they are not seeking damages against Mr Fong for these breaches. Rather, these alleged breaches form the basis for their claim against him in unlawful means conspiracy.[77] Thus, I will deal with these allegations when I deal with the plaintiffs' conspiracy claim.

37 Apart from themselves, the plaintiffs called as their witnesses, under subpoena, Ms Young and Mr Ng.

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72 PCS at paras 257–258.

73 PCS at paras 259–266.

74 PCS at paras 267 and 278.

75 PCS at paras 322–326.

76 SOC (Amendment No 3) at paras 83–112.

77 PCS at para 237.

Defendants' cases

38 The defendants submit that the plaintiffs' case on conspiracy is based on their own subjective belief of the circumstances and not on evidence. There is no evidence of any combination or agreement between the defendants to do any of the acts alleged by the plaintiffs.[78] Further, the alleged conspiracy is inherently incredible, because none of the defendants stood to gain from it. In fact, they stood to lose because it was in their interests for SSTG to grow in value.[79]

39 While Mr Barakat-Brown did communicate with Mr Ng without the plaintiffs' knowledge between 8 and 11 May 2018, there was nothing untoward about this. Mr Ng simply wished to get to know Mr Barakat-Brown and discuss SSTG's business moving forward. These communications were not shared with the plaintiff because Mr Ng did not see a need to, given that the plans he had discussed with Mr Barakat-Brown were consistent with Mr Baker's plan for StreetSine.[80]

40 The legal proceedings commenced against the plaintiffs were commenced in good faith after multiple opportunities had been given to the plaintiffs to address the issue of their unauthorised payments. Management decisions such as settling the SISV Litigation were not taken to "devalue" StreetSine – they were commercial decisions taken in StreetSine's interests that the plaintiffs happened not to agree with.[81] StreetSine was placed in judicial

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78 Fourth defendant's closing submissions ("4DCS") at para 41.

79 4DCS at paras 72–77.

80 First and second defendants' closing submissions ("1DCS") at paras 39–41.

81 4DCS at para 151.

management because it was in a precarious financial position. The decision to do so was taken by the directors of SSTG in the best interests of the company.[82]

41 Finally, the decision to terminate the plaintiffs on 17 December 2018 was a considered and commercial one. The SSTG board made this decision after considering the plaintiffs' failure to meet revenue targets at every prior juncture, and the cost of keeping them in their executive roles after Mr Barakat-Brown had taken over from Mr Baker as CEO. This decision was taken independently, and not on the instructions of SPH. When the plaintiffs were terminated, they were terminated in accordance with the terms of their MAs.[83] Removing them from their executive positions was not a breach of any of the terms of the SHA, because the comprehensive suite of contractual agreements entered into by parties at the time of SSTG's acquisition by SPHI only contemplated the plaintiffs being involved in executive management until 30 June 2018.[84]

42 For these reasons, the defendants say that there is no basis for either of the plaintiffs' claims, whether in minority oppression or unlawful means conspiracy.

43 The defendants did not rely on any point that the plaintiffs had a contractual right to exit under the P&COA as described at [13] above, a right which arose when no Qualifying IPO was achieved by 31 December 2017. The plaintiffs did not exercise this right and it terminated on 30 June 2018, prior to the occurrence of the alleged acts of oppression on which the plaintiffs rely in these proceedings.

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82 1DCS at paras 93–103.

83 1DCS at paras 61–62.

84 1DCS at para 21.

44 SPH and SPHI called Ms Deborah Lee, who had been involved in SPHI's acquisition of SSTG in 2014, and Mr Tan as their witnesses. SSTG, being a nominal defendant, did not call any witnesses. Mr Barakat-Brown testified on his own behalf and called Mr McCune as a witness. Mr Fong testified on his own behalf and did not call any witnesses.

Minority oppression

The applicable law

45 As the Court of Appeal held in *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 (*"Over & Over"*) at [70], s 216 CA is underpinned by the element of unfairness. Commercial unfairness is the touchstone by which the court determines whether to grant relief under s 216 CA (*Over & Over* at [81]). In assessing commercial unfairness, the court should bear in mind that the essence of a claim for relief under s 216 CA lies in upholding the commercial agreement between the shareholders of a company: *Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] 1 SLR 771 at [29]. The adjective "commercial" highlights that the inquiry is not limited to parties' formal legal rights. The commercial agreement between shareholders can be contained in a formal agreement such as the company's constitutional documents, a shareholders' agreement, or other collateral agreements. The commercial agreement can also come from an informal understanding among shareholders: *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 at [172]. Such an informal understanding must be both clear and shared, if it is be said to be a legitimate expectation; a mere subjective expectation on the part of a minority shareholder is not relevant: *Lim Kok Wah v Lim Boh Yong* [2015] 5 SLR 307, at [121]. There will be commercial unfairness if, in light of the commercial agreement, there

has been "a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder [was] entitled to expect": per Lord Wilberforce in *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227, cited in *Over & Over* at [77]. Ultimately, as the Court of Appeal has recently explained in *Senda International Capital Ltd v Kiri Industries and others and another appeal* [2019] 2 SLR 1 at [38]: "It is sufficient to say that a minority shareholder is entitled to fair treatment, an ambulatory standard bounded by the four limbs of s 216(1)".

46 To organise the inquiry, when considering the plaintiffs' complaints in turn, I start with the commercial agreement of the parties relevant to that complaint, if any, before determining whether there has been commercial unfairness.

Issues to be determined in relation to minority oppression

47 The plaintiffs' complaints can be organised under the following five sub-headings:

(a) Did SPHI unfairly or oppressively exclude the plaintiffs from executive management?

(b) Did SPHI unfairly or oppressively deny the plaintiffs access to information, documents and records?

(c) Did SPHI settle the SISV Litigation unfairly or oppressively to the plaintiffs?

(d) Did SPHI file a police report and commence litigation against the plaintiffs unfairly or oppressively?

(e) Did SPHI place StreetSine under judicial management unfairly or oppressively to the plaintiffs?

(f) Did SPHI change StreetSine's strategic direction and manage its operations unfairly or oppressively to the plaintiffs?

48 After reviewing the evidence for these complaints, I will consider my findings against the overarching claim that SPH and SPHI "leverage[d] [their] deep pockets to use oppressive tactics of the past to intimidate and pressure [the plaintiffs] to sell [their] shares on the cheap".[85] This claim is sometimes also put in terms of acquiring the underlying business on the cheap.

49 Finally, I will determine what remedy, if any, the plaintiffs are entitled to.

Did SPHI unfairly or oppressively exclude the plaintiffs from executive management?

What was the commercial agreement concerning the plaintiffs' executive management roles?

50 As I have summarised at [34] above, the plaintiffs have contended that they had a legal right to continue to exercise certain executive management rights until such time as they each ceased to hold 5% of the shareholding in StreetSine. They seek to derive this right as an express term by construction of the SHA, and alternatively as an implied term.

51 For both contentions, the plaintiffs rely on the background fact that SPHI's initial consideration for its acquisition of 60% of StreetSine did not

[85] NE, 19 July 2022 p 13 lines 21–24.

include any premium for control, as noted in a pre-acquisition memo,[86] whose contents were prepared for and agreed to by the SPH Board.[87] I accept that SPH had negotiated the initial consideration without any control premium. I also accept that this fact was known to all parties and is appropriately to be considered when construing the SHA or the implication of terms.

52 However, I am not able to accept that, after the termination of the MAs, the plaintiffs held executive management rights by virtue of the SHA, whether expressly or by implication, so long as they held 5% of the shareholding each.

53 The plaintiffs' express term argument can be stated simply. First, the capitalised word "Management" is defined in Clause 1.1 of the SHA to mean "each of the Existing Shareholders in their capacities as Chief Executive Officer (in the case of [Mr Baker] and Chief Technology Officer (in the case of [Mr Lee]) of [SSTG and its related companies]".[88] Secondly, some, but not all, of the references thereafter to "Management" are expressly limited in time to expire on 30 June 2018.[89] Therefore, where there is no stated time limit for a particular power of the "Management", it continued to be exercisable by Mr Baker and Mr Lee after 30 June 2018. For example, Clause 5.1.1 of the SHA (see [12] above) describes how the "Management" should "prepare and submit a draft updated Strategic Plan (incorporating an annual Operating Budget…) to the Board for its review and approval at least two months before the start of the next financial year of the Company". There is no stated time limit in this sub-clause, as compared to Clause 5.1.4 where the "Management's" conditional

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86 1 PCB 212–213.

87 NE, 12 April 2022 p 195 lines 10–14.

88 SOC (Amendment No 3) at para 23(b).

89 For example, Clauses 5.1.4 and 5.3.

authority to make variations to the Strategic Plan would end on 30 June 2018. Thus, while Mr Baker and Mr Lee could not vary the Strategic Plan after 30 June 2018, they were still entitled to prepare and submit the Strategic Plan incorporating an Operating Budget for the following year.[90]

54 The plaintiffs identified two other clauses potentially containing residual or continuing powers after 30 June 2018. One was Clause 3.12.4 under which the board would have to consult with the "Management" concerning bonuses and increments of employees. The other was Clause 7.1.3 where the "Management's" primary focus was required to be on growth and development of business and operations and the achievement of targets and milestones in the prevailing Strategic Plan.[91]

55 I am not persuaded by this contention. First, there is no logical business reason for Mr Baker and Mr Lee to retain these disparate management powers after ceasing to be employed as CEO and CTO respectively. For example, one would expect any replacement CEO to be responsible for all aspects of the Strategic Plan and Operating Budget without the suggested carve-out in favour of the plaintiffs under Clause 5.1.1. Indeed, this is made clear in Clause 1.1, which defines "Management" as Mr Baker and Mr Lee *in their capacities as CEO and CTO.* Once they ceased to be CEO and CTO respectively, any clauses referring to "Management" would no longer refer to them. I do not accept the opposite argument that because "Management" was defined as Mr Baker and Mr Lee in their capacities as CEO and CTO, the SHA conferred on them a right to remain as CEO and CTO, or otherwise to retain some or all of the functions and powers usually associated with those roles. That is a strained reading of the

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90 NE, 19 July 2022 p 27 lines 3–23.

91 NE, 19 July 2022 p 124 lines 2–26.

SHA, which in fact contradicts the terms of the MAs which provided for termination after 30 June 2018 (see [11] above).

56 A further weakness in the plaintiffs' contention is their suggestion that their management rights under the SHA continued until either of them held less than 5% of the shares in SSTG. They argue that this limit on their management rights arises from Clause 3.3. Clause 3.3 provides that there shall be no change to the shareholders' rights to appoint directors so long as they retain at least 5% shareholding. Clause 3.3 makes no reference to management or management rights. It governs the shareholders' rights to appoint directors. In none of the clauses referring to rights of management is there a reference to a minimum of 5% shareholding.

57 I consider that the SHA read as a whole does not support any concept of continuing or residual powers vested in Mr Baker and Mr Lee. Much less does the SHA suggest that these residual powers would be vested in them so long as they retained 5% shareholding each. The natural way to provide for such powers in a logical and coherent fashion would be to state expressly that even after the plaintiffs ceased to be CEO and CTO respectively, they would retain certain identified powers until they ceased to hold 5% shareholding. Alternatively, Clause 1.1 could have simply defined "Management" as Mr Baker and Mr Lee in their capacities as at least 5% shareholders. I should note that lawyers were involved in the drafting of the SHA, and that the table of contents and the structure of the SHA generally demonstrate an otherwise logical approach to the parties' respective powers, rights and obligations.

58 I turn next to the alternative contention that there was an implied term of the SHA that the plaintiffs would retain their rights, authority and obligation

to control and manage SSTG's business until such time that each ceased to be at least a 5% shareholder.[92]

59 This contention fails at the first step identified in *Sembcorp Marine v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193, at [101], namely that there be a gap in the contract uncontemplated by parties at the time of contracting. It is plain that at the time of entry into the SHA, parties had contemplated what Mr Baker's and Mr Lee's management rights would be and how long they would last. On my construction of the SHA, they simply ceased to have management rights pursuant to the SHA after 30 June 2018. This did not preclude them continuing to be employed as CEO and CTO under the MAs or having management roles under other agreements thereafter. Such roles would depend on what was subsequently agreed between them and SSTG, and any powers they might have after 30 June 2018 would be derived from those agreements (if any) and not from the SHA.

60 As the concept of legitimate expectations extends beyond matters of contractual right, I must consider whether there was any relevant legitimate expectation beyond what the SHA provides. Defeating a legitimate expectation, unlike breaching a contract, founds no potential contractual remedies but only the possibility that such conduct amounts to commercial unfairness or oppression so as to found relief under CA s 216. However, where contractual rights are the product of informed negotiation between experienced businesspersons, as is the case here, it will have to be shown clearly how and why the minority shareholder should legitimately expect a state of affairs that he had not secured in his contract, here the SHA. The principal point made by the plaintiffs is that when they sold 60% of the company they received no

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92 PCS at para 156.

control premium, and hence they expected to continue to have control until such time as they were paid for giving up that control. This point simply cannot bear the weight of the plaintiffs' contention. The SHA represents the bargain that they struck concerning the state of affairs following their sale of 60% of the company. The price that the plaintiffs received for that sale must be taken to match what was bargained for in the SHA, which included provisions that limited the control that SPHI would otherwise have had by virtue of being majority shareholder. These limitations included the plaintiffs' management rights that, on my construction of the SHA, were limited in time to the period until 30 June 2018, their rights to continue as directors and the provision for reserved matters that was not bounded in time. That SPHI did not pay for control is reflected in the provisions in fact expressly agreed between parties and does not support additional unexpressed limitations on SPHI's rights as a majority shareholder. I am unable to find any legitimate expectation that the plaintiffs would have management rights after 30 June 2018, or indeed any role in management other than that of remaining directors on the board as they were entitled to do under the SHA.

61 The plaintiffs argued that the fact that restrictive covenants against competing with StreetSine endured so long as they remained shareholders rather than ending on 30 June 2018 or upon ceasing to be employed as CEO and CTO showed that they expected to remain in management even after 30 June 2018 and after ceasing to be employees. I am not persuaded by this argument. The restrictive covenants at Clause 6 of the P&COA appear to reflect similar provisions at Clause 9 of the SPA, which also operate so long as Mr Baker or Mr Lee remained as shareholders. The P&COA extends the benefit of the covenants to SPH. Their purpose seems to be to protect SPH and SPHI as purchaser from future competition from the vendor. This is not unusual and the

fact that Mr Baker and Mr Lee agreed to them relates to their position as vendors. I do not consider that the restrictive covenants in the P&COA support the argument that Mr Baker and Mr Lee expected a continuing role in management even after 30 June 2018 and after ceasing to be executive employees.

62 I would go further. Not only was there no legitimate expectation that the plaintiffs would have management rights after 30 June 2018, I also do not accept that the plaintiffs even had a subjective expectation of such continuing rights at the time of entry into the SHA. I find that it is an afterthought.

Was their termination from executive roles commercially unfair?

63 The plaintiffs also argued that regardless of whether they had continuing rights to remain in executive roles and notwithstanding that their termination as employees was not in breach of their employment contracts, termination was nonetheless oppressive because of its manner and the failure to consult them about how StreetSine would operate thereafter. They pointed to the lack of a transition period and argued that a "technology company without a CTO was like a human without a brain".[93] The plaintiffs are certainly right that when a majority in control of a company terminates the management team in accordance with their constitutional rights to do so this does not of itself preclude a finding of unfairness. A lawful decision to terminate the management team could be made not in the best interests of the company but to advantage the majority or prejudice the minority.

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93 Plaintiffs' joint reply submissions ("PRS") at para 62.

64 This reflects the legal position that a board must make decisions in good faith in what it considers is in the interests of the company and not for any collateral purpose: see, for example *Cheong Kim Hock v Lin Securities (Pte) (in liquidation* [1992] 1 SLR(R) 497, at [26], citing *re Smith and Fawcett, Limited* [1942] 1 Ch 304, at 306.

65 However, in this case I am satisfied that the board decided to terminate the plaintiffs in the good faith belief that this was in StreetSine's best interests, and did not do so for any improper or collateral purpose. In coming to this view, I have noted the broader context that Mr Baker had himself initiated his own stepping back from executive responsibilities in March 2018 because he wished to return to the USA.[94] Moreover, Mr Baker had recommended Mr Barakat-Brown as his replacement as CEO in his email to Mr Ng dated 3 May 2018,[95] describing him as a "world class CEO… who has already come up to speed". Mr Lee also supported Mr Barakat-Brown's hiring.[96] Mr Barakat-Brown had duly become CEO from 1 June 2018.[97] By the time of the plaintiff's termination, Mr Barakat-Brown had been in place for half a year. There is no reason to doubt that the SPHI nominee directors genuinely believed that Mr Barakat-Brown could manage the business effectively in the absence of the plaintiffs.

66 Indeed, when cross-examined, Mr Baker let slip that he had supported the hiring of Mr Barakat-Brown as replacement CEO "because [he] would control him".[98] I find that Mr Baker's subsequent dissatisfaction with Mr

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94 NE, 30 March 2022 p 82.

95 3 DCB 555–556.

96 NE, 1 April 2022 pp 132–133.

97 1 DCB 466–467.

98 NE, 30 March 2022 p 84.

Barakat-Brown arose from the fact that Mr Barakat-Brown undertook his duties as CEO independently and did not allow himself to be controlled by Mr Baker. It is telling that when Mr Barakat-Brown reported to Mr Baker by WhatsApp on 28 May 2018 that terms were agreed with SPH and that he had signed the Service Agreement, Mr Baker simply replied "Super".[99]

67 Mr Tan explained the reasons for termination in detail, and I accept that these were his genuinely held views and moreover that they had a reasonable basis. The thrust of his evidence was that he assessed Mr Barakat-Brown to be capable of running the business without Mr Baker and that it would be better if he did so "without being micro-managed or constrained by frequent interference".[100] The below-expectation performance of SSTG and the cost of keeping the plaintiffs in executive roles were also relevant factors that he was entitled to consider. I have of course formed no view on whether the decision was the best one for the company in all the circumstances, only that it was a decision that the board could properly take. It is not the court's role to assess the merits of management decisions – "there is no appeal on merits from management decisions to courts of law: nor will courts assume to act as a kind of supervisory board over decisions within the powers of management honestly arrived at": Lord Wilberforce in *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821 at 832; [1974] 1 All ER 1126, cited in *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064 at [30].

68 Accordingly, I reject the plaintiffs' contention that their termination was an act of oppression or commercially unfair. They had no expectation, contractual or otherwise, to be involved in management of StreetSine after 30

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99 13 AB 6832.

100 Mr Tan's AEIC at para 185(1).

June 2018. Their termination occurred after 30 June 2018. The decision to do so was taken in the genuine belief that it was in the best interests of StreetSine.

Did SPHI unfairly or oppressively deny the plaintiffs access to information, documents, and records?

What was the commercial agreement concerning the plaintiffs' access to information?

69 Parties agreed that the plaintiffs should have access to information pursuant to Clause 2.2.4 of the SHA, in addition to the rights that they would have as directors under s 199 CA, which provides that:

> **Accounting records and systems of control**
>
> **199.**—(1) Every company must cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair financial statements and any documents required to be attached thereto to be prepared from time to time, and must cause those records to be kept in such manner as to enable them to be conveniently and properly audited.
>
> …
>
> (3) The records referred to in subsection (1) must be kept at the registered office of the company or at such other place as the directors think fit and must at all times be open to inspection by the directors.

70 It is a reasonable inference that the parties also agreed and understood that the plaintiffs while carrying out executive roles should have such access to information that they would need to properly perform those roles. However, this right would come to an end if and when they ceased to have executive roles.

Was there commercial unfairness in denying the plaintiffs access to information, documents and records?

71 Once the plaintiffs were terminated from their executive roles, their access to StreetSine's systems was removed. They remained directors and in

that capacity continued to be invited to attend board meetings and receive the board papers. While they had the right under Clause 2.2.4 of the SHA to inspect accounting records by prior appointment during office hours, they did not in fact make any formal request to inspect pursuant to this provision, a fact that Mr Baker admitted during cross-examination.[101]

72 The plaintiffs' complaints are principally twofold. One is that Mr Baker was compelled to commence proceedings in the High Court to obtain access to certain documents relying on his rights as a director under CA s 199 and that not only was this application allowed but SSTG was also ordered to pay costs. The other is that they were denied access to information and documents relevant to the SISV Litigation.

73 An application under CA s 199 is readily allowed by the court and so it proved in Mr Baker's case. It is another matter altogether however to treat the company's resistance to such an application as an act of oppression. It has not been established that the application was resisted in bad faith, as opposed to, for example, legitimate concern about the scope of the documents sought. Moreover, I accept the defendants' contention that any prejudice to the plaintiffs was eliminated upon SSTG's compliance with the order obtained by Mr Baker. I note further that the application under CA s 199 was both commenced and concluded while these minority oppression proceedings were afoot. I am not able to find that resistance to this application establishes or fortifies the plaintiffs' case.

74 As for information relevant to conduct of the SISV Litigation for the time period after the plaintiffs were terminated from their executive

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101 NE, 24 March 2022 p 212.

management roles, I hold that the degree of information to which they were entitled was that appropriate for members of the board of directors. I do not find that they were deprived of any specific information which they were entitled to have as directors. The fact that Mr Barakat-Brown took over management conduct of the SISV Litigation is no more than the natural and legitimate consequence of the change in management.

Did SPHI settle the SISV Litigation unfairly or oppressively to the plaintiffs?

What was the commercial agreement concerning settlement of the SISV Litigation?

75 The plaintiffs complain that the SISV Litigation was settled without their agreement as shareholders.[102] Clause 3.11 of the SHA provides that:

> **Reserved Matters**: … none of the Reserved Matters set out in Schedule 2 shall be taken by [SSTG] unless with the prior written approval of one of more Shareholder(s) collectively having not less than a Shareholding Percentage of 90 per cent.

Thus, whether the plaintiffs' approval was required under the SHA depends on whether settling the SISV Litigation was a reserved matter. Their argument is that it fell within paragraph 8 of Schedule 2 of the SHA, as a "sale, transfer or other disposal of any material assets of a Group company".[103] The defendants criticise the contention as an afterthought, given that shortly after their termination the plaintiffs wrote to SPH Chairman Dr Lee Boon Yang requesting that the SISV Litigation be made a reserved matter,[104] which implies that, at the time, the plaintiffs did not believe it was a reserved matter. However, regardless

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102 SOC at para 79B(b).

103 1 DCB 48.

104 2 DCB 168, at item 12.

of subjective beliefs at that time, it remains necessary to construe the SHA to determine what was meant by "disposal of a material asset", and whether settling the SISV Litigation would come within that.

76 Neither party adduced evidence from any accounting expert concerning how a litigation claim may be classified in the financial statements of a Singapore company. The defendants rested on the fact that the SISV Litigation was never classified as an asset in StreetSine's financial statements, a fact that Mr Baker accepted during cross examination.[105]

77 The plaintiffs did not elaborate on their contention that the SISV Litigation was an asset. I would infer that its basis must be that the claims sued on, namely the torts of conspiracy, causing loss by unlawful means and malicious falsehood, were choses in action belonging to StreetSine. Any property of StreetSine's including choses in action would be its asset, notwithstanding that the claims were for unliquidated damages.

78 In my view, in the context of the SHA, the word "asset" in the relevant paragraph bears the meaning of an asset in an accounting sense. In other words, it would apply only to property of StreetSine that was either classified as an asset in its financial statements, or ought to have been so classified under applicable accounting standards. The plaintiffs bore the burden of proof to establish this. They did not adduce any evidence that the SISV Litigation, not being so classified, ought to have been classified as an asset under applicable accounting standards. Accordingly, I do not accept that settlement of the SISV Litigation was a reserved matter.

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105 NE, 24 March 2022 pp 7–8.

79 I accept the defendants' position that settlement of the SISV Litigation was a matter for the SSSPL board. Thus, the commercial agreement was that the settlement of the SISV Litigation did not require the plaintiffs' approval.

Was the decision to settle the SISV Litigation commercially unfair?

80 I turn then to whether the SSSPL board's decision to settle the SISV Litigation was unfair or oppressive even though shareholder approval was not required. The board took appropriate steps to assess the best course of action including by obtaining the DSC Note. The DSC Note placed chances of success in relation to at least some defendants as about even. It cautioned that "[e]ven if StreetSine is successful in any of its claims, the damages … are not going to be anywhere close to what StreetSine earlier had in mind e.g. in its 2 May 2018 report on the assessment of damages".[106] It also contained an estimate of fees that was substantial.

81 There were suggestions that the DSC Note was shaped by how instructions were given by Mr Fong. I do not accept that this was the case. Certainly, the board was entitled to rely on the DSC Note as an independent and competent legal opinion concerning the prospects of the SISV Litigation.

82 Mr Baker and Mr Lee chose not to attend the board meeting at which the board agreed to settle the SISV Litigation.[107] Mr Tan has explained the considerations that the board took into account in arriving at its decision.[108] I am satisfied that the decision was taken in good faith with the best interests of

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106 4 DCB 590.

107 Mr Tan's AEIC at paras 288 and 291.

108 Mr Tan's AEIC at para 292.

StreetSine in mind. I do not accept that it was unfair or oppressive to the plaintiffs.

83 I would make three further observations. The first is that the SISV Litigation was prompted by genuine concern about the adverse business impact on SSTG and SSPL of the SISV's statements concerning the status of computer-generated valuations. The second is that as additional defendants were added, the risks associated with proceeding to trial naturally increased, because of the possibility of costs orders being made in favour of some or all of the defendants. The third is that Mr Baker's views on both the strength of the case and the likely amount of damages as expressed to Mr Fong by email of 20 April 2018[109] ("ironclad evidence") and by the 2 May 2018 report[110] (assessing compensatory damages at S$686.5m) were not backed up or substantiated by any evidence adduced in these proceedings. Mr Barakat-Brown, who prepared the 2 May 2018 report at a time before he became CEO (and so while he was still trusted by Mr Baker), noted contemporaneously in his email of 28 April 2018[111] to Mr Baker that he had "turned up the dials on most of the assumptions so the damages amount is higher" and the report contained "many easy vulnerabilities" including "a conceptual double-counting".

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109 11 AB 5784.

110 2 PCB 787; 12 AB 6312.

111 2 PCB 785.

Did SPHI file a police report and commence litigation against the plaintiffs oppressively?

84 The plaintiffs allege that "SPHI orchestrated a witch hunt" against them and their associates so as to pressure them "to accept a low-ball offer to sell their shares".[112]

85 The plaintiffs complain about a police report filed by Mr Barakat-Brown concerning payments made to one Mr John Field and a $1,000 reimbursement to Mr Baker's wife for her purchase of a wide-angle lens.[113] They also complain about the MC suit claiming $22,100. The MC Suit was filed on 21 June 2019, shortly before Mr Barakat-Brown noted to the board that substantial additional capital was needed.[114]

86 The plaintiffs did not show that these actions were without merit, let alone frivolous. I do accept that the sums involved are relatively small compared to the potential cost of pursuing them. To this extent, their pursuit may be criticised for pettiness. But mere pettiness in causing the company to pursue claims that are not plainly frivolous against a minority shareholder would not of itself constitute unfair treatment in the absence of evidence that similar or greater sins by others were left unchecked. However, if these actions were connected with a plan to buy the plaintiffs' shares cheaply, then they would potentially support an inference of "a violation of the conditions of fair play". I will return to this when I consider the plaintiffs' overall grievance.

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112 PCS at para 186.

113 PCS at para 188.

114 PCS at para 191.

Did SPHI place StreetSine under judicial management oppressively?

87 The claim made is framed in the following terms: Mr Barakat-Brown's mismanagement engineered cash flow difficulties that SPHI took advantage of to place SSTG and SSSPL into judicial management, so as to acquire StreetSine assets on the cheap.

88 This complaint is unmerited for two principal reasons:

(a) Even if Mr Barakat-Brown had mismanaged the business (which has not been proved by the plaintiffs), this does not eliminate the fact that the board was faced with how to deal with the company's cash flow difficulties for which the moratorium that would accompany judicial management would be one solution;

(b) The board was entitled to take into account the fact that judicial management, unlike out-of-court restructuring, would have the advantage of the "involvement of a professional and independent third party, namely the judicial manager, who would assist in running the companies and navigating SSTG and SSSPL through the precarious situation free from the ongoing SSTG and SSSPL board disputes, under the supervision of the High Court".[115]

89 Nonetheless, the JM Applications could potentially have been unfair or oppressive if they had truly been made as part of a larger scheme to oppress the plaintiffs. I will return to the question of motive when I consider the plaintiffs' overarching claim.

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115 Mr Tan's AEIC at para 322(6).

Did SPHI change StreetSine's strategic direction and manage its operations unfairly or oppressively?

What was the commercial agreement concerning StreetSine's strategic direction and its operations?

90 Under Clause 2.1 of the SHA, the StreetSine business was to "facilitate real estate and related transactions" by "providing digital integrated application services, value-added information, and marketing services".

91 Under paragraph 17 of Schedule 2 of the SHA, unilateral termination of a line of business was a reserved matter. Under paragraph 18 of Schedule 2 of the SHA, unilateral entry into a new line of business was also a reserved matter. In light of Clause 3.11 of the SHA (see [75] above), the commercial agreement was that shareholder approval from the plaintiffs was required to do either of these things.

Was there a departure from this commercial agreement?

92 The plaintiffs allege that SPHI unilaterally changed the strategic direction of StreetSine by disavowing the EPM vision.[116] EPM stands for efficient property market.

93 I have dealt with two aspects of this allegation in separate sections, namely the settlement of the SISV Litigation and the filing of the JM Applications. This leaves three limbs, namely:

(a) not executing the steps in what the plaintiffs term the "New IPO Plan", including raising of capital;

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116 PCS at para 164.

(b) terminating certain business with the Singapore Land Authority ("SLA"); and

(c) abandoning certain critical initiatives relating to mortgage processing and collaboration with the Housing and Development Board ("HDB").[117]

94 The first thing to note is that these specific claims, even if true, do not support the argument that there was a change of strategic direction away from providing digital integrated application services. Taken at their highest, they would demonstrate only that SPHI had not successfully pursued a public offering and had not pursued certain potential aspects of business. In general, this would simply fall within the category of business decisions in respect of which minority disagreement does not equate to suffering prejudice or unfair treatment.

95 Secondly, however, the claims made do not withstand scrutiny of the evidence. Mr Tan explained in his evidence the attempts at capital raising that foundered on a lack of interest from outside investors.[118] Further, Mr Barakat-Brown has explained how limited and preliminary the projects with SLA and HDB were.[119] I accept their evidence on these points. They were not seriously challenged on the specifics. In truth, the plaintiffs have exaggerated the importance and value of these collaborations.

96 Having considered the claims made and the evidence adduced in support of them, it is clear that there was no unilateral termination of an existing line of

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117 PCS at para 169.

118 Mr Tan's AEIC at para 156 and following.

119 Mr Barakat-Brown's AEIC at paras 167–173.

business within SHA Schedule 2 paragraph 17 or unilateral entry into a new line of business within SHA Schedule 2 paragraph 18.

97 As part of their claim for minority oppression, the plaintiffs have also criticised certain things that Mr Barakat-Brown did, such as extending the credits programme for property agents who were subscribed to StreetSine's property platform to allow them to use credits earned for the purpose of print-medium classified advertisements offered by SPH.[120] Much was made of this being a dealing with a related party. There was nothing of substance to this criticism. Mr Barakat-Brown explained in his evidence[121] that with weakening sales it was felt helpful to extend the credits programme in this way. He was not challenged in cross-examination.

Overarching claim: SPH's aim to acquire the plaintiffs' shares or the underlying business on the cheap

98 Underpinning the plaintiffs' allegations is a narrative that SPH had a scheme to acquire the plaintiffs' shares or the underlying business on the cheap and executed this plan through SPHI. While the same theme recurs in relation to the conspiracy claim, it is important to consider it in relation to the minority oppression claim. This is because such a scheme, if it existed, would bear on whether SPHI exercised its rights as majority shareholder in good faith as discussed in the preceding sections.

99 My first observation is that the plaintiffs' narrative is not supported by direct evidence of any such motive on SPH's part. Moreover, the narrative is not one of simple pressure put upon a minority shareholder to sell but a tale of

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120 PCS at para 184(f).

121 Mr Barakat-Brown's AEIC at paras 119–123.

a convoluted scheme to somehow manipulate the sales process undertaken by the judicial managers. It is cloak-and-dagger stuff of Machiavellian proportions.

100 This leads me to the point that such a daring and ambitious scheme if it existed must have involved SPH's CEO, Mr Ng. Yet, the plaintiffs called Mr Ng under subpoena as their own witness and at no time sought to impeach his evidence as hostile. They are bound to accept his evidence of fact as truthful (although a failure of recollection or mistake of memory on the part of one's own witness may be overcome by reference to other evidence). Mr Ng confirmed that he did not know of any plans to sell SSSPL at the time of the judicial management applications and had no intention to buy SSSPL.[122] During oral evidence-in-chief led by Mr Baker, he explained that SPH was invited to bid by the judicial managers, and did so, but unsuccessfully.[123] That is really all there was to it.

101 I conclude that SPH did not engage in a scheme to acquire the plaintiffs' shares or the underlying business on the cheap. In view of this conclusion, the plaintiffs' complaints about the police report and the MC Suit go no further than revealing some pettiness on SPHI's part. It also cannot be said that the JM Applications were made with improper motives.

What remedy, if any, are the plaintiffs entitled to?

102 In view of my conclusion that the plaintiffs were not unfairly treated by SPH and SPHI, this issue is moot. Accordingly, I do not consider remedies including the question of whether any order should extend to SPH in addition to SPHI.

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122 Mr Ng's AEIC, at p 68 VI(25).

123 NE, 23 March 2022 pp 109–111.

Conclusion on minority oppression

103 The claim for minority oppression fails.

Conspiracy

The applicable law

104 The following elements must be satisfied in a claim for unlawful means conspiracy (*EFT Holdings, Inc and another v Marinteknik Shipbuiders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]):

(a) There was a combination of two or more persons to do certain acts.

(b) The alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts.

(c) The acts were unlawful.

(d) The acts were performed in furtherance of the agreement.

(e) The plaintiff suffered loss as a result of the conspiracy.

105 The Court of Appeal at [101] made clear that the requisite intention to cause harm was far removed from mere foreseeability of harm:

> A claimant in an action for unlawful means conspiracy would have to show that the unlawful means and the conspiracy were targeted or directed at the claimant. It is not sufficient that harm to the claimant would be a likely, or probable or even inevitable consequence of the defendant's conduct. Injury to the claimant must have been intended as a means to an end or as an end in itself.

106 It is worth noting that the Court of Appeal at [90] left unanswered the "preliminary question ... whether unlawful means conspiracy continues to have

any relevance in our law as a basis of civil liability". The Court of Appeal dismissed the appeal because in any event the elements of combination and intention were not made out. Since *EFT Holdings*, the plea of an unlawful means conspiracy has become ever more frequent, and has, on occasion, succeeded.

107 As can be seen from my summary of the plaintiff's submissions at [35] above, the unlawful acts relied upon overlap with the alleged acts of oppression. This raises the question whether what counts as an unlawful act extends beyond civil wrongs, such as breaches of tortious, contractual or fiduciary duties, or criminal offences, to acts of oppression that are not in themselves a breach of any duty or bear any criminal character but are simply relied on or potentially relevant for the purpose of a remedy under CA s 216. The plaintiffs offered little argument, if any, for why the category of unlawful acts should be extended in this way. In my view, there is no principled basis for doing so. It is necessary for the plaintiffs to establish a civil or criminal wrong. Conduct that is merely unfair is not by itself an unlawful act. Thus, the plaintiffs must establish that the acts complained of were unlawful, for example by being in breach of the SHA, or of the articles of association or of directors' duties, and not just unfair to them.

Issues to be determined in relation to unlawful means conspiracy

108 For the plaintiffs' conspiracy claim, I will focus on the issue of whether there were any unlawful acts on the part of the defendants that they combined to carry out.

Were there any unlawful acts on the part of the defendants that they combined to carry out?

Excluding the plaintiffs from executive management

109 The claim of a combination to exclude the plaintiffs from executive management rests on three discussions that Mr Barakat-Brown had.[124] Two were with Ms Wu Sung Sung Janice ("Ms Wu"), SPH's executive vice president of its corporate development division. These took place on 1 November 2017 and 1 February 2018. The third was with Mr Ng and took place on 8 May 2018. As will be apparent from the brief chronology at [16]–[17] above, these took place after he had been engaged as an adviser but before he took over from Mr Baker as CEO.

110 SPH disclosed emails that followed these discussions and which offer a contemporaneous record of what transpired.[125] Mr Barakat-Brown for his part provided to SPH on 9 May 2018 his strategy and execution notes for his transition into the role of CEO ("the 9 May 2018 Note").[126]

111 It is clear from these documents that Mr Barakat-Brown, Ms Wu, Mr Fong, Mr Tan and Mr Ng had concerns about Mr Baker's management both in terms of his people management ("talking to [Mr Baker] is akin to a 'verbal assault'")[127] and his substantive focus ("the focus should shift from tech-centric

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124 PCS at paras 244–258.

125 1 November 2017: 9 AB 4709; 1 February 2018: 9 AB 5024; 8 May 2018: 2 PCB 822–823.

126 2 PCB 818–821.

127 9 AB 4709.

to customer first").[128] There is nothing in these documents that suggests that the views were not genuinely held.

112 There is nothing unlawful about a majority shareholder discussing with a prospective CEO concerns about the role of the founder. Keeping the substance of these discussions to themselves is entirely lawful, and within their rights. There is no legal obligation that a shareholder, whether one in the majority or one in the minority, must speak to management only with the knowledge and participation of all other shareholders. What good corporate governance requires is something distinct, namely that management ultimately reports to the board of directors, which is the body empowered under the articles of association to manage the business of the company.

113 Moreover, discussing "tapering [Mr Baker's] involvement" was in line with Mr Baker's own declared intention of moving back to the USA. Thinking of looking for an investor who might offer to buy out Mr Baker was also lawful. It would ultimately be for Mr Baker to agree whether to sell and at what price. Indeed, Mr Ng's statement that "If the price is right we might want to exit too"[129] shows that there was no plan to pressure the plaintiffs to sell to SPH cheaply.

114 The plaintiffs contend that the 9 May 2018 Note was kept secret from them, and materially departed from the plans for StreetSine to which the plaintiffs had agreed.[130] I do not accept this contention. Far from being kept secret, Mr Barakat-Brown testified that before he emailed the 9 May 2018 Note to Mr Ng, he discussed it in draft with Mr Baker, who knew he would be sending

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128 2 PCB 822.

129 2 PCB 822.

130 PCS at paras 252 to 256.

it to Mr Ng.[131] This evidence was not challenged during cross-examination nor was it directly contradicted by Mr Baker's own evidence. Further, my own reading of the 9 May 2018 Note is that it is not materially different from what Mr Baker himself envisaged as the way forward at the time, as expressed in his email to Mr Ng dated 3 May 2018.[132] In Mr Baker's e-mail, he highlighted four strategic initiatives that he was focused on for StreetSine:

(a) winning the SISV Litigation;

(b) optimizing Singapore operations, primarily through automation;

(c) expanding into Hong Kong as a test case for other international expansion and to support the IPO plan; and

(d) raising capital per the IPO plan.

The 9 May 2018 Note identified resolving the SISV Litigation in StreetSine's favour as a strategic priority.[133] It detailed operational improvements that were necessary to address the changing needs of StreetSine.[134] It considered that, while succeeding in Singapore was a priority, laying the foundations for international expansion was appropriate, and that "Hong Kong [was] a logical expansion".[135] The plaintiffs' real complaint with the 9 May 2018 Note was that it contained a "possible path forward" which entailed "enter[ing] into new service agreements with [Mr Baker] and [Mr Lee] for the roles they [were] needed to perform". I do not see any merit in this complaint given that Mr Baker specifically recommended that the board approve Mr Barakat-Brown's hiring

131 Mr Barakat-Brown's AEIC at para 40.

132 3 DCB 555–556.

133 2 PCB 819.

134 2 PCB 821.

135 13 AB 6832.

as CEO in his e-mail of 3 May 2018. This meant that Mr Baker's role necessarily had to change. Moreover, the question of the future roles of Mr Baker and Mr Lee was a legitimate one for the prospective CEO to discuss with the majority shareholder. After all, as CEO he would have to manage them (as part of his management of the business) in the performance of whatever executive roles they retained, notwithstanding that as CEO he would also be accountable to the board (as a whole) of which they would remain members.

115 In view of this reading, I accept Mr Ng's testimony that he did not see "any conflict" or "any daylight" between what Mr Baker was telling him and what Mr Barakat-Brown was telling him.[136]

116 I hold that this alleged conspiracy was nothing more than SPH considering options that were lawful and within their rights and discussing them with Mr Barakat-Brown as they were entitled to do. Moreover, a majority shareholder is entitled to disagree with a minority shareholder and take steps which it considers to be in the best interests of the company.

117 Ultimately, there is a mistaken premise underlying the plaintiffs' submissions, namely that Mr Barakat-Brown had a duty to report to Mr Baker personally and that Mr Baker had a right to "control" Mr Barakat-Brown. The true position is that Mr Baker and Mr Lee would be accountable to Mr Barakat-Brown as CEO in relation to the performance of any continuing executive roles they had notwithstanding that he would concurrently be accountable for his performance as CEO to the board of which they would remain members. Such double-hatting, as the expression goes, is fine in theory, but can be difficult in practice, especially when egos intervene.

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136 NE, 23 March 2022, pp 173–174.

Denying access to information

118 There was nothing unlawful in how the defendants approached the question of the plaintiffs' access to information. As explained at [73] above, it was within SSTG's rights to resist the application, and once an order was made it was duly followed.

Commencing frivolous litigation

119 As I have explained at [86] above, the litigation was not shown to be frivolous. There was nothing unlawful about the defendants' conduct in relation to such litigation.

Placing StreetSine under interim judicial management

120 Again, applying for interim judicial management (especially given that the application was granted), cannot conceivably be characterised as an unlawful act. The plaintiffs have not proved that Mr Barakat-Brown was responsible for, let alone engineered, StreetSine's financial difficulties.[137] Their suggestion that SPH "could have provided an emergency loan to SSTG prior to the JM Applications to avoid immediately placing SSTG and SSSPL into JM"[138] is irrelevant unless SPH was under a duty to do so. It was not contended that they were under any such duty. It is clear that they were not.

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137 PCS at para 268.

138 PCS at para 270.

Breach of director's duties

121 The plaintiffs alleged that Mr Fong breached his duties as a director.[139] The core of their allegations is that as chairman and director he subordinated the interests of StreetSine to those of SPH. Thus, his support for their removal from their management roles, the litigation against them and the discussions he had with others without including the plaintiffs are characterised as being for an improper purpose or in bad faith.

122 I do not accept these allegations. It was agreed that the board would be structured to include three nominees of SPHI. This is captured in Clause 3.2 of the SHA. That the nominees were also either employees or former employees of SPH was known to the plaintiffs. Nominated directors owe fiduciary duties to the company just as any other director does and are not subordinate to or subject to the control of the person who nominated them. The SPHI-nominee directors were obliged to act in good faith in the best interests of StreetSine, and were not subject to SPHI's direction. I am satisfied that Mr Fong like the other SPHI-nominees kept that duty in mind and did not take directions from SPH. The fact that SPH also considered that its interests were better served by, for example, terminating the plaintiffs from their management roles and filing applications for interim judicial management does not mean that such decisions by its nominees were made under direction or were tainted by any improper purpose.

Conclusion on conspiracy

123 For completeness, I will make brief observations on intention and loss. As is clear in the passage from *EFT Holdings* that I have cited at [105] above,

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139 PCS at paras 220–237.

the injury to the plaintiffs must have been an end or the means to an end. Such an intention is wholly missing in this case. The plaintiffs may not have agreed with the defendants' approach to StreetSine's strategic direction or management, and undoubtedly believed they knew best or better than the defendants. It may well be that the defendants were wrong and the plaintiffs were right. However, it is clear on the evidence that the defendants' desire and intention was to preserve or maximise StreetSine's value. Such an intention, if successfully carried out, would benefit the minority as much as the majority. Judicial management was a last resort process that the defendants hoped would both sidestep the disputes among shareholders and address the cashflow difficulties faced by StreetSine. The judicial managers carried out their duties independently. I have already rejected the plaintiffs' narrative of SPH and SPHI engaging in a scheme to buy their shares or the underlying business cheaply.

124 As for loss, the plaintiffs' claim of $1,678,246,487 in damages[140] was staggeringly overblown. First, it proceeded on the basis of putting them in the position they think they would have been if StreetSine had performed in accordance with their EPM vision. This is the wrong measure of damages, framed as it is in terms of performance, as if this were a breach of contract claim. Instead, it should be framed by comparison to the position that they would have been in if the unlawful acts had not occurred. The plaintiffs have far from proven that, had none of the allegedly unlawful acts occurred, they would have achieved their EPM vision. Further, no expert evidence was tendered of StreetSine's value at any time. The following data points were in the evidence: first, the price at which SPH made its acquisition in 2014, valuing the company as a whole at $50 million; and secondly, the Indicative Proposal in 2018 valuing

140 PCS at para 326.

the company as a whole at $85 million. These valuations do not begin to support an overall value of the company exceeding $4 billion. In oral closing, the plaintiffs raised the possibility of a separate assessment of damages.[141] The hearing was not bifurcated although I accept that in relation to the minority oppression claim, if successful, the price of any buy out would be for subsequent determination. However, there are two further difficulties. First, and tellingly, the absence of expert evidence at the hearing is traceable to the plaintiffs' litigation strategy. Had an expert been proffered, that person would have had to defend the plaintiffs' hyperbolic assertions of value. Secondly and fundamentally, actionable loss or damage is a necessary element in the tort of unlawful means conspiracy. On the evidence and submissions at the conclusion of trial, the plaintiffs had not properly identified and established such loss or damage.

125 I dismiss the plaintiffs' unlawful means conspiracy claim.

Counterclaim

126 SPHI has also brought a counterclaim against the plaintiffs for breach of Clause 8.2 of the SPA, under which the plaintiffs agreed to pay to SSTG or SSSPL the sum of any tax liability arising before 31 October 2014, and payments connected to that tax liability.[142] The plaintiffs put SPHI to proof of this counterclaim but did not raise a positive defence whether in pleadings or submissions.[143]

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141 NE, 19 July 2022 p 142 line 14 to p 147 line 23.

142 SPHI's Defence and Counterclaim (Amendment No 3) at paras 119–120.

143 Reply and Defence to Counterclaim (Amendment No 2) at para 88.

127 During cross examination, Mr Lee accepted the amounts claimed.[144]

128 SPHI has produced a letter from IRAS demanding payment of $8,364.87 from SSTG for additional tax for 2013.[145] They have also produced a letter from IRAS confirming a subsequent refund of $3,957.94 to SSTG.[146] Thus, SPHI has proved that SSTG paid net $4,406.93 additional tax for 2013. In addition, SPHI produced an invoice from Regnum Corporate Services Pte Ltd to SSTG for the sum of $6,420.00, for advice and correspondence with IRAS in connection with the additional tax liability for 2013.[147]

129 Accordingly, I allow SPHI's counterclaim and order that the plaintiffs pay SSTG the sum of $4,406.93 and SSPL the sum of $6,420.00.

Conclusion

130 Many of the plaintiffs' complaints concern events after they filed these proceedings on 30 August 2019, including the settlement of the SISV Litigation and the filing of the JM Applications. Had I found merit in the plaintiffs' claims, I would have had to consider whether: (a) the causes of action had arisen prior to commencement of proceedings, such that these later events merely continued or worsened an already actionable state of affairs; or (b) the plaintiffs were impermissibly relying on events post-commencement of proceedings to complete causes of action that were inchoate as of 30 August 2019. Given my conclusion on the merits of the complaints as a whole, it has not been necessary for me to undertake this exercise.

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144 NE, 1 April 2022 pp 34-37.

145 Tan's AEIC at pp 4499–4500.

146 Tan's AEIC at pp 4514–4515.

147 Tan's AEIC at p 4519.

131 The plaintiffs have not shown that they were victims of oppression or of a conspiracy. I dismiss the claim in its entirety and allow SPHI's counterclaim. Parties are to file written submissions on costs limited to 20 pages for the plaintiffs jointly and 10 pages for each of the defendants within 14 days of the date of this judgment, with a right of reply within 7 days thereafter, limited to 10 pages for the plaintiffs jointly and 5 pages for each of the defendants. I will then make my decision on costs.

Philip Jeyaretnam
Judge of the High Court

The first plaintiff in person;
Mohamed Nawaz Kamil and Ngo Wei Shing (Wu Weishen) (Providence Law Asia LLC) for the second plaintiff;
Aaron Lee Teck Chye, Xu Jiaxiong Daryl, Chong Xue Er, Cheryl and Lim Wei Ying (Allen & Gledhill LLP) for the first and second defendants;
Ng Lip Chih (instructed) and Rezvana Fairouse d/o Mazhardeen (NLC Law Asia LLC) for the third defendant;
Tan Kai Liang, Chua Xinying, Jonathan Kenric Trachsel and Leong Wen Wei, Michael (Allen & Gledhill LLP) for the fourth defendant;
Cai Zhenyang Daniel, Tan Shihao, Sean and Sim Hong (Drew & Napier LLC) for the fifth defendant.