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

[2022] SGHC 315

Suit No 844 of 2021

Between

Lim Tong Zhen Kevryn (Lin Tongzhen)

… *Plaintiff*

And

(1) Cheo Jean Sheng
(2) Ching Sheue Siant Joey
(3) H.S.Y.3 Bistro Pte Ltd

… *Defendants*

JUDGMENT

[Companies — Oppression — Minority shareholders]

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Lim Tong Zhen Kevryn
v
Cheo Jean Sheng and others

[2022] SGHC 315

General Division of the High Court — Suit No 844 of 2021
Goh Yihan JC
22, 23, 26, 29 August, 5, 19 October 2022

19 December 2022 Judgment reserved.

Goh Yihan JC:

Background

1 The Plaintiff is Ms Lim Tong Zhen Kevryn. The First Defendant is Mr Cheo Jean Sheng ("Cheo"), and the Second Defendant is Ms Ching Sheue Siant Joey ("Ching"). The Plaintiff made an investment in the Third Defendant, H.S.Y.3 Bistro Pte Ltd ("the Company"). Later, however, the Plaintiff became dissatisfied with how the Company was run by Cheo and Ching. She alleges that she was excluded from the conduct of the Company's affairs. Worst of all, she says that Cheo and Ching wrongfully diluted her shareholding in the Company through a share split, in breach of her legitimate expectation that she was to be a majority shareholder. Accordingly, she has brought the present claim against the alleged wrongdoers Cheo and Ching (whom I shall refer to collectively as "the Defendants").

2 This is the Plaintiff's claim for relief under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act") against the Defendants. For completeness, s 216(1), which provides the basis for relief against minority oppression, provides 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 IX, the Minister may apply to the Court for an order under this section on the ground —
>
> (*a*) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
>
> (*b*) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

3 In essence, the Plaintiff alleges that the Defendants conducted the affairs of the Company in a manner that was oppressive to her and in disregard of her interests as a shareholder of the Company. While the Plaintiff originally pleaded five grounds of oppression in her Statement of Claim, this withered down to just four grounds in her Closing Submissions. I shall adopt the grounds set out in her Closing Submissions, which were presented in the following order:[1]

(a) the Defendants unfairly diluted the Plaintiff's shareholding in the Company through a share split;

[1] Plaintiff's Closing Submissions dated 5 October 2022 at paras 11 and 12.

(b) the Defendants failed to hold Annual General Meetings ("AGMs") in a timely and proper manner and failed to include the Plaintiff in these meetings;

(c) the Defendants used the Company's resources for improper purposes and enriched themselves in the process; and

(d) the Defendants attempted to strike off the Company after extracting its full value.

4 The ground which the Plaintiff has dropped is that the Defendants conducted the Company's affairs to her exclusion by, among others, denying her information about the state of the Company's finances.[2] In any case, this is an overarching ground that is covered in the four grounds now advanced by the Plaintiff in her Closing Submissions. Ultimately, the Plaintiff's case is that the relationship of mutual trust and confidence upon which she had agreed to be an investor and shareholder of the Company, and upon which she received her shares, has broken down entirely.

5 Having considered the parties' evidence and submissions, I dismiss the Plaintiff's claim in its entirety. In my judgment, the Plaintiff has not made out any of the grounds of oppression against the Defendants. In essence, I find that the parties had not intended for the Plaintiff to be a majority shareholder of the Company. Accordingly, the major plank of her case falls away. I find that the Defendants did not unfairly dilute the Plaintiff's shares in breach of her legitimate expectations to be a majority shareholder. Further, I conclude that the Plaintiff has failed to make out the other three grounds of oppression which, in any event, would not have been sufficient by themselves to make out a claim

[2] Plaintiff's Statement of Claim dated 12 October 2021 at paras 60(a) and 60(d).

under s 216 without the main ground of unfair dilution being successfully proved. I now develop the reasons for my decision in this judgment.

The parties

6 I start by describing the parties and my assessment of their demeanour during the trial. I begin with the Company, which is a "karaoke pub" located in the Central Business District. It was incorporated on 6 August 2018.

7 As for the Plaintiff, she holds 30,000 shares in the Company, which forms the basis of the present claim. I, unfortunately, did not find the Plaintiff to be a reliable witness. Instead, I found that the Plaintiff generally spoke whatever came to her mind, and stuck stubbornly to it, even when it made no logical sense or was plainly inconsistent with what she had said on another occasion. Of course, the Plaintiff's demeanour does not, by itself, mean that her claim should fail.

8 I turn to the Defendants. Cheo has at all material times been the sole director of the Company. From the date of incorporation of the Company to 13 June 2019, Cheo held 4,000 shares in the Company. After the Plaintiff's shareholding in the Company was allegedly diluted *via* a share split, Cheo held 216,000 shares of the Company. In turn, Ching is the Company's secretary. From the date of incorporation of the Company to 13 June 2019, Ching held 1,000 shares in the Company. After the Plaintiff's shareholding in the Company was allegedly diluted via a share split, Ching held 54,000 shares of the Company. Cheo then transferred to Ching 81,000 shares on 6 September 2019. Thus, as of the commencement of the present suit, Cheo and Ching each hold 135,000 shares of the Company.

9 For ease of reference, I set out a table illustrating the changes in the shareholding which constituted the alleged dilution:

Shareholder	**No of shares held in the Company after share split**	**Percentage shareholding**	**No of shares held in the Company prior to share split**	**Percentage shareholding**
Plaintiff	30,000	10%	30,000	85.7%
Cheo	135,000	45%	4,000	11.4%
Ching	135,000	45%	1,000	2.85%
Total	**300,000**	**100%**	**35,000**	**100%**

10 I found the Defendants to be generally reliable witnesses on the stand. They took their time to answer questions on the stand and sought clarification when they did not understand the legal aspects of the question posed to them. In my view, the Defendants are genuinely perturbed by the Plaintiff's present claim. They relied on their lawyer's advice which led to the alleged dilution of the Plaintiff's shares. I am satisfied that they did not intend to oppress the Plaintiff, whether in the legal or non-legal sense of the word.

Overview of the parties' cases

The Plaintiff's case

11 Having introduced the parties, I turn now to provide an overview of their respective cases. The Plaintiff's case is that, around 10 June 2018, at the Defendants' invitation, she invested a total sum of $30,000 in the Company. This was purportedly in consideration of her being issued a total of

30,000 ordinary shares in the Company. This was to have represented a majority stake in the Company of 85.7%.

12 The Plaintiff alleges that there had been, at all material times, an express and/or implied understanding and trust between her and Defendants that:

(a) the Plaintiff's shareholding in the Company would remain the same or substantially similar to her initially subscribed shareholding percentage of 85.7%;

(b) the Plaintiff will remain the majority shareholder of the Company;

(c) the Plaintiff was providing the capital for the Company's primary business while Cheo was to manage the Company's business with the assistance of Ching;

(d) the Company's primary business was the operation of a "karaoke pub" business named H.S.Y.3. Bistro Pub, Bistro Novo;

(e) while the Plaintiff was not to take up any formal directorship in the Company, the Company would be run in close consultation with all the shareholders of the Company (*ie*, the Plaintiff and the Defendants); and

(f) any profits earned by the Company would be shared by way of dividends to the shareholders of the Company.

13 According to the Plaintiff, the parties' understanding was formed after several meetings in or around June 2018 where they discussed working together to set up a food and beverage establishment. After hearing the Defendants' proposal to start a bistro in the Central Business District, the Plaintiff agreed to

collaborate with them and to provide the financial capital which the Defendants needed for the venture.

14 The parties enjoyed a good relationship at the time. As such, the Plaintiff agreed not to take up a directorship role based on this relationship of mutual trust and confidence. Despite this, the Plaintiff maintains that it was a common understanding between the parties that the Plaintiff would continue to enjoy the Company's profits, which were paid out through dividends.

15 However, the Plaintiff alleges that, since the Company was incorporated, Cheo has conducted its affairs and exercised his powers as the sole director of the Company in a manner that is prejudicial, unfair, and oppressive to the Plaintiff. Ching, while not a director of the Company, is allegedly in concert with Cheo and has supported all his oppressive acts against the Plaintiff. The alleged grounds of oppression are those that I have set out at [3] above.

The Defendants' case

16 The Defendants' main case is that pursuant to the Partnership Agreement and Deposit Receipt dated 10 June 2018 ("the Deposit Receipt"), the Plaintiff had at all material times intended to invest $30,000 in the Company, in consideration for 10% ownership of shares of the Company. Accordingly, the parties never intended for the Plaintiff to be a majority shareholder. In fact, she got what she bargained for, which is 10% of the shares in the Company. There is thus no basis to say that the Defendants had unfairly diluted the Plaintiff's shares.

17 As for the other grounds of oppression, the Defendants deny that they had carried out any of those acts for reasons that I will explain below.

The relevant issues

18 With the overview of the parties' cases in mind, I now set out the relevant issues that I have to determine in the present case. In this regard, the parties had agreed to a list of issues for the purposes of the trial and submissions. I will therefore adhere to this list of issues except for suitable adjustments to account for the fact that the Plaintiff now advances four grounds of oppression as opposed to the original five:

(a) First, I will determine some general legal issues which would set the legal stage for the consideration of the more substantive issues.

(b) Second, I will consider whether the Defendants' alleged dilution of the Plaintiff's shares amounts to an oppressive act within the meaning of s 216(1).

(c) Third, I will consider whether the Defendants' alleged failure to hold AGMs in a timely and proper basis, as well as failure to include the Plaintiff in these meetings, amounts to an oppressive act within the meaning of s 216(1).

(d) Fourth, I will consider whether the Defendants' alleged use of the Company's resources for improper purposes and enriching themselves in the process amounts to an oppressive act within the meaning of s 216.

(e) Fifth, I will consider whether the Defendants' alleged attempt to strike off the Company after extracting its full value amounts to an oppressive act within the meaning of s 216.

(f) Finally, depending on whether I find that oppression within the meaning of s 216 has been made out, I will consider the appropriate remedies in this case.

Determination of general legal issues

Whether the Plaintiff needs to prove just one, some, or all of the alleged grounds of oppression

19 I begin with the determination of two general legal issues. The first is whether, in the light of the Plaintiff's allegation of four grounds of oppression, she needs to prove just one of them, some of them, or all of them, to succeed in the s 216 minority oppression action.

20 To start with, the *locus classicus* on minority oppression is the Court of Appeal decision of *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*"). For the court to make a finding of minority oppression, a plaintiff must identify the potentially oppressive acts (*eg*, not paying dividends, dilution of shareholding) and in deciding whether to grant relief under s 216, the court will consider "both the legal rights and the legitimate expectations of members" (see *Over & Over* at [78]). Then, a plaintiff must prove that there was commercial unfairness, *ie*, that there was a "visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect" (see *Over & Over* at [77]). This much is undisputed between the parties.

21 In my view, it is sufficient in principle for the Plaintiff to succeed on one of the grounds that she alleges satisfies the definition of a minority oppression under s 216. Based on a plain reading of s 216, either a course of conduct or even a single act could theoretically amount to oppression (see *Over & Over* at

[74]). However, for the Plaintiff to rely on a single ground, that ground must be a weighty one indeed. In this regard, the Court of Appeal in *Over & Over* had said (at [74]):

> … It has been noted, however, that the majority of the cases that have been decided by the courts pertain to minority complaints under limb (a) above, *viz*, oppression manifesting itself in the extended abuse in the conduct of the company's affairs … the following passage from Minority Shareholders' Rights and Remedies correctly encapsulates the position on what might be said to single distinct acts of unfair behaviour (at pp 228–229):
>
> > …
> >
> > In the same vein, *an isolated act may amount to oppression and a course of conduct need not be shown*. For example, *a singular dilution of the minority's shares by the majority contrary to an informal understanding*, or a clear and egregious misappropriation of monies contrary to an implied understanding, would suffice as oppressive conduct. However, a singular assertion of excessive remuneration or inadequate dividend payment perhaps may not. As illustrated by cases like *Low Peng Boon v Low Janie, Kumagai Gumi Co Ltd v Zenecon Pte Ltd*, *Re Elgindata Ltd* and *Re Cumana Ltd*, to name a few, allegations of oppression appear to be best sustained where oppression manifests itself in a course of conduct over a period of time, straddling several grounds or categories of oppressive conduct, and considered cumulatively. Nonetheless, this is not to say that a past and singular act may not amount to oppression under section 216 of the Companies Act. …
>
> [emphasis in original]

22 I therefore agree with the Defendants that it would be sufficient for the Plaintiff to succeed on just one ground *if* the sole ground is that in relation to the dilution of the Plaintiff's shares. This is because if proved, this ground goes to the root of the parties' arrangement. Also, while the dilution took place at a point in time with the passage of the relevant resolutions, the events leading to those resolutions took place over a relatively lengthy period of time.

23 However, I do not agree with the Defendants that the remaining grounds cannot, even if proved collectively, amount to oppression. This is because, as the Court of Appeal, referring to Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 2nd Ed, 2007), has said in *Over & Over* (at [74]), "allegations of oppression appear to be best sustained where oppression manifests itself in a course of conduct over a period of time, straddling several grounds or categories of oppressive conduct, and considered cumulatively". Therefore, it is conceivable, depending on the extent to which the rest of the allegations are proven, that the Plaintiff remains able to make out a minority oppression claim under s 216 based on the other grounds collectively other than that in relation to the dilution of the Plaintiff's shares. For completeness, I will thus consider all four grounds of oppression alleged by the Plaintiff before making a holistic assessment of whether the minority oppression action under s 216 is made out.

Whether there was a relationship of mutual trust and confidence between the Plaintiff and the Defendants

24 The second legal (and factual) issue which I need to determine is whether there is a relationship of mutual trust and confidence between the Plaintiff and the Defendants (*ie*, whether the Company was operated in a quasi-partnership manner). While the legal rights and expectations of a shareholder are usually enshrined in the company's constitution in the majority of cases, a special class of quasi-partnership companies form an exception to this rule (see *Over & Over* at [78]). A quasi-partnership is understood as a company whose affairs are conducted with a degree of informality, *ie*, where the members do not transact on an arms-length basis, do not distil their informal agreements into formal contracts, and do not record their understandings in writing (see the High Court decision of *Leong Chee Kin (on behalf of himself and as a minority*

shareholder of Ideal Design Studio Pte Ltd) v Ideal Design Studio Pte Ltd and others [2018] 4 SLR 331 at [50]).

25 The rationale underlying the law's recognition of this exceptional class of quasi-partnerships was elaborated upon by Lord Wilberforce in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 ("*Ebrahimi*") (at 379):

> [A] limited company is more than a mere legal entity, with a personality in law of its own: … there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. … The 'just and equitable' provisions … *enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.*
>
> [emphasis added]

26 While this statement in *Ebrahimi* was made in the context of the "just and equitable" jurisdiction of the court under the winding-up provisions of the UK Companies Act, the Court of Appeal in *Over & Over* has endorsed this explanation as applying equally to cases involving minority oppression (see *Over & Over* at [79] and [80]). The superimposition of equitable considerations to scrutinise the conduct of the majority is premised on the view that the minority shareholders are particularly vulnerable because of the informal nature of the company set-up, where not all rights and obligations are explicitly spelt out in legal terms. Further, the majority would be in an "advantageous" position to exploit the vulnerable minority shareholders, given that the latter may have no obvious legal remedies spelt out in the memorandum and articles of association (see *Over & Over* at [83]).

27 Accordingly, the starting point in establishing a claim based on minority oppression, in the context of a quasi-partnership, is for a plaintiff to show that the company in question is subject to equitable considerations, arising either at the time the parties' relationship commenced or subsequently, which make it unfair for those conducting its affairs to rely on their strict legal powers and rights under the memorandum and the company's articles of association (see the High Court decision of *Lim Kok Wah and others v Lim Boh Yong and others and other matters* [2015] 5 SLR 307 at [102]). In this regard, Lord Wilberforce in *Ebrahimi* identified some non-exhaustive elements that may justify the superimposition of equitable considerations (and hence the finding of a quasi-partnership) (see *Ebrahimi* at 379, cited with approval by the Court of Appeal in *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 ("*Evenstar*") at [29]):

> … Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: *(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.*
>
> [emphasis added]

28 If the venture is a quasi-partnership, then the court will apply a "stricter yardstick of scrutiny because of the peculiar vulnerability of minority shareholders in such companies" (see *Over & Over* at [83]) and "will insist upon

a high standard of corporate governance" (see the decision of the Court of Appeal in *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 ("*Lim Swee Khiang*") at [83]). The practical effect of finding a quasi-partnership is that the court will be more willing to look beyond the documents to search for some informal understanding between the parties, as the parties in such a situation would unlikely spell out and document all their rights.

29 In my judgment, the relationship between the Plaintiff and Cheo/Ching is not a quasi-partnership. I agree with the Defendants that the parties are essentially strangers to one another who only got acquainted *via* their mutual friend, Mr Ang Han Wei. The evidence shows that they dealt with each other at arms-length as investor and entrepreneur. The quality of a personal relationship involving mutual trust and confidence is therefore missing. This is thus unlike a situation of close friends (see *Lim Swee Khiang*), a company formed by parties who were partners together for a long association (see *Ebrahimi*), or a company formed by siblings or close relatives with a view to pull their resources together (see *Evenstar*).

30 The Plaintiff does not in fact push the case that there was a quasi-partnership. Instead, the Plaintiff argues that the Company needs not necessarily be a quasi-partnership for equitable considerations to arise. In support of this submission, the Plaintiff cites a passage from Hans Tjio, Pearlie Koh and Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015) ("*Corporate Law*") at para 11.059, at which the learned authors opine that "section 216 of the Companies Act may [not] only be accessed by members of companies that are quasi-partnerships. Indeed … the section is crafted in sufficiently broad terms as to apply also to public, and even listed, companies …". I do not think that this passage supports the Plaintiff's submission. Quite plainly, all that this

passage says is that s 216 is available to entities other than quasi-partnerships. This does not mean, as the Plaintiff suggests, that "equitable considerations" – by which I take to mean a court's willingness to look beyond the documents – apply beyond quasi-partnerships. As I have stated above, the superimposition of equitable considerations is *precisely because* of the finding that the company has the characteristics of a quasi-partnership. As Lord Hoffmann said in *O'Neill v Phillips* [1999] 1 WLR 1092, a case under s 459 of the Companies Act 1985 (c 6) (UK), which corresponds materially to s 216 (at 1098–1099):

> Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used. Conduct which is perfectly fair between competing businessmen may not be fair between members of a family. In some sports it may require, at best, observance of the rules, in others ("it's not cricket") it may be unfair in some circumstances to take advantage of them. All is said to be fair in love and war. So the context and the background are very important.
>
> In the case of section 459, the background has the following two features. First, a company is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality. The terms of the association are contained in the articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed. *Secondly, company law has developed seamlessly from the law of partnership, which was treated by equity, like the Roman societas, as a contract of good faith. One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.*
>
> The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. *But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of*

> *the rules or in using the rules in a manner which equity would regard as contrary to good faith.*
>
> [emphasis added]

31 Accordingly, since this is not a quasi-partnership situation, and in the light of the Court of Appeal's guidance in *Over & Over* at [83], I will ascribe greater weight to the documents in discerning the legitimate expectations of the Plaintiff in the present case.

Whether the Defendants' alleged dilution of the Plaintiff's shares amount to an oppressive act within the meaning of s 216(1)

The parties' arguments

32 I turn now to the first alleged ground of oppression, which is the Defendants' alleged dilution of the Plaintiff's shares in the Company. The parties each advanced rather different versions of what transpired in connection with the alleged dilution, which I will go through first.

The Plaintiff's case

33 The Plaintiff's case on this ground is as follows. Having decided to make an investment in the Defendants' venture on or around 10 June 2018, the Plaintiff invested $30,000. She alleges that, on or around 10 June 2018, she agreed orally with the Defendants to the following material terms:

(a) the Plaintiff would provide the majority of the start-up capital for the venture;

(b) as a result of her majority contribution towards the financial capital, the Plaintiff would become a majority shareholder of the Company;

(c) also, since the Plaintiff was providing the majority of the financial capital, the Defendants would run and manage the venture on a day-to-day basis but would consult her on major issues relating to the business; and

(d) there was no need for the Plaintiff to be appointed as a director of the venture and Cheo would be the sole director.

Following the alleged oral agreement, on or around 10 June 2018, the Plaintiff handed Cheo two cheques for the sums of $20,000 and $10,000.

34 After this, the Plaintiff says that Cheo asked her to sign a "Partnership Agreement and Deposit Receipt", which I have referred to above as the "Deposit Receipt". The Plaintiff says that the Deposit Receipt was prepared by Cheo solely for the purpose of recording the Plaintiff's payment of the two cheques for the total sum of $30,000 to the first defendant on 8 July 2018. The Deposit Receipt provided that the sum of $30,000 was to be returned to the Plaintiff if the Company was not able to obtain licensing approval to be run as a "karaoke pub".

35 Importantly, the Plaintiff says that Cheo had written the following on the Deposit Receipt:[3]

Term of Conditions:

1. Share Investment In Partnership: 10%
2. Share Value 1% Percent Per Share: S$3,000.00

[3] AEIC of Lim Tong Zhen Kevryn at p 42.

The Plaintiff alleges in her Affidavit of Evidence-in-Chief ("AEIC") that Cheo told her that the "10%" written on the Deposit Receipt was a placeholder for administrative reasons. Further, according to the Plaintiff, Cheo said to her that their original agreement stood and that the 10% figure was not meant to be binding on the parties' respective shareholdings of the Company. In any event, Cheo allegedly told the Plaintiff that they would be entering into a formal partnership agreement later where the 10% figure will not be stated.

36 The Plaintiff then says that Cheo later informed her in or around August 2018 that he had incorporated the Company. Cheo further (allegedly) said that he needed the Plaintiff to sign a shareholder agreement ("the Shareholder Agreement") to formalise the Plaintiff's arrangement with the Company. Cheo allegedly said that the Shareholder Agreement would govern the Plaintiff's investment in the Company and supersedes any previous agreement. The material terms of the Share Agreement are as follows:[4]

> 2. **PRECONDITIONS**
>
> As at the Commencement Date herein below stated, HSY3 and the Shareholder covenants as follows:-
>
> A. The Shareholder intends to make an investment by financing the license of usage of the concepts by the bistro-pub / bar and to incorporate them into the business operations of HSY3 or by other means, to be ascertained by Cheo Jean Sheng. Such financing and/or investment shall be equivalent to the number of the shares apportioned to the Shareholder at the value of S$1.00 per share.
>
> B. HSY3 will thereafter commence business at their intended place of business at No. 48 Circular Road Singapore 049403.

[4] AEIC of Lim Tong Zhen Kevryn at p 45–51.

> 3. **SHARE APPOINTMENT**
>
> A. It is agreed between the parties that the Shareholder shall receive the following share in HSY3 defined as follows:-
>
> | | |
> |---|---|
> | Number of shares | 30,000 |
> | Value Per Share | $1.00 per share |
>
> …
>
> 7. **ADDITIONAL INVESTMENT**
>
> A. In the event whereby the Company has incurred losses for a period of at least four (4) months, the Shareholder agree that his/her share will be terminated, reduced and/or struck out. In such event, the Shareholder is required to make additional investment in order to maintain his/her original share entitlement. Such investment value shall be decided at the sole discretion of the major shareholder/director, Cheo Jean Sheng ("Cheo").
>
> B. This Additional Investment is only required to be paid after the Company is in operation for more than four (4) months.
>
> …
>
> 21. **ENTIRE AGREEMENT**
>
> This Agreement sets forth the entire agreement and understanding between the parties and is intended to supersede any other arrangement that, prior to the date of this agreement, may previously have been entered into between the parties. Nonetheless, this Agreement does not invalidate or otherwise prejudice any causes of action (whether finalised or not) that may have been created or that may have otherwise arisen or that may have existed between the parties prior to the date of this agreement.
>
> [bold and underlined in original]

37 The Plaintiff did not ask for any share certificates from Cheo or Ching. However, she later realised in December 2018 that the Defendants' respective shareholdings in the Company were only 4,000 and 1,000 shares, respectively.

Based on her ARCA search, Cheo held 80% of the shares, whereas Ching held 20%. There was no reflection of the Plaintiff's investment at all.

38 The Plaintiff then sought the return of her investment in or around February 2019. She held a series of discussions with Cheo until 17 May 2019, when she informed Cheo that (a) she has not been reflected as a shareholder of the Company on ARCA, and (b) she had never received the share certificate for her shares. After some discussions with the Company's solicitors, the Plaintiff requested for the 30,000 fully paid-up ordinary shares to be issued to her.

39 In essence, the Plaintiff alleges that the Defendants then, in response to her request of 17 May 2019, collectively, engineered a series of events intended to cause substantial dilution of the Plaintiff's shareholding in the Company. The Plaintiff alleges that, without her knowledge, and right before the 30,000 ordinary shares were rightfully restored to the Plaintiff, the Defendants took immediate measures to dilute the Plaintiff's shareholding.

40 By way of a share split executed by a director's resolution and a member's resolution on 13 June 2019, the current issued and paid-up share capital of the Company of $5,000 comprising 5,000 ordinary shares belonging to the Defendants were sub-divided, such that 1 ordinary share was subdivided into 54 ordinary shares, so that the issued share capital of $5,000 would comprise 270,000 ordinary shares. As a result, the Plaintiff's shareholding was diluted to 10%, even though her 30,000 ordinary shares comprise 85.7% of the paid-up capital of the Company. Importantly, the sub-division did not apply to the Plaintiff's 30,000 shares.

The Defendants' case

41 The Defendants deny that there was ever an oral or written agreement between the Plaintiff and the Company for the Plaintiff to invest $30,000 in the Company in consideration for being issued a total of 85.7% share equity. The Defendants aver that the oral agreement which the Plaintiff has referred to is in fact the Deposit Receipt dated 10 June 2018. Thus, pursuant to the Deposit Receipt, the Plaintiff had at all material times intended to invest the total sum of $30,000 in the Company, in consideration for 10% ownership of shares. Also, the Defendants say that, during the AGM of the Company held on or about 1 July 2020, the Plaintiff orally declined to be elected as a director of the Company.

42 The Defendants accept that the parties entered into the Shareholder Agreement on or around 29 August 2018. The Defendants acknowledge that while Clause 3 states that the Plaintiff would receive 30,000 shares, the Company only had 5,000 shares at the time. Cheo says that this is a "slight mistake" which he did not pick up.[5] Ching also calls this a "slight mistake".[6] Regardless, the Defendants say that it was the common understanding of all parties that the Plaintiff was only meant to hold 10% of the shares because: (a) the Shareholder Agreement does not state the percentage of shares the Plaintiff is entitled to; and (b) the other clauses of the Shareholder Agreement are clearly inconsistent with the Plaintiff's claim to be a majority shareholder. In particular, Clause 7A clearly states that Cheo is the "major shareholder", which the Defendants have taken to mean the majority shareholder. The Shareholder Agreement also provides various powers and rights that Cheo

[5] AEIC of Cheo Jean Sheng at para 36.

[6] AEIC of Ching Sheue Siant Joey at para 22.

could, consistent with his status as majority shareholder, exercise at his sole discretion.

43 Finally, the Defendants say that the Plaintiff should be aware that a proper valuation of the Company shows that it would require a significantly larger investment to be the majority shareholder. For example, the Company paid $13,500 rent a month for the premises. As such, it was ridiculous for the Plaintiff to think that an investment of $30,000 would entitle her to be the majority shareholder of 85.7% of the Company.

44 The Defendants then say that the Plaintiff made minimal contributions to the business. The relationship between the parties had soured. In a meeting on 10 March 2019, the Plaintiff allegedly told the Defendants that she wanted to sell her shares as she was planning to contest the next General Election and did not want to be the owner of a bar. However, the Defendants did not want to buy back her shares as the business was not doing well. There was no commercial sense in their doing so. On or around 23 March 2019, the Plaintiff reiterated through a WhatsApp message that she would like to withdraw her shares from the Company. However, on or around 10 April 2019, the Plaintiff wanted to be reflected as a shareholder of the Company and requested Cheo to reflect the Plaintiff as a shareholder of the Company in accordance with the Deposit Receipt on or about 10 April 2019 and 17 May 2019. She said this was done because her parents wanted her name in the Accounting and Corporate Regulatory Authority (or "ACRA") register for the purposes of finding a buyer for her shares.

45 After further communications, the Plaintiff finally met the Defendants along with the Plaintiff's father and a male acquaintance. The Plaintiff's father demanded that the Plaintiff be allowed to withdraw her shareholding and be

refunded her investment amount of $30,000. In May 2019, the Plaintiff then asked to be reflected as a shareholder of the Company. In response, and after taking legal advice, Cheo passed a director's resolution in writing on 13 June 2019 giving effect to the share split. This was done to resolve the "slight mistake" in the Shareholder Agreement which stated that the Plaintiff was to have 30,000 shares but the Company only had 5,000 shares.

46 The Plaintiff then wrote to the Company's solicitors on 23 June 2019 stating that the share split was unlawful and unacceptable. However, on 25 June 2019, the Company's solicitors responded with the following points:

(a) the Shareholder Agreement does not provide the percentage of shares that the Plaintiff should receive.

(b) the shares in the Company were not issued to the Plaintiff at her request.

(c) the commercial intent in the Plaintiff's subscription for shares was for her to hold 10% of the share equity of the Company at incorporation, as is evident from the Deposit Receipt.

(d) such a valuation is also consistent with the commercial realities of the opening of a karaoke/bar outlet in Boat Quay, in which significant amounts of capital (in excess of $30,000) is needed to properly launch and operate such an establishment.

(e) the Defendants have made various shareholder loans to the Company to ensure that it has been able to maintain its operations.

My decision: the Defendants' alleged dilution of the shares did not amount to an oppressive act

47 Having set out the parties' respective cases on this first alleged ground of oppression, I decide, for reasons that I will now develop, that the Defendants' alleged dilution of shares via a share split did *not* amount to an oppressive act within the meaning of s 216(1) of the Companies Act.

48 In essence, the Plaintiff claims that she has a legitimate expectation that she would remain a majority shareholder of the Company, as gleaned from a supposed oral agreement between the parties on 10 June 2018. I do not find that the Plaintiff has established the existence of this oral agreement. I, therefore, do not find that the Plaintiff should have any legitimate expectation that she would be a majority shareholder. As such, given that the Shareholder Agreement does not expressly state whether the Plaintiff was meant to be a majority shareholder, the Plaintiff got what she was promised under the Shareholder Agreement, which is 30,000 shares in the Company at $1 each. In saying this, I accept that the Defendants had to effect the share split because the Company did not have enough shares to begin with.

The applicable law

49 Before I elaborate on these reasons, I begin with a brief statement of the applicable law. I agree with the Plaintiff that, as a matter of principle, the unfair dilution of shares is commercially unfair conduct and thereby, oppressive behaviour. In *Over & Over*, the Court of Appeal cited the English case of *Re Cumana Ltd* [1986] BCLC 430 with approval and held that the dilution of the minority's shares would constitute a case of oppression or unfair prejudice (at [75]):

> In the case of *Re Cumana Ltd* [1986] BCLC 430, the majority shareholder, Bolton, prevailed upon the company to undertake a rights issue. Bolton knew that Lewis, the minority shareholder, was unlikely to take up his proportion of new shares since he was unemployed and financially challenged. The effect of the proposed rights issue, should Lewis have been unable to take up the shares, would have been to reduce Lewis' minority holding from one-third to less than 1%. Lewis brought an action under the precursor to s 459 of the UK Companies Act 1985 asserting, inter alia, that the rights issue was unfairly prejudicial to him. The judge at first instance inferred that the proposed rights issue was part of a scheme to reduce Lewis's shareholding in the company and held that it was unfairly prejudicial to Lewis's interests. This was affirmed by the English Court of Appeal.

Similarly, in the High Court decision of *Poh Fu Tek and others v Lee Shung Guan and others* [2018] 4 SLR 425, Vinodh Coomaraswamy J held that where there was no commercial justification for the dilution of shares, such conduct would be a visible departure from the standards of fair dealing and amounted to oppression within the meaning of s 216 (at [16]–[17] and [22]).

50 However, the dilution of shares would require there to be a starting percentage to *dilute from*. In the present case, this comes back to whether the Plaintiff had a legitimate expectation that she would be a majority shareholder, and the precise shareholding percentage that that expectation entailed. If the Plaintiff cannot establish what shareholding percentage she was entitled to, and hence the starting percentage to dilute from, then it would be difficult to speak of any *dilution* to begin with. I therefore turn first to explain why I do not think that the Plaintiff had any legitimate expectation to be a majority shareholder.

Whether the Plaintiff had the legitimate expectation to be a majority shareholder

(1) The alleged oral agreement on 10 June 2018 and the Deposit Receipt

51 The issue at hand is whether there was an oral agreement between the parties allegedly entered on 10 June 2018 that amounted to a legitimate expectation that the Plaintiff would take majority shareholding, specifically, 85.7% of the shares.

52 To begin with, I did not find the Plaintiff's evidence to be convincing on this issue. Indeed, not only did she deviate several times from significant points in her AEIC, the Plaintiff also advanced what I consider to be completely illogical evidence during the trial. For example, despite saying quite clearly in her AEIC that she had handed the two cheques following the oral agreement on 10 June 2018,[7] the Plaintiff said during cross-examination that she had in fact passed the cheques to Cheo closer to 8 July 2018.[8] Also, despite saying in her AEIC that Cheo had written "10%" in the Deposit Receipt for her to agree to, she did an about-turn during trial and said that it was in fact *she* who wrote the "10%", albeit under Cheo's suggestion.[9] In my view, these are material deviations in significant aspects of the Plaintiff's own case that greatly troubled me. Either the Plaintiff had forgotten about what had gone on before, or she was making things up on the stand. I need not make a finding as to her state of mind in this regard, but I do not treat her evidence with any great degree of confidence.

[7] AEIC of Lim Tong Zhen Kevryn at paragraph 18.

[8] Day 1 Transcript, 22 August 2022, page 18, lines 4–10.

[9] Day 1 Transcript, 22 August 2022, page 48, lines 15 –26.

53 With this observation of the Plaintiff's demeanour in mind, I find first that the Plaintiff has not discharged her burden in showing there was an oral agreement between the parties on 10 June 2018, under which she was supposedly promised that she would be the majority shareholder in the Company. I say this for several reasons.

54 First, I disagree with the Plaintiff's characterisation of the Deposit Receipt as being only a receipt of the cheques provided by her. By the Plaintiff's own evidence, the Deposit Agreement was signed on 10 June 2018. However, she only passed the cheques to Cheo closer to 8 July 2018, *after* the Deposit Receipt was signed. This, therefore, goes against the Plaintiff's characterisation of the Deposit Receipt as being a receipt for the cheques: how can the Deposit Receipt perform this function if the cheques were received *after* it was signed between the parties?

55 Second, I find it unbelievable that the parties never discussed the *precise* percentage of the Plaintiff's majority shareholding that was an important term of this alleged oral agreement, if, in fact, this was even discussed. During cross-examination by Mr Amos Cai ("Mr Cai"), who appeared for the Defendants, the Plaintiff agreed that there had been no discussion of what her majority share would be, and everyone would have left the meeting with their own perception of what "majority" meant.[10] I find that this is too incredible to believe. If being the majority shareholder was so important to the Plaintiff, how could she not have clarified what was her shareholding in the Company, even if at a rough level? Moreover, when asked about what "majority" meant to her, the Plaintiff said during cross-examination that this was certainly not "51%" but above

[10] Day 1 Transcript, 22 August 2022, page 27, lines 16 –31 to page 28, lines 1–2.

"70%".[11] Leaving aside the fact that the Plaintiff may not have the relevant legal knowledge, I find it unbelievable that the Plaintiff would not understand, as a matter of common understanding, that majority would mean more than 50%. In my view, the Plaintiff's answer that majority meant "70%" to her was probably crafted at the stand to fit with her narrative that her purported shareholding in the present case is closer to 85.7% of the Company.

56 Third and relatedly, I find it hard to believe that the Plaintiff did not ask the Defendants during their meeting whether the suggested sum of $30,000 was sufficient for the start-up and how it compared to the overall investment in the Company. Even accounting for the fact that this was the Plaintiff's first financial investment since starting work in 2008, it is unbelievable that the Plaintiff would simply commit $30,000 without asking some very basic questions about how the money would be used for.

57 Fourth, I also find it unbelievable that the Plaintiff did not bother to record the majority shareholding in writing, if indeed, it was so important to her. During cross-examination, the Plaintiff admitted that the discussion was done in a private setting and that it was not the most formal situation.[12] As such, there was *absolutely* no record of the majority shareholding in either text messages or documentary records. This explanation is unconvincing. Instead, I find that the reason why there was no such record is simply that there was no agreement between the parties that the Plaintiff was to be a majority shareholder in the Company.

[11] Day 1 Transcript, 22 August 2022, page 26, lines 23–32.

[12] Day 1 Transcript, 22 August 2022, page 29, lines 1–8.

58 Fifth, and perhaps most crucially, the Plaintiff has not explained why the Deposit Receipt, which was signed on the *same day* as the alleged oral agreement, would stipulate that her shareholding was a mere "10%", if indeed there was an understanding that she was meant to be a majority shareholder in the Company. In considering the Deposit Receipt, I am aware, as I will explain later, that the entire agreement clause in the Shareholder Agreement precludes me from referring to it to *add to* the *Shareholder Agreement*. However, I am here using the Deposit Receipt in aid of my finding of whether the alleged oral agreement between the parties existed. This has nothing to do with the construction of the Shareholder Agreement. For ease of explanation, I reproduce the Deposit Receipt below (with some personal particulars redacted):[13]

好声音 3 – PARTNERSHIP AGREEMENT AND DEPOSIT RECEIPT

THIS AGREEMENT is made on this 10TH (day) of JUNE (month) 2018

BETWEEN

CHEO JEAN SHENG (NRIC No:) (hereinafter called " 好声音 3 Represented")

AND

LIM TONG ZHEN KEVRYN

(hereinafter called " 好声音 3 Partnership")

Property known as: 48 Circular Road, Singapore 049403 (the "Premises")

Term of Conditions:

1. Share Investment In Partnership: 10%
2. Share Value 1% Percent Per Share: S$3,000.00
3. Received Share Amount: Enclosed please find Cheque No. 327064 of HSBC Bank for the amount of Singapore Dollar Thirty Thousand Only (S$ 30,000/-) being payment of the Partnership of Karaoke Pub at the premises mutually agreed by both parties. In the event the premises approval is not granted as Karaoke Pub, the money shall refund to the Partnership. 327065 (HSBC)
4. In the event the premises approved is granted as Karaoke Pub, the Partnership failure to enter into the business the money shall be forfeited, thereafter this agreement shall treated as null and void.

Signed by 好声音 3 Represented

Name: Cheo Jean Sheng

Signed by 好声音 3 Partnership

Name: LIM TONG ZHEN KEVRYN

[13] AEIC of Lim Tong Zhen Kevryn at p 42.

59 I find it inexplicable that, if the Plaintiff was adamant that she was the majority shareholder, *and* that she had, by her own testimony, formed the impression that a majority shareholder was at least 70%, she would, *under her own hand* (see [52] above), write "10%" in Clause 1, which clearly relates to her share investment in the Company. It made no sense at all that the Plaintiff would do this on *the same day* that the alleged oral agreement was entered into. Her explanation at trial was that she trusted Cheo and that she did not want to ruin the partnership from the get-go.[14] However, I found this completely unbelievable. By her own evidence, the Plaintiff had only met the Defendants for the first time earlier in 2018. She did not know them very well. Yet, by her own evidence, she would trust the Defendants to the extent of writing, *under her own hand*, a shareholding percentage that is completely at odds with what she had in mind and put to risk the significant sum of $30,000 that she had painstakingly saved over the years. This is completely inexplicable.

60 Further, the Plaintiff agreed with Mr Cai during the trial that Clause 1 of the Deposit Receipt, which shows the shareholding percentage, was important to her.[15] If so, it defies belief that she would not simply put the correct figure (or one that was actually a majority shareholding to her mind) of at least 70% in Clause 1. There is no good answer to why the Plaintiff would intentionally put a figure that was obviously contrary to her alleged belief that she would be a majority shareholder.

61 Accordingly, I find that the Plaintiff has not discharged her burden of proving the existence of an oral agreement in which she was promised that she would be the majority shareholder of the Company. This is simply not made out

[14] Day 1 Transcript, 22 August 2022, page 48, lines 17–26.

[15] Day 1 Transcript, 22 August 2022, page 48, lines 11–20.

by her evidence. I, therefore, do not find that the Plaintiff should have any legitimate expectation that she is to be a majority shareholder of the Company.

(2) The Shareholder Agreement

62 I turn now to the Shareholder Agreement. The problem for the Plaintiff is that Clause 3 of the Agreement clearly provided that she was to own 30,000 shares at $1 per share. She got precisely what she was contractually entitled to after the share split. The Shareholder Agreement is otherwise silent on whether the Plaintiff is the majority shareholder. As such, without any proof of her supposed legitimate expectation that she was to be a majority shareholder, the Plaintiff cannot point to the Shareholder Agreement in support of her case of minority oppression. In fact, the Shareholder Agreement is fatal to the Plaintiff's case for several reasons.

63 First, I find it incredible for the Plaintiff to assert during trial that the bare representation of 30,000 on the Shareholder Agreement meant she was to be the majority shareholder.[16] There is nothing in the Shareholder Agreement, whether express or implied, that suggests this. Further, I find the Plaintiff's attempt to rely on the alleged oral agreement on 10 June 2018 to be unsustainable as I do not think there was any such agreement.

64 I also do not think that the Plaintiff can overcome the 10% figure in the Deposit Receipt as a prior indication of the parties' intention coming into the Shareholder Agreement. Mr Victor David Lau ("Mr Lau"), who appeared for the Plaintiff, pressed the point during his cross-examination of Mr Cephas Yee ("Mr Yee"), who had advised the Defendants on the share split, that Clause 21

[16] Day 1 Transcript, 22 August 2022, page 54, lines 19–27.

(which is the entire agreement clause) of the Shareholder Agreement precluded the consideration of the Deposit Receipt. In my view, it is legally permissible to consider the Deposit Receipt to *interpret* the contents of the Shareholder Agreement. The effect of the entire agreement clause is to preclude any attempt to *qualify or supplement* the Shareholder Agreement by reference to pre-contractual representations (see the decision of the Court of Appeal in *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 ("*Lee Chee Wei*") at [25]), but it certainly does not prevent parties from looking to a prior document to *interpret* it (see *Lee Chee Wei* at [41]). There is a thin line between interpretation and adding to the contract, and in my view, that line has not been crossed in the present case. Given that the Shareholder Agreement is silent on the shareholding percentage of the Plaintiff, it is permissible to turn to the Deposit Receipt as relevant background information to aid in the interpretative process. As such, I find that the "10%" figure in the Deposit Receipt to be an insurmountable hurdle for the Plaintiff: she had, by her own hand, agreed to being issued with 10% of the shares in the Company, which was to comprise 30,000 shares. At the very least, as applied to the Shareholder Agreement, this means that the parties never intended for the Plaintiff to be the majority shareholder.

65 Second, I again find it unbelievable that the Plaintiff did not ask what the total number of issued shares in the Company would be before committing to the Shareholder Agreement. If the majority shareholding was so important to her, then she could not simply assume that 30,000 shares would constitute a majority shareholding without asking further questions. By extension, it is completely unbelievable that the Plaintiff did not seek clarification on what her exact shareholding was in the Company. Her repeated assertions during cross-examination that the exact percentage did not matter because she knew she

would be the majority shareholder eventually when the Company was incorporated defies belief.[17] While Mr Lau in the Plaintiff's Closing Submissions urged me to accept the Plaintiff's pleaded case as her evidence was consistent at trial,[18] I am unable to agree. Being consistently unbelievable does not make one believable.

66 Third, the Shareholder Agreement contains terms that point away the Plaintiff as the majority shareholder. For example, looking at clause 7A of the Shareholder Agreement (reproduced above at [36]), it is provided in relation to additional investments that such "investment value shall be decided at the sole discretion of the major shareholder/director, Cheo Jean Sheng …", which suggests that it was Cheo who was the majority shareholder and not the Plaintiff. I recognise that the clause uses the expression "major shareholder" instead of "majority shareholder". However, taking in totality, I am convinced that "major shareholder" is meant to refer to "majority shareholder" in this context. The Plaintiff's argument in this regard was that she understood "major shareholder/director" to refer to two different individuals, such that "major shareholder" did not refer to the Cheo. This is despite the Shareholder Agreement clearly providing for the name of Cheo. I dismiss the Plaintiff's explanation as being inconsistent with the terms of the Shareholder Agreement.

67 During the trial, the Plaintiff ran a new argument that was not raised in her pleadings: that while the Shareholder Agreement contemplates the Plaintiff being the majority shareholder, it allowed Cheo to retain executive control of the Company as its sole director. Leaving aside the point that the Plaintiff never pleaded this, I do not agree with this interpretation of the Shareholder

[17] Day 1 Transcript, 22 August 2022, page 38, lines 2–16.

[18] Plaintiff's Closing Submissions at para 5.

Agreement. This is because the various clauses in the Shareholder Agreement provides for powers which go beyond what a sole director can do (and is consistent with majority shareholding), such as the Plaintiff's right of first refusal for sale in favour of Cheo (Clause 10B(i)) and that Cheo must agree to the incoming purchaser of the Company shares (Clause 10B(iii)). These powers would be more consistent with Cheo being a majority shareholder of the Company, as opposed to the Plaintiff being such.

68 At bottom, the fact remains that the Shareholder Agreement contains no indication on the Plaintiff's shareholding percentage as well. Instead, the Plaintiff contracted for 30,000 shares in return for her $30,000 investment. She got 30,000 shares. After the share split, the 30,000 shares *do* constitute 10% of the Company's shares. The contract has been performed. The share split is not a dilution of the Plaintiff's shares nor voting power in the Company because she never had any legitimate expectation of a higher shareholding percentage than 10%. There was, in other words, no starting higher shareholding percentage to *dilute from*. The Plaintiff, therefore, has no cause to complain, let alone allege that she was being oppressed by the Defendants.

69 In her Reply to the Defendants' Closing Submissions, the Plaintiff raised a slightly different point that was not properly pleaded in the Statement of Claim. Instead of arguing that the oppression arose from the dilution of shareholding from 85.7% to 10%,[19] the Plaintiff now argues that the real cause for concern was that: "Clause 3 of the Shareholder Agreement provided that [the Plaintiff] was to be issued 30,000 ordinary shares *worth S$1 each*" and that "it can surely be implied that [the Plaintiff] did not contemplate for the other

[19] Statement of Claim at para 35.

shareholders in the Company to be holding shares *worth S$0.0185 each*" [emphasis added].[20]

70 I reject this argument. First, it appears that the Plaintiff is asserting a new legitimate expectation (*ie*, that it was about the monetary value per share being diminished, and not the percentage shareholding being diluted), but that was not originally pleaded. Second, in any event, I do not read Clause 3 of the Shareholder Agreement as strictly guaranteeing that the value of all the other Company shares will remain at $1.00 per share. To my mind, the "$1.00 per share" stated in Clause 3 merely provided the *price* that the Plaintiff had to pay in exchange for the 30,000 shares, and not that the *value* per share of the other shares will remain at $1.00 indefinitely. This view is fortified when we look at Deposit Receipt (purely as an aid to interpretation and not to add to the terms) which stated at the relevant part: "3. Received Share Amount: Enclosed please find Cheque No … for the amount of … S$30,000 being *payment of the Partnership* of Karaoke Pub" [emphasis added]. Thus, $30,000 (for 30,000 shares) was merely the price to be paid by the Plaintiff. As such, the sale of shares can be seen from two perspectives. From the buyer's perspective, the Plaintiff was willing to pay $30,000 for 30,000 shares which represents her own subjective valuation of the Company's prospects. But otherwise, from the seller's perspective, I do not think that the Defendants were guaranteeing that, for all the other shares, the share value would *always* remain at $1 per share into perpetuity.

71 I also find that the Defendants had consulted Mr Yee in good faith on how to resolve the problem of the Company having insufficient shares to issue 30,000 shares to the Plaintiff. The evidence does not show that they had

[20] Plaintiff's Reply Submissions dated 19 October 2022 at para 72.

approached Mr Yee with a view to dilute the Plaintiff's shares. Indeed, Mr Yee was the one who advised the Defendants to effect the share split, including its precise mechanism, so as to achieve what he assessed to be the commercial bargain reached between the parties, *ie*, that the Plaintiff would be a 10% shareholder of the Company. Therefore, and in any event, the share split exercise that was conducted is *not* an illegitimate conduct, in the sense that it was done with a collateral motive to dilute the shareholding and control of the Plaintiff rather than for a legitimate business purpose (in contrast, see *Over & Over* at [122] and [127] where the purpose was to dilute voting power without commercial justification; see also, the High Court decision of *Lim Anthony v Gao Wenxi and another* [2020] SGHC 67 at [29]).

72 Accordingly, I find that the Plaintiff has failed to show that the Defendants' alleged dilution (or, more accurately, splitting) of the shares amounted to an oppressive act within the meaning of s 216(1) of the Companies Act.

Whether the Defendants' failure to reflect the Plaintiff's share ownership amounted to an oppressive act

73 For completeness, I also deal with the Plaintiff's subsidiary argument that the Defendants' failure to reflect her share ownership amounted to an oppressive act under s 216(1). I should say that the Plaintiff does not advance this as an independent ground of oppression, but deals with this under her claim that the alleged shared dilution amounted to an oppressive act.

74 The Plaintiff alleges that the Defendants refused to reflect her ownership in the Company in the ACRA register. After the events leading to the share split, the Plaintiff started to grow suspicious of the Defendants. This was caused by there being no profits or dividends being shared with the Plaintiff, which went

against her legitimate expectations. Then, in December 2018, the Plaintiff performed an ACRA search on the Company but realised that her shareholding was not reflected. The Defendants claim that the Plaintiff did not want to be reflected as the shareholder of the Company for personal reasons. Presumably, this was because it might have affected the Plaintiff's political image as a candidate with a political party.

75 In my view, I do not need to make a finding whether this omission to reflect the Plaintiff's shareholding was based on the Plaintiff's own instructions, or whether this was intentionally done by the Defendants. This is because I do not regard this as relevant to the Plaintiff's claim of minority oppression. Indeed, I do not understand the Plaintiff to have advanced the failure to reflect her shareholding as an independent ground of minority oppression. At the most, it might be said that the Defendants had breached the Shareholder Agreement in failing to issue the 30,000 shares to the Plaintiff within a reasonable time of its conclusion. However, the Plaintiff has not sued the Defendants for breach of contract.

76 That said, I am satisfied that once the Defendants were notified of their omission by the Plaintiff on 17 May 2019,[21] Cheo took immediate steps to correct this omission, such as by informing the Plaintiff that she could speak with Cheo's lawyer to arrange for her to be reflected as a shareholder.[22] The Plaintiff, by not suing for breach, might be taken to have affirmed the contract following her acquiescence following the Defendants' actions.

77 I turn then to the next ground of oppressive advanced by the Plaintiff.

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[21] Defendants' Closing Submissions at para 116.

[22] AEIC of Cheo Jean Sheng at paras 87–89.

Whether the Defendants' alleged failure to hold AGMs in a timely and proper basis, as well as failure to include the Plaintiff in these meetings, amount to an oppressive act

The parties' arguments

78 The Plaintiff alleges that the Defendants failed to hold AGMs within six months of the end of its financial year under s 175 of the Companies Act. The last AGM was held on or about 7 August 2019 and the Defendants were in breach as they were supposed to have held the next AGM by 7 February 2020. The Defendants eventually only held the AGM on 16 June 2020.

79 In contrast, the Defendants say that under s 175 of the Companies Act, the Company is only required to hold an AGM annually and not every six months. As such, the Company had held all the required AGMs under s 175 since it held AGMs on 7 August 2019, 16 June 2020, 16 August 2021, and 21 July 2022. In any event, the Defendants say that even if they had failed to hold an AGM every six months, this failure did not amount to oppression as the Defendants had afforded the Plaintiff several other meetings to voice her concerns about the Company.

My decision: the Defendants' alleged failure to hold AGMs did not amount to an oppressive act

80 In my judgment, the Defendants' alleged failure to hold AGMs did not amount to an oppressive act within the meaning of s 216(1) of the Companies Act.

81 Contrary to the Plaintiff's arguments, I accept that the Defendants have not acted in breach of the requirements under s 175(1), which states as follows:

> **Annual general meeting**
>
> **175.**—(1) Subject to this section and section 175A, a general meeting of every company to be called the "annual general meeting" must, in addition to any other meeting, be held after the end of each financial year within —
>
> (*a*) 4 months in the case of a public company that is listed; or
>
> (*b*) 6 months in the case of any other company.

82 Thus, a plain reading of s 175(1) provides that a company (that is not a public company) needs to hold an AGM *within 6 months* at the end of each financial year. Given that the Company's financial year ended on 31 January of 2020,[23] it would have been obliged to hold an AGM by 31 July 2020. I thus disagree with the Plaintiff that the Defendants breached s 175 by holding the next AGM on 16 June 2020. This was well within the six months after the end of the Company's financial year, which was 31 January 2020.

83 Even if there was a breach under s 175 of the Companies Act, that does not necessarily amount to oppression. It would take a much longer and severe lapse to show that there was a deliberate attempt to exclude a minority shareholder from partaking in the business for an oppression claim to succeed. For example, in *Guan Seng Co Sdn Bhd v Tan Hock Chuan* [1990] 2 CLJ 761, the court found that the minority's interest was being oppressively disregarded as no AGM had been held for *six years*. In contrast, there were no such extraordinary circumstances here even if we accept the plaintiff's argument (*ie*, the Plaintiff claimed that the AGM should have been held latest by 7 February 2020) that the Defendants had missed the AGM deadline by a few months.

[23] AEIC of Lim Tong Zhen Kevryn at para 90.

84 Accordingly, I conclude that the Defendants' alleged failure to hold AGMs did not amount to an oppressive act within the meaning of s 216(1) of the Companies Act.

Whether the Defendants' alleged use of the Company's resources for improper purposes and enriching themselves in the process amount to an oppressive act

The parties' arguments

85 As for the Plaintiff's next ground of oppression, she alleges that the Defendants, in their management of the Company's business, abused their positions by incurring substantial non-business-related expenditure, and/or paid themselves excessive salaries which were all charged to the Company. The Plaintiff alleges that, based on the unaudited financial statements of the Company alone, the Company only booked losses (before income tax) of $364,456 in 2020 and $127,979 in 2021 because of the large expenses incurred by the Company.

86 The Plaintiff says that these expenses of the Company are excessive and without any reasonable commercial justification. Ultimately, the Plaintiff alleges that, in so doing, the Defendants have conducted the Company's affairs in complete disregard of the Plaintiff's rights as a shareholder. Instead of distributing the Company's profits to its shareholders in a proportionate manner by way of dividends, the Defendants unilaterally paid themselves substantial salaries and bonuses. In so doing, the Defendants artificially increased the losses suffered by the Company such that there was nothing left for distribution.

87 The Defendants' position is that their expenses were all legitimate. There was no incurrence of substantial non-business-related expenses. Indeed, the Defendants say that they only paid themselves a small monthly salary, which

they were well-entitled to since they managed the Company on a full-time basis. The table below shows the Defendants' monthly salaries, which admittedly increased over time, as well as that of two selected employees[24]:

Month	1st Df	2nd Df	Jasline	Michelle
Jan 2019	$1,200.00	$1,200.00	$1,200.00	$1,200.00
July 2019	$1,300.00	$1,300.00	$1,300.00	$1,300.00
July 2020	$1,400.00	$1,400.00	$1,400.00	NA
Oct 2020	$3,000.00	$2,000.00	$2,000.00	NA

My decision: the Defendants' alleged use of the Company's resources for improper purposes and enriching themselves did not amount to an oppressive act

The alleged excessive expenses

88 Turning to the allegation that the Company's resources had been used for improper purposes, I do not think that the expenses incurred were so exceptional that it demonstrates that non-business-related expenses had gone into the accounts. For example, looking at the "other expenses" category,[25] the biggest items appear to be depreciation and rental, and these appear to be reasonable for a pub that was operating in the Central Business District area. I am satisfied that the figures for the individual line items were reasonable expenditures.

[24] Defendants' Closing Submissions dated 5 October 2022 at para 135.

[25] AEIC of Lim Tong Zhen Kevryn at p 204.

89 In this regard, it is pertinent to note that the Defendants had invited the Plaintiff, on occasion, to review the financial statements with their own accountants, but the Plaintiff did not do so.[26] I do not think that it lies in the mouth of the Plaintiff to make several allegations as she does now against the accuracy of the financial statements.

90 More broadly, I am satisfied that the food and beverage businesses suffered disproportionately during the COVID-19 pandemic with the restrictions placed on group sizes and the sale of alcohol. It is therefore entirely conceivable that the Company would be in the red during this period of operation.

Salaries

91 On the issue of salary, I do not think that the annual salaries of the Defendants ($21,000 and $18,000 in 2020 and $27,000 and $22,500 in 2021, for Cheo and Ching, respectively) can be considered excessive remuneration. These figures work out to be, on average, below $2,000 a month for the full-time management of the Company. I find that this is entirely legitimate.

92 Accordingly, I conclude that the Defendants' did not make use of the Company's resources for improper purposes and enriched themselves in the process.

Whether the Defendants' alleged attempt to strike off the Company after extracting its full value amount to an oppressive act

93 Lastly, the Plaintiff claims that the Defendants were acting in an oppressive manner in putting forward the resolution to strike off the Company.

[26] AEIC of Cheo Jean Sheng at paras 75–76.

Contrariwise, the Defendants assert that they had to close the business down as they struggled to keep the Company profitable over the years. In any event, the Company has not been struck off.

94 This is an easy ground to decide since the Company has not been struck off. I find that the Plaintiff does not have a case here. She has not suffered neither loss nor oppression in this regard.

Summary of the Plaintiff's case on minority oppression

95 Accordingly, I find that the Plaintiff has failed to prove any of her alleged grounds of oppression against the Defendants. Her case premised on minority oppression under s 216(1) of the Companies Act therefore fails in its entirety.

The appropriate remedy (if the minority oppression action is made out)

96 Since I have concluded that the Plaintiff's case on minority oppression fails in its entirety, there is no need for me to consider what the appropriate remedy should be.

Conclusion

97 For the reasons above, I dismiss the Plaintiff's claim in its entirety. In my judgment, the Plaintiff has not made out any of the grounds of oppression against the Defendants. In summary, I find that the parties had not intended for the Plaintiff to be a majority shareholder of the Company. Accordingly, the major plank of her case falls away. I find that the Defendants did not unfairly dilute the Plaintiff's shares by way of a share split in breach of her legitimate expectations to be a majority shareholder. Further, I conclude that the Plaintiff has failed to make out the other three grounds of oppression which, in any event,

on a holistic assessment of the case, would not have been sufficient by themselves to make out a claim under s 216 without the main ground of unfair dilution being successfully proved.

98 In closing, I would like to thank Mr Lau and Mr Cai, as well as Mr Cai's team, for their able assistance throughout this matter. In particular, while I was not ultimately persuaded by Mr Lau's client's case, I am thankful for Mr Lau's efforts despite having run the case on his own and at a relatively early stage of his career.

99 Unless the parties are able to agree on the appropriate costs order, they are to tender their very brief written submissions of no more than ten pages on the issue within 21 days of this judgment.

Goh Yihan
Judicial Commissioner

Victor David Lau Dek Kai (Drew & Napier LLC) for the plaintiff;
Cai Enhuai Amos, Tian Keyun and Kieran Jamie Pillai
(Yuen Law LLC) for the first and second defendants;
The third defendant absent and unrepresented.