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

[2024] SGHC 13

Originating Claim No 301 of 2022

Between

(1) Oon Swee Gek
(2) Tay Su-Lyn
(3) Tay Yiming

… *Claimants*

And

(1) Violet Oon Inc Pte Ltd
(2) Murjani Manoj Mohan
(3) Group MMM Pte Ltd

… *Defendants*

Companies Winding Up No 195 of 2022

Between

(1) Oon Swee Gek
(2) Tay Su-Lyn
(3) Tay Yiming

… *Claimants*

And

(1) Violet Oon Inc Pte Ltd

… *Defendant*

JUDGMENT

[Companies — Oppression — Equal shareholders]
[Companies — Directors — Removal]
[Companies — Winding up]
[Companies — Members — Rights]
[Companies — Directors — Powers]
[Companies — Capital — Share capital]
[Contract — Duress — Economic duress — Causation]
[Contract — Duress — Illegitimate pressure]
[Contract — Undue influence — Actual]
[Contract — Undue influence — Presumed]
[Insolvency Law — Winding up — Grounds for petition]
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[Insolvency Law — Winding up — Winding-up order]
[Abuse of Process — Collateral purpose]
[Abuse of Process — Inconsistent positions]

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v
Violet Oon Inc Pte Ltd and others and other matter

[2024] SGHC 13

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Philip Jeyaretnam J
10–14, 17–19 July, 18 August 2023

19 January 2024 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 The touchstone for the grant of remedies under s 216 of the Companies Act 1967 (2020 Rev Ed) ("Companies Act") is commercial unfairness. This is a broad concept that covers all dealings between shareholders concerning the affairs of a company. It is assessed in light of the commercial agreement between the parties. This matter raises the question whether unfairness on the part of one shareholder in negotiating changes to the arrangements between shareholders may potentially found the grant of remedies to the other shareholder, particularly where agreement to the changes was obtained by economic duress or undue influence.

2 In this matter, the eponymous owner of a restaurant business, together with her son and daughter, brought into the company as 50% shareholder (via

his wholly-owned corporate vehicle) a man with an apparent track record of elevating family brands, including taking them beyond Singapore. At the time of his entry, the first three were working in the company and drawing modest salaries. In the years that followed, they raised their own salaries, staying within reasonable bounds. They did not tell the new shareholder of these increases. When he discovered these increases, he demanded changes to the shareholder arrangements. This included making an entry in the company's accounts of a "loan" from the new shareholder's corporate vehicle that exceeded in amount the total salaries paid to the first three since his entrance. If the company failed to repay this "loan" it would potentially be converted into equity for the new shareholder's corporate vehicle, giving him a majority shareholding. The eponymous owner and her children agreed, and a new shareholders' agreement was executed.

3 In these proceedings, the new shareholders' agreement has been challenged on grounds of duress and undue influence.

4 At the heart of this case is the question whether the new shareholder's outrage upon discovering the increases in salary was feigned or exaggerated to frighten and intimidate his fellow shareholders so as to secure unfair advantages for himself. If it was, does this amount to commercial unfairness?

5 Assuming the claimants succeed, then a further question of appropriate remedy arises: should the court order a compulsory sale of shares by the substantive defendants as prayed for, rather than the more typical remedy of a compulsory purchase of the claimants' shares by the defendants? Alternatively, is the most appropriate remedy a winding up of the company?

6 These proceedings are also impugned on the ground that they constitute an abuse of process, principally as an offer had been made to purchase the claimants' shares by the substantive defendants, but also as a circumvention of an alleged exit mechanism.

Facts

The parties

7 The claimants in both matters before me are the same. The first claimant is Ms Oon Swee Gek, known more widely as "Violet Oon". I shall refer to her as "Ms Oon". The second and third claimants are Ms Oon's children, Ms Tay Su-Lyn and Mr Tay Yiming.[1] I shall refer to them as "Ms Tay" and "Mr Tay", respectively. Collectively, I shall refer to them as the "claimants". The claimants are Singapore citizens.

8 In 2012, the claimants incorporated the first defendant, Violet Oon Inc Pte Ltd, in Singapore. I shall refer to it as the "Company". The Company is the first defendant in both matters before me and is unrepresented in both. In 2014, the second defendant in HC/OC 301/2022 ("OC 301"), Mr Murjani Manoj Mohan, became acquainted with the claimants. I shall refer to him as "Mr Murjani". He acquired a 50% shareholding in the Company in 2014 via his wholly-owned corporate vehicle, MMM Delicious Private Limited ("MMM Delicious"). Sometime later, this 50% shareholding was transferred to the third defendant in OC 301, Group MMM Pte Ltd, a Singapore company.[2] I shall refer to it as "Group MMM". Mr Murjani is the sole shareholder of

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1 Tay Yiming's 1st Affidavit dated 30 September 2022 in HC/CWU 195/2022 ("Tay Yiming's 1st Affidavit") at para 1.

2 Murjani Manoj Mohan's Affidavit dated 16 December 2022 in HC/CWU 195/2022 ("Manoj Murjani's Affidavit (16 December 2022)") at para 29.

Group MMM, as well as a director and its Chief Executive Officer ("CEO").[3] Mr Murjani was appointed as a director of the Company by Group MMM in August 2016.[4] As the Company was not an active party in either of the two matters before me, where I use the term "defendants", this should be read as referring only to Mr Murjani and Group MMM collectively as they are the substantive defendants.

Background to the dispute

9 The claimants incorporated the Company on 26 March 2012,[5] with the three claimants serving as directors of the Company. Ms Oon was employed as the Company's Culinary Curator and Chef, responsible for culinary activities and staff training and development.[6] Ms Tay was employed as the Company's Creative Director, Marketing Manager, and Events & Catering Manager, responsible for, among other things, branding, business development, and event planning.[7] Mr Tay was employed as the Company's General Manager and Managing Director, responsible for, among other things, operations, dealing with stakeholders such as banks and landlords, and developing business strategies.[8] From its incorporation until around December 2014, Ms Oon held 40% of the Company's shares while Ms Tay and Mr Tay each held 30%.[9]

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3 Manoj Murjani's Affidavit (16 December 2022) at para 14.

4 Tay Yiming's 1st Affidavit at para 31.

5 Tay Yiming's 1st Affidavit at para 18.

6 Tay Yiming's 1st Affidavit at para 6.

7 Tay Yiming's 1st Affidavit at para 8.

8 Tay Yiming's 1st Affidavit at para 10.

9 Tay Yiming's 1st Affidavit at para 20.

10 The claimants and Mr Murjani became acquainted sometime during the second half of 2014.[10] From around September to November 2014, they discussed MMM Delicious becoming a shareholder of the Company.[11] Mr Murjani was the chairman of MMM Delicious.[12] On 13 November 2014, the claimants and MMM Delicious entered into an agreement comprising a subscription agreement and a shareholders' agreement.[13] I shall refer to the agreement as a whole as the "2014 SHA". Pursuant to the terms of the 2014 SHA, MMM Delicious subscribed to 50% of the Company's shares for $450,000.[14] Following the execution of the 2014 SHA, the Company's shareholding was divided as follows:[15]

(a) Ms Oon: 20%;

(b) Ms Tay: 15%;

(c) Mr Tay: 15%; and

(d) MMM Delicious: 50%.

Notwithstanding this share distribution, the claimants continued to state publicly that they were the "(co-)founders" of the Company. MMM Delicious's shareholding in the Company was later transferred to Group MMM.[16]

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10 Tay Yiming's 1st Affidavit at para 24 and Manoj Murjani's Affidavit (16 December 2022) at paras 25–27.

11 Tay Yiming's 1st Affidavit at paras 24–25 and Manoj Murjani's Affidavit (16 December 2022) at para 27.

12 Tay Yiming's 1st Affidavit at p 349.

13 Manoj Murjani's Affidavit (16 December 2022) at pp 203–220.

14 Manoj Murjani's Affidavit (16 December 2022) at pp 203, 204, and 208.

15 Tay Yiming's 1st Affidavit at para 29.

16 Manoj Murjani's Affidavit (16 December 2022) at paras 27 and 29.

11 Where the Company required institutional financing that entailed the giving of personal guarantees, the claimants gave such guarantees. Mr Murjani's position was that he would not give personal guarantees for loans, as was his practice.[17]

12 At the time the 2014 SHA was executed, the claimants were drawing the following salaries:[18]

(a) Ms Oon: $5,000 per month;

(b) Ms Tay: $1,000 per month; and

(c) Mr Tay: $4,500 per month.

Mr Murjani and the claimants agreed that the latter would continue to draw these salaries following the execution of the 2014 SHA.[19] However, they disagree over whether and when the claimants were entitled to increase the monthly salary quantum.[20] The claimants exercised their discretion periodically between January 2015 and November 2018 to increase their respective salaries incrementally, without informing Mr Murjani.[21] Sometime in December 2018, Mr Murjani found out about the salary increases. He took issue with these increases, characterising the situation as one where the claimants had overpaid

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17 Tay Yiming's 1st Affidavit at para 34(d) and Manoj Murjani's Affidavit (16 December 2022) at para 28(b).

18 Tay Yiming's 1st Affidavit at para 35.

19 Tay Yiming's 1st Affidavit at para 36 and Manoj Murjani's Affidavit (16 December 2022) at para 28(d).

20 Tay Yiming's 1st Affidavit at para 36 and Manoj Murjani's Affidavit (16 December 2022) at para 28(d).

21 Tay Yiming's 1st Affidavit at para 40 and pp 409–503.

themselves without authority, and raised it, along with other matters, to the claimants.[22]

13 Mr Murjani took the view that he should be compensated by the Company to balance off the total salary increments, which he initially claimed amounted to $511,804.[23] This figure was later revised to $1,100,000,[24] and again to approximately $1,250,000.[25] These revised claims were asserted over a period of less than two months: see [70] below. Mr Murjani proposed that this amount should be added to the quantum of shareholder loans extended by Group MMM to the Company and that the claimants should revert to their initial salaries as set out at [12] above.[26]

14 During a meeting between Mr Murjani and Mr Tay in February 2019, the former asserted that the defendants brought $5,266,667 worth of value to the Company. This sum comprised the following contributions:[27]

Contribution	**Value**
Enabling the Company to obtain the sub-tenancy at National Gallery	$250,000
Enabling the Company to obtain a lease at Clarke Quay	$150,000

22 Manoj Murjani's Affidavit (16 December 2022) at para 51.

23 Tay Yiming's 1st Affidavit at para 59 and Manoj Murjani's Affidavit (16 December 2022) at para 52(a).

24 Tay Yiming's 1st Affidavit at para 62 and Manoj Murjani's Affidavit (16 December 2022) at para 52(b).

25 Tay Yiming's 1st Affidavit at para 63 and Manoj Murjani's Affidavit (16 December 2022) at para 52(3).

26 Tay Yiming's 1st Affidavit at para 59 and Manoj Murjani's Affidavit (16 December 2022) at para 52(a).

27 Tay Yiming's 1st Affidavit at para 63 and Manoj Murjani's Affidavit (16 December 2022) at para 52(e).

Enabling the Company to obtain a lease at ION Orchard	$500,000
Contributions to the Company's brand in general	$2,500,000
Value of salary overpayments to the claimants	$1,666,667
Introducing bankers with whom Mr Murjani had a relationship with to the Company	$100,000
Total value contributed to the Company	**$5,266,667**

Referencing this estimate, Mr Murjani proposed, among other things, that Group MMM should acquire 70% of the shareholding in the Company in satisfaction of $4,000,000 worth of value contributed by the defendants.[28]

15 On 21 February 2019, Mr Murjani emailed Mr Tay a list of terms, to which the claimants agreed ("2019 Terms").[29] The key terms included the following:

(a) Group MMM would receive $1,550,000, comprising $1,250,000 in salaries and Central Provident Fund ("CPF") contributions which the Company had "overpaid" to the claimants, an additional $300,000, and interest on this sum ("Group MMM Loan");[30]

(b) Group MMM would receive compensation of the same quantum received by the claimants as their monthly salaries moving forward;

(c) all public relation materials in relation to the Company would be edited and redone to feature the defendants;[31]

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28 Tay Yiming's 1st Affidavit at para 64(a) and Manoj Murjani's Affidavit (16 December 2022) at para 52(f)(i).

29 Tay Yiming's 1st Affidavit at para 70.

30 Manoj Murjani's Affidavit (16 December 2022) at para 59.

31 Manoj Murjani's Affidavit (16 December 2022) at para 76.

(d) the Company's persona and brand, including, among other things, logos and packaging would emphasise "VO Singapore" as opposed to "Violet Oon";

(e) the Company's logo and packaging would include the words "a Group MMM partnership";

(f) Ms Oon and Ms Tay would be removed from the board of directors, leaving only Mr Tay and Mr Murjani as directors of the Company;

(g) Mr Murjani would be appointed Chairman and CEO of the Company; and

(h) Ms Oon, Ms Tay, and Mr Tay's roles in the Company were to be Chef, Creative Director, and Director of Operations, respectively: *cf*, [9] above.

16 Following this, on 26 February 2019, the claimants and Mr Murjani, on behalf of Group MMM, executed a revised shareholders' agreement ("2019 SHA"). Collectively, I refer to the 2019 Terms and 2019 SHA as the "2019 Agreements".

17 Around March 2020, in light of the COVID-19 pandemic and resultant cash flow issues, the parties agreed that the claimants' salaries would be withheld by the Company and accumulated as a debt owing from the Company to the claimants.[32] Sometime during the COVID-19 pandemic, the claimants offered to sell their shares to the defendants.[33] This offer was not accepted. The

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32 Tay Yiming's 1st Affidavit at para 86.

33 Tay Yiming's 1st Affidavit at para 108.

Company continued its operations, and the claimants continued their employ therein.

18 In April 2022, Mr Tay sought the reinstatement of monthly payments of the claimants' salaries.[34] In an email dated 1 May 2022, Mr Murjani rejected this. Mr Murjani also returned to the issue of the alleged "excess salaries" paid from "2014 to February 2019" and claimed that this request for reinstatement of salaries was an attempt by the claimants to pay themselves salaries "without obtaining board approval".[35] Further in the same email, Mr Murjani seemed to suggest that, unless written employment contracts were now entered into by the Company with his approval, no salaries were owed to the claimants.[36]

19 On 30 September 2022, the claimants filed this originating claim, OC 301, against the Company and the defendants seeking, among other things, an order that Group MMM sell its shares in the Company to the claimants as a remedy for oppression under s 216 of the Companies Act.[37] In the alternative, the claimants seek an order to wind up the Company under s 216(2)(*f*) of the Companies Act. The claimants also seek the setting aside of the 2019 Terms and 2019 SHA.

20 The claimants also filed an originating application, HC/CWU 195/2022, on 3 October 2022 seeking an order that Group MMM sell its shares in the Company to the claimants under s 125(3) of the Insolvency, Restructuring and

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34 Tay Yiming's 1st Affidavit at para 86 and p 826.

35 Tay Yiming's 1st Affidavit at p 829.

36 Tay Yiming's 1st Affidavit at p 830.

37 Statement of Claim dated 30 September 2022 in HC/OC 301/2022 ("Statement of Claim") at p 60.

Dissolution Act 2018 (2020 Rev Ed) ("IRDA").[38] The valuation of these shares is to be determined by the court or by an independent valuer appointed by the court.[39] In the alternative, the claimants sought the winding up of the Company under ss 125(1)(*f*) and 125(1)(*i*) of the IRDA.[40]

21 By way of a letter from their counsel dated 5 April 2023, the defendants offered to acquire the claimants' cumulative 50% shareholding in the Company for $6,000,000 (the "Group MMM Offer").[41] Other salient terms of this offer are elaborated upon below at [104].

The parties' cases

22 The claimants allege that there was a personal relationship, *ie*, one of mutual trust and confidence, between themselves and Mr Murjani. Consequent to this personal relationship, the claimants posit that seven legitimate expectations arose:

(a) the claimants and Group MMM would always hold 50% of the Company's shares, respectively ("50/50 Shareholding LE");

(b) the claimants and Group MMM would bear a fair and equal share of the financial responsibility and risk in maintaining the Company as a going concern ("Co-Investing LE");

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38 Originating Application for HC/CWU 195/2022 filed on 3 October 2022 ("Originating Application (CWU 195)") at para 1.

39 Originating Application (CWU 195) at para 1.

40 Originating Application (CWU 195) at para 3.

41 2nd and 3rd Defendants' Closing Submissions dated 11 August 2023 ("Defendants' Closing Submissions") at para 158; Manoj Murjani's Supplementary Affidavit of Evidence-in-Chief dated 15 May 2023 ("Manoj Murjani's Supplementary AEIC") at para 6 and pp 38–40.

(c) the Company's branding would remain rooted in Ms Oon's personal identity, cultural heritage, and family ("Branding LE");

(d) Ms Tay and Mr Tay would eventually succeed Ms Oon as "caretakers of the Company's business and branding" ("Succession LE");

(e) the claimants would be continually involved in the Company's day-to-day operations and management in their capacities as directors, and have the power and discretion to determine their own salaries as employees ("Salaries LE");

(f) the defendants would inject funds into the Company, and Mr Murjani would mentor the claimants and provide his expertise and access to equity, funds, and/or business contacts, so as to grow the Company's business locally and internationally ("Parties' Roles LE"); and

(g) all parties would perform their respective roles in a manner consistent with the aforementioned legitimate expectations, in the best interests of the Company, and in accordance with the duties they owe to the Company ("Parties' Duties LE").

23 The claimants say that Mr Murjani has not honoured these legitimate expectations and seek an order under s 216 of the Companies Act that Group MMM sell its shares to them. The claimants also submit that the 2019 Agreements were obtained by duress or undue influence and thus should be set aside. Alternatively, the claimants apply to court to wind up the Company on the basis of ss 125(1)(*f*) and 125(1)(*i*) of the IRDA. However, they do not want the Company to be wound up if the court would instead grant them an order that Group MMM sell its shares to them.

24 In opposition to the claimants' submissions, the defendants contend that the claim under s 216 of the Companies Act should not succeed as there is no personal relationship between the claimants and Mr Murjani. Hence, there were no legitimate expectations which arose, and there was no commercial unfairness toward the claimants. Additionally, the 2019 Agreements should not be set aside as there was no duress or undue influence. If the court is satisfied that the claim under s 216 of the Companies Act is made out, the order should be for sale of the claimants' shares to Group MMM and/or Mr Murjani as the "party with legal control of the Company".[42] In the alternative, if the buyout order is granted in favour of the claimants, the defendants submit that the valuation provided by the claimants' expert should be "treated with extreme caution and circumspection".[43] The defendants also disagree with the claimants' application for the Company to be wound up because it "appears to be able to continue as a viable entity".[44] Finally, the defendants submit that OC 301 and CWU 195 are an abuse of process.

Issues to be determined

25 Accordingly, the issues that arise for my determination relate to:

(a) what the commercial agreement between the parties in 2014 was;

(b) in light of the commercial agreement, whether the defendants acted in a manner that was commercially unfair to the claimants;

(c) whether the present proceedings involve an abuse of process which disentitles the claimants from pursuing it;

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42 Defendants' Closing Submissions at para 150.

43 Defendants' Closing Submissions at para 151.

44 Defendants' Closing Submissions at para 152.

(d) if there was commercial unfairness, whether the appropriate order is for Group MMM to sell to the claimants; and

(e) whether it is just and equitable to wind up the Company.

Commercial agreement in 2014

26 Section 216 of the Companies Act provides shareholders with a personal remedy in cases where there has been "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": *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Sakae Holdings*") at [81]. Commercial unfairness is the touchstone of a claim under s 216 of the Companies Act: see *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [81]. The commercial agreement between the parties sets the frame against which commercial unfairness is to be judged. This commercial agreement need not be enforceable as a matter of contract law to be worthy of protection under s 216 of the Companies Act. It is an agreement in the broadest sense as it may be found in informal understandings and assumptions attendant to the parties' personal relationship: *Over & Over* at [84] and [87]. In assessing commercial fairness, the court is therefore entitled to consider not only the parties' legal rights, but also their legitimate expectations (*Sakae Holdings* at [82]). In this context, the term "legitimate expectation" describes the correlative "right" that the claimant shareholder is entitled to protect, a right that arises from the personal relationship between the parties: *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14 at 19–20 and *O'Neill v Phillips* [1999] 1 WLR 1092 at 1100–1102).

27 In this case, parties entered into a written agreement, namely the 2014 SHA. Prior to its execution, Mr Tay consulted a lawyer. On that lawyer's

advice, Mr Tay suggested changes that Mr Murjani accepted. Moreover, the 2014 SHA contained an entire agreement clause at cl 4.7. Legitimate expectations, however, are not the same as contractual terms. Failure to honour legitimate expectations does not give rise to contractual remedies such as damages. Rather, it grounds the possible grant of relief under s 216 of the Companies Act. In this case, the entire agreement clause did not purport to exclude understandings. Nonetheless, once parties have entered into a written agreement regulating their relationship as shareholders, it would be difficult to find that legitimate expectations co-existed with it unless they were both consistent with the written agreement and supported its spirit. Moreover, if what is put forward as a legitimate expectation is something that parties would be expected to record in a written agreement if they had that expectation, then its non-recording is an indication that there was no such expectation. Ultimately, this is a question of fact.

28 I would add two general points. First, while legitimate expectations are not contractual terms and so not subject to the requirement of certainty, they do, if they exist, form the foundation and framework for the parties' relationship in the company in which they are shareholders. For this reason, a legitimate expectation must be reasonably clear and straightforward. The more complicated, qualified, hedged, vague, or ambiguous a contended-for expectation is, the less likely it is that it operated as a legitimate expectation. Second, expectations must not be confused with "hopes" or "aspirations". A legitimate expectation should set an objective baseline of behaviour or establish a clear red line that parties should not cross. If it is merely something parties hope will happen if all goes well, it will not amount to a legitimate expectation. Again, these points relate to factual analysis of the claim.

29 I have listed and labelled the alleged legitimate expectations at [22] above. Before I discuss them individually, I explain my views and state my findings on the extent to which the Company was founded on a personal relationship of mutual trust and confidence. The defendants would point to such matters as Mr Murjani being a professional and serial investor, and the parties' shared ambition to professionalise what was, in origin, a family business (including with a view to growth beyond Singapore and potential sale in part or in whole to the profit of the parties), as indicating it was not a quasi-partnership. Instead, their position is that the parties shared, in essence, a business relationship governed only by its corporate constitutional documents and the 2014 SHA.

30 I agree that, given these elements, the Company was not a quasi-partnership. It was grounded in a personal relationship of trust. But that, in itself, does not make the Company a quasi-partnership. At the same time, shareholders in a company that is not a quasi-partnership may nonetheless on the facts share certain legitimate expectations concerning its governance. That the parties' relationship began in trust is part of the context for determining whether on the facts there were understandings shared by the parties that were not fully articulated in the 2014 SHA and which were capable of giving rise to legitimate expectations. I have come to this view that there was a personal relationship of trust based on the evidence concerning how the parties' relationship began, as well as how the 2014 SHA was drafted.

31 Mr Murjani came into the Company very much because of the personal characteristics of Ms Oon as an esteemed and well-reputed doyenne of Singapore Peranakan cuisine. Ms Oon and the other claimants, at a time described by the former as a "lovefest", chose to partner Mr Murjani because

he expressly presented himself to them as someone respectful and supportive of founders, and who was personally enthused by Ms Oon's vision.

32 While it is true that Mr Tay sought input from a lawyer for the 2014 SHA, it is also clear that this was a limited review that elicited only general suggestions for the draft that had come from Mr Murjani. I find that on 4 November 2014, there was an important discussion between the parties in-person and that, notwithstanding the entire agreement clause, the 2014 SHA was not intended to be exhaustive. That it was not exhaustive and there was no comprehensive legal review undertaken by either side is demonstrated by the fact that a key point, namely the relationship between Ms Oon and the Company that bore her name, was not addressed beyond a clause providing that Ms Oon's activities, such as writing cookbooks or conducting cooking shows, should be channelled through the Company on terms to be agreed. There was no specification of whether and on what terms the Company was entitled to use Ms Oon's name. For avoidance of doubt, the question of the relationship between Ms Oon and the Company, beyond her employ (see [9] above), is not agreed between parties and is a dispute outside the scope of this litigation.

33 I now turn to the asserted legitimate expectations. In relation to the 50/50 Shareholding LE, the presence of clauses contemplating the entry of third parties or external buyout (see cll 7, 8, and 9 of the 2014 SHA) militate against there being any such legitimate expectation. Parties started at 50/50, but this could change if the appropriate corporate processes were followed. There is no room for any different expectation.

34 In relation to the Co-Investing LE, I accept that both parties had the expectation at the start that there would be broad fairness and equality in how parties approached the sharing of financial responsibility and risk. Indeed, such

an expectation follows from parties being equal shareholders, unless something has been said to the contrary at the initial stages of the relationship. I specifically find that Mr Murjani did not tell the claimants at the start that he would not give personal guarantees for any financing that might be required, and only told them this later when there was a need for bank borrowings.[45] However, an expectation of broad fairness and equality leaves room for parties to make different contributions or have different responsibilities on different aspects, so long as overall this happens on broadly fair and equal terms.

35 In relation to the Branding LE, I accept that both parties had the legitimate expectation that the branding would remain rooted in Ms Oon's personal story and heritage. Naturally, in Ms Oon's email dated 12 November she described it as "strongly rooted in Peranakan cuisine - the exquisite cooking of my culture - that of the Peranakans".[46] I do not accept that this meant that Ms Oon, or the other claimants, had any kind of veto over branding, or how the Company's story would be told or its products marketed. Indeed, the claimants expected Mr Murjani to bring to bear his own marketing acumen to take the brand, if not global, at least overseas. I do not find that the content of cl 6.3 of the 2014 SHA, which provided that Ms Oon's activities such as writing cookbooks or conducting cooking shows should be channelled through the Company on terms to be agreed, takes this point any further. This clause is really just a place marker for how parties should seek to agree terms whenever Ms Oon had opportunities that related to the brand value of the Company.

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45 Transcript for the hearing on 18 July 2023 at p 188, line 20 to p 190, line 11; Transcript for the hearing on 19 July 2023 at p 100, lines 13–23.

46 Bundle of Key Documents filed on 3 July 2023 ("Bundle of Key Documents") at p 131.

36 I do not accept the Succession LE. While parties may have anticipated a continuing role beyond Ms Oon for her children, and perhaps especially for Mr Tay, this would have been dependent on performance and the circumstances in which the Company found itself. The 2014 "Successors" video certainly identified Ms Tay and Mr Tay as "heirs and heiresses" of the family business.[47] However, I do not see how Mr Murjani's expressed enthusiasm for the video at the time meant that he was acknowledging and affirming that they must have a perpetual continuing role beyond Ms Oon no matter what.

37 I turn now to the Salaries LE. The Salaries LE as framed by the claimants comprises three distinct expectations:

(a) that the claimants could, at their discretion, unilaterally increase the quantum of their monthly salaries;

(b) that the claimants would remain involved in day-to-day operations and management as *directors* of the Company; and

(c) the claimants would remain employed by the Company.

38 In relation to the quantum of salaries paid to the claimants, Mr Murjani agrees that something was discussed at the time of the 2014 SHA's execution but that it was about the claimants wanting to receive "nominal" salaries, to which he agreed.[48] Ms Oon sent herself an email two days before this meeting,[49] and I accept her evidence that this email formed an aide-memoire for her at the meeting between the parties on 4 November 2014. In the email, she not only outlined the then-salaries but also indicated increments as revenue increased.

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47 Bundle of Documents Not in AEICs (Volume 2) filed on 4 July 2023 at pp 46–47.

48 Transcript for the hearing on 18 July 2023 at p 61, lines 22–24, and p 192, lines 3–6.

49 Bundle of Key Documents at pp 103–107.

39 Counsel for Mr Murjani relied on a statement in an email Mr Murjani wrote on 28 December 2018:[50]

> … It was agreed at the commencement of the partnership that the 3 of you would receive a nominal compensation, given that you are all shareholders, of a base salary amount of $4500, $1000 and $5000 respectively and never was there any discussion thereafter, except for that shareholders would receive a benefit at a stage when the company was growing and have the ability. …

40 I do not put much weight to this statement which was made after the dispute had arisen over what Mr Murjani alleged was overpayment of salaries. It is true that Mr Tay did not respond to it. Indeed, at no time during his attempts to deal with Mr Murjani in that period of dispute did he say that the parties had discussed how the salaries would increase over time. Mr Murjani's counsel gave short shrift to Mr Tay's failure to do so, mocking Mr Tay for, in effect, claiming "battered wife syndrome" where his mental state was such that he could do nothing but appease the abuser.[51] I will consider what Mr Tay's mental state was when I come to the arguments on economic duress and undue influence, but for the moment it suffices to say that Mr Tay's failure to mention it does not, in my view, mean that it did not happen.

41 I find that the word "nominal" or something like it was used during the meeting to describe the claimants' initial salaries: see [12] above. The word "nominal" could mean not rising to the level of substantial, but in my view, what was meant was that they would not initially be receiving salaries commensurate with the work they were doing. In other words, their initial salaries were significantly less than what they deserved, constituting a form of voluntary

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50 Bundle of Key Documents at p 250.

51 Minute Sheet for the hearing on 18 August 2023 at p 5.

contribution to the future growth of the Company. I do not find that there was any suggestion that the salaries would not increase, whether to reduce the gap between what was paid and what was commensurate with the work, or to reflect the Company's growth.

42 Indeed, I go further and find that there was a discussion of how salaries would increase over time with a general road map for their increase being discussed in broad accordance with Ms Oon's aide-memoire for the meeting. I accept her evidence on this point. I do not find, however, that the parties agreed that the claimants' salary increases were simply to be at their discretion. I do not accept that this was said, in part because if it was said, it is hard to imagine that Mr Murjani would simply have agreed to this. It would be natural for him to have expected to be consulted when the time came for any increase, notwithstanding this not being the case for the other employees of the Company.

43 I accept that for the foreseeable future the claimants expected to remain employees and directors of the Company with involvement in day-to-day operations and that Mr Murjani likewise expected them to do so, unless mutually agreed otherwise. Not only was the brand of the Company deeply associated with Ms Oon, but the expertise and experience relevant to a business rooted in Peranakan culture lay with her and her children. Thus, not only were they working in the Company, but they and Mr Murjani expected them to continue doing so because this was what was needed for the Company to operate and grow. Their working in the Company was clearly linked to their continuing roles as directors thereof. This point is distinct from whether there was a legitimate expectation of succession, which I have not accepted.

44 While I do not accept the Salaries LE entirely as framed, it is clear that the claimants legitimately expected (and Mr Murjani understood) that the

claimants would continue to work and should be rewarded fairly for the work they put in, meaning that their remuneration would increase over time. In other words, the gap between what they were paid and the amount they ought to be paid on a commercial basis would ultimately narrow or disappear. This is consistent with the general point that it would not be fair for only one side to do the work if not remunerated reasonably for it. This is a key finding, because the fact that the increases were expressly foreshadowed and implicitly anticipated is material to how I view Mr Murjani's reaction to his alleged discovery of them.

45 Turning to the Parties' Roles LE, I accept that Mr Murjani held himself out as having expertise in branding and in bringing local brands overseas, and that this was a material reason why the claimants wanted him to join the Company as a shareholder (via his corporate vehicle(s)). I also accept that Mr Murjani was expected in a general sense to mentor the claimants in his areas of expertise. However, I do not see how this rises to the level of a legitimate expectation. It was more an aspiration in the context of a hopefully successful coming together of parties.

46 Finally, the Parties' Duties LE is, in my view, wholly otiose and redundant. There is no need for a separate legitimate expectation that other expectations will be honoured. As for the expectation that parties will act in the best interests of the Company or behave in accordance with their duties owed to the Company, this would appear to relate to their roles as directors, and such duties exist regardless of any legitimate expectation. Moreover, in appropriate cases, breaches of directors' duties (or indeed prejudicial exercise of directors' powers) may found relief under, among others, s 216 of the Companies Act independently of any legitimate expectations. There is no need to introduce an additional legitimate expectation in order that directors be accountable.

47 From this discussion, my conclusion is that there were only limited firm legitimate expectations underpinning the Company. As I have noted in the course of the discussion above, I accept that there was a shared legitimate expectation of broad fairness and equality in taking on financial responsibility and risk and a shared legitimate expectation that the claimants would work in the Company and be fairly remunerated for that work, such remuneration increasing over time.

Commercial unfairness

48 The thrust of the claimants' case is that Mr Murjani feigned outrage over the claimants' increase in their salaries to pressure Mr Tay to agree to different arrangements, namely the 2019 Agreements, that were substantially more advantageous to the defendants. In their submission, Mr Murjani sought to take advantage of their vulnerability, including their exposure on personal guarantees that he did not have (see [11] above), as well as fear of potential civil or criminal liability. The claimants contend that Mr Murjani's conduct amounted to duress or the exercise of undue influence.

Whether 2019 Agreements may be avoided on ground of economic duress

49 I begin with duress. Economic duress has long been recognised as a vitiating factor: *Third World Development Ltd v Atang Latief* [1990] 1 SLR(R) 96, where the Court of Appeal cited with approval the following *dicta* from the Privy Council decision (on appeal from Hong Kong) in *Pao On and others v Lau You Long and others* [1980] AC 614:

> Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree with the observation of Kerr J in *Occidental Worldwide Investment Corporation v Skibs A/S Avanti* [1976] 1 Lloyd's Rep 293, 336 that in a contractual situation commercial pressure is not enough. There must be present some factor 'which could in law be regarded as a

> coercion of his will so as to vitiate his consent.' This conception is in line with what was said in this Board's decision in *Barton v Armstrong* [1976] AC 104, 121 by Lord Wilberforce and Lord Simon of Glaisdale — observations with which the majority judgment appears to be in agreement. In determining whether there was a coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are, as was recognized in *Maskell v Horner* [1915] 3 KB 106, relevant in determining whether he acted voluntarily or not.
>
> …
>
> The commercial pressure alleged to constitute such duress must, however, be such that the victim must have entered the contract against his will, must have had no alternative course open to him, and must have been confronted with coercive acts by the party exerting the pressure: *Williston on Contracts*, 3rd ed, vol 13 (1970), section 1603.

50 In *Tam Tak Chuen v Khairul bin Abdul Rahman* [2009] 2 SLR(R) 240 ("*Tam Tak Chuen*"), Judith Prakash J (as she then was) cited *Universe Tankships Inc of Monrovia v International Transport Workers Federation* [1983] 1 AC 366 for the two elements of duress that the claimant must satisfy (at [22]):

(a) pressure amounting to compulsion of the will of the victim; and

(b) the illegitimacy of the pressure exerted.

51 On the point of illegitimacy, Prakash J at [22] cited Nelson Enonchong, *Duress, Undue Influence and Unconscionable Dealing* (Sweet & Maxwell, 2006) ("*Enonchong*") at para 3-031 for the proposition that illegitimate pressure may be indicated where the "terms secured as a result of the threat of lawful action are so 'manifestly disadvantageous' to the complainant as to make it

unconscionable for the defendant to retain the benefit of them". Prakash J subsequently went on to consider categories of circumstances when a threat of lawful action is illegitimate as set out in *Enonchong*, including (at [50]):

(a) where the threat is an abuse of legal process;

(b) where the demand is not made *bona fide*;

(c) where the demand is unreasonable; and

(d) where the threat is considered unconscionable in the light of all the circumstances.

52 Prakash J's view was that, once illegitimate pressure is established, the burden lies on the defendant to "prove that the pressure had not contributed to the plaintiff's decision to execute the agreement": *Tam Tak Chuen* at [62], following the Privy Council decision in *Alexander Barton v Alexander Ewan Armstrong and others* [1976] AC 104 ("*Barton v Armstong*"). This was followed in *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 ("*E C Investment*") at [48], with the elaboration that this is a question of fact that is determined with reference to the circumstances of the case: *DSND Subsea Ltd v Petroleum Geo-Services ASA* [2000] BLR 530 at 545, *per* John Dyson J.

53 In *E C Investment*, Quentin Loh Sze-On J (as he then was) generally agreed with the principles espoused by, among others, Prakash J (at [48]). However, Loh J cautioned that the doctrine of unconscionability could "open the door to uncertainty" and that "there remains a distinct and discernible difference between what is 'illegitimate' and what is 'unconscionable' and it is worth remembering that what is unconscionable is not necessarily illegitimate" (at [49]). Loh J further noted that "it certainly will be a very rare case indeed for

a contract to be set aside for duress when only lawful means or pressure was used" (at [51]). Quoting Treitel, *The Law of Contract* (Edwin Peel ed) (Sweet & Maxwell, 12th Ed, 2007) ("Treitel")at para 10-005, Loh J emphasised, first, that there must be a distinction between "*agreements which are the result of mere 'commercial pressure', and those which are the consequence of unfair exploitation*" [emphasis in original]. The same passage that he cited from Treitel continued with the postulation that "*for economic duress*[,] *the minimum requirement before it can be said that the threat was a significant cause is to satisfy the 'but for' test, i.e. that the agreement would not have been made at all or on the terms it was made*" [emphasis in original].

54 That postulation of the "but for" test in cases of economic duress differed from the position taken in *Tam Tak Chuen*, with which Loh J had appeared to agree at [48], namely that "once the plaintiff had proved that illegitimate pressure had been exercised on him, it was up to the defendant to prove that the pressure had not contributed to the plaintiff's decision to execute the agreement".

55 While there was an appeal on other aspects of Loh J's decision, there was no appeal concerning economic duress: see *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and others another appeal* [2012] 1 SLR 32 at [16]. Consequently, the question whether the burden of proof lies on the person said to have exerted pressure to prove that the pressure had not contributed to the decision to execute the agreement has only been considered at the level of the High Court. Moreover, such consideration was not strictly part of the *ratio* of those cases.

56 In my respectful view, I do not agree that the burden of proof shifts in this way. Such a shift in the burden of proof would align the position for

economic duress with that of duress to the person, but diverge from how another similar doctrine operates, namely misrepresentation, where the party seeking to avoid the contract must satisfy the "but for" test. The shift in the burden of proof is ordinarily justified for one of two policy reasons:

(a) persons in the position of the party to whom the burden shifts are likely to have special knowledge of that aspect of the case; or

(b) to signal societal disapproval of the conduct that triggers the shift in the burden of proof.

57 The party found to be exerting economic duress would not have better knowledge of the victim's state of mind. While applying economic duress is far from laudable, it is hard to see why it would merit opprobrium more than the making of misrepresentations. The seriousness and reprehensibility of duress to the person is of a different order from economic duress. Thus, in this matter, I will not shift the burden of proof to the defendants. Rather, I will need to consider whether the claimants have satisfied the "but for" test.

58 I appreciate that on this issue I depart from the position in *Tam Tek Chuen* at [62] *and E C Investment* at [48], which opined that after illegitimate pressure is proved by the claimant, the burden shifts to the defendant to prove that this pressure did not cause the victim to enter into the agreement. As noted at [50] above, Prakash J in *Tam Tek Chuen* referred to the Privy Council decision in *Barton v Armstrong*, but in that decision one aspect of the duress took the form of threats to the person, including death threats. In that context of duress to the person, the shift in the burden of proof is settled law. In that context, it marks the law's opprobrium for threats of physical harm as a means to coercing another's signature to a contract or deed. The English law position on causation now clearly differs between duress to the person and economic

duress, as summarised in *Chitty On Contracts* (Vol 1) (Hugh Beale ed) (Sweet & Maxwell 34th Ed, 2022) at para 10-034, such that for economic duress there is no shift in the burden of proof and a "but for" test is applied:

> **'but for'** In *Dimskal Shipping Co SA v I.T.W.F.* Lord Goff said that there may be duress where 'the economic pressure may be characterised as illegitimate and has constituted a significant cause inducing the plaintiff to enter the relevant contract". This dictum indicates that, as cases of duress of goods, the victim will not have the benefit of the reversed burden of proof in the same way as the victim of duress to the person, nor will it suffice that the threat was merely 'one reason' for his actions or 'present to his mind'. As Mance J said in *Huyton v Cremer*, by "significant cause" Lord Goff meant that what the judge termed the 'relaxed view' of causation in special context of duress to the person does not apply to economic duress. Mance J said:
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> > '… the minimum basic test of subjective causation in economic duress ought … to be a "but for" test. The illegitimate pressure must have been such as actually caused the making of the agreement, in the sense that it would not otherwise have been made either at all or, at least, in the terms in which it was made. In that sense, the pressure must have been decisive or clinching. There may of course be causes where a common sense relaxation … is necessary, for example in the event of an agreement induced by two concurrent causes, each otherwise sufficient to ground a claim of relief, in circumstances where each alone would have induced the agreement.'
>
> Adopting a 'but for' test would place cases of economic duress on a par with cases of negligent or non-negligent misrepresentation. This seems appropriate. Only in the special circumstances of duress to the person, as with cases of fraudulent misrepresentation, should relief be given merely because the threat or fraud had some influence on the mind of the victim.
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> [emphasis in original; footnote references omitted]

59 More recently, the Court of Appeal in *BOM v BOK and another appeal* [2019] 1 SLR 349 ("*BOM v BOK*") at [172] has recapitulated that duress:

> requires a transaction to have been procured by the *illegitimate pressure* that is exerted by one party over the other. This

> illegitimate pressure takes the form of a threat that is accompanied by a demand for a promise which (if satisfied) nullifies that threat, with the other party agreeing to the promise as he perceives that threat as real…
>
> [Duress is thus concerned with] (a) the nature of the pressure (*ie*, is the threat, or the demand accompanying the threat, made in such a manner as to render the pressure *illegitimate*?); and (b) the impact of the threat on the person at whom the threat is directed, specifically whether the threat so affected him as to *coerce* his will.
>
> [emphasis in original]

60 I would accordingly summarise the principles of law on economic duress as follows. The burden lies on the party seeking to rely on it to establish the following.

(a) The other party had exerted pressure directed at compulsion of their will.

(b) Such pressure was illegitimate, which entails an objective evaluation of the pressure exerted and the overall circumstances. Mere commercial pressure is insufficient but it is not necessary that the pressure involve unlawful means.

(c) But for the illegitimate pressure, they would not have agreed at all or on those terms.

61 Economic duress is distinct from the doctrine of unconscionability, but nonetheless manifest disadvantage in the bargain struck may support inferences that their will was coerced, that the pressure exerted was illegitimate and that the transaction was the result of such illegitimate pressure.

Whether there was illegitimate pressure amounting to compulsion of the claimants' wills which led to the execution of the 2019 Agreements

62 The 2019 Agreements were precipitated by the parties' dispute over the claimants' increases in their monthly salaries.

63 In my view, Mr Murjani used the dispute as an opportunity to both confuse and pressure Mr Tay. It was illegitimate pressure. Mr Murjani adopted four broad tactics.

(a) He threatened potential consequences that would be severe for Mr Tay, his sister and mother, including that the Company would be wound up and Mr Tay (and Ms Tay and Ms Oon) would be financially exposed on their personal guarantees.

(b) He exaggerated the extent to which the salaries had been increased and kept raising these figures.

(c) He exaggerated his and Group MMM's contribution to the Company.

(d) He deliberately isolated Mr Tay, by refusing to speak to Ms Oon or Ms Tay, other than one meeting on 22 or 23 February 2019.[52] The exertion of pressure on Ms Oon and Ms Tay by Mr Murjani was mostly "second-hand", *ie*, communicated to them by Mr Tay, who was in primary contact with Mr Murjani leading up to the 2019 Agreements.

64 I now elaborate on each of these, starting with the threats. Specifically, the claimants submit that, among other things, Mr Murjani made "direct oral

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52 Transcript for the hearing on 14 July 2023 at p 16, lines 11–21.

threats to sue the [c]laimants and wind up the Company, and/or implicit or veiled threats to take action against the Company and/or the [c]laimants, to their detriment, if Mr Murjani's demands were not met".[53] The defendants deny these allegations primarily on the basis that Mr Tay's evidence under cross-examination was inconsistent in relation to the "*precise nature* of the threat" [emphasis added].[54] The defendants contend that because Mr Tay introduced, during cross-examination, new information about the alleged threats made by Mr Murjani that were not specified in his affidavits that Mr Tay was embellishing.

65 I do not accept this criticism of Mr Tay's evidence and accept his evidence on this aspect of the case. It is not surprising that Mr Tay's recollection of the threats is not specific or precise. People do not always or necessarily remember what exactly was said so much as the impression it had on them. I accept that Mr Tay understood that Mr Murjani was threatening to wind up the Company and expose him and his family members to claims on the personal guarantees, an exposure which Mr Murjani did not have. In my view, Mr Murjani made his meaning clear without being explicit. From my observation of him in the witness box, he appears to be someone equipped with an ability to manipulate others emotionally without spelling things out. His email dated 19 February 2019 shows how he made a veiled yet clear threat:[55]

> … I do not want there to be any misunderstanding here. As explained, you have already taken $1.25M out of the company. It is my willing [*sic*] to not pursue this matter, to compromise to find a way forward without affecting yourselves and the company. …

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53 Claimants' Closing Submissions at para 190(a).

54 Defendants' Closing Submissions at para 64.

55 Bundle of Key Documents at p 279.

66 The reference in the above email to "$1.25M" was a reference to the total amount of salaries that the claimants had allegedly received. I explain this further below at [69] to [74] but for the moment I simply note that even on Mr Murjani's own position at the time, more than half of the moneys received by the claimants was at the quantum of salary as originally agreed to by him knowing and understanding that it was "nominal" by comparison with the work required of the claimants: see [37]–[39] and [41] above. Mr Murjani has also accepted that there was nothing unreasonable about the revised amounts and they were commensurate with the work done. On my reading of his email, Mr Murjani was deliberately frightening Mr Tay by referring to the whole amount and putting it in terms of "taking". Plainly, when he went on to say that he was willing not to pursue the matter and sought a way forward that would not affect the claimants or the Company, he was also saying that if the claimants did not agree to what he wanted, he would pursue the matter and thereby affect both them and the Company.

67 My assessment that Mr Murjani deliberately unsettled and intimidated Mr Tay by making allegations of serious misconduct that he knew to be untrue is additionally supported by his later behaviour in May 2022 in coupling a demand that Mr Tay "resign from being involved … in the management" with the accusation that Mr Tay was "using the company and its funds as if it [was his] own and [his] own piggy bank".[56] By this stage Mr Tay had grown more resolute and it did not work: Mr Tay responded by pointing out that in fact they had "stopped accepting salaries from around March 2020 because of the COVID-19 pandemic, after [Mr Murjani had] suggested that salaries to shareholders can be held back and accumulated as debt".[57] However, it

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56 Tay Yiming's 1st Affidavit at p 829.

57 Tay Yiming's 1st Affidavit at p 828.

demonstrates Mr Murjani's ability and willingness to make false accusations to create fear and manipulate his counterparty.

68 In their closing submissions, the defendants submit that even if Mr Murjani had threatened to sue the claimant and/or wind up the Company, this does not amount to illegitimate pressure.[58] They say that such a suit or application to wind up would not be a criminal or civil wrong. But that is too simplistic. It overlooks two points. First, Mr Murjani knew and understood from the meeting on 2 November 2014, some four years before, that the claimants were not receiving salaries commensurate with their work and responsibilities, and that the plan was to increase those salaries as the Company grew. I also infer that he accepted that the increases were not unjustified or disproportionate as he has never attempted to suggest otherwise. Given his knowledge that increases were planned and his acceptance that the quantum of increases were themselves reasonable, any suit he might bring in the name of the Company would have no merit. Nor would a winding up application. I infer that he knew that at the time. Accordingly, he was implicitly threatening legal action that he knew had no merit. In his meetings with Mr Tay, he would have observed the effect that these threats had on Mr Tay and behaved in a calculated fashion to take advantage of Mr Tay's weakness.

69 Mr Murjani's second tactic was to exaggerate what the claimants had been "overpaid". Based on the quantum of salaries the parties agreed the claimants were to draw upon the execution of the 2014 SHA, the total monthly payout for each of the claimants, consisting of the claimants' take-home pay and additional CPF contributions from the Company were approximately

[58] 2nd and 3rd Defendant's Closing Submissions at para 72.

(excluding any further deductions for whatever reasons) (the "Original Salaries"):

(a) Ms Oon: $5,850 per month;

(b) Ms Tay: $1,170 per month; and

(c) Mr Tay: $5.265 per month.

70 The claimants periodically increased their respective salaries between January 2015 and November 2018.[59] Mr Murjani's evidence is that he became aware of these increases in December 2018. He then began discussions with the claimants, represented by Mr Tay, that ultimately culminated in the execution of the 2019 Agreements. In the course of these discussions, claims were made concerning the total amount of moneys which the claimants had allegedly "overpaid" themselves, *ie*, the total amount received by the claimants, collectively, in excess of their Original Salaries. I summarise these claims and Mr Murjani's proposals for rectifying these "overpayments" in the following sub-paragraphs.

(a) On 28 December 2018, Mr Tay informed Mr Murjani that the claimants had received $330,000 in salary increments.[60]

(b) That same day, Mr Murjani asserted that the figure should be $511,804, based on his estimations. He proposed that this overpayment could be accounted for by (i) adding $511,804 to the shareholder loans

59 Tay Yiming's 1st Affidavit at para 40 and pp 409–503.

60 Tay Yiming's 1st Affidavit at para 59.

owed to Group MMM by the Company and (ii) the revision of the claimants' salaries to the quantum of the Original Salaries.[61]

(c) On 31 December 2018, Mr Murjani asserted that the "overpayments" amounted to $1,100,000.[62] This amount allegedly "took into consideration the amount of salary and CPB [*sic*] contributions to the [claimants] over the material period".[63] Mr Murjani and Mr Tay then agreed that, among other things: (i) $1,100,000 would be added to the shareholder loans owned to Group MMM by the Company and (ii) Group MMM would receive 75% of the collective total monthly salary received by the claimants.[64]

(d) On 2 February 2019, Mr Murjani met Mr Tay and informed the latter that the total amount "overpaid" totalled $1,250,000.[65] This figure was allegedly based on a spreadsheet provided by Mr Tay, which includes the figure "$1,244,931.63".[66]

(e) During that same meeting on 2 February 2019, Mr Murjani communicated to Mr Tay that the total amount "overpaid" to the claimants was $1,666,667.[67] Mr Murjani also further asserted that Group MMM's contributions to the Company amounted to an estimated sum of $5,266,667: see [14] above. At this juncture, it suffices to reiterate

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61 Manoj Murjani's Affidavit dated 16 December 2022 at para 52(a).

62 Tay Yiming's 1st Affidavit at para 62.

63 2nd and 3rd Defendants' Closing Submissions at para 97(b); Manoj Murjani's Affidavit dated 16 December 2022 at p 319.

64 Manoj Murjani's Affidavit dated 16 December 2022 at p 319.

65 Tay Yiming's 1st Affidavit at para 63.

66 Manoj Murjani's Affidavit dated 16 December 2022 at para 52(e) and p 333.

67 Manoj Murjani's Affidavit dated 16 December 2022 at para 52(e)(v).

> that this sum included the figure of $1,666,667 that the claimants had allegedly overpaid themselves. Against this backdrop, Mr Murjani made several more proposals to resolve the salaries dispute and other disagreements between Mr Murjani and the claimants.[68]

71 Following the 2 February 2019 meeting, Mr Tay, on behalf of the claimants, and Mr Murjani, on behalf of Group MMM, continued making proposals. This culminated in their agreement to the 2019 Terms, set out in an email from Mr Murjani on 21 February 2019, and the execution of the 2019 SHA.

72 I first make some observations concerning the figures set out above at [70]. First, based on the spreadsheet exhibited to Mr Tay's first affidavit,[69] the total amount received by the claimants in the form of salary increases, inclusive of CPF contributions from the Company on the increased salary quantum, amounts to $345,150. Second, and most importantly, there is no basis for the figures asserted by Mr Murjani. Based on the same spreadsheets, the total amount received by the claimants from December 2014 to November 2018 was $1,279,980. Further, although Mr Murjani claimed to have relied on a spreadsheet provided by Mr Tay for his estimate that the total amount "overpaid" was $1,250,000, this appears to be a deliberate misinterpretation of the information in said spreadsheet. Indeed, the spreadsheet does include the figure "$1,244,931.63", however, it is unclear how this figure was derived. Regardless, the spreadsheet clearly states, "Total Overpayment + Interest (estimate) = $511,804.13". Mr Murjani also admitted that some of the figures

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68 Manoj Murjani's Affidavit dated 16 December 2022 at para 52(f).

69 Tay Yiming's 1st Affidavit at pp 409–413.

he quoted were of the entire amount, *ie*, salaries, CPF, overpayments, and all, paid to the claimants, as opposed to just "overpayments".[70]

73 Moreover, any right to claim against the claimants for alleged overpayment of their salaries, if at all, would lie with the Company, as opposed to Group MMM, which was a shareholder of the Company.

74 Mr Murjani's counsel did not seriously argue that he did not know that he was exaggerating the amount of the overpayment. From my observation of Mr Murjani in the witness box, I find that he knew full well that he was exaggerating the overpayment to put pressure on Mr Tay. He was contriving a way for the Company to be required to pay Group MMM a balancing amount. Mr Murjani really had no explanation of how he arrived at the figures that he did. Not only is he well-educated and obviously highly intelligent, but he is also an experienced businessman. In fact, Mr Murjani admitted his awareness of the fact that the overpayments totalled only $330,000, claiming that he had suggested to resolve this issue by having the claimants pay back this sum to the Company.[71]

75 Mr Murjani's counsel's arguments focused more on the point that Mr Tay would, on the face of it, appear well able to take care of himself in commercial negotiations. After all, he is a university graduate with training in accountancy. If he had stopped to think for a moment, he might have understood that not only was Mr Murjani being unfair but that he was being unfair in order to frighten Mr Tay, at which point he could have gathered his resolve. Indeed, the claimants' evidence is that they knew that Mr Murjani's position was

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70 Transcript for the hearing on 18 July 2023 at p 78, lines 18–25, and p 81, lines 2–8.

71 Transcript for the hearing on 18 July 2023 at p 162, line 21 to p 163, line 14.

incorrect and, specifically, that the "overpayment" figures he estimated were fictitious.[72] Unfortunately for Mr Tay, he seems to have been pushed off-balance, so much so that he offered an additional top-up of $300,000 such that the Company would owe Group MMM $1,550,000 (including the total sum of the $1,250,000 in alleged overpayments): see [15(a)] above.[73] I accept Mr Tay's explanation of his doing so, namely that he wanted put a stop to Mr Murjani's escalation of demands.[74] Mr Tay was obviously not thinking straight, and in my view this is evidence that there was compulsion of his will.

76 A major factor in the pressure felt by Mr Tay was the fact that the claimants had given several personal guarantees.[75] Mr Murjani was fully aware of the fact that the claimants had much more to lose than he did if the Company defaulted on its bank borrowings or was wound up.[76]

77 In support of their contention that this was a considered decision by the claimants, the defendants suggest that this proposal was not the only option available to the claimants. Instead, they could have repaid the $1,250,000 in allegedly overpaid salaries to the Company but were unwilling to do so.[77] While I accept that was theoretically an option that Mr Murjani may have mentioned to them, it was not pursued or discussed, in all likelihood because that would not have been to Mr Murjani's advantage. Only half of any repaid amount would benefit him indirectly as a 50% shareholder, via Group MMM. As for

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72 Transcript for the hearing on 12 July 2023 at p 80, line 18 to p 81, line 4.

73 Manoj Murjani's Affidavit dated 16 December 2022 at p 342.

74 Tay Yiming's 1st Affidavit at para 70.

75 Tay Yiming's 1st Affidavit at paras 37(d) and 68.

76 Manoj Murjani's Affidavit dated 16 December 2022 at para 128(b).

77 Defendants' Closing Submissions at para 98(a).

Mr Murjani's suggestion that Group MMM become a 70% shareholder, this was equally unfair, and was, in effect, what he sought to achieve indirectly by booking into the Company's accounts the invented Group MMM Loan – which if unpaid would convert into equity.

78 Mr Murjani's third tactic was to exaggerate how much he and Group MMM had contributed to the Company: see [14] above. He did so to convince Mr Tay that what he was asking for was small by comparison. On 2 February 2019,[78] Mr Murjani took Mr Tay through a calculation.[79] He explained this in his affidavit of evidence-in-chief as being an "estimate in good faith" and "simply trying to put a dollar figure on the many intangible contributions made by us". I do not accept that it was done in good faith at all. It was a negotiating tactic calculated to confuse Mr Tay. Every part of it is bizarre. First, he asserted that he had contributed $900,000 of value by enabling the execution of three leases. Mr Murjani claimed that these figures were equivalent to one-month's revenue at the respective outlets.[80] However, a store's revenue is not representative of the profits it generates, *ie*, it does not account for the overheads incurred to achieve that revenue. In other words, this is not a fair reference point to determine the value of this contribution to the Company, especially since the Company was ultimately operating these outlets at a loss at the time of his claim.[81]

79 Next, he claimed that the defendants had contributed $2,500,000 to the Company's brand. He resiled from this under cross-examination, asking to re-

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78 Bundle of Affidavits of Evidence-in-Chief (Volume 12) dated 3 July 2023 at pp 45–49.

79 Bundle of Key Documents at pp 274–276.

80 Transcript for the hearing on 18 July 2023 at p 86, lines 11–22.

81 Transcript for the hearing on 18 July 2023 at p 96, line 23 to p 97, line 15.

word the relevant sub-paragraph from "$2,500,000, being the estimated value that Group MMM and I contributed to the Company's brand" to "$2,500,000, being the estimated value of the Company's brand, which Group MMM and I significantly contributed to".[82] It is clear from the wording of the rest of his affidavit that the original wording was indeed how he had put it in negotiations on 2 February 2019. The change he claimed in the witness box would have contradicted the mathematical justification for his demand then for "70% shareholding in the Company in exchange for $4,000,000 of the true value that Group MMM and [he] had contributed to the Company".[83] But even the revision was absurd. He claimed that the value of his intangible contribution to the brand "Violet Oon" was $1,500,000 compared to $1,000,000 for the contribution from the claimants,[84] notwithstanding that it is an eponymous brand.

80 Mr Murjani also claimed a value of $100,000 for having "introduced various senior bankers to the Company, who [he] had built a trusted relationship with over the years".[85] However, the Company does not appear to have enjoyed any tangible benefits from these introductions. Leaving aside that he could not really explain how he came to this figure, the reality was that the claimants bore a "disproportionate" share of financial responsibility in that only they provided personal guarantees[86] and consequently in his word, their contribution was "immense".[87]

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82 Transcript for the hearing on 18 July 2023 at p 99, line 22 to p 100, line 19.

83 Manoj Murjani's Affidavit dated 16 December 2022 at para 52(f)(i).

84 Transcript for the hearing on 19 July 2023 at p 109, line 21 to p 110, line 6.

85 Manoj Murjani's Affidavit dated 16 December 2022 at para 52(e)(vi).

86 Transcript for the hearing on 19 July 2023 at p 101, lines 17–19; Tay Yiming's 1st Affidavit at paras 37(d) and 68.

87 Transcript for the hearing on 19 July 2023, p 113, line 20.

81 Again, I hold that Mr Murjani knew full well that he was exaggerating his own contribution, both in absolute and relative terms. Mr Tay's inability at the time to question Mr Murjani's presentation of his own value, particularly in relative terms, does not show considered agreement on his part but is symptomatic of compulsion of his will. I accept that he was both confused and fearful, and that this was the state of mind Mr Murjani sought to instil in him.

82 Mr Murjani's fourth tactic was to isolate Mr Tay. Ms Tay gave evidence that Mr Murjani only wanted to meet with Mr Tay, to the exclusion of herself and Ms Oon.[88] I accept her evidence.

83 In short, Mr Murjani, by pretending that he was outraged by the claimants' increases in salary, sought to bully and confuse Mr Tay into ceding control of the Company to him. Mr Murjani exploited the situation to manoeuvre the claimants into agreeing to the invention of a "loan" that if not paid would be converted into equity for Group MMM. There were a number of difficulties with this. First, if the claimants had truly overpaid themselves, any moneys owed would be owed from the claimants to the Company. There is no legal basis for the amount that the claimants were paid, and more, to be treated as a shareholders' loan owed by the Company to Group MMM. Second, the 2019 Terms provided, among other things, that Group MMM would receive the same amount of compensation as that received by the claimants collectively from 1 December 2018 onwards.[89] As mentioned in the previous paragraph, the claimants' compensations were paid to and received by them *qua* employees, as opposed to *qua* members. There is no basis for Group MMM, a corporate entity, *qua* member, to receive the same compensation as the claimants *qua* employees.

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88 Transcript for the hearing on 13 July 2023 at p 7, lines 13–15.

89 Tay Yiming's 1st Affidavit at p 635.

Mr Murjani, being a seasoned businessman who has invested in several companies prior to the Company should be well-aware that there was no basis for Group MMM to receive funds from the Company in the manner he had suggested. Accordingly, regardless of whether his demands were lawful, they were, at minimum, unreasonable and not made in good faith. They smacked of attempted exploitation.

84 For clarity, I add that I do not accept that it is open to shareholders of a company, even acting unanimously when the company is solvent, to invent a loan owed from the company to a shareholder. This is what Mr Murjani attempted.

85 The only incontrovertible benefits enjoyed by the claimants following the execution of the 2019 Agreements are: (a) an increase in monthly salary for Ms Oon and Mr Tay; and (b) no threat of winding up of the Company and/or litigation by Mr Murjani and/or Group MMM as at the execution of the 2019 Agreements. The defendants have attempted to characterise the continuation of equal shareholding between Group MMM on one hand and the claimants on the other as another benefit enjoyed by the claimants, as opposed to converting $4,000,000 in alleged value of Group MMM's contributions to the Company into a 70% shareholding in favour of Group MMM. This argument is, in my view, untenable. Putting aside the issue of whether there was a valid legitimate expectation of equal shareholding which constituted, in part, the commercial agreement between the parties in 2014, the basis of this benefit is Mr Murjani's *unsubstantiated estimations* that Group MMM and himself had contributed $5,200,000 in value to the Company. Furthermore, the alleged "benefit" of continued equal shareholding was contingent on Group MMM receiving $1,550,000 and interest thereon from the Company within three years of the date of the 2019 Terms. Failing which, "[a]ny unpaid amount thereafter

or in the event of capital being raised in the company prior to the 3 years will be converted to equity at the original value of the company".[90] This sum consisted of (a) the $1,250,000 which the claimants had supposedly overpaid themselves and (b) an additional $300,000.[91] In other words, under the 2019 Terms, if Group MMM did not receive payment of more than what the claimants received from January 2015 to November 2018 as salary for actual work done by them within the next three years, the "benefit" of equal shareholding would end and Group MMM would become the majority shareholder of the Company.

86 In contrast, the defendants gained significant benefits from the 2019 Agreements. First, the claimants would continue to work in the Company and yet a larger amount would be paid to Group MMM. Group MMM would also receive at least $1,550,000 in payments, arising from the claimed overpayment of the claimants' salaries. Further, Group MMM would be featured in materials associated with the Company, *ie*, receive publicity. Two of the claimants would lose their directorships. Mr Murjani would be appointed CEO, despite admitting during the hearing that he was to be a CEO in name only,[92] and Chairman of the board with a casting vote. This was an important advantage even if he has thus far not used this casting vote.

87 It is indeed a well-established principle of contract law that consideration need only be sufficient, not adequate. However, that the agreement was manifestly disadvantageous to the claimants supports my inference that it was the result of Mr Murjani's illegitimate pressure.

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90 Tay Yiming's 1st Affidavit at p 635.

91 Defendants' Closing Submissions at para 72.

92 Transcript for the hearing on 17 July 2023 at p 42, lines 5–15.

88 Given the unfairly exploitative and manifestly disadvantageous nature of the 2019 Agreements and the claimants' testimony concerning the negotiations and the pressure they felt under, I find that the claimants would not have entered into them but for the illegitimate pressure exerted on them.

89 The defendants submit that the email communications between Mr Murjani and Mr Tay leading up to the 2019 Agreements show the claimants' ability, via Mr Tay, to safeguard their rights and hence the pressure did not result in the execution of the agreement.[93] The argument is that Mr Tay remained capable of deciding whether to enter the 2019 Agreements as he negotiated for the shareholding to remain equal between the parties. However, the question is whether the claimants would have entered into the 2019 Agreements taken as a whole, if not for the illegitimate pressure exerted. In my view, it clear that they would not have done so, but for the fear of the Company being wound up and their personal guarantees being called on, as well as other deeply unpleasant consequences.

90 Thus, I find that the elements of economic duress, sufficient for vitiating the 2019 Agreements, are made out. I set aside the 2019 Agreements.

Whether the 2019 Agreements may be avoided on the ground of undue influence

91 The claimants also submit that the 2019 Agreements were obtained by undue influence. Having found that there was economic duress, I do not have to consider this alternative contention. However, it is helpful to consider the doctrine of undue influence in application to the facts because, while its starting point is different from economic duress, it sometimes traverses the same ground.

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93 Defendants' Closing Submissions at para 72.

The law may consider the facts through different lenses, but the victim may experience both pressure and influence from a wrong-doer at or about the same time. Consequently, in order to do justice in the round, both vitiating factors are often properly considered together.

92 Undue influence divides into proved actual undue influence, *ie*, Class 1 undue influence, and presumed undue influence, *ie*, Class 2 undue influence. The latter subdivides into undue influence rebuttably presumed from an irrebuttably presumed relationship of trust and confidence, such as solicitor-client relationships, *ie*, Class 2A undue influence, and undue influence rebuttably presumed from a proved relationship of trust and confidence, *ie*, Class 2B undue influence. In relation to actual undue influence, the Court of Appeal in *BOM v BOK* expounded that (at [103], referencing *The Law of Contract in Singapore* at para 12.123):

> … the heart of the inquiry is *whether the person exercising the undue influence has 'exercised such domination over the plaintiff victim's mind that his independence of decision was substantially – or even totally – undermined' …*
>
> [emphasis added]

93 For actual undue influence, it must be shown that the influencer had the capacity to influence the victim in the circumstances prevailing at the time of the transaction. Such capacity to influence may lie in vulnerabilities of the victim that the influencer exploits, or in the victim's misplaced trust that overall, the influencer is acting in the victim's best interests. Here, the main contention of the claimants is that Mr Murjani was a mentor to Mr Tay and used this relationship to manipulate Mr Tay. As I have found above at [88], Mr Murjani exerted illegitimate pressure on Mr Tay and, by extension, the claimants as a whole. This pressure resulted in the latter agreeing to, among other things,

onerous terms, such as the Company owing Group MMM an additional $300,000, to maintain the existing shareholding structure.

94 I have found that the claimants made these decisions because of illegitimate pressure exerted by Mr Murjani. This is not inconsistent with Mr Murjani having exercised undue influence over Mr Tay, whom the former insisted on negotiating with to the exclusion of Ms Oon and Ms Tay. I accept that the claimants were aware that Mr Murjani's allegations were false[94] and that they "disagreed with the [defendants'] position",[95] yet gave into his demands anyway. In their words, the claimants were "most concerned about the Company's business. … [They] had to protect the Company at all costs and did not want to have to spend time and money defending a baseless legal action".[96]

95 However, at this time in early 2019 what they did not realise was that Mr Murjani was feigning his outrage, as part of his manipulation of Mr Tay. A review of the Whatsapp messages and emails exchanged between Mr Murjani and Mr Tay reveals how the former combined veiled threats with dangled solutions (naturally ones to his advantage), weaving in averments of concern for the claimants and for the Company, calculated to make Mr Tay feel that it would be fair to agree to what Mr Murjani proposed.

96 I find that Mr Murjani knew exactly what he was doing in manipulating Mr Tay. I base this finding on my observations of Mr Murjani in the witness box as well as on how he wrote to Mr Tay in contemporaneous emails. In the witness box, Mr Murjani was often evasive and pretended to feign ignorance of

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94 Transcript for the hearing on 12 July 2023 at p 80, lines 17–21.

95 Tay Yiming's 1st Affidavit at para 69.

96 Tay Yiming's 1st Affidavit at para 69.

how his emails would be read. Such ignorance was implausible, given his evident high proficiency in the English language. Moreover, there are many examples in the written record which give a strong indication of how he would have spoken to Mr Tay as well. I cite some examples from Mr Murjani's email to Mr Tay sent at 9.32pm on 19 February 2019.[97]

97 At 6.56pm, Mr Tay had emailed Mr Murjani in a tone that is not merely conciliatory but submissive.[98] Therein, Mr Tay tried to discuss how Mr Murjani wished to change the branding narrative and made some suggestions. Mr Tay reiterated the claimants' offer of an additional $300,000 top-up to the "loan" the Company would book in favour of Group MMM, pleading that it be the step that paved the way "to continue a harmonious relationship" and begging that failure by the Company to "repay" the "loan" not be linked to increases in Mr Murjani's equity. Mr Murjani's response was at times scornful and larded with accusations of "misrepresentations on the truth of the partnership Violet Oon Singapore" and of the claimants having "taken $1.25M out of the company".[99] The threat to take steps "affecting [the claimants] and the company" was veiled behind words that he was "willing to not pursue this matter, to compromise to find a way forward without" so affecting them.[100] Then, against this background of pressure, words of comfort leap out, portraying himself as "forgiving and trying, with immense effort in moving forwards harmoniously, to discuss with sincerity solutions".[101] Naturally, his "sincere

97 Tay Yiming's 1st Affidavit at pp 620–622.

98 Tay Yiming's 1st Affidavit at pp 622–624.

99 Manoj Murjani's Affidavit (16 December 2022) at pp 339–340.

100 Manoj Murjani's Affidavit (16 December 2022) at p 340.

101 Manoj Murjani's Affidavit (16 December 2022) at p 339.

solution" was to insist on linking non-repayment of the invented "loan" to conversion into equity for Group MMM.

98 Mr Murjani had presented himself as a man much more experienced in business than the claimants with their family style of operating. I accept too the claimants' submission that Mr Murjani was treated as mentor,[102] and this was particularly clear in the case of Mr Tay. This fact supports my finding that Mr Murjani exercised actual undue influence over Mr Tay.

99 Having found the claimants have successfully proved, based on the material before me, that Mr Murjani in fact exercised undue influence over Mr Tay, I do not need to determine whether Mr Murjani's mentorship rose to the level of a relationship of such trust and confidence that gives rise to a rebuttable presumption of undue influence.

100 Mr Murjani was one person, the claimants three. Mr Murjani directly exerted undue influence only on Mr Tay. As I have found at [63(d)] and [82], this was a deliberate strategy on Mr Murjani's part. Nonetheless, it raises the question whether Ms Oon and Ms Tay should be entitled to rely on actual undue influence of Mr Tay to avoid the 2019 Agreements. While the economic duress applied to Mr Tay plainly affected mother and sister too, only Mr Tay was directly besieged with emotional bullying and manipulation. The law expects adults who are not incapacitated or vulnerable to take responsibility for their own interests. However, the facts of this case are special. I am satisfied that both Ms Oon and Ms Tay were deeply disturbed by the toll on Mr Tay and just wanted the nightmare to stop. In this way, the reach of Mr Murjani's undue influence extended to them as well.

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[102] Claimants' Closing Submissions at paras 9, 10, and 200.

Abuse of process

101 The defendants submit that both OC 301 and CWU 195 constitute an abuse of process on the claimants' part and hence the latter are disentitled from bringing OC 301 and CWU 195.

OC 301

102 Both the claimants' and the defendants' submissions on the issue of abuse of process rely on the two-stage framework set out in *Kroll, Daniel v Cyberdyne Tech Exchange Pte Ltd and others* [2023] 4 SLR 484 ("*Daniel Kroll*") at [135] ("*Kroll* Framework"). The *Kroll* Framework was set out in relation to *pre-trial striking out applications* against minority oppression claims under O 18 r 19 of the Rules of Court 2014: *Daniel Kroll* at [135]. The *Kroll* Framework was subsequently modified and applied in *Leong Quee Ching Karen v Lim Soon Huat and others* [2023] 4 SLR 1133 ("*Karen Leong*") at [29]–[31], also in relation to a *pre-trial* striking out application, under O 9 r 16(1) of the Rules of Court 2021.

103 My approach to abuse of process where an offer has been made in an oppression case is first to determine whether the defendant made a reasonable offer that the claimant ought reasonably to have accepted, rather than pursuing the matter to trial. If the claimant has unreasonably rejected a reasonable offer, then, unless the claimant can show some other reason or reasons both legitimate and sufficient to justify pursuing the case regardless, then I would hold that there has been an abuse of process. The seeking of collateral advantages would not ordinarily be a legitimate reason to proceed with the matter, and might itself indicate an abuse of process.

Reasonableness of the Group MMM Offer

104 The terms of the Group MMM Offer include, among other things:[103]

(a) Mr Murjani acquires the claimants' cumulative 50% shareholding in the Company for $6,000,000;[104]

(b) all shareholders' loans owed by the Company to the claimants will be treated as being discharged;[105]

(c) the claimants shall not use or procure the use of the name of the Company or "VOS" in connection with their own name or any other name in a way calculated to suggest that they continue to be connected with the business of the Company;[106] and

(d) the claimants shall not "carry on, engage or be engaged in, concerned or interested in any business relating to the food and beverage industry in [Singapore], or which otherwise directly or indirectly competes with the business of the Company …, or contradicts the Company's reasonable business" for a period of 24 months after payment of the $6,000,000 consideration.[107]

105 The defendants submit that the Group MMM Offer was reasonable.[108] First, the value of the offer was fair as after deducting the moneys owed to the

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103 Manoj Murjani's Supplementary AEIC at pp 38–40.

104 Manoj Murjani's Supplementary AEIC at p 38.

105 Manoj Murjani's Supplementary AEIC at p 39, at para 3.c.

106 Manoj Murjani's Supplementary AEIC at p 39, at para 3.d.

107 Manoj Murjani's Supplementary AEIC at p 39, at para 3.e.i.

108 Defendants' Closing Submissions at paras 164–168.

claimants (as shareholders' loans and allegedly unpaid salaries), the claimants would receive approximately $4,000,000. This figure is "substantially in excess of both [parties'] experts' valuations".[109] The claimants' expert's valuation was prepared with the benefit of all relevant documents and information as the claimants were and continue to be in operational control of the Company.[110] Finally, there is "no issue of the costs of the assessor and assessment process given that both the [claimants] and [the defendants] adduced their own expert evidence".[111]

106 On the other hand, the claimants submit that the Group MMM Offer was unreasonable on the basis that, first, "[t]here is no evidence that the $6M Consideration is based on a value by a competent expert".[112] Second, $6,000,000 is not a fair offer as after deducting moneys owed to them by the Company, the value of the "Violet Oon" name (the right to which they would lose under the terms of the Group MMM Offer), the legal costs incurred by the time the Group MMM Offer had been made, and the $750,000 share capital injected by the claimants, the true value of the profit the claimants would receive from the sale of their shares to Mr Murjani was only $20,782.[113] Third, the restraint of trade clause as stated at [104(d)] above is "onerous" as "its practical effect would be to exclude the Claimants from the F&B industry entirely, for a period of 24 months … [and] [t]o stop the Claimants from doing what they do (and

109 Defendants' Closing Submissions at para 167.

110 Defendants' Closing Submissions at para 168.

111 Defendants' Closing Submissions at para 168.

112 Claimants' Closing Submissions at para 276.

113 Claimants' Closing Submissions at paras 277–278.

Ms Oon, from doing what she has always done), for any period of time, would be unreasonable and unjust" [emphasis in original omitted].[114]

107 I hold that the Group MMM Offer was not reasonable.

108 First, it did not address what Mr Murjani knew the claimants wanted and sought as their primary relief, namely that they buy Group MMM's shareholding, not sell their shares to Group MMM. This relief was not unreasonably sought by the claimants and was certainly not doomed to fail.

109 Secondly, it was premised on Group MMM thereafter taking on the business associated with Ms Oon and using her name, with the imposition of restrictive covenants on the claimants. This latter condition in fact acknowledged that the goodwill the Company had in the name "Violet Oon" was a reflection, at least in part, of Ms Oon's personal goodwill. Yet the offer made no attempt to account for or compensate the claimants for being so restricted over and above what might be the value of their shareholding.

Rejection of the Group MMM Offer

110 Moreover, the claimants were justified in rejecting the Group MMM Offer for the simple reason that their intent was to buy out Group MMM. The offer, even if it had been objectively reasonable as an offer to buy out the claimants, was not what they wanted. They were entitled to press on with the claim, seeking the remedy that they wanted, given that it was certainly not doomed to fail.

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114 Claimants' Closing Submissions at para 277(c).

111 As the claimants contend, their "singular purpose in this litigation … is to obtain the exit of [Mr Murjani] and/or Group MMM from the Company, and obtain 100% shareholding of the Company".[115] Moreover, the restraint of trade term of the Group MMM Offer would have prevented the claimants from working in an industry that their experience for almost the past decade has been in.

112 The defendants also submit that the rejection was not justified because the claimants refused to participate in mediation wherein negotiations on the possible sale of the claimants' shareholding to Mr Murjani could have occurred.[116] However, whether the claimants had attempted amicable dispute resolution is distinct from whether their rejection of the Group MMM Offer was justified. Rejection of mediation is a consideration when it comes to costs, but in relation to abuse of process, the concern is whether there was a reasonable offer unreasonably rejected.

CWU 195

113 The defendants also submit that there was an abuse of process involved in CWU 195. This is the claimants' application filed on 3 October 2022 seeking to purchase Group MMM's 50% shareholding in the Company under s 125(3) of the IRDA or wind the Company up on the just and equitable ground.[117]

114 The thrust of the defendants' complaint is that a winding up application under s 125 of the IRDA may be an abuse of process when relief under s 216 of

115 Defendants' Closing Submissions at para 174.

116 Defendants' Closing Submissions at paras 175–178.

117 Originating Application (CWU 195/2022) at para 1.

the Companies Act is available.[118] On this basis, they submit that "the fact that the [claimants] have also filed OC 301 offers further basis to infer that CWU 195 was filed for a collateral purpose" [emphasis in original omitted].[119]

115 The defendants submit that the claimants "do not genuinely want the Company to be wound up" and that there was an abuse of process as the claimants filed CWU 195 with the intention of pressuring Group MMM to sell its shares to the claimants.[120] They substantiate this submission on the grounds that, among other reasons:

(a) OC 301 and CWU 195 were filed in rapid succession;[121]

(b) the claimants had been "blatant" about their intention to buy-out Group MMM's shareholding;[122]

(c) the claimants had rejected "all reasonable attempts at alternative dispute resolution";[123] and

(d) Mr Tay has "been assuring the Company's landlords and other stakeholders that the Company will continue to pay its debts and continue to be in business notwithstanding the commencement of OC 301 and/or CWU 195".[124]

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118 Defendants' Closing Submissions at para 196.

119 Defendants' Closing Submissions at para 196.

120 Defendants' Closing Submissions at paras 183, 194(b), and 200.

121 Defendants' Closing Submissions at para 197.

122 Defendants' Closing Submissions at para 199.

123 Defendants' Closing Submissions at para 202.

124 Defendants' Closing Submissions at para 201 quoting Tay Yiming's 2nd Affidavit at p 8.

116 In my judgment, it was reasonable for the claimants to put before the court the remedy of winding up as one possible answer to the situation in the Company. The claimants' position is that they want either to buy-out Group MMM's shareholding or for the Company to be wound up.[125] Moreover, for the Company to continue its operations, as it has done, reassurances would need to be given to the Company's stakeholders.

117 I am satisfied that the claimants' pursuit of both proceedings was reasonable. Moreover, the claimants played their part in ensuring that both proceedings were dealt with expeditiously by the court without duplication or waste of court resources.

Whether CWU 195 was filed to circumvent the shareholder exit mechanism in the 2019 SHA

118 The defendants also submit that CWU 195 is an abuse of process as it was filed to circumvent the shareholder exit mechanism in the 2019 SHA. There were similar provisions in the 2014 SHA.

119 First, cl 9 of the 2019 SHA (cl 8 of the 2014 SHA) applies only to the situation where "a Shareholder … wishes to transfer any of its shares in the Company to a third party".[126] As the buy-out sought by the claimants does not involve any transfer of shares to third-parties, this clause is inapplicable.

120 Turning to cl 10 of the 2019 SHA (to which cl 9 of the 2014 SHA is similar), Mr Murjani and Mr Tay are to resolve material issues relating to the business by having good faith discussions. If they are unable to do so, the

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125 Claimants' Closing Submissions at para 282.

126 Defendants' Closing Submissions at para 204.

shareholders, *ie*, Group MMM and the claimants, are to "agree to conduct an internal or external buy-out, in accordance with this Agreement, at a price to be agreed at such time" [emphasis in original omitted].[127] As the defendants acknowledge, this clause envisages the parties coming to an agreement in relation to a buy-out and the price of such buy-out.[128] It is not a clause that the claimants could unilaterally operate nor obtain specific performance of. Moreover, Mr Murjani did not express interest to be bought out by the claimants. The claimants for their part have been adamant about not wanting to be bought out by Mr Murjani. The parties did not enter into negotiations. Such a clause effectively does no more than mandate negotiations, presumably to be undertaken in good faith. It is untenable to suggest that an application under s 125 of the IRDA amounts to a circumvention of the shareholder exit mechanism.

Appropriate remedies

121 When the case opened, I asked junior counsel for the defendants whether they accepted that there is an available remedy under both or either of s 216 of the Companies Act and s 125 of the IRDA for the minority complaining of oppression to buy out the majority, a compulsory purchase of the majority by the minority.[129] She accepted that there is, but that such a remedy is "just rare".[130]

122 I agree with her concession. Section 216(2) of the Companies Act mandates making such order as the court thinks fit "with a view to bringing to an end or remedying matters complained of", as well as providing by

127 Defendants' Closing Submissions at paras 204–205.

128 Defendants' Closing Submissions at para 206.

129 Transcript for the hearing on 10 July 2023 at p 78.

130 Transcript for the hearing on 10 July 2023 at p 79.

s 216(2)(*d*) specifically for the purchase of shares in the company without limiting this to shares of the applicant. Section 125(3) of the IRDA similarly permits the court to order the purchase of shares without limiting it to shares of the applicant:

> …if it is of the opinion it is just and equitable to do so, make an order for the interests in shares of one or more members to be purchased by the company, or by more other members, on terms to the satisfaction of the Court.

123 One argument against making this order on the present facts is that my setting aside the 2019 Agreements has put an end to the matters complained of. On this view, the parties can continue in the Company on the basis of their original arrangements. Moreover, setting aside the 2019 Agreements means that:

(a) the Company is under no liability in relation to the Group MMM Loan, *ie*, the Company does not owe $1,550,000 to Group MMM, (although in my view it is not open to shareholders even of a solvent company and even acting unanimously to invent a liability for the company to one of their number: see [84] above);

(b) Group MMM will no longer receive the same amount of compensation as the sum totalling the claimants' monthly salaries;

(c) Mr Murjani would no longer be Chairman of the Company's board and CEO of the Company; and

(d) Ms Oon and Ms Tay would rejoin the Company's board.

124 Nonetheless, I do not agree that the cat can be put back in the bag in this way. I find that the claimants' concerns about continuing to work with

Mr Murjani are wholly reasonable. Mr Murjani's professed willingness to work with the claimants does not solve the problem.

125 Another point might be that the Company should be wound up. It might be said that the general principle that a company which remains a going concern should not ordinarily be wound up merits an exception where this would achieve some other end for the parties, *eg*, the possibility of an open bidding process for the company's business that both sets of shareholders could participate in. However, in this case neither truly seeks a winding up, at least not other than as a last resort. Making such an order would risk the Company losing enterprise value which is not in the interests of either the claimants or the defendants.

126 I accept that ordering the defendants to an oppression action to sell their shares should be rare. It involves an interference with their property rights. However, I hold that this is one such rare case. I consider it material that the Company carries the name of Ms Oon. It was very much a family business. All three claimants were and are involved "hands-on". Moreover, it represents Ms Oon's legacy, in a general sense of the word. Both son and daughter legitimately and reasonably wish to uphold and continue their mother's legacy. I further consider that Mr Murjani will not be punished by such an order, as the purchase price for Group MMM's shares will be determined by valuation.

127 I turn now to the question of valuation. The defendants contend that any purchase of Group MMM's shares must be at fair value, presumably on a going concern basis. I accept this contention. However, parties have not fully addressed the basis of valuation. I have in mind two points (but there may be others):

(a) whether there should be a premium factored in for control; and

(b) whether there should be any discount for lack of marketability.

128 My provisional view is that there should be a premium for control and no discount for lack of marketability. Were the parties to negotiate freely on a buy-out, there would have to be a premium applied because the buyer would achieve control as a result of the purchase. As Group MMM is a reluctant seller, it would not be fair to discount its shares for lack of marketability when it has not wanted to market its shares anyway. Nonetheless, if the parties are not able to agree on these or other aspects of the basis for valuation, they are at liberty to apply and I will hear them.

129 There remains one other aspect of the basis for valuation. That is how the valuation should treat the Company's rights to use and exploit its name. Belatedly, the claimants have contended that Ms Oon is in the position of licensor and is entitled to charge for use and exploitation of her name, notwithstanding that she has never done so. As I have indicated at [29], what the position is in law is not an issue before me. However, I do have power to make directions concerning the basis of valuation. In my view, regardless of the true legal position between Ms Oon and the Company, it is fair that Group MMM's shares be valued on the basis that the Company has the right to use and exploit the name in connection with its business without payment of any fee to Ms Oon.

130 Turning to the identity of the valuer, parties should seek to agree on an independent valuer, failing which parties may refer the choice of independent valuer back to me.

131 I make no order on CWU 195. My order for the purchase of the Group MMM's shares is made in OC 301 pursuant to s 216 of the Companies Act.

Costs

132 Parties are to seek to agree both the incidence and amount of costs, bearing in mind that there are two separate proceedings. Failing agreement within 14 days of this judgment, either party may write in for me to determine incidence and assess the costs.

Conclusion

133 I am satisfied that Mr Murjani exerted economic duress and undue influence in order to change the shareholder arrangements with a view to his taking control of the Company. While I have set aside the changes, this does not completely remedy or bring to an end the matters complained of. Moreover, the court should not leave the shareholders to stew in distrust, enmity, and potential deadlock. The appropriate remedy is for the claimants to buy-out the defendants' interest in the Company at fair value.

Philip Jeyaretnam
Judge of the High Court

Meryl Koh Junning, Justin Lai Wen-Jin, Shahera Safrin, and Daniel Wong Sheng Jie (Drew & Napier LLC) for the claimants in HC/OC 301/2022 and HC/CWU 195/2022;
The first defendant in HC/OC 301/2022 and HC/CWU 195/2022 absent and unrepresented;
Thio Shen Yi SC, Chew Xizhi Stephanie, and Phoon Wuei (TSMP Law Corporation) for the second and third defendants in HC/OC 301/2022.
