

Pang Swee Kang v Low Chui Ying Foreen and another
[2012] SGHC 12

Case Number : Suit No 134 of 2010
Decision Date : 17 January 2012
Tribunal/Court : High Court
Coram : Quentin Loh J
Counsel Name(s) : Roy Yeo Kan Kiang (Sterling Law Corporation) for the plaintiff; Mak Kok Weng (Mak & Partners) for the first and second defendants.
Parties : Pang Swee Kang — Low Chui Ying Foreen and another

Companies – Shares – Transfer

17 January 2012

Judgment reserved.

Quentin Loh J:

Introduction

1 This is a dispute between the plaintiff, Pang Swee Kang (“the Husband”), and the first defendant, Foreen Low Chui Ying (“the Wife”), over 54,000 shares in the second defendant, Animal Practice Pte Ltd (“the Company”). The Company was incorporated on 27 March 2006, with a share capital of S\$90,000 put up by the Wife’s mother, Mdm Lau Bee Eng (“Mdm Lau”).

2 After some adjustment, I am told, the Wife held 54,000 shares (60%) and Mdm Lau held 36,000 shares (40%) in the Company. It was not disputed that both the Husband and the Wife did not contribute to the initial capital of the Company. The Husband claimed that the 54,000 shares held by the Wife belonged to him and the Wife claimed otherwise.

3 This case started as an Originating Summons where the Husband sought a court declaration that the transfer of shares from the Husband to the Wife on 28 July 2008 be declared null and void and a court order for the Company to rectify its share register to reflect the Husband as the holder of 54,000 shares in the Company. The Originating Summons was ordered to be converted to a writ action and the affidavits filed by the Husband and the Wife were ordered to stand as pleadings.

4 The parties had already obtained an interim judgment for divorce by the time of the hearing before me. However, the ancillaries had not yet been dealt with as the parties were awaiting the outcome of these proceedings. I gave oral judgment with brief grounds on 27 July 2011. The Husband, being dissatisfied with my decision, filed an appeal on 23 August 2011 and I now give my full grounds of decision.

Issues

5 At trial, the parties agreed that the issues before me were:

(a) whether the signature alleged to be that of the Husband on the share transfer document dated 28 July 2008 was genuine or whether it was a forgery; and

(b) if the signature was a forgery, then a declaration was sought that that document was null and void and the Husband seeks a declaration that he was still the owner of the 54,000 shares in the Company.

6 Counsel on both sides were initially of the view that the case could be decided on the evidence of the handwriting experts only. Consequently, the documentary and affidavit evidence of the Husband and the Wife and their cross-examination at the first tranche of the trial was, with respect, very cursory. Many questions relating to the facts in my mind were left unanswered.

7 Having reflected on the matter, I consequently called counsel back and gave each of them a list of the queries I had for each of their cases, as well as a list of queries I had for the other side. I also asked for more documentation, such as the Company's corporate registers and records. As a result, there was a second tranche of trial where more facts and documents were put forward and further cross-examination was conducted.

The Husband's Case

8 The Husband claimed that he owned 54,000 shares in the Company and that the Wife, as the company secretary, had forged his signature and surreptitiously transferred the 54,000 shares to herself. The Husband claimed that the Wife could do that because he had left the running of the Company to her. The Husband's pleadings rather artfully implied, but did not explicitly say, that he was behind the setting up of the Company. The Husband recited that whilst he only had a secondary school education, his strength was in the veterinary business in which he was involved for many years. By contrast, the Wife, who was a university graduate with a Masters Degree, had no prior experience in this kind of business.

9 In his Counsel's Opening, the Husband alleged that the Company was set up by him after borrowing \$90,000 from Mdm Lau on the condition that Mdm Lau would hold 60% of the shares in the Company until the loan was fully repaid whereupon she would transfer her interest in the 60% of the shares to him, making him the majority shareholder. Thereafter, Mdm Lau would remain as the minority shareholder by taking over the shares of her daughter, the Wife, who held the remaining 40% of the shares. I pause to note that this does not square with the Plaintiff's Affidavit filed on 19 August 2009, (which was ordered to stand as his pleading), where at paragraphs 3 and 5 the Husband deposes that Mdm Lau held 40% of the shares and the Wife held 60% of the shares.

10 The Husband further alleged that he had already repaid Mdm Lau the S\$90,000 he borrowed, and she had transferred to him her 60% stake, making him the majority shareholder of the Company. This was evidenced by him being paid dividends, which exceeded S\$90,000, as the majority shareholder. In or around June 2009, he discovered that the Wife had unilaterally and without his knowledge transferred his 60% shareholding to herself and backdated the transfer to 28 July 2008. The Husband then lodged a police report.

The Wife's Case

11 The Wife claimed that the Company was incorporated on 27 March 2006 by Mdm Lau, with an initial capital contribution of S\$90,000. The Wife was allotted 63,000 shares (70% of the share capital) and Mdm Lau was allotted the remaining 27,000 shares (30%). Shortly thereafter, the Wife took steps to run the Company and she managed the Company with the assistance of paid employees. At the time of incorporation, the Husband was running a Dog Breeding Farm and he helped out at the Company on an *ad hoc* basis. The Husband was paid for that help and was given free or discounted veterinary treatment for the animals from the Dog Breeding Farm. Unfortunately, the

Husband ceased operating the Dog Breeding Farm in April 2007 and was unemployed with no future plans for his career path.

12 The Wife then suggested that the Husband join her in the Company. The Husband agreed and was paid a monthly salary like the other employees. However, once the Husband started working at the Company, work related disagreements started to occur between them and that exacerbated the existing marital problems between them. The Wife began to suffer from depression in early 2008 and harboured thoughts of suicide. She then decided to transfer her shares in the Company to the Husband, on the condition that he was to transfer the shares back to her if she recovered. This was because she thought that, should she die or become incapacitated, then the Husband could continue the business. Transferring her shares to Mdm Lau was not a viable option because Mdm Lau did not know how to run a veterinary clinic and, in any case, Mdm Lau was gainfully employed at that time.

13 The Wife then told the Husband of her intention and made it clear that he was to hold her shares as her nominee and he was to transfer the shares back to her upon request. On that understanding, she transferred her shares in the Company to the Husband on 27 March 2008. The Husband did not make any payment for the shares transferred to him.

14 However, soon thereafter, as a result of their deteriorating marital relationship, the Wife asked the Husband to transfer the shares back to her. She prepared the transfer document and the Husband signed the document voluntarily on 28 July 2008. However, the Wife did not register the transfer document with the Accounting and Corporate Regulatory Authority ("ACRA") until 18 February 2009. The Wife claimed that this was because, in the interim period, she was still unwell and suffering from bouts of depression; and she did not consult a psychiatrist until 13 August 2008 and she was only prescribed the necessary medication then. It was only when she felt better in February 2009 that she registered the transfer with ACRA electronically.

15 The Wife also claimed that, in order to effect the share transfer with ACRA electronically, she required the Husband's 'Singpass' password. The Husband had voluntarily given to her his password in order for her to transfer his shares back to her electronically.

Findings of Fact

16 Having heard the Husband and the Wife and considered the evidence, I made the following findings of fact:

(a) The Husband only had a primary education and dropped out of school at an early stage around 1988; he said he did so because his family lacked the means to pay his school fees and he wanted to earn money which he could also use to help out his family. He proceeded to do odd-jobs: as a construction worker, a farmer, working in a 'kelong', selling vegetables in a market, and some work related to assisting vets in their clinics and dog handling. He started Pets Man in Lor Halus around 1997 and sold puppies, did pet grooming and managed to house abandoned dogs. He alluded to being misunderstood by SPCA and to some apparently adverse newspaper report. His business venture failed after a few months. In 2002, he ventured into importing Smoke Pet Treats but this failed when the imports deteriorated due to our high temperatures and humidity. He also worked at Animal Recovery Centre, Simei East Branch, ("ARC"), 4 days a week and spent the other 3 days pursuing his pet grooming and pet transport ventures. The Husband met the Wife around 2001 when he was working for ARC and doing his own pet grooming and transport.

(b) Around 2004, he started a Dog Breeding Farm under Pets Culture, which was a sole proprietorship registered in or around February 2002 under the Wife's name. I accepted the Wife's

evidence that her name was used in this sole proprietorship because the Husband was in debt at that time. I also accepted the evidence of the Wife that the Dog Breeding Farm was not doing well. It needed capital to continue and there were difficulties in relation to raising this money. The Husband claimed otherwise but he had not submitted any evidence to substantiate his claims, *viz*, that it was profitable, he managed to pay off his loans and that he sold it for the "highest price ever" (a record price) of S\$48,000. The Husband claimed that the Company was his project and it was his efforts that brought it into existence; yet I find it telling that none of the alleged money he made was available for the Company; a type of business that the Husband said was his dream of some 20 years' standing.

(c) The Company was incorporated on 27 March 2006 with funds from Mdm Lau, the Wife's mother. Subject to my findings below, on the premise of the case presented before me by both parties, (where the 70:30 shareholding became a 60:40 shareholding, without explaining how or when that happened), the Wife held, (or was, and I make no conclusive finding on this for the reasons set out below, at least beneficially entitled to), 60% of the shares (54,000) and Mdm Lau held (or was, and I also make no conclusive finding on this, at least beneficially entitled) to the other 40% (36,000). It was not disputed that the Husband did not directly contribute to the share capital. The Company started off with a vet, one Dr Tharm Sook Keng ("Dr Tharm")

(d) From the evidence, the Wife obviously loved the Husband very much and wanted to help provide an alternative for him in the likely event the Dog Breeding Farm failed. There was evidence of problems in that business between the Husband and the other principals in the Dog Breeding Farm. The Husband also had problems with Mdm Lau but the Wife prevailed over both of them to start the Company. The Dog Breeding Farm ceased operating in April 2007. I find as a fact that it did not cease because the Husband wanted to concentrate on the Company, but because of other problems, such as financial and viability issues.

(e) The Husband had originally tried to get funding from other sources, but it was obvious that none of these materialized. The evidence showed that he had no funds to invest in such a venture. It was the Wife who had to persuade the Husband to use the money offered by Mdm Lau to assist them in their start-up. I find that there was an agreement to pay back Mdm Lau her investment. Pursuant to this agreement, Mdm Lau received various sums between November 2006 and early June 2007 amounting to about S\$80,000; and another S\$55,000 on 15 January 2008. At the time of incorporation, I find that the Husband treated the Company as the Wife's business. As he still had his Dog Breeding Farm, he only helped out at the Company when he could, and was paid for those services.

(f) I also accept that it was the Husband who wanted to set up the Company. However, the Husband was not a qualified vet and could not enrol in a university to study to become a vet. A vet clinic required a qualified vet and had to be licensed by the Agri-Food & Veterinary Authority of Singapore. It is telling that in all the years before the Company was set up, the Husband had never set up or attempted to set up a vet clinic. Instead in 2004, the Husband acquired a Dog Breeding Farm with others. The Wife was not unfamiliar with the business of pets and running a pet shop. I accept her evidence that she had previously helped one Mr Wee Pan Lee set up his pet shop "Wags to Whiskers". I find that in addition to not having any capital, the Husband was incapable of putting in place the administrative, regulatory and logistical work necessary to start and set the Company up. On the other hand, I find that the Wife was capable, as she had the necessary qualifications, experience and resources.

(g) The evidence showed that the Wife took proactive steps by getting her mother to provide the funds for the Company. Further, she bore the burden of persuading the Husband to accept

that arrangement even though she felt that the Husband was distancing himself from her. She chose to undertake all that was necessary to set up the Company despite the detrimental effect it had on her marriage. I find that the Wife did this whilst harbouring the hope that things would improve between them – if the Company was successful, the Husband would have more self-respect and they would not quarrel so much over financial matters.

(h) Unfortunately, well before March 2006, there were already some deep seated problems between the Husband and the Wife. There is evidence of this as early as February 2004. On 13 February 2004, the Wife wrote:

... Furthermore treats you better, take care of you, manage and maintain the household better, and help you out with your work.

... If you can hang out that long with the previous 2, [referring to the previous 2 women in the Husband's life] even if I started to inherit some of their life's value, [referring to the first woman as pestering, ill-mannered and foul mouthed, not having children for the Husband to maintain or being high maintenance and spendthrift referring to the second] I reckon you can bear with me as were the amount of time you could with them. Its more than enough for me.

I had lived with other people. Even they had maids and servants serving them all their life till they had to take care of themselves, they had better self-respect and respect for me (their temporary house keeper).

Me? Your wife... do more, earn less, get screwed, get into more shit, more errands, give more love, more time, more effort, greater care, put in money... yet treated worse off than these people's maid/housekeeper.

(i) I find that this state of affairs did not improve as the years moved on. It only got worse with the starting of the Company and the closure of the Dog Breeding Farm.

(j) Returning to the Company, I find that at the beginning stages, because the Husband was still involved in his Dog Breeding Farm, and because there was some resentment on his part that Mdm Lau had financed it, it was the Wife and Dr Tharm who ran the Company. At a later stage, between September 2006 and July 2007, one Dr Blair joined them. The Husband normally turned up at the Company in the late afternoon or evenings.

(k) It was also clear from the evidence, and I so find, that Mdm Lau wanted the shares to be in the Wife's name so that the Wife would have something to fall back on when Mdm Lau passed on. Mdm Lau also harboured the hope that with this arrangement the Husband would treat the Wife with more respect and not bully her. I do not find, as contended by the Husband, that there was any agreement between them for Mdm Lau to put up the money for the Company, to be repaid the "loan" as and when the Company made money and then to transfer the business and shares to the Husband. There was evidence, which I accept, that the Wife holding the shares with her mother in the Company was an issue [\[note: 1\]](#) which was articulated in a letter which I find was written by the Wife sometime in March or April 2008 [\[note: 2\]](#):

Feel that the share distribution is not fair for you?

My mum say to put the share under my name?

Afraid that if clinic did well, you don't get what you deserve? Or I will snatch it away from

you? (if anyone also has the possibility of doing this, you'd prefer benefitting outsider?)

...

Afraid you got no time? (but in the first place, u offer the 10% to Kevin coz of lack of fund and also so that he could help u tend to the farm while you set up the clinic. You ask me to manage after you set it up coz you afraid you got no time and lousy with administrative stuff. I know you busy, so I also help set up. You should have more time than you should be having if you set it up alone now with extra help.

...

You simply cannot swallow your pride for getting a loan from mother-in-law?

Cannot swallow your pride for what my mum says?

(l) I find that the Wife worked very hard to make the Company succeed. I find that in the formative period, the Husband did make some contributions, like giving ideas, assisting in getting some information relating to pets, medicine, clinic equipment, and viewing premises and equipment with the Wife. But it was chiefly the Wife's work that set up the Company, by getting in supplies and getting the operations running with Dr Tharm. As noted above, the Wife wanted to set up this business so that if the Husband's Dog Breeding Farm folded up, he would have something else to do. I find, contrary to the Husband's contention, that there was no agreement for the Husband to own any shares in the Company because Mdm Lau was the sole person providing the funds and she would not have agreed to placing any shares in the Husband's name. As for the Wife, I find that she was neutral at best, as it did not matter if whether or not the Company made money – she treated her money as common property belonging to herself and the Husband anyway. The Wife must have felt that she would eventually be able to let the Husband have some shares in the Company once Mdm Lau was no longer around; or perhaps at some later stage when Mdm Lau could be persuaded otherwise.

(m) I find that the Husband also contributed to the Company but to a much lesser extent once it was set up and running. He seemed much more interested in his pet grooming and pet transportation work. The Wife ran the Company with the vets working there. The main income of the Company came from veterinary work, and the Company had always hired qualified and duly registered vets. The Husband would not be in a position to do this work. I do not find that the vets hired by the Company carried out their veterinary work under the supervision and control of the Husband. On the contrary, there was evidence which I am sure will surface in the Family Court, that the Husband was disruptive: there is evidence that the vets in the Company resented his interference with their work; and that the Husband often abused his position (by virtue of his relationship with the Wife) in the Company, sometimes resulting in losses to the Company.

(n) Having heard the Husband and the Wife's evidence, and having observed their respective demeanour during cross-examination, I preferred the evidence of the Wife. I did so because the Husband's evidence and claims did not square with the facts. He also contradicted himself at times. For example, he filed a police report stating that his 'Singpass' was kept by the Wife; yet in his Affidavit filed on 13 October 2009 he said that the Wife had obtained his 'Singpass' by stealing a look at it from a booklet in the drawer where all their passwords were kept. I also find that the Husband's view of himself and his abilities were inflated. He obviously had a problem sustaining a job or a business. He had no bank account and did not know anything about how a company was run. Further, he merely tirelessly repeated that he was very knowledgeable about

dogs and was apparently often referred to as a “walking encyclopedia” on dogs. Yet today, he was still carrying on with his pet grooming and pet transportation and had made no headway in this area of his professed love and passion. His professed knowledge, close ties to the animal industry and to the vets in the Company (who presumably also called him the “walking encyclopedia” on dogs) had certainly not enabled him to set up any clinic. On the other hand, the Wife was still successfully running the Company since the Husband departed in June 2009 and I accepted the Wife’s evidence that the Company continued to be profitable.

(o) The Husband closed down the Dog Breeding Farm in or around April 2007 and he did more “work” at the Company. Unfortunately, their relationship quickly deteriorated with the Husband coming into the Company. They had frequent quarrels and differences not only at home but also at the Company. I find that these problems, and the realization by the Wife that no matter what she did, she could not keep or even get any love from the Husband, drove her into depression in the beginning of 2008. Her random entries showed a tortured soul, with little self-worth and wanting to shut herself up. [\[note: 3\]](#) She resented the Husband for making decisions and even decisions to which she had strong objections to, and then asking her to put her name down and accept the legal liability. I accepted her evidence that she harboured thoughts of suicide. She said, and I accepted, that she attempted suicide during her depression. One of the entries read:

It is good if after saying all these, the anger in you for me to be a permanent feeling. Please hate me and make it last forever. My endurance for pain might be strong ... but I am already psychologically screwed. Please do a kind deed and left [*sic*] me alone. Even if I were to die quietly, I will be ever grateful to you for letting me out of this living hell. ... I just want to finish up this last bit of work and I want to just be left alone ... to live, to die, to rest, to rot ... just leave me alone. [\[note: 4\]](#)

(p) I find that during the Wife’s period of depression, thinking that she would die or become incapacitated, she transferred her 60% shareholding in the Company to the Husband sometime in or about March 2008. There was no evidence as to how this transfer was carried out, whether it was by the usual Share Transfer Form or a signed resolution like the document in question or whether it was just an electronic entry at ACRA. Indeed, the Share and Director’s Registers in the Wife’s and the Company’s Supplementary Bundle of Documents were all blank and the records were not updated. I find that despite her hurt and despair, the Wife’s love for the Husband still made her leave the business to him when she was no longer around. That was her final sacrifice and act of love before she left this world. It was not disputed that the Husband did not pay anything for the shares. Although the Husband claimed that the loan was paid, I find that the money used to repay the loan came from either the profits of the Company (in which he held no shares) or the Wife’s account. The loan was not repaid with his own money. I note the Husband drew a salary from the Company and was reimbursed and paid for any “extra” work he did for the Company. The Wife was also paid a salary.

(q) I find that the Wife was not of full mental capacity and sound mind and was suffering from Depressive Disorder with Panic Attacks when she transferred her 60% shareholding to the Husband. I reject the Husband’s claim that she voluntarily transferred the 60% shares to him pursuant to the agreement that when Mdm Lau’s loan was paid up, he would get these shares. The evidence showed that there was no such agreement. So long as Mdm Lau was around, the shares had to remain in the Wife’s and Mdm Lau’s names.

(r) I also do not accept the Wife’s claim that there was an agreement between her and the Husband to the effect that she would transfer her 60% shares in the Company to the Husband; and if she recovered, the Husband had to re-transfer the shares back to her. At the time of the

transfer the Wife did not think about recovery as she was severely depressed and was not capable of forming an agreement with the Husband.

(s) The Wife sought psychiatric help sometime in August 2008. From August to December 2008, I find that the Wife only made marginal improvement. However, she began to get better with treatment thereafter. I find that when she recovered sufficiently, which was in late December 2008 or early 2009, she could think more clearly. She realized what she had done in transferring her shares. At the same time, the staff started telling her what was going on whilst she stayed away from the Company due to her illness. She then accepted the fact that she and the Husband were through as man and wife and that he had severely disrupted the running of the Company during the period of her illness. On top of that, the Husband was having an affair with a part-time nurse that worked at the Company. There is evidence and I accept that the Company staff were on the Wife's side and resented the Husband's unreasonable interference in the Company.

(t) I also find that the control and management of the Company was, until the Wife became ill and transferred the shares to the Husband, with the Wife. The Husband did not decide salary levels, especially the Wife's salary, nor the bonuses or payments out to the staff or Mdm Lau. There was an allegation from the Wife that the Husband insisted on handing out the bonuses in "cash" to the staff so that he could siphon off a portion of their bonus. This too was discovered when she recovered from her illness. When the Wife recovered sufficiently in early 2009, she continued to make the final decisions as owner of the Company.

(u) I accept the Wife's evidence that there was wrongdoing on the Husband's part as far as the Company was concerned. I also accept her evidence that what brought matters to a head and his termination was Mdm Lau and the Wife going to the Company one day and finding the Husband there with his mistress, in the clinic grooming her own client's dog. As a result of an altercation between Mdm Lau, the Husband and his mistress, the police were called in. The Husband's employment was terminated with immediate effect. It is telling that the Husband never protested then and there that he was the owner and majority shareholder of the business and that Mdm Lau had no authority to fire him.

(v) The preponderance of evidence was that the Husband interfered with the employees and vets at the Company. These persons (for instance, a vet named Dr Theo) did not like or accept the Husband's interference. The Husband's evidence did not answer many of these allegations. His demeanour on the stand and his answers to the questions put to him were not as satisfactory when set against that of the Wife and the staff of the Company. In fact, I find his first Affidavit dated 19 August 2009 in effect, bland and misleading. Even at this stage, he had not answered the voluminous allegations of wrong doing that have been made against him.

(w) I formed the impression that the Husband was the type of person who could not be bothered or did not bother with administrative details and paperwork. His low level of education may have been a contributory factor but it is more because of his nature and make-up. For the reasons set out below, I find that the signature on document in dispute, the 'Director's Meeting for Transfer of Shares' dated 28 July 2008 was signed by him. I find that, on a balance, the Wife managed to get him to sign this document; it would not have been difficult because he was likely not to have bothered to read what he was signing. Neither, on his own evidence, did he bother to keep copies. Insofar as it is necessary, I find that this document was signed sometime on or before 18 February 2009 and backdated to 28 July 2008. On his own evidence, everything was going fine until June 2009, when he discovered the allegedly unilateral and unauthorized transfer of 54,000 shares to the Wife. There would have been no reason for him to have been suspicious

of anything in February 2009. His bland affidavit on this issue also spoke for itself.

The "Forged" Signature and Expert Evidence

17 Each side put forward a handwriting expert. The Husband engaged Mr William Pang Chan Kok ("Mr Pang") who opined that there was strong support for the proposition that the impugned signature was not that of the Husband. The Wife engaged Mr Yap Bei Sing ("Mr Yap") of the Health Sciences Authority ("HSA") who came to the opposite conclusion as Mr Pang, *viz*, that it was probable that the writer of the signatures in the specimens "S1" to "S26" was the same as that in "Q" (the share transfer document in question).

18 The Husband alleged that the signature on the share transfer form was a forgery. Forgery of a document said to effect a transfer of shares was a very serious allegation and was akin to fraud. It was settled law that the burden of proof was on the Husband, and it was a high burden.

19 Having heard and considered the evidence, I preferred the expert evidence of Mr Yap over that of Mr Pang for the following reasons:

(a) Mr Pang's report failed to comply with Order 40A of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"). This was a very serious defect. Although I allowed its correction by oral evidence-in-chief, the damage was already done. At the time of forming his opinion and writing his report, the important requirements were not in his mind.

(b) The bulk of Mr Pang's experience was in graphology. His apprenticeship in document examination and forensic examination only commenced in 2004 and he received his certification in 2006. In contrast, Mr Yap from HSA had about 20 years' experience in forensic document examination, and he had handled more than 3,900 cases and had testified in court on more than 70 occasions. His report also complied with Order 40A of the Rules.

(c) Mr Yap had carefully set out 27 signatures of the Husband against the impugned signature. He convincingly explained, and it was evident from the Comparison Chart, that the Husband's signature had a large natural variation in many respects and in many different parts of his signature, *viz*, in the size, the slant and the formation and relative positioning of the strokes. The debate over the "2" figure exceeding the height of the inverted "e" was settled in my mind when Mr Yap was able to refer me to some signatures, like S6, S4 and S25 where the same could be seen. Mr Pang also conceded that the specimen signatures "exhibited a wide range of variation" and he considered this normal. He also accepted that the signatures were pictorially similar, which he defined as "some level of pictorial resemblance that is observable and cannot be attributed to coincidence or chance."

(d) Mr Pang referred to certain details like the inverted "e" being elliptical in shape in the impugned signature whereas the specimen signatures resembled a "boat" structure. A look at Mr Yap's Comparison Chart immediately revealed that Mr Pang's reliance was misplaced. There were so many variations to the inverted "e". Similar comments on the details of the impugned signature when checked against the Comparison Chart showed that his conclusion was not borne out by the specimen signatures. The weakness of Mr Pang's conclusion was that each feature he pointed out in the impugned signature was only compared against one other signature without reference to the many other sample signatures.

The Company records

20 During the course of the evidence, I asked for the Company's corporate registers and records. The corporate secretarial records were produced in evidence. [\[note: 5\]](#) The records showed that the Company was incorporated on 26 March 2006 with a share capital of S\$90,000 divided into 90,000 shares of S\$1.00 each with Mdm Lau holding 27,000 ordinary shares (30%) and the Wife holding 63,000 ordinary shares (70%). [\[note: 6\]](#) There was an unsigned Director's Resolution [\[note: 7\]](#) bearing the date of 6 August 2009 confirming the allotment of 'subscriber' shares and that Share Certificates Nos. 1 and 2 were issued with the company seal affixed thereto [\[note: 8\]](#) but without signatures.

21 There was a 'Post AGM Memorandum' dated 14 December 2008 recording a resolution of the directors, Mdm Lau and the Wife, bearing their signatures, to pay a dividend of A\$50,000 in November 2008 and S\$50,000 in December 2008 to themselves in the proportion of 40% and 60% respectively.

22 Other than the contested document entitled "DIRECTOR'S MEETING FOR TRANSFER OF SHARES" dated 28 July 2008 [\[note: 9\]](#), many other documents in the register were effectively blank. The blank documents included:

- (a) the Register of Application for and Allotment of Shares [\[note: 10\]](#);
- (b) the Register of Transfers [\[note: 11\]](#);
- (c) the Register of Members [\[note: 12\]](#); and
- (d) the Register of Directors' Shareholdings and other interests [\[note: 13\]](#);

23 Only the following forms were filled in:

- (a) the particulars of Mdm Lau and the Wife as directors [\[note: 14\]](#) in the Register of Directors;
- (b) the Form 45 consent to act as director [\[note: 15\]](#) signed by the Wife and Mdm Lau;
- (c) the particulars of the Wife as company secretary [\[note: 16\]](#) in the Register of Secretaries and a consent to act as secretary signed by the Wife;
- (d) the contested 'share transfer' document [\[note: 17\]](#);
- (e) an unsigned Director's Resolution pursuant to Article 90; and
- (f) two post-AGM memoranda.

The applicable law

24 Article 20 of the Articles of Association of the Company states [\[note: 18\]](#):

Transfer of shares

20. Subject to these Regulations, any member may transfer all or any of his shares by instrument in writing in any usual of common form or in any other form which the directors may approve. The instrument shall be executed by or on behalf of the transferor and the transferor shall remain the

holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect thereof.

25 Article 20 stipulates two requirements for the valid transfer of shares. First, an instrument in writing in any usual or common form, (there being no evidence of the third option), was to be executed by or on behalf of the transferor. Second, the registration of shares and the entering the name of the transferee in the register of members. Both these requirements were not complied with.

26 Section 126(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("CA") provided as follows:

Instrument of transfer

126.—(1) Notwithstanding anything in its articles, *a company shall not register a transfer of shares or debenture unless a proper instrument of transfer has been delivered to the company*, but this subsection shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any share in or debentures of the company has been transmitted by operation of law.

[emphasis added in italics]

27 Although counsel for the Wife informed me that there was a subsequent adjustment of shares from the original 70:30 shareholding to the present 60:40 shareholding between Mdm Lau and the Wife, there were no transfer forms reflecting this change. There was also no transfer form reflecting the alleged transfer of shares from the Wife to the Husband. In both cases, the transfer of shares was not effected on the register of members.

28 In *Jamat bin Awang v Lai Wee Ngen* [1995] 3 SLR(R) 496 ("*Jamat*"), the Court of Appeal held that shares were generally transferable in the manner provided by the company's articles of association, subject only to s 126(1) CA which required a proper instrument of transfer executed by the person registered as the holder of the share in question. A transferee would not have the capacity to execute the instrument of transfer in favour of himself. The Court of Appeal in *Jamat* also cited with approval *Hawks v McArthur* [1951] 1 All ER 22 for the proposition that to successfully transfer legal title in a share, the transferees name must be entered into the register of members maintained by the company. Both these requirements must be complied with, *viz*, a valid instrument of transfer within the meaning of s 126(1) CA and compliance with the articles, which in this case required the entry of the transferee's name into the register of members. See also Gower & P L Davies, *Principles of Modern Company Law* (Sweet & Maxwell, 8th Ed, 2008) at p 939, para 27-5.

29 However, for the purposes of this case, I make no findings on the beneficial ownership of the shares. First, that was not a question before me; secondly, the evidence on this issue is incomplete as Mdm Lau had not given any evidence; and thirdly, this is an issue that is more properly addressed by the Family Court dealing with the ancillaries and division of matrimonial property. Therefore, for the purposes of this case, I find that Mdm Lau held the legal title to 27,000 shares and the Wife held the legal title to 63,000 shares in the Company. This is so despite the Register of Members being blank, the unsigned Resolution upon incorporation allotting the 27,000 shares to Mdm Lau and 63,000 shares to the Wife and the two Share Certificates Nos. 1 and 2 with the company seal affixed to each of those certificates but without the signatures of two directors or a director and the company secretary. It is common ground that Mdm Lau put up the S\$90,000 capital in the Company.

Conclusion

30 I find that the alleged transfer of the 54,000 shares from the Wife to the Husband was null and void as the Wife was in a state of deep depression and was not capable at that time to make a valid disposition. It was also made without any consideration. Lastly the alleged transfer did not comply with s 126(1) CA and Article 20 of the Articles of Association of the Company. I therefore find and hold that there was no valid transfer of the contested 54,000 shares from the Wife to the Husband in or around 27 March 2008.

31 Insofar as it is necessary to do so, I find and hold that the Husband signed the document entitled "Director's Meeting for Transfer of Shares" bearing the date 28 July 2008. This document was signed around or before 18 March 2009. On balance, I find and hold that the Husband signed this document without reading it. Insofar as it purported to transfer any shares from the Husband to the Wife it was of no effect as it was only a note of a vote for a resolution; it did not amount to an instrument of transfer within the meaning of s 126(1) CA and it does not comply with Article 20 of the Articles of Association of the Company for the transfer of shares.

32 It followed that the Husband did not hold any shares in the Company and was therefore not entitled to an order for the rectification of the share register. But that was not to say that the Husband had no "share" in the Company. I noted above (at [\[29\]](#)) that I make no findings as to the beneficial ownership of the shares. However, it was clear to me that the contested 54,000 shares in the Company was matrimonial property, which was acquired by the couple during their marriage. Both the Husband and the Wife had put some effort and contribution into running the Company. What each party's respective exact share was in the contested 54,000 shares is for the Family Court hearing the ancillaries to determine after reading all the affidavits made for those proceedings. From the evidence before me, it was clear that the contributions from the Wife to this asset were more than that of the Husband. However what evidence is made available to the Family Court is another matter. It should also be borne in mind that Mdm Lau has worked at the Company since she resigned from her previous job at OCBC as a result of the Husband's complaints to her employer and besides contributing to the value of the Company from that date, Mdm Lau still holds the legal title to 27,000 shares in the Company.

33 As a result of my findings above, I refused to grant the declarations sought by the Husband and dismissed his action.

Costs

34 Having heard the parties on costs, I ordered 50% costs to the Wife to be agreed or taxed, and no costs to the Company.

[\[note: 1\]](#) Plaintiff's Supplementary Bundle of Documents ("PSBD"), at pp 37 – 42.

[\[note: 2\]](#) PSBD, at p 40.

[\[note: 3\]](#) PSBD, at pp 43 – 57.

[\[note: 4\]](#) PSBD, at p 47.

[\[note: 5\]](#) First and Second Defendant's Supplemental Bundle of Documents ("DSBD") filed on 24 September 2010, at pp 1 – 59.

[\[note: 6\]](#) DSBD, at pp 1 – 2.

[\[note: 7\]](#) DSBD, at p 49.

[\[note: 8\]](#) DSBD, at pp 57 – 58.

[\[note: 9\]](#) DSBD, at p 48.

[\[note: 10\]](#) DSBD at p 17.

[\[note: 11\]](#) DSBD at p 19.

[\[note: 12\]](#) DSBD at p 21.

[\[note: 13\]](#) DSBD at p 30 – 36.

[\[note: 14\]](#) DSBD, at p 23 and the reverse of p 23 which is unnumbered

[\[note: 15\]](#) DSBD, at pp 24 – 27.

[\[note: 16\]](#) DSBD, at pp 38 – 39.

[\[note: 17\]](#) DSBD. at p 48.

[\[note: 18\]](#) DSBD at pp 48.